

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER**

**ITA No.733/Hyd/2016
Assessment Year: 2005-06**

Sri B. Janardhan Reddy, vs. Dy. CIT,
Hyderabad. Central Circle-6(1),
Hyderabad.

PAN – ADYPB3929N

(Appellant)

(Respondent)

Assessee by : Shri A.V Raghu Ram
Revenue by : Shri D. Prasad Rao

Date of hearing : 26-03-2018
Date of pronouncement : 25-05-2018

ORDER

PER B. RAMAKOTIAH, AM:

This is an appeal by Assessee against the order of CIT(A)-9, Hyderabad dated 29.02.2016, Assessee has raised 3 grounds in this appeal which are as under:

“2. The order of the A.O originally passed is contrary to provisions of law as proceedings u/s153A is initiated though there is no incriminating material found relating to this assessment year.

3. The Ld. CIT(A) erred in confirming the addition on account of invoking provisions of Sec. 50C without appreciating the fact the A.O ought to have referred to valuation cell to find out whether a part of the property would be loss in road widening affecting the value of the property.

4. The Ld. CIT(A) erred in confirming the addition of Rs. 5,95,000/- made as unexplained investment without appreciating that there is sufficient balance in the form of opening balance of Rs. 7,73,465/- and further erred in ignoring the decision of the Hyderabad ITAT., in the case of Smt. Surapu Indira Devi to the effect that opening balance cannot be added”.

Ground Nos 1 and 5 are general in nature.

2. We heard both Ld. Counsel and Ld. DR and perused the documents on record.

I. The issue in ground No. 2 is with reference to the proceedings u/s 153A. It was the contention that there is no incriminating material found relating to this assessment year, hence, proceedings u/s 153A are bad in law. This ground was not raised before CIT(A) nor in the earlier proceedings even before the ITAT. Moreover, ITAT vide its order dated 28.02.2013 has noted as under:

“Briefly the facts of the case are that there was a search and seizure operation u/s 132 of the IT Act and certain documents were seized and assessment was completed based on the said documents”.

In view of the factual finding given in the earlier proceedings, the present contention is that there is no incriminating material found cannot be accepted the ground raised is in fact an additional ground which is not admitted and also there is no merit on the ground raised, in view of the factual position, accordingly the ground is rejected.

II. As regards ground No. 3, brief facts relating to this ground are that Assessee has shown sale of commercial property on 20.12.2004 for a consideration of Rs. 6,50,000/-. A.O noticed that the value for the purpose of stamp duty was fixed at Rs. 10,86,500/- and accordingly invoking the provisions of Sec. 50C of the IT Act, the value was proposed to be adopted at that price. Assessee put forth the argument that there was 10 feet road widening in the area and it was difficult to vacate the purchaser and taking possession of the premises. A.O however did not

agree and the matter was contested before Ld. CIT(A) who confirmed the addition. On the further appeal to the ITAT, Hyderabad in ITA Nos. 1510 to 1514/Hyd/2010 dated 28.02.2013. ITAT has remitted the matter to the file of A.O, with a direction that A.O shall decide the issue after taking into consideration the value of the Sub-registrar u/s 50C of the IT Act and thereafter, if convinced with material produced by Assessee with reference to the depression in sale price due to the factors contended the A.O shall determine the sale price accordingly. In the reassessment proceedings, A.O again repeated the addition and the CIT(A) has confirmed the same.

3. After considering the rival contentions, we are of the opinion that A.O has not followed the directions of the ITAT given earlier. Even in the original assessment proceedings, it was the submission of Assessee that the property was occupied by one Sri Srinivasa Chary. The property was purchased from Shri Vijay Mohan in September 1999 and property was not transferred in the Assessee name, since the tenant Shri Srinivasa Chary was not willing to vacate. Further there was impending road widening in which the flat was like to be demolished or loose value, therefore, he only obtained GPA and transferred the flat to the tenant on 20.12.2004 itself. In view of that, he has received Rs. 8 lakhs towards sale consideration and not SRO value which was Rs. 10,86,500/-. These aspects have not been examined by A.O and the impugned order which is passed is the repetition of original order. As seen from the order dated 31.12.2009 Assessee has admitted the sale

consideration at Rs. 8 lakhs and the sale amount was also shown in the cash flow statement provided from the year. The only issue is, whether the addition of Rs. 2,86,500/- is warranted u/s 50C of the IT Act. It is not clear whether Assessee has adopted the sale consideration at Rs. 6,50,000/- or Rs. 8,00,000/- in the computation of long term capital gain. There is no clarity about the income offered by Assessee, even in the original order. Since these aspects are not properly examined, we are of the opinion that this issue is to be re-examined by A.O, as per the directions of the ITAT given earlier. Moreover, when assessee has objected to the valuation, under the provisions of 50C of the IT Act, reference is required to the valuation cell. A.O has not even examined the sale deed, whether the tenant itself is the buyer or not, as contended by Assessee, if so, it is easy to question the buyer and also examine whether there is any road widening as contended by Assessee. Without examining these aspects, the A.O simply repeated the additions stating that Assessee has not furnished any evidence. Since Assessee's contentions are not examined properly, we set aside the order passed by A.O and restore the issue to the file of A.O for fresh examination after giving due opportunity to Assessee. The ground is considered as allowed for statistical purposes.

4. The ground No. 4 pertains to addition of Rs. 5,95,000/- made towards unexplained investment. In the original assessment order, after examining the cash flow statement prepared by Assessee post search, A.O made addition of Rs. 5,95,000/- being investments in M/s JR

Estates & Gardens to an extent of Rs. 4,75,000/- and construction of Fatehnagar property at Rs. 1,25,000/-. It was the contention that Assessee has prepared cash flow statements and as per the cash flow statement Assessee had enough sources to invest. The same contention was reiterated before the ITAT in the ground of appeals. ITAT vide para 10 of its order set aside the issue to decide after providing reasonable opportunity to Assessee and in accordance with law. It was the contention of Assessee that Assessee has prepared the cash flow statement after the search which was furnished before the ADIs and the A.O in the form of receipts and payments account and these statements have been accepted in respect to two years and according to which there is enough source for investing in the above items. However, Ld. CIT(A) rejected the contentions on the same reason i.e. cash flow statement have been prepared post search and authenticity of the same cannot be verified. Hence the present appeal.

4.1. After considering the rival contentions and perusing the papers placed on record, we noticed that Assessee has withdrawn an amount of Rs. 6,75,000/- in the month of February and March 2000 and deposited an amount of Rs. 2,20,000/- so as to have cash balance of Rs. 4,75,000/- as on 01.04.2000. The receipts and payments from A.Y 2001-02 to 2005-06 were prepared and cash flow statement was also prepared based on the withdrawals and deposits. As seen from the statements placed on the paper book, Assessee has shown opening cash balance at Rs. 7,73,465/- as on 01.04.2000. The cash balance for the

year ending 31.03.2001 was 14,14,443/-. Likewise every year, there was cash balances shown and for the impugned year the opening cash balance was shown at Rs. 10,88,648/- and closing cash balance was shown at Rs. 33,77,024/-. When these cash flow statements including various receipts by way of sale of properties and payments to various investments have been accepted, we are unable to understand why only three investments shown in the cash flow statement are added by A.O. Since assessee has enough cash balances as reported in the receipts and payments and since these investments were reflected in the above statement, it cannot be treated as 'unexplained investments'. Considering the facts of the case, we are of the opinion that there is no basis for making the addition of Rs. 5,95,000/-. Accordingly, the same is deleted. The ground is allowed.

5. In the result appeal is considered allowed for statistical purposes.

Pronounced in the open court on 25th May, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 25th May, 2018.

KRK

- 1) *Shri B. Janardhan Reddy, C/o A.V. Raghuram, Advocate, 610, Babukhan Estate, Basheerbagh, Hyderabad.*
- 2) *Dy. CIT, Circle-6(1) Hyderabad.*
- 3) *CIT(A) -9, Hyderabad.*
- 4) *The Pr.CIT-6, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*