

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No.127/Hyd/2021		
Assessment Year: 2010-11		
Mrs. Rashmi Singh Hyderabad PAN:BASPS9695A (Appellant)	Vs.	Dy. C.I.T Circle 6(1) Hyderabad (Respondent)
Assessee by:	Sri A.V. Raghuram	
Revenue by:	Sri E. Sridhar, DR	
Date of hearing:	19/04/2021	
Date of pronouncement:	29/04/2021	

ORDER

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A)-12, Hyderabad, dated 28.10.2020.

2. Brief facts of the case are that the assessee individual filed her return of income for the A.Y 2010-11 on 28.07.2010 admitting total income of Rs.50,901/- which was processed u/s 143(1). Subsequently, the Assessing Officer came to know that the assessee is one of the purchasers of Villa Plot in Emaar Hills Township (P) Ltd., ('EHTPL'), Hyderabad i.e. Plot No.B2 admeasuring 597 sq.yards and that there was an investigation by the CBI into the affairs of EHTPL and connected group of cases and has filed a charge sheet. The outcome of the investigation by the CBI and the charges framed thereon is that the villa plots were sold at a price higher than what is recorded in the MOU/Allotment letter of Registered Document. It was observed that the recorded price is Rs.5000/- per sq. yard but the amount

paid in cash were over and above the recorded price of Rs.4000/- per sq. yard to Rs.45,000/- per sq. yard. Therefore, the Assessing Officer reopened the assessment u/s 148 of the Act. During the reassessment proceedings, the Assessing Officer relied upon the statement of one of the Directors of company, Sri Koneru Rajendra Prasad, and Shri Tummala Ranga Rao who marketed the plots and held that the assessee has paid the cash component of Rs.29,85,000/- and he accordingly brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the assessment order and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

- “1. The learned CIT (A) erred on facts and law.*
- 2. The learned CIT (A) erred in confirming the addition of Rs.29,85,000 towards unexplained money.*
- 3. The CIT (A) based his order on presumption of facts and circumstantial evidences.*
- 4. The learned CIT (A) ought to have given the assessee an opportunity to cross examine the statements of third parties relied upon by the Assessing Officer.*
- 5. Any other ground at the time of hearing”*

3. The learned Counsel for the assessee submitted that cases of similar assessee had come up before the Tribunal for adjudication and the B Bench of this Tribunal in the case of Shri G. Mahesh Babu in ITA Nos 256/Hyd/2015 and others vide orders dated 27.11.2015 has considered the issue at length and has remanded the issue to the file of the Assessing Officer for re-examination. For the sake of ready reference, the relevant paragraphs are reproduced hereunder:

“23. We have considered the submissions of the parties and perused the material on record. It is very much evident from the assessment

order that mainly relying upon the material gathered as a result of investigation made during the assessment proceedings of EHTPL, particularly on the basis of statement recorded from Shri T.Ranga Rao, the Assessing Officer has come to the conclusion that the assessee has paid on money to the extent of Rs.1,99,20,000 over and above the recorded sale consideration. Of course, besides the statement of Shri T.Ranga Rao, it is seen that the department has gathered information in exercise of power under S.133(6) from some other buyers, who agreed to have paid on-money towards purchase of plots/villas from EHTPL. It is relevant to note that when the assessee was called upon to explain whether he has paid on-money, he stoutly denied the same and insisted that apart from recorded sale consideration, he has not paid anything more. It is the plea of the assessee before the CIT(A) as well as before us that the Assessing Officer has utilised the material gathered as a result of investigation/enquiry adverse to the assessee without either supplying the same to him or allowing an opportunity to the assessee to cross examine Shri T.Ranga Rao, whose statement primarily formed the basis of the addition. We find that the aforesaid submissions of the assessee are acceptable. It is very much clear from the assessment order that though the Assessing Officer has Shri G. Mahesh Babu, Hyderabad, referred to the information received to suggest that the assessee has paid amount of Rs.1,99,20,000, neither in the assessment order nor even subsequently no material has been brought on record to show what exactly is the information/evidence, which indicated that assessee has paid the on money of Rs.1,99,20,000. Further, the investigation results of CBI as well as statement of Shri T.Ranga Rao which have been followed by way of charge sheets and supplementary charge sheets, though heavily relied upon by the Assessing Officer, but admittedly they were not supplied to the assessee. Even the Learned Departmental Representative accepts the aforesaid factual position. Though in the course of assessment proceedings there is no fetter on the Assessing Officer to conduct any enquiry or investigation as found necessary for ascertaining the real nature of transaction or income, at the same time, it is salutary principle of law that any adverse material gathered by him, which he proposes to utilise against the assessee, must be confronted to the assessee for allowing him an effective opportunity of rebuttal. This is in keeping with the principle of natural justice that no person should be condemned without giving a fair opportunity of hearing. In the present case, though the basis for addition is the statement recorded from Shri T. Ranga Rao, admittedly, the Assessing Officer has neither supplied a copy of the statement to the assessee nor allowed him an opportunity to cross examine him, though the assessee in his letter dated 13.3.2014 has specifically asked for cross examination of Shri T.Ranga Rao. In the aforesaid view of the matter, there is violation of rules of natural justice by the Assessing Officer while making the addition of Rs.1,99,20,000. Therefore, the addition made by the Assessing Officer, on account of alleged payment of on-money, cannot be sustained.

24. Having held so, it is necessary to examine whether non-compliance of the rules of natural justice in the facts and circumstances of the present case has made the assessment void ab initio, or the Assessing Officer can be asked to decide the issue again

after following principles of natural justice, as Shri G. Mahesh Babu, Hyderabad, requested by the learned Departmental Representative. As already stated elsewhere in the order, the learned counsel for the assessee has relied upon the decision of the Hon'ble Supreme Court in the case of Andaman Timber Industries (supra), to plead that not allowing the assessee to cross examine the witness has rendered the assessment order void. However, on a perusal of the said judgment of the Hon'ble Supreme Court it is found to be factually distinguishable. In that case, Hon'ble Supreme Court has initially remitted back the matter to the Tribunal for deciding the issue in one way or the other, after considering the submissions of the assessee. However, it is noticed that the Hon'ble Supreme Court ultimately allowed assessee's appeal because the Tribunal while examining the issue of cross-examination of witness has merely observed that even such cross-examination would not have improved the assessee's case. Hon'ble Supreme Court held, as the demand raised against assessee was solely relying upon the statement of witness, denial of cross examination to assessee vitiated the order. Unlike the case of Adaman Timber Industries (supra) in assessee's case statement of Shri T.Ranga Rao is not the only piece of evidence relied upon by the Assessing Officer. It is relevant to note that apart from the statement of Shri T.Ranga Rao, there are other information gathered by the department by taking recourse to S.133(6) as per which some of the buyers of the plots have admitted of having paid on- money. Further, through a process of investigation, CBI has found irregularities in the activities of EHTPL and submitted charge sheet(s). As the statement of Srhi T.Ranga Rao, the entire charge sheet(s) filed by CBI and information gathered by the department through enquiry have not been brought on record before us either by assessee or department, we are unable to examine the extent of assessee's involvement, if at all, in the irregularities alleged by CBI or whether the assessee has also been implicated by the investigation agency or any other person. Therefore, in our view, issue relating to payment of on-money requires to be examined afresh by Assessing Officer after confronting evidence/material sought to be relied upon to the assessee and seeking his response on them. The Assessing Officer must also disclose to Shri G. Mahesh Babu, Hyderabad, the assessee the material/information on the basis of which he has quantified the on-money payment of Rs.1,99,20,000. If the Assessing Officer is able to establish on the basis of evidence gathered that the assessee has paid on- money to the extent quantified by him, then he can make the addition under S.69B. On the flip side, if there is no evidence available on record to directly link the assessee towards payment of on-money, then merely on the basis of the fact that some other buyers have accepted payment of on-money, no addition can be made. With the aforesaid observations, we remit the issue to the file of the Assessing Officer with a direction to re-decide the same afresh in accordance with law, after giving reasonable opportunity to the assessee, duly complying with the principles of natural justice. This ground of the assessee is allowed for statistical purposes.

4. With similar direction, the assessment of assessee is also set aside and the issue is remanded to the file of the

Assessing Officer for reconsideration in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing.

5. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 29th April, 2021.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Hyderabad, dated 29th April, 2021.

Vinodan/sps

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4	Pr. CIT -12, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order