

आयकर अपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.सुन्दरसिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**S.A. No.04/Viz/2021
(Arising out of I.T.A No.177/Viz/2019)
(निर्धारण वर्ष/Assessment Year:2010-11)**

**आयकर अपीलसं./I.T.A.No.177/Viz/2019
(निर्धारण वर्ष/Assessment Year:2010-11)**

Sri Mullapudi Sree Ramachandra Vs. Asst. Commissioner of
Venkata Krishna Ranga Rao Income Tax
D.No.33-76/1, Kanchirajuvari Street Circle-1
Tanuku Rajahmundry
[PAN : AACHM0072L]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से / Assessee by : Shri C.Subrahmanyam, AR
राजस्व की ओर से /Revenue by : Shri B.Satyanarayana Raju, DR

सुनवाई की तारीख / Date of Hearing : 14.06.2021
घोषणा की तारीख/Date of Pronouncement : 23.06.2021

आदेश /ORDER

Per D.S.Sunder Singh, Accountant Member :

The assessee filed stay application requesting for grant of stay of outstanding demand of Rs.38,61,900/-. Since, the appeal is taken up for

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hearing, the stay application of the assessee becomes infructuous and hence the same is dismissed.

2. This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-1, Hyderabad in Appeal No.0441/2016-17/ACIT, Circle-1, RJH/CIT(A)-1/Hyd/2018-19 dated 14.03.2019.

3. In this case, the Assessing Officer (AO) made the addition of Rs.1,36,29,000/- u/s 69 relating to on money payment for purchase of villas in M/s Emmar Hills Township Pvt. Ltd for plot No.A-30 admeasuring 1947 sq.yds. The assessee has admitted the sale consideration of Rs.92,48,250/- @5000/- per sq.yd. During the pendency of assessment proceedings, the AO had received the information from the AO of M/s Emmar Hills Township Pvt. Ltd., that some purchaser of plots have made the on money payment for purchase of the plots to M/s Emmar Hills Township Private Ltd. ranging from Rs.4000/- to 45,000/- per sq.yd. Though the actual sale consideration was Rs.9,000/- and above per sq.yd., the plot was registered @Rs.5,000/- per sq.yd and hence, the AO viewed that the assessee also had understated the investment in the cited plots. The vendor, Sri Tummala Ranga Rao, Director, M/s Stylish Homes Real

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Estates Pvt. Ltd. has given a statement confirming the on money payment as informed by the AO of M/s Emmar Hills Township Pvt. Ltd., u/s 164 of CRPC, before the Hon'ble II Metropolitan Magistrate, Hyderabad. Basing on the information filed in the charge sheet and the statement recorded u/s 164 of CRPC and the information received from the AO of Emmar Hills Township Pvt. Ltd, the AO made the addition of Rs.1,36,29,000/- as excess cash payment over and above the registered value in the hands of the assessee, since the assessee failed to explain the source. For the sake of clarity and convenience, we extract relevant part of the order of the AO in para No.2.3 and 2.7 which reads as under :

"2.3. The brief facts of the transaction are that the assessee has purchased one Villa / Plot bearing no.A-30 from M/s. Emmaar Hills Township Pvt. Ltd., a Company incorporated under the Companies Act 1956 having its Registered Office at No.137, ANR Center, F-3, 1stFloor,Road No.1,Banjara Hills, Hyderabad, as evidenced by a copy of the agreement produced. As per the said agreement provided by the assessee it is clear that the assessee paid Rs.92,48,250/- being the 95% of sale consideration of the Plot as on the date of execution of the agreement and the balance of Rs.4,86,750/- representing the balance 5% was agreed to be paid before the execution of the sale deed. The extent of the Plot was 1947 Sq. Yards. The agreement was dated 12.08.2009. As per the information received in this office while completing the scrutiny assessment in the case of M/s. Emmaar Hills Township Pvt. Ltd. for the Asst. Year 2009-10, an amount of Rs.1,01,22,14,777/- was added by the Assessing Officer to the Income Returned, on account of on-money received by M/s Emmaar Hills Township Pvt. Ltd., towards sale of Villa Plots. During the appellate proceedings before the Commissioner of Income Tax (Appeals), the said assessee filed as additional evidence, the copies of original charge sheet dated 11.08.2011 and supplementary charge sheet dated 23.04.2012 filed by the Central Bureau of Investigation (CBI) before the Court of Hon'ble Special Judge for CBI Cases. Upon examining the said charge sheet, it was noticed by the Assessing Officer that some of the Villa Plot buyers have paid on money in addition to what was stated in the sale agreement. It is learnt that M/s, Emmaar Hills Township Pvt. Ltd., with whom the assessee had

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entered into an agreement, has relied upon the charge sheet and supplementary charge sheet filed by the Investigating Agency - CBI and that the same was sought to be the additional evidence before the learned first Appellate Authority, it assumed significance for the purpose of analyzing with reference to the angle of investment and sources thereof in respect of the Villa Plot purchasers. As per the charge sheet and supplementary charge sheet it is noticed that Sri Tummala Ranga Rao, Director of M/s Stylish Holmes Real Estate Pvt. Ltd. had confirmed that some of the Villa plots were sold by collecting excess amount ranging from Rs.4000/ per Sq. Yard to Rs.45000/- per Sq. Yard over and above registered rate of Rs.5,000/- per sq. yard. The excess money, as mentioned in the charge sheet filed by the CBI, was collected by Sri Tummala Ranga Rao. As per the extracts of charge sheet of CBI, it is learnt that Sri Tummala Ranga Rao has given a statement u/s.164 of CRPC before the Hon'ble II Metropolitan Magistrate, Hyderabad, during the course of which, he confirmed to have collected the extra money from the Villa Plot Buyers, over and above the rate registered in the document. The assessee, on the roles of the undersigned has purchased a Villa Plot bearing A-30, the extent of which was 1947 sq. yards, by making extra payment of Rs.1,36,29,000/- which is equivalent to extra payment made @Rs.7,000/- per sq.yard, though the agreement reflects that the plot was purchased for Rs.97,35,000/- @Rs.5,000/- per sq.yards.

2.7. It is mentioned here that even though the assessee denies to have made any excess on-money payment to the seller, the statement given by the seller and the conclusions arrived at by the Investigating Agency-CBI and the additional evidence filed before the CIT(A) by M/s Emmaar Hills Township Pvt. Ltd. will have their own latent legal sanctity. Had it been a statement of other party with regard to the additional investment, it would have been a different situation to be dealt with separately as regards the evidentiary value of such statement for the purpose of assessment. But, in this case, the conclusions are arrived at by the Investigating Authority-CBI in the case of other party namely M/s Emmaar Hills Township Pvt. Ltd., Hyderabad and such communication is passed on to the undersigned, it is but consequential to infer that the assessee has made the on money payment of Rs.1,36,29,000/-. The same is treated as unexplained investment which was met out of the unexplained sources. This addition is made u/s 69 of the Income Tax Act."

4. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO. Against which the assessee is in appeal before us.

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5. During the appeal hearing, the Ld.AR argued that the AO made the addition merely relying on the information received from the AO of M/s Emmar Hills Township Pvt. Ltd. and the statement given by Sri Tummala Ranga Rao before Hon'ble II Metropolitan Magistrate, Hyderabad u/s 164 of CRPC. Though the assessee has denied having paid any excess amount over and above the registered value and no other evidence was found indicating the excess payment, the AO made the addition, arbitrarily on assumption and surmises and thus argued that there is no case for making addition u/s 69 of the Act. Hence requested to delete the same.

5.1. The Ld.AR further stated that the statement given by Sri Tummala Ranga Rao and the statement u/s 164 of CRPC before the Hon'ble Metropolitan Magistrate and the evidence found in M/s Emmar Hills Township Pvt Ltd were not given to the assessee and the assessee was also not given opportunity to cross examine Sri Tummala Ranga Rao and the CEO of M/s Emmar Hills Township Pvt Ltd. The Ld.AR further submitted that on identical facts in the case of Shri G. Mahesh Babu in ITA No. 256/Hyd/2015, 286/Hyd/2015, 55-58/Hyd/2015 dated 27.11.2015 of Hon'ble ITAT, Hyderabad Bench has remitted the matter back to the file of the AO for reconsideration of the issue. Therefore argued that since, the assessee was not given opportunity, the assessment made u/s 143(3) by

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the AO is against the principles of natural justice, hence void ab-initio which needs to be quashed.

6. On the other hand, the Ld.DR supported the orders of the lower authorities.

7. We have heard both the parties and perused the material placed on record. On identical facts in the case of Shri G.Mahesh Bahu, the Coordinate Bench of ITAT Hyderabad has remitted the matter back to the file of the AO for reconsideration of the issue. For a query from the bench, both the parties have agreed to remit the matter back to the file of the AO for denovo consideration as per the directions given by the coordinate bench of ITAT,Hyderabad in Shri G.Mahesh Babu (Supra). Coordinate Bench of ITAT has remitted the matter back to the file of the AO with a direction to redo the assessment afresh after giving opportunity to the assessee. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.23 and 24 which reads as under :

"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

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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 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 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

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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 onmoney. 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 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."

Since the facts are identical, respectfully following the view taken by the coordinate Bench of ITAT, Hyderabad, we remit the matter back to the file of the AO with a direction to reexamine the issue as per the directions given in the order of the ITAT Hyderabad (supra) and decide the issue

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afresh on merits after giving reasonable opportunity to the assessee.

Accordingly, appeal of the assessee is allowed for statistical purpose.

8. In the result, stay application of the assessee is dismissed and the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23rd June, 2021.

<p>Sd/- (एन के चौधरी) (N.K.CHOUDHRY) न्यायिक सदस्य/ JUDICIAL MEMBER Dated : 23.06.2021 L.Rama, SPS</p>	<p>Sd/- (डि.एस.सुन्दरसिंह) (D.S.SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Sri Mullapudi Sree Ramachandra Venkata Krishna Ranga Rao, D.No.33-76/1, Kanchirajuvari Street, Tanuku
2. राजस्व/The Revenue –Asst. Commissioner of Income Tax, Circle-1, Rajahmundry
3. The Pr.Commissioner of Income Tax-2, Hyderabad
4. The Commissioner of Income Tax (Appeals)-1, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam