

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

ITA No.155/Hyd/2017 (Assessment Year : 2008-09)		
Asst. Commissioner of Income Tax, Central Circle 2(3), Hyderabad.	Vs.	Sri Meka Srinivas, Flat No.305, Solitaire Banjara Hills, Road No.10, Banjara Hills, Hyderabad. PAN BACPS 3232H
Appellant		Respondent

Appellant By : Smt. Nivedita Biswas (D.R)
Respondent By : Shri C. P. Rama Swamy.

Date of Hearing : 24.02.2021.
Date of Pronouncement : 06.05.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This Revenue's appeal for Asst. Year 2008-09 arises from the Commissioner of Income Tax (Appeals)-12, Hyderabad order dt.29.09.2016 passed in case No.0132/2015-16 in proceedings under Section 143(3) r.w.s. 153A of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. Coming to the Revenue's sole substantive grievance that the CIT(Appeals) has erred in law in reversing the Assessing Officer's action adding the alleged unexplained investment amount of Rs.1.90 Crores, both the learned representatives invited our attention to the lower appellate detailed discussion to this effect as under :

9.0 Addition on account of Unexplained investment in lands - Rs.1,90,00,000/-:

9.1 While finalising the assessment order, the AO had observed that with regard to page 5 of the seized Annexure A/MS/RES/03, payment details for an amount of Rs.1.90 cr. to various land lords were found. When questioned to explain about the details of transaction and its accountability

in books of account, the assessee could not offer any explanation. Hence the amount of Rs.1,90,00,000/- is treated as unaccounted amount in the hands of the assessee and considered for addition.

9.2 The appellant objected for the addition and it has been submitted that as stated earlier, the assessee incorporated a company by name Suvarnabhoomi Developers Pvt Ltd during the financial year under reference and as the company was acquiring land the payments were made to the landlords and all these payments were recorded in the books of the company and nothing to do with the assessee's transactions. Hence the addition of Rs.1,90,00,000/- needs to be deleted, as per the assessee.

9.3 On the basis of the written submissions of the appellant the matter has been referred to the AO for further examination of the facts as per Rule 46A of I.T.Rules and the report of the AO on the subject matter runs as under:

"The addition is made basing on the seized material (Page No.100 of ANNEXURE A/MS/RES/03) found and seized from the assessee premises. Hence, the onus to prove the same, lies on the assessee himself. As the assessee had not submitted any evidence in this regard the same addition may be upheld."

9.4 The report of the AO on the subject matter has been referred to the appellant and the submissions of the appellant runs as under:

The AO on examination of page no.5 of seized material in Annexure A/MS/RES/03, observed that certain payments amounting to Rs.1,90,00,000/- had been made to land lords by name 'karim & others' during the year of account. In the absence of any explanation offered in this regard, the AO treated the amount of Rs.1,90,00,000/- as if paid by the assessee and treated the same as unaccounted amount in the hands of the

assessee. Accordingly, the addition was made. The following is the extract of the impugned seized material which has already been filed at page no.5 of the paper book.

Land Lord Payment

- | | |
|----------------|----------------------------------|
| 1. 20-12-2007- | Rs.90,00,000 to karim and others |
| 2. 10-01-2008- | Rs.50,00,000 to karim and others |
| 3. 30-01-2008- | Rs.50,00,000 to karim and others |

Rs.1,90,00,000

(Copy of seized document is enclosed).

The Ld.CIT(A) has discussed this issue at length at para No.9 to 9.2 of his order. The Ld.CIT(A) has observed that the impugned payments mentioned in the scribbling are not linked with any corroborative material indicating gain/benefit in the hand of the assessee. He has also observed that if the payments are to be considered as true then there should be corresponding asset/gain in the hands of the assessee. The CIT(A) has further observed that without bringing any material on record towards corresponding asset/gain in the assessee's hands, the AO has merely brought the payment to tax. Thus, the Ld.CIT(A) held that in the absence of any corroborative material, the scribbling could not be considered as unexplained expenditure and accordingly deleted the addition.

However, in the remand report the AO has suggested for upholding of the addition on the ground that the addition has been made on the material seized from the assessee's premises that the onus to prove the same lies on the assessee himself and that the assessee has not submitted any evidence in this record.

In this connection it is humbly submitted that the above mentioned seized material is only a rough scribbling and does not relate to any payments by the assessee. As the assessee is Executive Director of M/s.Suvarna Bhoomi Developers Pvt Ltd he was dealing with purchase of land for the company. In this process he was discussing with various land owners and based on the negotiations on the probable dates for payments were mentioned in the sheet. However as the same was not materialized these payments were not made by the company. However the company had made payments to the extent of Rs.40 lakhs to Karim & others on various dates which are recorded in the books of accounts of Suvarna Bhoomi Developers. Copy of ledger account is enclosed. The impugned payments made to the land owners have already been shown in the company books of

account of Suvarna Bhoomi Developers towards the purchase of land during the financial year relating to the asst. year under consideration. Since the assessee has nothing to do with the impugned payments. The addition is not warranted in the assessee's hands. It is, therefore, prayed that no addition is upheld in the hands of the assessee on this count.

9.5 Perused the submissions of appellant and the findings/observations of the AO. As could be made out from the facts of the case, the seized documents viz., page 5 of A/MS/RES/03, indicate the total amounts of Rs.1,90,00,000/- paid on 3 different dates of 20-12-2007, 10-01-2008 and 30-01-2008, made to landlords, by names "karim and others' and the AO at the stage of assessment proceedings had treated the amounts as unaccounted income of the assessee merely on the ground that the documents were found in the possession of the assessee during search proceedings and the assessee failed to explain the amounts/transaction whereas the assessee's contention was that he has nothing to do with the said amounts/payments with a further contention that some of the said payments are reflected in books of the company M/s.Suvarnabhoomi Developers Pvt Ltd/Ms.SDPL which was dealing with transactions of purchase of land and the assessee as an executive director of the said company was also part of the land dealing and the transactions related to the said payments are not in fact materialized, as such the amounts under reference cannot be attributed to the assessee merely because the documents were found and seized in possession of the assessee. As per the AO, the onus was on the assessee. The same conclusion was drawn by the AO even at the stage of remand proceedings. In this context, it may be relevant to observe that the assessee had discharged the onus of explaining the transaction, which are attributed to M/s.SDPL, where he is an Executive Director. Hence, it was incumbent on the AO to examine the amounts in detail with reference to the books of

M/s.SDPL with special reference to the payments made to karim and others that are reflected in books of M/s.SDPL. As per the information brought on record, it clearly indicate that the payments relate to acquisition of land and such transactions were not taking in the name of the assessee as an individual and as indicated the payments are purely relatable to the transactions of purchase of lands. Hence, based on facts of the case, it is reasonable to hold that there is no basis to presume that the said amounts of Rs.1,90,00,000/- were stated to be paid by the assessee. Hence, the addition of Rs.1,90,00,000/- held to have no legs to stand and as such the addition is ordered for deletion and the ground related to the issue are treated as Allowed.

3. Learned CIT-DR vehemently supported the Assessing Officer's action that he had rightly made the impugned unexplained investment addition in assessee's hands on account of the incriminating material found during the course of search dt.10.02.2009 in case of M/s. Suvarnabhoomi Group. And that the CIT(Appeals) has erred in law and on facts in deleting the same. The assessee placed strong reliance on the CIT(Appeals) detailed discussion extracted in preceding paragraph in deleting the impugned addition.

4. We have heard rival submissions in support and against the impugned addition. We find no substance in Revenue's

contentions. This is for the reason that the assessee herein Sri Meka Srinivas has already proved himself to have acted as Managing Director (MD) of M/s. Suvarnabhoonmi Developers Pvt. Ltd. (SDPL) who was engaged in corresponding business transaction in real estate. And also that the seized document i.e. A/MS/RES/03 has nowhere indicated the assessee's name at all leading to the inference that it was he himself in individual capacity and not the company who had carried out all the real estate transactions leading to impugned unexplained investment addition in issue. We thus find no reason to restore the assessment findings assessing the sum in issue of Rs.1.90 Crores in assessee's hands. The CIT(A)'s conclusion under challenge is upheld therefore.

5. This Revenue's appeal is dismissed.

Order pronounced in the open court on 06.05.2021.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt. 06.05.2021.

* Reddy gp

Copy to :

1.	Sri Meka Srinivas, Flat No.305, Solitaire Banjara Hills, Road No.10, Banjara Hills, Hyderabad.
2.	ACIT, Central Circle 2(3), Hyderabad.
3.	Pr. C I T(Central), Hyderabad.
4.	CIT(Appeals)-12, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.