IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

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<tr><th>ITA No.</th><th>A.Y.</th><th>Appellant</th><th>Respondent</th></tr>
<tr><td>787/Hyd/13</td><td>2007-08</td><td rowspan="6">L.Purushotham Naidu,
Rajendra Nagar Mandal,
R.R.District
[PAN: ABGPL4958H]</td><td rowspan="6">Dy.Commissioner of Income Tax,
Central Circle,
Tirupati</td></tr>
<tr><td>713/Hyd/17</td><td>2007-08</td></tr>
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<tr><td>720/Hyd/17</td><td>2009-10</td></tr>
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For Assessee : Shri S.Rama Rao, AR
For Revenue : Shri Sibendu Moharana, CIT-DR

Date of Hearing : 03-02-2021
Date of Pronouncement : 24-02-2021

O R D E R

PER BENCH :

The instant batch of six cases pertains to a single assessee, Shri L.Purushotham Naidu, for AYs.2006-07 to 2009-10. Appeals ITA No.717/Hyd/2017 to 720/Hyd/2017 arise from CIT(A)-3, Visakhapatnam's as many orders, all dated 09-01-2017 passed in case Nos.79, 80, 81 & 82/2014-15/CIT(A)-3/VSP/2016-17. His next two appeals 787/Hyd/2013 & 713/Hyd/2017 for AY.2007-08 emanate from CIT(Central)'s and the CIT(A)-3, Visakhapatnam's orders in case Nos.CIT(C)/H/263/49/11-12, dt.18-03-2013 and 491/2015-16/CIT(A)-3/VSP/2016-17. Relevant proceedings in former three cases are u/s.143(3) r.w.s153A, 143(3) (4th case)

& 143(3) r.w.s.263 (fifth and sixth cases) of the Income Tax Act, 1961 [in short, 'the Act'] appeal-wise; respectively.

Heard both the parties. Case files/paper books perused. We notice that almost all the issues raised in the instant six appeals are identical. The same are therefore taken up together for disposal for the sake of convenience and brevity.

2. It transpires during the course of hearing that the assessee's first substantive grievance in former three appeals ITA Nos.717/Hyd/2017, 718/Hyd/2017 and 719/Hyd/2017 in AYs.2006-07 to 2008-09 challenges correctness of both the lower authorities' action treating sale consideration(s) from transfer of his alleged agricultural lands involving Rs.1,32,18,225/-, Rs.45,00,000/- and Rs.4,29,25,000/-; respectively as representing business income assessable u/s.28 of the Act. We notice that the department had carried out a search action in assessee's case on 25-07-2008 culminating in initiation of Section 153A proceedings as per the alleged incriminating documents found/seized during the source of search.

3. Coming to the 'lead' AY.2006-07 before us, the Assessing Officer noticed during the course of assessment that the assessee had purchased a parcel of land measuring Ac.4.10 guntas situated at S.No.240/A in Srinagar Village near Hyderabad on 15-11-2008 for Rs.12.75 lakhs and sold the same vide sale deeds; both dt.09-12-2005 to Sri P.Chakradara Rao & P.Vijayalaxmi, W/o. Sri P.Chakradara Rao and Shri K.Venkat Reddy to the tune of Rs.10.20 acres in former two and 1.10 acre in the last case; involving the corresponding sale

consideration(s) of Rs.65 lakhs each and Rs.15 lakhs; respectively. The Assessing Officer sought to treat the same as an adventure in the nature of real estate liable to be taken as business.

We notice from a perusal of paras 1.2 to 1.4 of the assessment order that the Assessing Officer took note of the assessee's real estate transactions right from 17-04-2006 to 31-01-2008 and held that the impugned sale consideration resulted in business income of Rs.1,32,18,225/- only. He adopted the very course of action in AYs.2007-08 and 2008-09 as well.

4. The assessee preferred appeal. The CIT(A) has affirmed the Assessing Officer's action after receiving the Assessing Officer's remand report (discussed in para 5 of the lower appellate order) as under:

"8.5, I have examined this transaction in the context of written submissions of the appellant. The submissions of the appellant are that the land under consideration was acquired with his own funds not from borrowed funds, hence no adventure. I am not inclined to agree with this argument due to the fact that the intention is established to be profit. It is immaterial whether own funds or borrowed funds. Another argument of the appellant is that the property was entangled in legal issues is also rejected. The appellant had purchased the property knowingly for less price with speculation and risk. It means the appellant is knowing the uncertainties for conversion or sale due to defects and dispute to the title. In these Circumstances, the conclusion irresistable for adventure. Hence this argument can't be accepted. The appellant is well aware of the market conditions and knowingly took the risk of purchasing such property at low price is very well an adventure in the nature of trade. Such kind of risk was normally avoided by the buyers. Moreover, the theory of not knowing the legal issues is not possible especially in the land dealings, the 'pahanas', link documents are always perused by the buyers and the market information about litigation properties is a first alert in the real estate transactions. Therefore the appellant took the plunge knowingly while entering in to the transaction.

8.6 The other argument of the appellant that the period of holding is less hence it should be considered as Investment and capital gain should be accepted. Lesser the period of holding more the risk and speculation in real estate hence the plea is rejected. Another contention of the appellant is that the land is agricultural land and it retains the character as it appears in revenue records. This argument will not come to the rescue of the appellant. The land at issue is situated in Maheswaram Mandal which is the hub for public enterprises and large size private entrepreneurs. The lands in Maheswaram though remain agricultural on records, there is hardly any agricultural activity. In the instant case, there are no facts supporting the arguments of the appellant. Either the original owner Sri Bugga Ramreddy or the appellant have carried any agricultural activity. It is seen from records that the original venders Sri Bugga Ramreddy family has agreed to give 30 feet road to the land. It suggests the future plans for real estate as the minimum road requirement for house sites is to be a 30 feet road. In the vicinity of Hyderabad, what is available in large tracks is only dry land which is termed as non arable agricultural land encompassed with heaps, stones and shrubs. To cultivate such land is more burdensome and expensive than keeping it in lock stock and barrel. These conditions of land appear to have well known to the appellant since he claimed that he has been associated with VRO and surveyed the lands extensively. In the light of these facts, the argument of the appellant is viewed as a last resort or aimed at evading tax on the transaction. The appellant's intention of holding the land did not persist leave alone agricultural activity nor any regular income was coming out of this land.

8.7 I have perused the original purchase deed and the subsequent sale deeds concerning the property of Ac 4.10 cents. Prima-face it appears from the submission made by the appellant that there exists an "Agreement of sale" between the Original land owners (Bussu family) and the appellant in 2000. It seems that the agreement was the precedent for all subsequent transactions. According to this agreement, the appellant had paid Rs.1,00,000/-. It is also not known how the appellant got possession of land with a minimum payment of Rs.1,00,000/-. Further, in all the documents the appellant is described as "doing business" no where he was described as agriculturist buying the land for investment or for pride of possession. After purchasing Ac 4.10 cents initially from Bussu family, the appellant has disposed byway of executing 3 sale deeds to an extent of land admeasuring Ac 3.50 cents. It means that the appellant is left with Ac 0.60 guntas out of total land of Ac 4.10 cents originally purchased (4.10 -3.50 = 0.60). Therefore, the theory of investment clearly goes against the appellant owing to the nature of transaction

being trade and commerce. In these circumstances 0.60 guntas can be attributable to provision of road of 30 feet to the property.

When the appellant paid advance in the year 2000, he is well within the knowledge of any risk and speculation involved in the deal. The frequency of purchase and sales are recorded by the Assessing Officer in eight instances besides the one as mentioned above is a testimony to the fact that the activity of appellant is business but not investment. No one hates money, no one advances money to any person without any benefit in commercial sense. It is seen from the records that no agricultural activity was carried out by the appellant. The appellant hailing from agricultural family has no qualification for making a claim or character of land to be agricultural land. The land at Rajendranagar, a hub of residential construction and corporate ventures can no longer be called agricultural land irrespective of the fact that it is beyond 8 KM from Hyderabad. In fact, the grater, Hyderabad Municipal Corporation limits are extended up to 50KM radius of GHMC. The agricultural activity has no place in this radius nor any farmer can buy agricultural land and cultivate any crops is a reality. In view of the facts and circumstances of this case, I find no reason to interfere in the decision of Assessing Officer. Accordingly, it is held that the activity of the appellant in purchase and sale of land is an adventure in the nature of trade and the addition made by the Assessing Officer to the tune of Rs.1,32,18,225/- is hereby confirmed".

5. Mr. Rama Rao vehemently contended during the course of hearing that both the lower authorities have erred in law and facts in treating the assessee's sale consideration(s) arising from transfer of agricultural lands as business income in all these assessment years. And particularly in AY.2006-07 wherein the assessee has entered into a single transaction of agricultural land purchased in November 2005 and sold after almost two months holding period only. He then invited our attention to the assessee's paper book in this first AY.2006-07 that he had simply purchased agricultural dry land without making any addition thereto and sold it the very financial year after deriving a heavy sum i.e., almost 12 times the purchase price (supra). It is further reiterated that the assessee had in

fact been engaged in transport business only. He has also drew our attention to the list of the corresponding fixed assets to this effect. Learned counsel's case accordingly is that impugned addition of business income in the assessee's hands is not sustainable in law as well as on facts.

6. Mr.Moharana, on the other hand has strongly supported both the lower authorities' action treating the assessee's sale consideration derived from transfer of agricultural dry land as business income as enumerated in the Assessing Officer's and CIT(A)'s detailed discussion extracted in the preceding paragraphs. He sought to buttress the point that this assessee had infact got recorded his sub-statement as well during search clearly admitting therein that he knew all the nuances of the real estate business. And that he had shifted from Tirupati to Hyderabad in pursuit of carrying real estate business activity only. Mr.Moharana therefore urged to upheld both the lower authorities' action treating the assessee's income derived from sole of agricultural dry lands as business income.

7. We have given our thoughtful consideration to the foregoing rival pleadings. The issue that arises for our apt adjudication in all these three assessment years is purely a factual one that as to whether this assessee has been rightly held as engaged in adventure in real estate business or not. Our reply to the same comes in Revenue's favour and against the taxpayer. We wish to make it clear that not only this assessee had purchased and sold the alleged parcel of dry agricultural land within a time span of hardly two months but

also he had engaged himself in the very line business right from 02-04-2005 onwards i.e., at least from the relevant account period starting from 01-04-2005 to 31-03-2006 and so on. Apart from the Assessing Officer having prepared a detailed chart of the assessee's sale/purchase transactions in his assessment orders; although not in the relevant previous year, it also emerges *qua* the assessee's second substantive ground that he had sought to purchase a parcel of land from M/s. Shruthi Estates by way of an agreement dt.02-04-2005 which in turn was revised to 13-02-2006 as per both the lower authorities' orders pertaining to the second issue of unexplained investment. As we see in succeeding paragraphs, learned counsel has himself clarified as per the assessee's stand through that he had been executing similar MoUs in all these years. Coupled with this, his balance sheet has also prepared a list of fixed assets at Sr.Nos.9 to 15 (as pointed out by the Revenue) which sufficiently throws light on the assessee's business activity carried out in real estate business. We sought to know from learned counsel as to when the above stated assets/parcels of land at Sr.Nos.9 to 15 had been acquired by the assessee, no clear cut reply has come from the taxpayers side. It is further noted that this assessee had not filed his books of account in any of the lower proceedings on the pretext that the same had been lost while shifting the office from Tirupati to Hyderabad. All these facts lead us to the irresistible conclusion that there has been some misstatement on assessee's part in not only producing the corresponding books of account but also the relevant sale/purchase deeds, which could have been easily obtained from the concerned

offices for our perusal. We thus invoke the presumptions provided u/s.114(g) of the Indian Evidence Act, even if the said document could have been produced before the tribunal, the issue could have been reasonable decided in favour of the department and against the assessee. We therefore uphold both the learner lower authorities' action treating the assessee's receipts from sale of alleged agricultural land(s) as adventure in nature of real estate business involving varying sums (supra) in the respective assessment years. This first substantive ground in assessee's former three appeals ITA Nos.717/Hyd/2017, 718/Hyd/2017 & 719/Hyd/2017 for AYs.2006-07 to 2008-09 is declined therefore.

8. We now proceed to decide the second issue of un-explained investment addition of Rs.1,15,00,000/- in AY.2006-07. It is not in dispute that the Assessing Officer had taken note of an agreement dt.13-02-2006 found/seized during the course of search allegedly indicating the assessee to have paid Rs.85 lakhs and Rs.35 lakhs vide cheque and DD; respectively. He thus treated the same as 'un-explained' after quoting the assessee's failure in proving the source thereof during the course of scrutiny. The assessee preferred appeal. He chose to file additional submissions before the CIT(A). A remand report was called for. The same came from the Assessing Officer's end reiterating the impugned addition. It is in this factual backdrop that the assessee is in appeal before us.

9. We have given our thoughtful consideration to the assessee's and Revenue's arguments against and in support of the impugned addition. It *prima-facie* emerges that both the

learned lower authorities have ignored the clinching aspect that the agreement dt.13-02-2006 was infact in continuation of his earlier similar document dt.02-04-2005 wherein a sum of Rs.80 lakhs had been paid. Case records indicate that M/s. Shruthi Estates (the vendor herein) had also sought to adjust earlier sum of Rs.80 lakhs in the second agreement. We wish to observe here that this sale deed finally took place in the next AY.2007-08. All these factual matrix appears to have escaped learned lower authorities' respective orders as well as the Assessing Officer's remand report. We therefore deem it appropriate to restore this second issue in AY.2006-07 back to the Assessing Officer for his afresh factual verification as per law. The assessee or his authorised representative shall appear before the Assessing Officer on or before 31-07-2021 with all the relevant evidence explaining the source of the investments made relating to the twin agreements hereinabove as well as the bank account statement so as to prove source of his investment treated as 'un-explained'. The Assessing Officer thereafter shall verify all the necessary facts within the three effective opportunities of hearing. It is further clarified that all the factual verification shall be done at assessee's risk and responsibility only. The second substantive ground in AY.2006-07 is taken as accepted for statistical purposes in foregoing terms.

9A. Next comes the third issue disallowance of Rs.5,13,320/- @6% involving various miscellaneous expenses in AY.2006-07. Both the learned lower authorities are fair enough that this is the estimated disallowance only wherein assessee had not been able to prove each and every head of expenditure.

Neither of the learned lower authority has also not pin-pointed any specific failure on the former's part. It is further stated that the tribunal's order in AY.2005-06 has already decided the issue in taxpayer's favour keeping in mind the fact that he was engaged in transport business eligible for presumptive taxation scheme u/s.44AE of the Act. Be that as it may, we keep in mind the fact that it is purely an estimation disallowance, carrying no precedent. We therefore of the opinion that lumpsum disallowance of Rs.1,50,000/- out of Rs. 5,13,320/- in issue would meet the ends of justice. Necessary computation to follow as per law. The assessee's appeal ITA No.717/Hyd/2017 for AY.2006-07 is partly allowed in above terms.

10. We now come to the identical second common issue of unexplained expenditure/unexplained investment addition(s) of Rs.1,06,51,340/- in AY.2007-08 and Rs.1,62,82,993/- in AY.2008-09 respectively. A lot of arguments have taken place between the authorities *qua* the alleged creditor, Mr.Chakradar having advanced the loan(s) in question to assessee in lieu of charging interest; both out of books.

11. Mr.Rao vehemently contended during the course of hearing that this Mr.Chakradhar is a fictitious person, whose identity as nowhere been established keeping in mind the fact that the Assessing Officer as well as the CIT(A) have gone on assumptions and presumption while making the impugned addition. He made a very strong endeavour to highlight that the concerned person as per the incriminating documents found and seized was "CHF" only which has been wrongly

adopted as 'Shri Chakradhar' as well as various other names like of 'LPN' (representing the assessee himself) etc. We find no merit in assessee's foregoing contentions. We notice that the Assessing Officer's assessment order dt.31-12-2010 at pg.14 has prepared a tabulation by extracting contents of the documents found/seized in the course of search at assessee's premises and on top of that is a clear cut person name as 'Chakradar'. That being the case, it was the assessee's burden to rebut the presumption of correctness thereof as contemplated u/s.292C r.w.s.132 of the Act. We thus uphold both the lower authorities' action in principle making the impugned addition(s) of unexplained investment/expenditure in AY.2007-08 and 2008-09 (supra).

12. Next comes equally important aspect of quantification of the impugned addition. Learned CIT-DR fails to dispute that even if we uphold the Assessing Officer's as well as the CIT(A)'s action, the fact remains that they have themselves held that 'Chakradhar' or 'CHF'; as the case may be, have advanced loans to the assessee out of books and interest thereupon was also repaid in cash. We fail to understand in this factual backdrop as to how the principal amount of the said loan(s) could be added as un-explained since the identity of the creditor party has itself been established very fairly in both the lower proceedings. The impugned addition therefore deserves to be upheld to the extent of the interest amount paid over and above the alleged principal sum in both these assessment years. We thus direct the Assessing Officer to finalise necessary computation adding the interest component pertaining to this identical issue in AYs.2007-08 and 2008-09.

This second common issue in both these assessment years is allowed for statistical purposes in above terms. These appeals ITA Nos.718/Hyd/2017 and 719/Hyd/2017 are partly allowed.

13. We now advert to assessee's appeal ITA No.720/Hyd/2017 for AY.2009-10. There is no dispute that the second issue raised herein pertains to an addition of Rs.3,93,668/-, representing Shri 'Chakradhar' as was the case in AY.2007-08 and 2008-09 (supra) adjudicated in preceding paragraphs. We thus restore this ground back to the Assessing Officer in very terms.

14. This leaves us with an addition of Rs.9 lakhs treated as 'un-explained cash credits' in both the lower proceedings. It is an undisputed fact that although the assessee had claimed the same to have come from one Smt.Swarna, he could neither produce the said creditor in assessment nor in the CIT(A) proceedings. All he has done is to file an affidavit before the CIT(A). The same sufficiently indicates that the clinching three aspects i.e., identity, genuineness and creditworthiness of this creditor party Smt.Swarna have gone un-discharged from the assessee side. We thus find no reason to interfere with the learned lower authorities' action of making the impugned addition. The same stands confirmed. This appeal assessee ITA No.720/Hyd/2017 is partly allowed in above terms.

15. We are now left with assessee's twin appeals 787/Hyd/2013 and 713/Hyd/2017 involving Section 263 and Section 143(3) r.w.s.263 proceedings in AY.2007-08. It is not in dispute that the corresponding Section 153A r.w.s.143(3) assessment on 31-12-2010 (supra) which forms subject matter

of the CIT's revision directions for the sole reason that since the Assessing Officer had not even conducted any enquiry regarding the sum of Rs.60 lakhs coming from one Shri Sunil Kumar Ahuja and therefore the same deserves to be taken as erroneous one causing prejudice to the interest of the Revenue. It transpired during the course of hearing; and more particularly, from a perusal of pg.4 para 3 of the assessment order that the total amount in case of Shri Ahuja is Rs.18,800,000/- in the relevant previous year. Pages 14 and 15 of the paper book further suggest that all these six transactions have taken place between 26-02-2007 to 03-03-2007. It is therefore clear in other words that the CIT has himself treated transactions of Rs.1,28,00,000/- as having satisfied the required parameters of an enquiry conducted during the course of scrutiny. We therefore see no reason to confirm the CIT's order under challenge. Coupled with this, the fact remains that the Assessing Officer had first considered all the credit sums of Rs.7,73,73,826/-, and made addition of Rs.4,29,25,000/-. We thus, conclude that it hardly turns out to be a case of 'no enquiry' *per se* as it has been treated while exercising the impugned Section 263 revision jurisdiction. His revision directions under challenge therefore are also not sustainable. We order accordingly. The Assessing Officer's consequential assessment dt.31-12-2010 stands revived. The assessee succeeds in appeal ITA No.787/Hyd/2013. Same order to follow in assessee's consequential assessment appeal ITA No.713/Hyd/2017 as it has no legs to stand in view of the fact that the CIT's revision directions have been held as not sustainable. This last appeal ITA No.713/Hyd/2017 is allowed.

16. To sum up, the assessee's appeals ITA Nos.787/Hyd/2013 and 713/Hyd/2017 are allowed and ITA Nos.717, 718, 719 & 720/Hyd/2017 are partly allowed in above terms. Ordered accordingly. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 24th February, 2021

Sd/- **(LAXMI PRASAD SAHU)** **ACCOUNTANT MEMBER**	Sd/- **(S.S.GODARA)** **JUDICIAL MEMBER**

Hyderabad,
Dated: 24-02-2021

TNMM

Copy to :

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2.The Commissioner of Income Tax(Central), Hyderabad.

3.The Dy.Commissioner of Income Tax, Central Circle, Tirupati.

4.CIT(Appeals)-3, Visakhapatnam.

5.Pr.CIT(Central), Visakhapatnam.

6.D.R. ITAT, Hyderabad.

7.Guard File.