

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. 988/Hyd/2019
(निर्धारण वर्ष / Assessment Year: 2006-07)

Dr. K. Ravindranath, Vs. Deputy Commissioner of
Hyderabad Income Tax,
[PAN No. AAZPK5186E] Circle-6(1),
Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Ms. Suvibha Nolkha, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 20/10/2022
घोषणा की तारीख/Pronouncement on: 27/10/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 19/03/2019 passed by the learned Commissioner of Income Tax(Appeals)-1, Hyderabad ("Ld.CIT(A)") in the case of Dr. K. Ravindranath ("the assessee") for the assessment year 2006-07, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual and is in medical profession. For the assessment year 2006-07 he filed his return of income on 30/10/2006 declaring an income of Rs. 72,45,040/-. Order under section 143(3) read with section 153B of the Income Tax Act, 1961 (for short "the Act") was passed on 31/12/2007 determining the taxable income at Rs. 73,20,940/-. Notice under section 148 of the Act was issued on 28/3/2013 stating that income chargeable to tax has escaped assessment, by communicating the reasons for reopening through letter dated 11/11/2013.

3. Learned Assessing Officer noticed that the assessee is one of the purchasers of Villa plot No. B-33A measuring 763 square yards in Emmar Hills Township from Emmar Hills Township Pvt. Ltd. (EHTPL). The Central Bureau of Investigation (CBI) has conducted investigation into the affairs of EHTPL and connected group of cases and filed chargesheet stating that the villa plots were sold at a price higher than what is recorded in the MOU/allotment letter/registered document and while the recorded price is Rs. 5000/-per square yard, the amounts paid in cash over and above the recorded price of Rs. 5000/- ranges from Rs. 4000/- per square yard to Rs. 45,000/-per square yard. Learned Assessing Officer further noted that the villa plots were marketed by M/s. Stylish Homes Real Estate Private Limited represented by its Directors Sri Koneru Rajendra Prasad and Sh. Tummala Ranga Rao and the excess amounts over and above the recorded price were accepted in cash by Sh. Ranga Rao and at times his representatives/nominees. Further according to the learned Assessing Officer, CBI also recorded the statements of 37 Villa plot buyers under section 161/164 of the code of criminal procedure and such buyers

confirmed to have paid the money in cash in excess of the recorded price. According to the admission of Sh. T. Ranga Rao, assessee paid Rs. 38,15,000/- in cash over and above the official price of Rs. 38,15,000/- for purchase of plot number B33A admeasuring 763 square yards at Rs. 5000/-per square yard in excess of the recorded price of Rs. 5000/-per square yard taking the total cost to Rs. 10,000/-per square yard, which the assessee denied vide note dated 11/3/2014.

4. Learned Assessing Officer did not believe the assessee in his denial to have paid any amount in cash over and above the recorded price and vide order dated 11/3/2014 passed under section 143(3) read with section 148 of the Act noted that,-

Sh. Tummala Ranga Rao, seller in charge of the villa plots deposed before the Magistrate in his statement recorded under section 164 Cr.P.C. that he sold the Villa plots at a price higher than the documented price and in the list of 82 plots, the assessee's plot number B33A finds place as having paid Rs. 38, 15, 000/-in cash;

as many as 37 Villa plots purchasers examined by the CBI confirmed the fact of their paying the amounts in cash over and above the recorded price;

such Villa plot purchasers having admitted to have paid in cash in excess of the document price, have admitted the said sums as unexplained investments in either their returns filed or during the course of assessment proceedings and have paid the resultant taxes;

Sh. Koneru Raj Kumar, brother of the assessee and nephew of Sh. Koneru Rajendra Prasad, Director of Stylish Homes has also deposed before the CBI that he paid an amount of Rs. 5000/-per square yard in cash over and above the documented price, thereby establishing that even the close family members dismantle the theory that some of the Villa plot purchasers did not pay any cash in excess of the documented price; and

though the assessee stated that the deal was not through, he failed to substantiate it with any documentary evidence, either in the form

of correspondence with the seller or statements evidencing the return of sums paid to the seller.

5. For these reasons, learned Assessing Officer believed the cash component to the tune of Rs. 38,15,000/- and added it back to the income of the assessee, and thereby determined the income of the assessee at Rs. 1,11,35,940/-.

6. Aggrieved by such an action of the learned Assessing Officer, assessee preferred an appeal before the Ld. CIT(A) and pleaded that the addition was made on presumptive basis based on statement made by Sri T. Ranga Rao in the case of Emmar Hills Township and by relying on the investigations conducted by the learned Assessing Officer of the Emmar Hills Township; that the learned Assessing Officer did not bring sufficient material on record to prove the unexplained investment under section 69 of the Act by way of evidence of payments/receipt, except the statement made by representative of the marketing agent Emmar Hills Township, Mr T. Ranga Rao and Manager Accounts before the authorities in the case of proceedings against Emmar Hills Township; and that, therefore, by placing reliance on the decision of the Hon'ble High Court of Andhra Pradesh and Telengana in the case of G Mahesh Babu, assessee pleaded that the onus lies on the learned Assessing Officer to prove that the assessee in fact made the payment of open court on money" from undisclosed sources.

7. Ld. CIT(A), therefore, sought a remand report from the learned Assessing Officer and by letter dated 7/11/2017 the learned Assessing Officer stated that neither the assessee nor Mr T. Ranga Rao attended the office for cross examination and also did not submit any clarification in response to the notice, and therefore, learned Assessing Officer made a

request to the Ld. CIT(A) to take a view in the light of the decision of the Hon'ble High Court.

8. Ld. CIT(A), having received the remand report, furnished the same to the assessee calling for the objections. Ld. CIT(A) recorded that the assessee did not respond to the same. Ld. CIT(A), therefore, opined that the assessee also might have paid the very same money as was paid by others, even otherwise when the assessee was conferred with special provisions of registered right, the other provisions of the Act are attracted, or that the market value of the property purchased by the assessee was not the same as indicated in the title deeds. Basing on these, Ld. CIT(A) concluded that inasmuch as the doubts are not clarified by the assessee as required under the order of the Hon'ble High Court, the explanation offered by the assessee cannot be accepted. He accordingly dismissed the appeal.

9. Assessee is, therefore, before us in this appeal contending that the authorities below failed to appreciate the fact that the immovable property in consideration was not registered in favour of the assessee and inasmuch as the vendors did not provide the plot which was chosen by the assessee but offered alternative plot, the assessee declined to accept the same and, therefore, there is no conclusive contract for purchase of any plot whatsoever. According to the Ld. AR unless and until the property is transferred in favour of the assessee, the sale is not conclusive and the sale consideration cannot be determined at any particular rate.

10. With reference to the charge sheet filed by the Directorate of Enforcement in the court of the Special Judge for CBI cases more

particularly to the table of details in respect of the plots in purchasers to be found at page No. 27 of the paper book, it is submitted by the Ld. AR that originally plot No. A7 admeasuring 1227 square yards was intended to be purchased by the assessee but the seller company unilaterally changed the allotment and offered plot No. 33A admeasuring 763 sq. yards and therefore the assessee did not evidence any further interest in getting the plot registered in his name and the same was not registered so far, and no further payments were made towards the balance amount of consideration.

11. In a similar situation, Ld. AR submits that various Benches of Tribunal in identical set of facts involving addition towards payment of on money based on the statement of T. Ranga Rao and other Villa owners deleted the adjustment. She, fairly submitted that a Coordinate Bench of this Tribunal restored the issue to the file of the learned Assessing Officer on the ground of violation of principles of natural justice, to verify the factual situation and to take a plausible view, and the said action of the Tribunal was upheld by the Hon'ble High Court in the case of PCIT vs. G Mahesh Babu in ITTA No. 208 and 226 of 2016. She submitted, in the alternative, that the issue may be restored to the file of the learned Assessing Officer for factual verification and to take a plausible view according to law.

12. Ld. DR, on the other hand, opposed the prayer for the deletion of the addition stating that each case revolves on its facts and merely because the payment of money is not proved in some other matters, without examining the facts in this case, the addition cannot be deleted. He further submitted that at best the matter may be remanded to the file of the

learned Assessing Officer to examine the factual situation in the light of the observations made by the Tribunal in the Hon'ble High Court in the case of G Mahesh Babu.

13. We have gone through the record in the light of the submissions made on either side. There is no denial of the fact that the Ld. CIT(A) sought remand report from the learned Assessing Officer by letter dated 6/6/2016 to afford an opportunity to the assessee to cross examine the person on whose statement the learned Assessing Officer completed the assessment, and the learned Assessing Officer also issued notices to the assessee as well as Mr R. Ranga Rao. There is also no denial that the assessee and Shri Ranga Rao did not respond to such notice nor did they offer any clarification in response to such notice. In this situation, the learned Assessing Officer was helpless and reported the same to the Ld. CIT(A) that it was not possible for him to verify the facts of the case in the light of the observations of the Tribunal in the case of G Mahesh Babu as confirmed by the Hon'ble High Court.

14. Having perused the remand report, the Ld. CIT(A) drew inferences basing on the record since absolutely there was no cooperation from the assessee for factual verification and to examine the case in the light of the view taken by the Tribunal in the case of G Mahesh Babu. Having deliberately not cooperated with the authorities for factual verification, it is not open for the assessee to seek the deletion of the addition made basing on the findings given in the cases of others. When the proceedings are pending, they have to be taken to their logical conclusion. It's not open for the assessee to stall the proceedings by non-cooperation and then to

seek the benefit of deletion of the addition basing on the view taken in some others matters.

15. According to us, when the authorities were exercising the factual verification in the case of the assessee, it is minimum expected of the assessee to cooperate with the authorities in such fact verification for determination of the correct tax liability in correct hands. In the case of G Mahesh Babu, a Coordinate Bench of this Tribunal the issue is remanded to the file of the learned Assessing Officer to give an opportunity to the assessee to cross examine Mr Ranga Rao. Hon'ble High Court held that in the case of violation of principles of natural justice the order should be set aside and the matter remitted back to the same authority to afford an opportunity to the assessee.

16. In these circumstances, we are of the considered opinion that on the face of the complaint of the assessee that there is violation of principles of natural justice inasmuch as the learned Assessing Officer basing the findings on the statement of Mr Ranga Rao, without affording an opportunity to the assessee to cross examine such Ranga Rao, it would be in the fitness of things to afford an opportunity to the assessee for fulfilment of the principles of natural justice by restoring the matter to the file of the learned Assessing Officer to give an opportunity to the assessee to cross examine the said Ranga Rao and to take a view basing on such factual verification.

17. With this view of the matter, while respectfully following the view taken by the Hon'ble High Court in the case of G Ramesh Babu (supra), we set aside the impugned order and restore the issue to the file of the

learned Assessing Officer to give an opportunity to the assessee to cross examine Mr Ranga Rao, verify the facts and take a similar view according to law. Keeping in view the past conduct of the assessee, we make an observation that it is the last opportunity to the assessee to cooperate with the learned Assessing Officer in getting the matter disposed of on merits by submitting the details required by the learned Assessing Officer. Learned Assessing Officer will take steps to facilitate the cross examination of Mr Ranga Rao by the assessee, and thereafter on factual verification will take a plausible view according to law. Grounds of appeal of the assessee are accordingly treated as allowed for statistical purpose.

18. In the result, appeal of the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on this the 27th day of October, 2022.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 27/10/2022

TNMM

Copy forwarded to:

1. Dr. K. Ravindranath, Plot No. 303F, Road No. 25, Jubilee Hills, Hyderabad.
2. The Deputy Commissioner of Income Tax, Circle-6(1), Hyderabad.
3. CIT(A)-1, Hyderabad.
4. Pr.CIT-2, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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