

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 639/Hyd/2020
(निर्धारण वर्ष / Assessment Year: 2013-14)

Ramya Constructions Limited, Vs. Deputy Commissioner of
Vijayawada Income Tax,
[PAN No. AACR1165K] Central Circle-2(3),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 23/08/2022
घोषणा की तारीख/Pronouncement on: 22/09/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 18/09/2020, passed by the Learned Commissioner of Income Tax(Appeals)-12, Hyderabad ("Ld. CIT(A)") in the case of M/s. Ramya Constructions Limited ("the assessee") for the assessment year 2013-14, assessee filed this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of real estate, making layouts and sale of plots. The business of assessee includes purchase of agricultural lands in potential suburban areas and convert the agricultural land to non-agricultural land as per the regulations of land administration and town planning departments of State Government. The assessee-company filed their return of income for the assessment year 2013-14 on 27/09/2013 admitting total income of Rs. 1,62,54,319/-. A search and seizure operation under section 132 of the Income Tax Act, 1961 ("the Act") was conducted on the group of M/s. Kapil Consultancy Services Pvt. Ltd., and others on 07/04/2017. The case of the assessee was re-opened under section 147 of the Act by issuance of notice dated 29/03/2019 under section 148 of the Act. Assessee's objections against re-opening were disposed-of by order dated 21/11/2019. Assessment under section 143(3) of the Act r.w.s. 147 of the Act was complete by order dated 28/12/2019 by making the disallowance of Lay-out Development Expenditure of Rs. 3,07,57,863/-, disallowance under section 14A r.w.s. Rule 8D of Rs. 2,470/- and addition towards interest on redeemable debentures of Rs. 52,92,000/-.

3. Aggrieved, the assessee was in appeal before the Ld. CIT(A). Assessee challenged the additions and also the re-opening. Ld. CIT(A) by way of impugned order, having dealt with the facts leading to the re-opening assessment in detail held that there are reasons and material forming the basis for re-opening, and by following the decisions reported in Raymond Wollen Mills Ltd. Vs. ITO (1999) 236 ITR 34 (Supreme Court) and Green Arts (P) Ltd. Vs. ITO (2005) 257 ITR 639 (Del), observed that

correctness or sufficiency of such basis cannot be called in question. He further opined that there is nothing in section 147 of the Act to suggest that a learned Assessing Officer cannot re-open the assessment where he did not investigate and un-earth any material before conducting any enquiry after issuance of notice to the assessee. For this purpose, Ld. CIT(A) placed reliance on the decision of the Allahabad High Court in the case of Ramprasad Vs. ITO (1995) 82 Taxman 199 (All).

4. Considering the case on merits, Ld. CIT(A) gave relief to the assessee in respect of the disallowance of layout expenditure and disallowance under section 14A of the Act, but dismissed the appeal in respect of the addition towards interest on redeemable debentures to the tune of Rs. 52.92 lakhs. Assessee is therefore before us in this appeal. Ground No. 1 and 4 are general in nature and do not require any adjudication. Ground No. 2 relates to the challenged the reopening proceedings whereas ground No. 3 is in respect of the addition relating to the interest on account of the redeemable debentures, which we now proceed to adjudicate hereunder.

5. Insofar as the reopening is concerned, it is the argument of the Ld. AR that the reopening in this matter had arisen on account of the search and seizure carried out in the case of M/s Kapil consultancy services private limited on 7/4/2017, and therefore, section 153A read with section 153C of the Act in respect of the persons not searched. He submits that in view of the fact that section 153C of the Act starts with a nonest and a class, namely, "notwithstanding anything contained in section 139, section 147, section 148 of the Act, section 149, section 151 and section 153" all general provisions including section 147 read with section 148 of the act are not applicable.

6. On the issue of the addition made by way of notional interest on debentures to the tune of Rs. 52,92,000/-, Ld. AR submitted that this addition was made by the learned Assessing Officer basing on surmises and conjectures, on estimate basis. According to the Ld. AR the assessee did not receive any interest on debentures and there is no material with the learned Assessing Officer to conclude that the payment was made by the investing Companies. He submits that the assessee transferred an amount of Rs. 3.78 crores various Companies for allotment of debentures, but the recipient Companies have not issued the debentures, but showing the same as advances received for sale of property, whereas in the books of the assessee it was inadvertently shown as debentures. Ld. AR further submitted that after knowing the facts, the assessee reverse of the entry and instead of showing it under the head non-current investments, the said amount was shown under the head "short term loan and advances (note 12) as advances paid for purchase of property", and therefore, there is no interest accrual in the hands of the assessee.

7. Ld. AR fairly brought to our notice that in an appeal involving the group company in ITA No. 651/Hyd/2020 and batch a coordinate Bench of this Tribunal considered the issues similar to the ones involved in this appeal. He filed a copy of the order dated 21/3/2022 in ITA No. 651/Hyd/2020 and batch.

8. Ld. DR relied on the observations of the Ld. CIT(A) and submitted that the Ld. CIT(A) considered the case law on this aspect and held that the learned Assessing Officer satisfied and had a reason to believe that finance cost was actually spent on the development of land, the assessee resorted to misrepresentation of the finance cost as land development cost on

un-fructified sale of plots, the advances for sale of plot were being diverted to other group company is under the guise of share capital/advances for purchase of property/inter-corporate deposits etc., and therefore the said findings of the Ld. CIT(A) cannot be interfered with. On merits also, he submitted that the assessee did not bring any material on record to prove their contentions and therefore, there is nothing on record suggesting any interference with the findings of the authorities below.

9. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that both the issues involved in this appeal were also involved in the case of the group company is in ITA No. 651/Hyd/2020 and batch, disposed of by a common order dated 21/3/2022. In that batch of appeals, a coordinate Bench held that since there is no material found in the search pertaining to our relating to the assessee nor such a reference could be found in the reasons recorded by the learned Assessing Officer suggesting the reopening proceedings as based on any seized material belonging to, pertaining to relating to the group companies, the reopening proceedings in this case under section 147/148 cannot be found fault with.

10. In the appeal on hand also, the reasons do not disclose that any material belonging, pertaining relating to the assessee says that during the search proceedings in the case of M/s Kapil consultancy services private Ltd. There is no expiration forthcoming from the assessee as to how the case on hand is different either in fact or law from the ones in the case of group companies. Apart from this, the reasons recorded by the learned Assessing Officer in this matter, as could be found at paragraph No. 3 of the assessment order, do not reveal any information gathered at the time

of the sec. since the proceedings in the case of M/s Kapil consultancy services private Ltd nor any reference to the sec. since the proceedings in the case of M/s Kapil consultancy Pvt. Ltd to be found therein. The reopening in this matter has nothing to do with the search and seizure proceedings in the case of M/s Kapil consultancy Pvt. Ltd. Merely because they happen to be certain search action against M/s Kapil consultancy services Pvt. Ltd, it need not ipso facto be inferred that the present reopening proceedings have something to do with such search action. The reopening in this matter is altogether independent, as could be gathered from the reasons recorded in this matter, and therefore, the non obstante cause has no obligation to the facts of the case. We accordingly hold that the learned Assessing Officer had rightly initiated the proceedings under section 147 by issuing notice under section 148 of the act. Ground No. 2 is accordingly dismissed.

11. Now coming to the addition relating to the notional interest on redeemable debentures, there is no dispute that this issue is dealt with in the case of the group companies and by order dated 21/3/2022 a coordinate Bench observed that there is no material on record to throw any light on the details of the debentures the scheme in issue which could be taken as a benchmark for making the impugned addition; that it transpires that the assessee's stand from day one was that it had neither treated the corresponding interest income nor actually received the same in the relevant previous year; it could be noted that the assessee decided to file the additional evidence under section 46A of the Income Tax Rules 1962 ("the Rules"); and considering all these aspects in the interest of justice it would be proper to restore back the same to the file of the

learned Assessing Officer to examine the corresponding debentures the scheme and whether or not the assessee received any interest or creditor the same in their books.

12. Since there is no change in facts or law, while respectfully following the view taken in the case of group companies in ITA No. 651 /Hyd/ 2020 by order dated 21/3/2022, we set aside the findings of the authorities below and restore the issue to the file of the learned Assessing Officer to verify the fact relating to the debentures the scheme and also whether the assessee received and credited any such interest in their books in the relevant previous year. This ground is allowed for statistical purpose.

13. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on this the 22nd day of September, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 22/09/2022

TNMM

Copy forwarded to:

1. Ramya Constructions Limited, H.No. 40-14-3/1, Chandramouli Puram,
Near Benz Circle, Vijayawada.
2. Deputy Commissioner of Income Tax, Central Circle-2(3), Hyderabad.
3. CIT(A)-12, Hyderabad.
4. Pr.CIT(Central)-Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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ITAT, HYDERABAD