

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

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**ITA No.2235 & 2236/Hyd/2017
(Assessment Year : 2014-15)**

1. Shri Nalla Sudhakar,
Hyderabad.
PAN AFQPN 1577G
 2. M/s.Ved Kiran Infra Projects Pvt. Ltd.,
Hyderabad.
PAN AECV4030C
-Appellants.

Vs.

Asst. Commissioner of Income Tax,
Central Circle 2(3), Hyderabad.Respondent.

Appellants By : Shri K.C. Devdas, C.A.
Respondent By : Shri Sunil Goutam, (D.R.)

Date of Hearing : 07.04.2022.
Date of Pronouncement : 08.04.2022.

O R D E R

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

These twin assessee's as many appeals for Assessment Year 2014-15 arise against the Commissioner of Income Tax (Appeals)-12, Hyderabad separate orders; both dt.2.11.2017 passed in case Nos.0267 and 265/2016-17 in


proceedings under Section 143(3) r.w.s. 147 of Income Tax Act, 1961 ('the Act').

Heard both sides. Case files perused.

3. We notice at the outset with the able assistance of both the parties that these twin assessee's identical sole substantive grievance challenges correctness of the learned lower authorities' action making unexplained investment addition of Rs.2.85 crores; on substantive cases in individual's and protective basis in company's hands herein; respectively. The CIT(A)'s detailed discussion affirming the Assessing Officer's action to this effect in individual hands on substantive basis read as under :

6. Unexplained investment in Land :Rs.2,85,00,000/-:

6.1 The facts of the case are that consequent to search action conducted on 20.11.2014 in the Mansani Constructions group, survey operation u/s.133A of the Income Tax Act 1961 was also conducted in the case of M/s.Vedkiran Infra Projects Pvt Ltd., on 20.11.2014 in which the assessee is a Managing Director. Page No.34 to 41 of Annexure A/VKIPL/01 impounded from the registered office of M/s. Vedkiran Infra Projects Pvt Ltd



is the original agreement of sale dated 06.07.2013 entered into between Sri T.V.Ramdev (Vendor) and Vedkiran Infra Projects P Ltd., & Vishwambara Educational Society for the sale of land to the extent of 11 acres at S.No.215, Boduppal Village, Ghatkesar Mandal, RR Dist. As per the said agreement, the vendor agreed to sell the said property for Rs.18.5 crores and the vendor also acknowledged the receipt of Rs.5.5 crores. As per the statement dated 27.11.2014 u/s.131, the appellant admitted that a total cost of Rs.22 crores was incurred for the purchase of property which included the sale consideration of Rs.18.5 crores paid to vendor, Rs.1 crore incurred for registration & stamp duty, and the remaining expenditure of Rs.2.5 crores towards development of the land into plots and conversion of the land from manufacturing zone to residential zone. The appellant further admitted that M/s.Vishwambhara Educational Society paid the amount of Rs.5.5 crores as their 25% of share of the investment thus confirming that the total cost of investment was Rs.22 crores. As the appellant could not explain the sources for Rs.2.85 crores out of the total investment of Rs.22 crores, the Assessing Officer added the said amount to assessee's income and completed the assessment u/s.143(3) r.w.s.147 on 30.12.2016.

6.2 During the course of appellate proceedings, the AR of the appellant filed written submissions along with additional /revised grounds of appeal contesting the said addition, stating that not the appellant, but M/s.Vedkiran Infra Projects P Ltd., is the purchaser of property. It was further argued that all the investments were accounted for in the books of M/s.Vedkiran Infra Projects P Ltd; and that M/s.Vedkiran Infra Projects P Ltd was the legal title holder over the property, and the appellant never held any legal title for the said property. Therefore, the AR contends that the real owner of property is M/s.Vedkiran Infra Projects P Ltd and hence if any

addition is called for with regard to purchase consideration, the same should have been considered in the hands of the company.

6.3 In the remand report furnished on 19.09.2017, the Assessing Officer has stated as under:

"1. The ownership of the property being with M/s.Vedkiran Infra Projects Pvt Ltd is not disputed. Sri Nalla Sudhakar (MD of the company) along with his wife are the directors of the company. It is categorically admitted by Sri Nalla Sudhakar that the amount of Rs.2.85 crores is unexplained and has admitted the same as his undisclosed income which has been taxed in his hands on substantive basis. Since the source for the amount of Rs.2.85 crores for purchase of property by M/s.Vedkiran Infra Projects Pvt Ltd by his own admission, is Sri Nalla Sudhakar himself and he failed to substantiate his source.

2. As per the statement given by Sri Nalla Sudhakar on 27.11.2014 (copy enclosed) in answer to Q.No.37 while referring to page 8 of impounded Annexure VKIPL/1 (copy enclosed) he has stated that initially Sri T.V.Ramdev had agreed to sell the land to the extent of 13 acres 33 guntas for Rs.20.25 crores but ultimately the transaction materialized for 11 acres only for Rs.18.5 crores. As per the statement given by Sri Nalla Sudhakar on 27.11.2014 in answer to Q.No.26 he has admitted the payment of Rs.18.5 crores to Sri T.V.Ramdev in addition to incurring other expenses of Rs.3.5 crores thus totaling to Rs.22 crores. The fact that Vishwambhara Educational Society provided funds to the tune of Rs.5.5 crores for getting 25% of share of the asset is not disputed by the assessee which strengthens the voluntary admission made by Sri Nalla Sudhakar vide his sworn statement dated 27.11.2014 that the total cost of investment is Rs.22 cr. Further, the assessee has also not brought on record any material evidence during the assessment proceedings to prove that his admission of undisclosed income was erroneous or untrue."

6.4 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the additional /revised grounds of appeal filed as well as the comments of the Assessing Officer thereon. The relevant extract of the statement of Sri Nalla Sudhakar recorded u/s.131 are as under:

"Q.26 Now i am showing you statement of Sri Ch. Devender Reddy, Secretary and Corresponded of Vishwamabara Educational Society, recorded u/s. 131 on 26-11-2014. In his answer to question no.5, he has stated that the total cost of the land admeasuring 11 acres situated at S.No.215, Boduppal village, R.R. District is Rs.22 crores, and they have invested Rs.5.5 crores out of the total cost towards their 25% share of investment. Please comment?"

Ans. Yes, I agree that the total cost incurred on purchase land to the extent of 11 acres at survey no 215, Boduppal Mandal is 22 crores and Vishwabharara Educational Institution has invested 5.5 crores towards their 25% of share. The total cost of Rs.22 crores includes the sale of consideration of Rs.18.5 crores paid to Sri Talluru Venkata Ramdev in accordance with the sale agreement dated 06-07-2013, which was duly signed by Sri Talluru Venkata Ramdev (vender), Sri Ch. Devender Reddy (on behalf of Vishwabharara Educational Society), and myself (on behalf of M/s. Vedkiran infra Projects Pvt. Ltd). Apart from this, an amount of Rs.1 crore was incurred for registration and stamp duty and the remaining expenditure of Rs.2.5 crores was in incurred towards development of the land into plots and conversion of the land from manufacturing zone to residential zone. The details of which I will produce in two days.

Q.27. Please give the details of mode of payment of the sale consideration paid to Talluru Venkata Ramdev?

Ans: Out of the total consideration of Rs 18.5 crores, an amount of Rs.16.19 crores has been paid through bank i e. through RTGS or cheques either by Vedkiran Infra Projects Pvt Ltd or by Vishwabharara Educational Society. The remaining amount of Rs.2.31 crores has been paid in cash to Sri Venkata Ramdev.

Q 28. Please refer to the answer given by you to the question no.19. of the above statement recorded on 25-11-2014, wherein you have stated that the total investment made in the property is Rs.19.4 crores which includes the sale consideration of Rs.16.19 crores. Please comment in view of your answer to the question number 27 above?

Ans I agree that the actual sale consideration paid to Venkata Ramdev is Rs.18.5 crores as per the sale agreement entered into with him. However, the amount of Rs.2.31 crores paid in cash was not included, for which I may be excused as it was a bona-fide mistake on my part. And with regard to total investment incurred, I once again state that we have invested a total amount of Rs.22 crores in the above said land.

Q.29. In your answer to question number 19 above, you have given the details of sources for the investment of Rs.19.15 crores. Please give the details of sources for the remaining amount of Rs.2.85 crores.

Ans. Regarding the sources for 19.15 crores, I would like to state that I will prove the sources as given in my answer to question no.19. With regard to the remaining amount of Rs.2.85 crores, I submit that I am not able to give the details of the sources for the said amount, I voluntarily admit the said amount as my undisclosed income for the F.Y.2013-14 relevant to the A.Y.2014-15.

From the statement reproduced above, it is abundantly clear that Sri Nalla Sudhakar, the appellant, himself voluntarily admitted that the total cost of the property was Rs.22 crores; that Rs.2.31 crores out of the sale consideration was paid in cash; and that out of the total consideration of Rs.22 crores, he was unable to explain the sources of Rs.2.85 crores; and was therefore, voluntarily admitting the said amount as his undisclosed

income for A.Y:2014-15. Subsequently, while filing the return, the appellant has not included the said disclosure of Rs.2.85 crores in his returned income. No retraction statement has been filed, and no reasons for the retraction have been given. No evidence has been advanced to explain the sources of the investment of Rs.2.85 crores, either during assessment or during appellate proceedings. The only contention of the appellant's AR during appellate proceedings is that the Assessing Officer did not have any corroborative evidence to prove that Rs.2.85 crores was unexplained investment, and that he made the addition solely on the basis of statement recorded u/s.131. This plea does not serve the appellant's cause in any way. The Assessing Officer had enough corroborative evidence in the form of the original agreement found; payment of Rs.5.5 crores by Viswambhara Educational Society towards 25% of the cost; and the voluntary statement by the appellant himself, to prove that the total consideration paid was Rs.22 crores. Out of the said amount, Rs.2.85 crores has not been explained, even during appellate proceedings. This contention of the appellant's AR is therefore found to be devoid of any merits. As regards the evidentiary value of the statements recorded, it is pertinent to refer to a recent judgement of **Delhi High Court in the case of Smt.Dayawanti Vs. CIT(390 ITR 496)(Delhi)**, wherein similar issue has been decided by the High court, after considering all previous decisions on the matter. The Head-Note of the said judgement is reproduced herewith:

"IT: Statements recorded during search operations could be relied upon to make addition to assessee's income.

IT: Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

Section 132, read with section 153A, of the Income-tax Act, 1961 – Search and seizure – General (Statement made during search) – Search and seizure

operations were carried out on assessee firm - Various materials, documents, agreements, invoices and statements in from of accounts and calculations were seized - Assessee along with her family members surrendered a sum of Rs.3.5 crores as additional income in respect of business carried on outside books of account - Assessing Officer rejected books of account and made additions by estimating sales and gross profit rates, inter alia on ground that in course of search a statement was recorded by assessee's son on behalf of assessee and other family members - Assessee submitted that statements were not recorded during search but later and that they could not be considered of any value - Whether probative value of statements recorded during search operations was undeniable as occasion for making them arose because of search and seizure that occurred and seizure of various documents, etc. that pointed to undeclared income - Held, yes - Whether under these circumstances, assessee's argument that they could not be acted upon or given any weight was insubstantial and meritless - Held, yes - Whether thus addition to assessee's income could be based on these statements - Held, yes [Paras 18 & 20] [In favour of revenue]"

The evidentiary value of the statements recorded is, therefore, undeniable, and Grounds No.2 to 4 are **DISMISSED**.

6.5 As regards the plea taken by the appellant's AR in the revised grounds, that the addition made in hands of the appellant is illogical and improper, since the property in question belongs to M/s.Vedkiran Infra, this appears to be merely an afterthought, and a desperate attempt to wriggle out of the situation. The property in question no doubt belongs to M/s.Vedkiran Infra, but the appellant has categorically admitted that the amount of Rs.2.85 crores is unexplained investment made by him in the said property. The amount has therefore been rightly added by the Assessing Officer in the hands of the appellant. Moreover, protective addition of the said amount has already been made in the case of M/s.Vedkiran Infra Projects Pvt Ltd. Therefore, if at any stage, it is held that the amount should not be taxed in the hands of the appellant here, then the said amount should be automatically taxed in the hands of M/s.Vedkiran Infra Projects Pvt Ltd., as per the appellant's own plea. The revised grounds of this issue raised by the appellant are therefore **DISMISSED**.

4. We have heard both the sides. There is hardly any issue about the total purchase consideration coming to

Rs.22 Crores whereas the assessee's and the co-purchaser M/s. Vishwambhara Educational Society have 3/4th and 1/4th shares, respectively. The latter had already paid its consideration of Rs.5.5 Crores. The assessee company's share comes to Rs.16.5 Crores. The Revenue's case all along has been that it has failed to explain source of the impugned sum of Rs.2.85 Crores forming subject matter of addition(s) before us. It has placed a strong reliance on the survey statement of Mr. Nalla Sudhakar/Appellant herein admitting cash payment of Rs.2.85 Crores in issue which has been added on substantive and protective basis (supra).

5. The assessees vehemently contended that the impugned additions are not based on any supportive evidences apart from the foregoing survey statement. And that the latter hardly carries any significance in light of the CBDT's twin circulars dt.10.03.2003 and 18.12.2014.

All these arguments fail to convince us as it has come on record that the relevant sale agreement found in the course of search dt.20.11.2014 had indicated the purchase price

as Rs.22 Crores out of which the assessee could neither account nor explain source of Rs.2.85 Crores in the survey statement in issue. We deem it appropriate to observe here that the said seized document carries presumption of correctness u/s.292C(1) of the Act. And that the individual assessee has further supported the contents thereof in survey statement. We thus decline learned counsel's arguments based on the CBDT's twin circulars (supra). There is also no indication of any substantive retraction from the assessee's side before the departmental authorities as well. Their case that the vendor has supported its stands if no cash payment goes contrary to both the sale agreement as well as survey statement. The impugned addition is upheld in principle therefore.

6. Next comes the equally important aspect of assessment of the impugned on-money addition. Case law ITO Vs. Ch. Atchiaiah 218 ITR 239 (SC) holds that correct amount of income has to be assessed in the right person's hands alone. We find in this legal backdrop that it is the

company assessee only which had purchased the land in issue as recorded in its books maintained in the regular course of business. We therefore delete the impugned addition in ITA No.2235/Hyd/2017 and uphold in the company assessee's appeal ITA No.2236/Hyd/2017. Ordered accordingly.

7. These twin assessee's former appeal ITA No.2235/Hyd/2017 is allowed and latter appeal ITA No.2236/Hyd/2017 is dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 8th April, 2022.

Sd/-

(L.P. SAHU)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt.08.04.2022.

* Reddy gp

Copy to :

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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.