

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.1594/Hyd/2018		
Assessment Year: 2007-08		
M/s. Aakash Estates Pvt.Ltd. No.269/S/98, Sagar Society,Road No.2, Banjara Hills Hyderabad-500 034 PAN : AAFC8175Q	Vs.	DCIT,Circle-1(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:		Shri C.P Ramaswami,Advocate
Revenue by:		Shri K.P.R.R.Murthy, Sr.AR
Date of hearing:		23.06.2022
Date of pronouncement:		29. 06.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 02.05.2018 of the Learned Commissioner of Income Tax (Appeals)-1, Hyderabad relating to AY 2007-08.

2. Grounds raised by the assessee are as under:-

1) The order of the Learned CIT (A), in so far as it is prejudicial to the interest of the appellant, is against law, weight of evidence and probabilities of the case.

2) (a) The impugned order of the learned CIT(A) have been passed in gross violation of the principles of natural justice because the learned CIT(A) refused to give a copy of the remand report called by her (with particular reference to ground NO.2 raised before her regarding invalid service of notice u/s.148 for assumption of jurisdiction u/s.147) and consequently the impugned reassessment is liable to be annulled.

(b) The learned CIT(A) failed to appreciate that substituted service cannot be resorted to without failure of regular service of notice and recording of

such failure with reasons. Consequently, upholding the assumption of jurisdiction by illegal service of notice is liable to be cancelled.

3) Without prejudice to ground No.2:

(a) The learned CIT(A) grossly erred in confirming the addition of sums of money of Rs.9,45,000/- and of Rs.7,83,000/- as unexplained investment u/s.69C despite the fact that the two payments made by account payee cheques on 29.08.2006 from the bank account of the appellant backed by adequate balance at the relevant point of time. Consequently, the said additions have to be deleted.

(b) The learned CIT(A) grossly erred in confirming the addition as unexplained investment u/s.69C of two sums of Rs.1, 12,05,000/- and Rs.65,32,000/- which were deposited on 06.12.2008 and realized on 10.12.2008 by account payee cheques and thereby do not fall for consideration for the assessment year 2007-08. Consequently, the impugned order of the learned CIT(A) suffers from non-application of mind and is liable to be set aside, deleting the additions.

4) For the above grounds and such other grounds that may be urged at the time of hearing, the appellant prays that the appeal be allowed.

3. Although, a number of grounds have been raised by the assessee, however, the ld.Counsel for the assessee confined his arguments to the order of the ld.CIT(A) in confirming the addition of Rs. 1,94,65,000/- made by the AO, which has been sustained by the ld.CIT(A).

4. Facts of the case, in brief, are that the assessee is a company engaged in the business of real-estate. It filed its return of income on 30.09.2009 declaring 'nil' income. Subsequently, the AO noticed that assessee has purchased two villa plots from Emmar by paying an amount of Rs.9,45,000/- and Rs.7,83,000/- as first and second installments for villa plot nos. B-15 & B-16 on 29.08.2006. Further, they have also paid an amount of Rs.1,12,05,000/- and Rs.65,32,000/- on 06.12.2008 as third and final installments. The assessee has paid excess money over and above the registered value. Therefore, the AO had reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the I.T.Act. Hence, he reopened the assessment by issue of notice u/s. 148 dated 06.03.2014 to the address mentioned in the return filed for AY

2007-08. However, in response to the same, neither any reply was filed from the assessee nor anyone appeared for hearing. Further, a notice u/s. 142(1) dated 05.12.2014 was also issued by the AO requesting the assessee to appear on 12.12.2014. But, this time also, none appeared. Since the case was getting barred by limitation and since the assessee did not respond to statutory notices issued by the AO, the AO completed the assessment u/s. 144/147 of the I.T.Act determining the total income of the assessee at Rs. 1,94,65,000/-.

4.1 In appeal, the ld.CIT(A) on the basis of the remand report obtained from the AO sustained the addition made by the AO.

5. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal.

6. The ld.Counsel for the assessee submitted that due to non receipt of notice, the assessee could not appear before the AO for which the AO passed the *ex-parte* order u/s. 144 of the I.T.Act determining the total income of the assessee at Rs. 1,94,65,000/-. He submitted that although the ld.CIT(A) has called for a remand report from the AO however, copy of the same was not given to the assessee for rejoinder. Further, the perusal of the assessment order shows that an amount of Rs. 1,12,05,000/- was paid on 06.12.2008 and 65,32,000/- paid on 06.12.2008 which fall during FY 2008-09 relevant AY 2009-10 and therefore, could not have been added for the FY 2007-08. He accordingly, submitted that the order of the ld.CIT(A) being not in accordance with law should be set aside and the addition made by the AO and sustained by the ld.CIT(A) should be deleted.

6.1 In his alternate contention, he submitted that the matter may be restored to the file of the AO with direction to give one more opportunity to the assessee to substantiate his case.

7. The ld. DR on the other hand heavily relied on the order of the ld.CIT(A). Referring to the detailed order passed by the ld.CIT(A) from paragraph 8.4 to 8.10 of the order, he submitted that the ld.CIT(A) has elaborately discussed the issue while sustaining the addition made by the AO. Therefore, the same being in accordance with law should be upheld and the grounds raised by the assessee should be dismissed.

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs. 1,94,65,000/- being the payments made by the assessee for purchase of two villas by invoking the provisions of section 69C as unexplained investment. We find the ld.CIT(A) sustained the addition made by the AO, on the ground that assessee failed to substantiate such payments made for purchase of the two villas. It is the submissions of the ld. Counsel for the assessee that due to non receipt of notice, the assessee could not substantiate his case before the AO and the remand report obtained by the ld.CIT(A) was not confronted to him. Further, it is also submission that payments made in FY 2008-09 relevant AY 2009-10 cannot be added u/s. 69C of the Act for the AY 2007-08.

9. We find some force in the above argument of the ld.Counsel for the assessee. There is no dispute to the fact that the assessment order has been passed u/s. 144 of the I.T.Act. The perusal of the order of the ld.CIT(A) shows that she was constrained to pass the

order sustaining the addition since the assessee, despite given sufficient opportunities to produce the details regarding the first and second installments and source of funds did not produce any evidence. The relevant observations of the Id.CIT(A) reads as under:-

“Firstly, the appellant did not submit cheque numbers of the so , called cheques used to pay these instalments. Also, the bank account does not have reference of any such payment to M/s.Emaar Hills & Township on those dates, nor amounts referred is seen as entries, in the submitted bank account. Secondly, the income of the appellant for the relevant year is Rs.14,438/- (AY 2007-08) and that too from interest. The expenditure for the year is less than Rs.15,000/- for the year. That is to say, there has been no business by the appellant company. Now, the question arises as to sources of Rs.17,28,000/-. Thirdly, the appellant was given opportunities on 05.08.2016, 22.08.2016, 22.02.2017, 08.03.2017, 15.03.2017, 07.07.2017, 17.10.2017, 10.11.2017, 19.04.2018 & 02.05.2018, to produce the details regarding the first and second instalments and source of funds. The appellant could not produce any evidence before me to confirm the sources of Rs.17,28,000/- from a firm which is not doing any business. Also, in case the payments were made in earlier years, sources could have been presented before me. Appellant could not give any further confirmation or explanation regarding the source of funds. ~

To conclude, appellant has not been able to explain sources j payments of all the four transactions. No reference has been made in the earlier years in the return of income by the appellant. For the relevant Assessment Year, the appellant has filed Nil return and no details has been mentioned in the computation of income for purchase of the property worth Rs.1,94,65,000/-.It is pertinent to note that the detailed questionnaires were issued by the Assessing Officer, however, no supporting evidence were submitted during the assessment proceedings and before me. We have verified the assessment records and could not find the sale deed. The appellant could not justify as to why the addition should be made in different assessment years.”

10. It is also not understood as to how the payments made in FY 2008-09 can be brought to tax u/s. 69C of the I.T.Act for AY 2007-08. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with direction to grant one final opportunity to the assessee to substantiate his case by filing requisite details

and decide the issue as per fact and law. The assessee is also hereby directed to appear for the AO and file the requisite details without seeking any adjournment under any pretext failing which, the AO is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 24th June, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 24th June, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	M/s. Aakash Estates Pvt.Ltd. No.269/S/98, Sagar Society,Road No.2, Banjara Hills Hyderabad-500 034
2	DCIT,Circle-1(1),Hyderabad
3	CIT(A)-1 & Pr.CIT-1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order