IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad
(Through Video Conferencing)

Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.1493/Hyd/2019		
Assessment Year: 2014-15		
Income Tax Officer, (International Taxation), Nellore.	Vs.	Sri Ramu Yelchuri, Nellore. PAN : AAIPY6557G.
(Appellant)		(Respondent)
Assessee by:	Shri S. Ramarao.	
Revenue by:	Shri Rohit Mujumdar	
Date of hearing:	07.02.2022	
Date of pronouncement:	22.02.2022	

O R D E R

Per S. S. Godara, J.M.

This Revenue's appeal for A.Y. 2014-15 arises from the Commissioner of Income Tax (Appeals) – 10, Hyderabad's order dated 15.07.2019 in appeal No.0015 & 0014/CIT(A)-10/2017-18 / CIT(A), Hyd-10/10011 & 10012/2017-18, involving proceedings u/s 201(1) / 201(1A) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The Revenue's sole substantive grievance raised in the instant appeal challenges correctness of the CIT(A)'s action reversing the Assessing Officer's findings treating the assessee to be an "assessee in default" for having deducted TDS @ 1% than

the specified rate of 20% u/s 195(1) thereby raising consequential demand in issue. Lower appellate discussion in issue reads as follows :

> *"7. There was a survey u/s. 133A conducted in the case of the appellant i.e., Dr. Ramu Yelchuri, on 11.09.2013. The appellant along with his wife, who also filed the appeal, purchased residential house property from non-residents for a consideration of Rs. 1,90,31,000/--, "as per the registered sale deed dt. 01.08.2013. In the course of the survey, copy of the agreement dt. Nil was discovered and according to which the sale consideration was of Rs.6 crores and a sum of Rs.1,00,000/-, in cash, towards advance, was paid on 16.05.2013. The sale agreement was found to be signed by the appellant, on 16.05.2013. In the course of the survey, a stamp paper reflecting cash payment of Rs.4,11,59,310/-, over and above the document value of Rs.1,90,31,000/-, was also discovered. The stamp paper confirms that the sellers received the cash component, on 01.08.2013, which was also signed by the sellers.*
>
> *7.1 In view of the above, it is seen there is incriminating evidence reflecting on money payment of Rs. 4,11,59,310/-, in the purchase transaction under consideration. This fact is beyond dispute and no submissions have been made by the appellant, even in the present appeal proceedings, rebutting the same.*
>
> *8. The sale consideration reflected in the registered sale deed is of Rs.1,90,31,000/-. Therefore, including the on money payment, the total sale consideration paid is of Rs. 6,01,90,310/-.*
>
> *9. As rightly pointed out by the AO, the appellants should have deducted taxes at source @ 20% vi] s. 195(1) in respect of, both, the document value of Rs. 1,90,31,000/- and the on money of Rs. 4,11,59,3101/-. This is the correct position as the appellants have actually paid both the said amounts. Further, the sellers are non-resident Indians. Against this position, the appellant deducted tax @ 1 % u/s 194(IA) in respect of only the document value of Rs.1,90,31,000/-.*
>
> *9.1 That the sellers are non-residents is a fact beyond dispute. The plea of the appellant that he was under the bonafide belief that the sellers were residents cannot be accepted. This is a case where the appellants made cheque payment (in terms of the registered sale deed) and also cash payments, outside the registered sale deed, which are clearly unaccounted. The PANs of the NRIs were available at the time of the registration of property and in the explanation, before the AO, the appellant stated that the property was purchased from nonresidents. Therefore, there is no merit in the argument of the appellant that he was not aware of the residential status of the sellers. In a transaction like this, also considering the fact of on*

money payment, it is only reasonable and logical to expect the appellants to know the residential status of the sellers. Even otherwise, ignorance is not a valid reason and the relevant legal provisions apply.

9.2 As the payments were made to non-resident Indians, the appellants were required to deduct taxes @ 20% in terms of Section 195(1) in respect of the total sale consideration paid.

10. In the appeal proceedings, the appellant also submitted that the non-residents filed returns of income and assessments were completed u/s 143(3) r.w.s. 147 on 28.12.2017. The appellant stated that the returns were filed on 26.07.2014 and claimed exemption from capital gain arising from the sale of the said property. The AO considered the relevant returns of income, filed by the non-resident Indians. In the returns, the non-residents did not admit the on-money receipt.

10.1 In view of the position, as above, the AO is directed to compute the demand u/s. 201(1) / 201(lA), in the cases of the appellants, in the light of the re-assessments done in the cases of the sellers. While doing so, the AO should also consider the relevant demand raised and taxes and interest paid. Accordingly, the grounds of appeal no. 2 to 5 are treated as allowed, for statistical purpose.

11. In the result, both the appeals are treated as allowed, for statistical purpose."

3. We have given our thoughtful consideration to rival contentions. Mr. Mujumdar vehemently contended during the course of hearing that the CIT(A) has erred in law and on facts in applying section 201(1) first proviso inserted in the Act vide Finance Act 2012 w.e.f. 01.07.2012 in case of "non-resident" payees herein whereas the earlier legislature expression therein had only included "sum paid to a resident" only which got substituted by "payee" by the Finance Act 2019 w.e.f. 01.09.2019 only. The Revenue's case in light of the foregoing statutory position is that the legislature had very well covered the "resident" payee(s) than a payee simpliciter (covering both residents as well as non-residents") w.e.f. 01.09.2019 whereas we are in A.Y. 2015-16 only.

4. We find no merit in the Revenue's foregoing legal arguments for the precise reason that the CIT(A) has nowhere applied the above stated statutory proviso in the facts of the instant case. All he has done is to affirm the Assessing Officer's section 201(1) findings in principle followed by direction to the latter to ensure that there is no double demand of the impugned tax amount once the corresponding payee(s) / recipients NRI(s) stands assessed. We further quote Jagran Prakashan Limited Vs. DCIT (2012) 354 ITR 288 (Allahabad) holds that assessment states of the assessee concerned is very much a vital issue in section 201(1) proceedings.

5. Coupled with this, learned counsel has invited our attention to page no.106 of the paper book containing the Assessing Officer's consequential order dt.06.09.2019 determining balance tax liability on the assessee under section 201(1) as "nil" with interest under section 201(1) amounting to Rs.7,94,524/-, respectfully. Be that as it may, it has already come on record that CIT(A) has nowhere applied the foregoing statutory proviso forming the sole argument raised at the Revenue's behest. The same admittedly goes contrary to the factual position in the lower appellate discussion extracted in the foregoing paragraphs. The Revenue's sole substantive grievance is declined therefore.

6. This Revenue's appeal is dismissed in above terms.

Order pronounced in the Open Court on 22nd February, 2022.

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

Hyderabad, dated 22nd February, 2022.
TYNM/sps

Copy to:

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2	The Income Tax Officer, International Taxation, Nellore.
3	CIT(Appeals) – 10, Hyderabad.
4	CIT (IT & TP), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order