

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1741/HYD/2018 Assessment Year: 2014-15		
Yarram Nirmala Devi, Ongole. PAN - AKGPY 3995A (Appellant)	Vs.	Income-tax Officer, Ward - 2, Ongole. (Respondent)
Assessee by:		Shri S. Rama Rao
Revenue by:		Shri Sunil Goutam
Date of hearing:		15/03/2022
Date of pronouncement:		17/03/2022

ORDER

PER L.P. SAHU, A.M.:

This appeal is directed against order of CIT(A) - 1, Guntur, dated 30/12/2016 for the AY 2014-15 involving proceedings u/s 143(3) rws 147 of the Income Tax Act, 1961 ; in short "the Act", on the following grounds of appeal:

"1. The order of the learned Commissioner of Income Tax (Appeals)-I, Guntur is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals)-1, Guntur is not justified in sustaining the addition of Rs. 1,10,19,250/- made by the assessing officer towards alleged understatement of sale consideration in respect of land sold by the appellant.

3. The learned CIT(A)-1, Guntur ought to have held that the assessing officer is not justified in making the addition simply based on the statement of the purchaser without any documentary evidence whatsoever in support of the excess consideration alleged to have been received by the appellant.

4. Any other ground that may be urged at the time of appeal hearing.”

2. Briefly the facts of the case are that the Income Tax Officer, Ward - 1, Chirala conducted survey u/s. 133A of the Act in the case of Sri Syed Yusuf Sharif and Sri Syed Baji Sharif of Vetapalem on 19-09-2013. During the course of survey, statement was recorded from Sri Syed Yusuf Sharif, wherein, it was admitted that Sri Syed Yusuf along with his brother Sri syed Baji Sharif purchased properties i.e. 11.44 cents (549.22, Sq. Yards) @ Rs. 15 lakhs per cent from Smt. Yarram Nirmala Devi and paid Rs. 1,76,31,250/-.

2.1 Accordingly, the AO issued notice u/s. 142(1) of the Act calling for the Return for the Asst. Year 2014-15. In response to this, the appellant filed a letter enclosing the copy of the Income Tax Return filed with ITO, Ward 2, Ongole. The AO found from the computation that the appellant admitted sale consideration at Rs. 66,12,000/-

(Rs. 32,52,000/- & Rs. 33,60,000/-) and arrived at Long term capital gain at Rs. 3,72,087/-. The appellant also claimed deduction u/s. 54 and 54EC of the Act to the extent of Rs. 31,07,470/- and admitted taxable capital gains at Rs. 2,64,617/-. The AO noted that the appellant had not disclosed the total sale consideration received from the buyers hence issued notice u/s 148 of the Act. In response to this, the appellant stated that the e-filed Return dated 07-08-2014 may be treated as Return for this purpose. The AO called for the statement recorded from the buyers from the ITO, Ward - 1, Chirala. After obtaining the same, it was noticed by the AO that the purchaser admitted payment of total consideration to the appellant at Rs. 1,71,63,125/-. In view of this, explanation of the appellant had been called for. The appellant, before the AO, stated that she has received only Rs. 66,12,000/- which had been credited to her bank account and categorically stated further that she had not received any amount in excess of the said amount. The appellant also relied on the decision of the Hon'ble Supreme Court in the case of KP Varghese and pleaded that no addition should be made. However, the AO considering the statement of the buyer, filing of Return admitting the undisclosed income and payment of tax voluntarily by the said buyer, made addition of Rs. 1,10,19,250/- as suppressed/undisclosed sale receipts in excess of sale consideration admitted.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee filed written submissions along with case laws, which were extracted by the CIT(A) in his order at pages 4 to 9. The CIT(A) after considering the assessment order, statement of facts, submissions made by the ld. AR of the assessee, remand reports obtained from the AO, counter comments of the assessee, report on cross examination granted by the AO, counter comments on the same by the assessee, confirmed the order of the AO by holding that the witness at the time of survey gave the statement regarding the payment of on-money which was supported by admission of the income and filing of the return by the buyer and also confirmed the said payment even at the time of cross examination availed by the appellant.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

6. Before us, the ld. AR of the assessee reiterated the submissions made before the lower authorities and strongly objected to the admissions made by the purchaser that he paid money to vendor of Rs. 1,71,63,125/-. He further submitted that there was no evidence produced by the purchaser of the property that he paid over and above

the sale consideration recorded at Rs. 66,12,750/-. Further, he submitted that the burden is on the revenue to prove that excess consideration (on money) was received by the assessee and without establishing receipt of on money, the addition cannot be made. For this proposition, he relied on the following cases:

1. Pr. CIT Vs. Kanubhai Maganlal Patel, [2017] 79 taxmann.com 257 (Guj.)
2. ACIT Vs. Govindbhai N. Patel, [2013] 33 taxmann.com 237 (Guj.)

7. The Id. DR, on the other hand, relied on the orders of revenue authorities and submitted that cross objections were provided to the assessee on 18/04/2018, which are placed at pages 51 & 52 of the paper book filed, in which the purchaser of the property has clearly accepted when question no. 9 was posed to him that the exact amount of Rs. 1,71,63,125/- was paid to vendor and the same has been recorded in his financial statements. He, therefore, submitted that there is no room for further argument as submitted by the Id. AR that no proof was submitted by the purchaser that he paid an amount of Rs. 1,71,63,125/- during cross-examination after question & answer No. 9 and there was no any further question asked by the assessee. He, therefore, submitted that the order of the CIT(A) may be confirmed on this issue.

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The AO found that there was a difference of Rs. 1,10,19,250/- in the sale price as computed by the assessee in her computation of income. The purchaser of the property has recorded the purchase cost at Rs. 1,75,63,125/- whereas the vendor of the property has shown the sale consideration at Rs. 66,12,750/-. The AO, therefore, added the difference amount of Rs. 1,10,19,250/- in the hands of the assessee as long term capital gains. During the course of appellate proceedings, the CIT(A) called for a remand report from the AO to submit a report on addition made towards on money receipt of Rs. 1,10,19,250/-. In the report dated 05/02/2018, the AO obtained copy of the statement recorded from the property purchaser i.e. Syed Yousuf Sharif at the time of survey proceedings u/s 133A of the Act. At the request of the assessee, it was allowed to cross examine the purchaser on 18/04/2018. In the cross examination, responding to the question No. 9, the purchaser stated that he paid excess amount of Rs. 1,76,31,250/-. For the sake of clarity, the question No. 9 and answer by the purchaser is reproduced below:

Space left intentionally

Q.8	Seller	I suggest you that since you are in duress by virtue of under the control of income-tax officers, the contents of your statement did not flow into your mouth and that you just affixed your signature though you have not given the statement.
Ans:	Purchaser	It is not true and I don't accept your suggestion.
Q.9	Seller	How much excess you have paid?
Ans:	Purchaser	I paid excess amount of Rs. 1,76,31,250/-

8.1 From the above cross examination, it is clear that the purchaser of the property's answer that he paid an amount of Rs. 1,76,31,250/-, the figure of which is mentioned by the AO in the assessment order. Thereafter, no further question was posed by the seller to the purchaser, which clearly shows that the said amount was accepted to have been received by the assessee for the sale of property. There was no limitation/bar for posing any question to the purchaser of the property, but, after question No. 9, in the cross-examination, no question is there to pose to purchaser by the seller. In view of the above observations, we do not find any infirmity in the order of the CIT(A) in confirming the addition of Rs. 1,10,19,250/- made by the AO on account of excess payment received by the assessee towards purchase of her property. Accordingly, the grounds raised by the assessee on this count are dismissed.

9. In the result, appeal of the assessee is dismissed in above terms.

Pronounced in the open court on 17th March, 2022.

Sd/- (S.S. GODARA) JUDICIAL MEMBER	Sd/- (L.P. SAHU) ACCOUNTANT MEMBER
Hyderabad, Dated: 17 th March, 2022	

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Copy to :

1	<i>Smt. Yarram Nirmala Devi, D.No. 203, Ramnivas Apartment, Pardhasaradhi Nagar, Near Ramachandra Mission, Ongole.</i>
5	<i>ITO, Ward - 2, Ongole.</i>
3	<i>CIT(A) - 1, Guntur</i>
4	<i>Pr. CIT, Guntur</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	