

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI V.DURGA RAO, JUDICIAL MEMBER**

I.T.A. No. 849/HYD/2014

Assessment Year: 2007-08

Mr.Pramod Kumar Gupta, HYDERABAD [PAN: ACGPG2294L]	Vs	Deputy Commissioner of Income Tax, Central Circle-3, HYDERABAD
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(Appellant)

(Respondent)

For Assessee	:	Shri Sunil Kumar Jain & Shri Sanjay Kumar Sharda, ARs
For Revenue	:	Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 25-11-2019

Date of Pronouncement : 26-11-2019

ORDER

PER D.KARUNAKARA RAO, A.M. :

This appeal of assessee is directed against the order of the Commissioner of Income Tax (Appeals)-VII, Hyderabad, dated 27-02-2014, for the AY.2007-08.

2. The Ground(s) of Appeal raised by assessee are extracted as under:

"1. In computing the total income the learned assessing officer has made following additions:

A) The CIT(A) ought to have deleted the inappropriate addition to total income made by the AO stating it as unexplained investment to the extent of Rs.95,59,140/-"

3. Briefly stated relevant facts include that the assessee filed return of income, declaring a total income of Rs.12,99,902/- u/s.143(3) r.w.s.153A of the Income Tax Act [Act]. There was a search and seizure action on the assessee on 11-03-2010. In the light of the seized papers/documents, the Assessing Officer (AO) noted that the assessee made various payments both in cash and cheque towards purchase of lands at Ghatkesar, Boduppall, Kuntlur, Bhimili and Nadargul etc. The AO did not discuss much about these land transactions and the payments there-of in his order. The AO summarily made an addition of Rs.1,25,42,100/- for want of explanation of sources of the payments. Further, the AO found certain other papers and it contains the details of the transaction of purchase of 10 acres of land at Kukatpally for a consideration of Rs.1 Crore. For that, major part of the payment was made in cash. On this count, the AO made an additional amount of Rs.47,50,000/- and quantified the assessed income at Rs.1,85,92,002/- eventually.

4. During the first appellate proceedings, the assessee made various submissions and details, argued for deletion of the additions. In his order, the CIT(A) discussed the transactions relating to all these land deals and gave part relief. The appeal was partly allowed eventually.

5. Aggrieved with confirming of the addition amounting to Rs.95,59,140/-, the assessee filed the present appeal with the Ground(s) mentioned above.

6. Before us, at the outset, Ld.Counsel for the assessee argued for remanding the entire issue to the file of AO, considering the **non-speaking order** of the AO as well as due to absence of categorical finding of AO on the documents. Bringing our attention to various land purchase transactions narrated above, Ld.Counsel for the assessee submitted that most of the facts available on the seized papers were improperly appreciated by the CIT(A), **without calling** for any report from the assessing authority. Further, Ld.Counsel submitted that the AO never appreciated the seized material in correct perspective and therefore justified his request for remanding the issue to the assessing authority.

7. Per contra, Ld.DR for the Revenue relied heavily on the order of the CIT(A) and that of the AO as well.

8. We heard both the counsels and various orders of the Revenue. While referring to the order of the assessing authority i.e., Central Circle-3, Hyderabad, we found the following reasons in the operative part of the assessment order, leading to the huge addition of Rs.1,85,92,002/-. For the sake of completeness, relevant lines are extracted here under:

“3. During the course of search proceedings evidences regarding real estate transactions undertaken by Sri Pramod Kumar Gupta were found and seized at the O/o.M/s.Eggwood Boards & Panels Pvt Ltd (EBPL) vide annexure A/EBPL/OFF/1/01, various documents have been seized which indicate towards purchase of lands by Sri Pramod Kumar Gupta through P.Janaki Rama Rao and Sri A.Pandurangam. It is observed that during the F.Y.2006-07, relevant for the A.Y.2007-08, the assessee has made payment of Rs.77,22,100/- by cash towards purchase of land at Ghatkesar, Rs.5,55,000/- cash for land at Boduppall, Rs.10 Lakhs cash at Kuntlur, Rs.50,000/- for land at Bhimli, Rs.32,15,000/- towards land at Nadargul.

3.2. As the assessee was not able to explain the sources of the payment, an amount of Rs.1,25,42,100/-, the same is treated as unexplained investment in the hands of the assessee.

3.3. As seen from another document found and seized during the course of search, the assessee along with Sri P.Janaki Rama Rao, has purchased 10 acres of land at Kukatpally for a consideration of Rs.1 Crore. Out of this, only an amount of Rs.5 Lakhs is paid by cheque and the balance amount is paid by cash. The assessee has admitted payment of Rs.60 lakhs as unexplained cash payments. However, considering the agreement of Rs.1 crore and only Rs.5 lakhs only has been paid by way of cheque, 50% of the share of the assessee of Rs.47,50,000/- is treated as unexplained investment in the hands of the assessee”.

8.1. From the above, it is obvious that the AO never had an occasion to write few meaningful lines giving his findings on the transactions and giving reasoning of his decision on additions about each of the transactions. AO did not consider the statements recorded by the Investigation Authorities during the search and seizure action etc. Para 3.2 of the AO's order is the only operative para leading to the huge addition of Rs.1,25,42,100/-. In our view, the order of AO should be considered defective so far as the reason for making addition is concerned. In our view, therefore, such order should be considered as non-speaking order. Further, we have examined the order of the CIT(A) (29 pages) and find that the AO's contribution in making the order from the CIT(A) is marginal. Commenting on the order of the CIT(A), elaborate details are found placed in the order of CIT(A) and the source of such information is not known. In our view, the request of the Ld.AR for the assessee appears to be appropriate and the Ground raised should be remanded to the file of AO for *Denovo* assessment. The Assessing Authority is directed to grant an opportunity of being heard to the assessee in accordance with the said provisions of natural justice.

The Ground raised by assessee is accordingly allowed for statistical purposes.

9. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 26th November, 2019

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Hyderabad, Dated 26th November, 2019

TNMM

Copy to :

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- 2. The Asst. Commissioner of Income Tax, Central Circle-3, Hyderabad.*
- 3. CIT(Appeals)-VII, Hyderabad.*
- 4. CIT(Central), Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*