

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

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri K.Narasimha Chary, Judicial Member

ITA No.505/Hyd/2021		
Assessment Year: 2011-12		
DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004	Vs.	Shri Nadi Ali Mirza Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D
(Appellant)		(Respondent)

ITA No.506/Hyd/2021		
Assessment Year: 2011-12		
DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004	Vs.	Nadi Ali RA of Shamsu UI Zoha Jermain Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D
(Appellant)		(Respondent)

ITA No.507/Hyd/2021		
Assessment Year: 2011-12		
DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004	Vs.	Nadi Ali Mirza RA of Sogera Shamsi Flat No.403, H.No.10-2- 289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D
(Appellant)		(Respondent)

ITA No.508/Hyd/2021		
Assessment Year: 2011-12		
DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004	Vs.	Nadi Ali Mirza of Gauhar Taj Aly Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D
(Appellant)		(Respondent)

ITA No.509/Hyd/2021		
Assessment Year: 2011-12		
DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004	Vs.	Nadi Ali Mirza of Mazhar UI Ajiab Mirza Flat No.403, H.No.10-2- 289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D
(Appellant)		(Respondent)

ITA No.510/Hyd/2021		
Assessment Year: 2011-12		
DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004	Vs.	Nadi Ali Mirza RA of Ishrat Fatima Hussain Flat No.403, H.No.10-2- 289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D
(Appellant)		(Respondent)

Cross Objection.No.02/Hyd/2022 (In ITA No. No.505/Hyd/2021)		
Assessment Year: 2011-12		
Shri Nadi Ali Mirza Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D	Vs.	DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
(Appellant)		(Respondent)

Cross Objection.No.03/Hyd/2022 (In ITA No. No.506/Hyd/2021)		
Assessment Year: 2011-12		
Nadi Ali RA of Shamsu UI Zoha Jermain Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D	Vs.	DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
(Appellant)		(Respondent)

Cross Objection.No.04/Hyd/2022 (In ITA No. No.507/Hyd/2021)		
Assessment Year: 2011-12		
Nadi Ali Mirza RA of Sogera Shamsi Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D	Vs.	DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
(Appellant)		(Respondent)

Cross Objection.No.05/Hyd/2022 (In ITA No. No.508/Hyd/2021)		
Assessment Year: 2011-12		
Nadi Ali Mirza of Gauhar Taj Aly Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D	Vs.	DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
(Appellant)		(Respondent)

Cross Objection.No.06/Hyd/2022 (In ITA No. No.509/Hyd/2021)		
Assessment Year: 2011-12		
Nadi Ali Mirza of Mazhar UI Ajiab Mirza Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D	Vs.	DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
(Appellant)		(Respondent)

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Cross Objection.No.07/Hyd/2022 (In ITA No. No.510/Hyd/2021)		
Assessment Year: 2011-12		
Nadi Ali Mirza RA of Ishrat Fatima Hussain Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028 PAN : CLUPM0296D	Vs.	DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:	Shri T.Rajendra Prasad, CA	
Revenue by:	Shri M.Vijay Kumar,CIT-DR	
Date of hearing:	11.10.2022	
Date of pronouncement:	03.11.2022	

ORDER

Per Bench:

These batch of appeals filed by the Revenue and the batch of Cross Objections filed by the assessee are directed against the separate orders dated 16.08.2021 of Learned Commissioner of Income Tax (Appeals)-10, Hyderabad relating to AY's 2011-12. Since common issues are involved in all these appeals and Cross Objections, therefore, these were heard together and are being disposed of by this common order.

2. There is a delay of 31 days in filing of the appeals by the revenue for which the revenue has filed condonation application explaining the reasons for delay. After considering the contents of the condonation application and after hearing both the sides, the delay in filing of the appeals by the revenue is condoned and all the appeals filed by the revenue are admitted for adjudication.

3. First we take ITA No.505/Hyd/2021 for AY 2011-12 as the lead case. Both the sides agreed that the outcome of this appeal is applicable to the remaining appeals.

4. Facts of the case, in brief, are that a survey u/s. 133A of the I.T.Act was conducted by the office of DDIT(Inv.), Unit-II(2), Hyderabad on 25.05.2016 at Budvel village, Rajendra nagar Mandal, Ranga Reddy district, wherein it was found that during the FY 2010-11 relevant to the AY 2011-12, the assessee has sold a land at Budvel village for a registered value that is much lower than the SRO value and that he had not filed any return of income declaring the capital gains for taxation for the relevant assessment year. The DDIT(Inv.) forwarded the information to the AO along with the final survey report and the comments of the JDIT(Inv.). A summon u/s. 131 of the Act, dated 27.05.2016 was

sent by the office of the DDIT(Inv.) to the assessee Mr. Nadi Ali Mirza through E-mail, as he lives in London, UK. The assessee in his reply submitted that he is a citizen of U.K. for the last 30 years and that he currently lives at 58, Norbury court Road, London SW 164 HT. He submitted that he owns a house in India at Flat No.403, Maphar Exotica Apartments, Masab Tank, Hyderabad. He also submitted that he had sold two lands in India during the FY 2010-11 relevant to AY 2011-12 one at Budvel village and another at Manchirevula village. He stated categorically in his reply that he is prepared to pay tax, if any, on the sale of land and has also computed and submitted his tax liability on the capital gains. He further submitted that he should not be held liable for the capital gains tax, if any, of his siblings for whom he had signed as General Power of Attorney in a representative capacity.

4.1 Subsequently, the assessee filed another letter before the DDIT(Inv.), wherein he conceded that being the elder son of the family, all business dealings and communications of the entire family with respect to the transactions in India were/are being handled by him. He also submitted that he holds a registered GPA for all his siblings and agreed to pay all the taxes regarding capital gains arising out of the sale of properties in India on behalf of his siblings too. The assessee also claimed in his submission that the Vendees in both the sale transactions have committed fraud and have not fully honoured their commitments. It was submitted that some of the cheques given by the Vendees were allegedly dishonoured on presentation to the bank. The assessee also informed that he had approached the Court for recovery/cancellation of the documents. It was accordingly argued that financially no sale has been effected so as to attract capital gains.

5. The AO issued a notice to the assessee asking him to explain as to why no return of income was filed for the AY 2011-12 despite having taxable income and why suitable action should not be initiated for non-filing. The assessee reiterated his earlier stand that fraud was committed on him by the Vendees and as the matter is sub judice there is no liability for capital gains. The assessee retracted from his earlier statement wherein he had submitted that he is prepared to pay the tax, if any, on the purported sale of property. Subsequently, the assessee furnished the following documents before the AO

i. Power of Attorney dated 17/09/2016 drawn in favour of Chartered Accountants Mr. K. A. Sai Prasad and Mr. V. R. Prabhakar appointing them as his representatives to represent before the Income Tax Department in relation to the assessment proceedings.

ii. Copy of the earlier submission dated 08/06/2016 made before the DDIT(Inv.), Unit-II(2), Hyderabad.

iii. Copy of the Agreement of Sale cum General Power of Attorney dated 19/04/2010 (Document No. 3033/2010).

iv. Copy of the Agreement of Sale cum General Power of Attorney dated 19/04/2010 (Document No. 3034/2010).

v. Copies of Cheques issued by M/s. Tirumala Tirupati Constructions (India) Pvt. Ltd.

vi. Copy of Sale Deed dated 03/06/2010 (Document No. 1404/2010). vii. Copy of Sale Deed dated 03/06/2010 (Document No. 1403/2010).

viii. Copy of the W.P No. 26678 of 2013 filed by the assessee Mr. Nadi Ali Mirza and his brother Mr. Mazhar UI Ajaib Mirza in the Hon'ble High Court of Judicature at Hyderabad with the District Registrar, Ranga Reddy District and Sub Registrar, Rajendranagar, Ranga Reddy District ad Respondents.

ix. Copy of an Exparte Ad Interim Injunction Order u/ s 39 Rules 1&2 of CPC dated 19/02/2016 passed by the Court of the VIII Addl. District & Sessions Judge, Ranga Reddy District at L. B. Nagar (IA. No. 126/2016 in O.S. No. 174/2016) on a Petition filed by Mr. Mazhar UI Ajaib Mirza, brother of Mr. Nadi Ali Mirza.

x. Copy of Original Suit (O.S. No. 1424 of 2015) filed by the four sisters of Mr. Nadi Ali Mirza viz. Mrs. Gauhar Taj Aly, Mrs. Ishrat Fatima Hussain, Mrs. Sogera Shamsi and Mrs. Shamsu UI Zoha jermain against Mr. Nadi Ali Mirza, Mr. Mazhar UI Ajaib Mirza and the Vendees before the Court of the Hon'ble 8th District Judge. Ranga Reddy District at L. B. Nagar.

6. The AO subsequently made a search in the database of the Hon'ble High Court of Judicature at Hyderabad and the Ranga Reddy District Court that are available online for public consumption. He noted that the assessee Mr. Nadi Ali Mirza is a non-resident living in the United Kingdom and is a citizen of the UK. His father (Late) Hyder Ali Mirza, who was a Retired Major and Pensioner in the Indian Army, expired on 08.06.1983 leaving behind the following as his legal heirs, entitled to the percentage of holding in properties mentioned against their names:

Name of the Legal Heir	Relationship	Percentage of Holding
Nadi Ali Mirza(assessee)	Son	25%
Mazhar UI Ajaib Mirza	Son	25%
Gauhar Taj Aly	Daughter	12.50%
Ishrat Hussain Fatima	Daughter	12.50%
Sogera Shamsi	Daughter	12.50%
Shamsu UI Jermain Zoha	Daughter	12.50%

7. The AO noted that the properties originally owned by (late) Hyder Ali Mirza devolved on his six children after his death. The devolution was in the ratio of 1:1 between sons and daughters as per the Muslim personal law. Therefore, both the sons together inherited 50% of the properties and the four daughters together inherited the remaining 50% of the properties of (late) Hyder Ali Mirza. The properties of (late) Hyder Ali Mirza that devolved on the six children and are under consideration in the present assessment proceedings are as follows:

- i. Land admeasuring Ac. 39-11 Guntas situated at Survey Nos. 310, 311 & 312, Budvel Village, Rajendranagar Mandal, Ranga Reddy District.

ii. Land admeasuring Ac. 6-00 Guntas situated at Survey No. 493, Manchirevula ,/ Village, Rajendranagar Mandal, Ranga Reddy District.

8. The AO noted that the assessee Mr. Nadi Ali Mirza and his brother Mr. Mazhar UI Ajaib Mirza (Vendors) entered into an Agreement of Sale cum General Power of Attorney on 19/04/2010 (registered under Document No. 3033/2010 at the Office of District Registrar, Ranga Reddy) for the sale of undivided 50% share of land equivalent to Ac. 19-251/2 Guntas (out of a total of Ac, 39-11 Guntas) at Survey Nos. 310,311 & 312, Budvel Village, Rajendranagar Mandal. Ranga Reddy District to M/s. JMC Constructions Private Limited, 8-3-944/4, Plot No.1, Ameerpet X Roads, Hyderabad (Vendee) for a sale consideration of Rs.2,50,00,000/- (Rupees Two Crore and Fifty Lakh only). The Vendee M/s. JMC Constructions Private Limited was represented by its Director Mr. A. Madan Mohan. On the date of execution of the Agreement itself, the Vendors received the entire sale consideration in the form of Demand Draft and Cheques, all issued by/drawn on Andhra Bank, Bowenpally Branch, Secunderabad. The details of the Demand Draft/ Cheques are as follows:

- a) Rs.12,50,000/- (DD No. 496188 dated 19/04/2010)
- b) Rs.12,50,000/ - (Cheque No. 846956 dated 10/05/2010)
- c) Rs.25,00,000/ - (Cheque No. 846957 dated 30/01/2014)
- d) Rs.50,00,000/ - (Cheque No. 846958 dated 28/01/2014)
- e) Rs.50,00,000/ - (Cheque No. 846959 dated 30/01/2014)
- f) Rs.50,00,000/ - (Cheque No. 846960 dated 27/06/2012)
- g) Rs.50,00,000/ - (Cheque No. 846961 dated 27/06/2012)

9. He noted that the Vendors also delivered the physical possession of the land to the Vendee on the day of Agreement i.e. 19/04/2010. Out of the total sale consideration of Rs.2,50,00,000/-, an amount of Rs.1,25,00,000/ -, being 50%, forms the share of the assessee Mr. Nadi Ali Mirza, the remaining 50% belonging to his brother Mr. Mazhar UI Ajaib Mirza.

10. The assessee submitted that only the Demand Draft (No. 496188) for Rs.12,50,000/ - and a Cheque (No. 846956) for Rs.12,50,000/ - (totaling Rs.25,00,000/ -) were honoured on presentation to the bankers of the Vendee and the balance Cheques aggregating to Rs.2,25,00,000/ - were dishonoured. As the Vendee's Cheques were dishonoured and the Vendee did not respond to the Vendors' requests for payment, the Vendors executed a Cancellation of Agreement of Sale cum GPA dated 16/04/2013 and presented it before the Sub-Registrar, Rajendranagar for registration. The Sub-Registrar, Rajendranagar on the advice of the District Registrar, Ranga Reddy, refused to register the Cancellation Agreement vide its Order dated 05/08/2013 following the provisions of Rule 26(i)(k)(i) of Registration Rules under the Registration Act, 1908 as it was executed unilaterally and the Vendee refused registration. Aggrieved by the refusal to register the Cancellation Agreement by the Sub-Registrar, Rajendranagar, the assessee Mr. Nadi Ali Mirza and his brother Mr. Mazhar UI Ajaib Mirza filed a Writ Petition before the Hon'ble High Court of Judicature at Hyderabad on 12/09/2013 (WP No. 26678/2013, SR No, 145783/2013, WPMP 35502/2013, WPMP 33015/2013, WPMP 19626/2015). As on date, this Petition is still pending for disposal before the Hon'ble High Court of Judicature at Hyderabad. The AO noted that the land was further transferred by the Vendee M/s.JMC Constructions Private Limited to other parties subsequently. The

Civil Miscellaneous Appeal No. 734/2016 filed by Mr. Mazhar UI Ajaib Mirza before the Hon'ble High Court of Judicature at Hyderabad on 21/09/2016 requesting the Court for an injunction restraining the Vendee from further alienating the schedule property and creating third party rights was dismissed on 26/09/2016. Therefore, as on date the property stands transferred in the name of M/s. JMC Constructions Private Limited.

11. The AO noted that the assessee Mr. Nadi Ali Mirza, along with his four other siblings viz. Mrs. Gauhar Taj Aly, Mrs. Sogera Shamsi, Mr. Mazhar UI Aj aib Mirza and Mrs. Shamsu UI Zoha Jermain, sold the 6 acre land at Survey No. 493, Manchirevula Village, Rajendranagar Mandal, Ranga Reddy District to Mr. K. Sai Neeraj Kumar and Mr. A. Madan Mohan vide two Sale Deeds dated 03/06/2010 (registered under Document Nos. 1403/2010 & 1404/2010 at the Office of the Sub-Registrar, Gandipet) for a total sale consideration of Rs.2,90,40,000/ -. The assessee's share amounts to Rs.72,60,000/-, being 25% of the ownership in the property. As per both the Sale Deeds, the Vendees had paid the total sale consideration amount to the Vendors and the Vendors handed over the possession of the property to the Vendees on the date of the registration i.e. 03/06/2010. The sale consideration was received by the Vendors vide eight Cheques (Nos. 898473 to 898480) drawn on Axis Bank, Jubilee Hills Branch, Hyderabad and another eight Cheques (Nos. 071453 to 071460) drawn on ING Vysya Bank Ltd., Banjara Hills Branch, Hyderabad. The assessee submitted that none of these cheques were honoured by the Vendees.

12. Despite being in receipt of taxable income, the assessee has not filed any return of income for the A.Y. 2011-12. In view of the above, he held that the provisions of clause (a) of Explanation 2 to

Section 147 of the Act are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. Since more than 4 years have lapsed from the end of assessment year under consideration and the income which escaped assessment is more than one lakh rupees, therefore, he initiated proceedings u/s 147 of the Act with the prior approval of the Commissioner of Income Tax (IT&TP), Hyderabad as required u/s 151 of the Act. Accordingly, a notice u/s 148 of the Act dated 27/03/2018 was issued to the assessee requesting him to file a return of income in the prescribed form for the assessment year 2011-12 within 30 days. The notice delivered to his address through speed post was returned back by the postal authorities with the comments 'unclaimed'. The notice was also sent to him through e-mail at nadialimirza@hotmail.co.uk. However, no reply was received from him to this e-mail too. The notice was also sent through e-mail to his representatives at saivani89@gmail.com and mohan@credofinn.com. However, no reply was received from them too. A physical copy of the notice u/s 148 of the Act was served on the person of Mr. K. Krishna Mohan, the CA and Authorized Representative (AR) on 28/03/2018. A copy of the notice u/s 148 of the Act was also served on the person of Mr. Mohammed Khadeer, the Power of Attorney (POA) holder. A General Power of Attorney was signed by the assessee Mr. Nadi Ali Mirza in favour of Mr. Mohammed Khadeer on 05/08/2016. However, no reply was received from any of them to the notice issued u/ s 148 of the Act. A notice u/s 142(1) of the Act dated 25/07/2018 was also issued to the assessee and was emailed to him. However, no reply was received even to this notice.

13. In view of the above and relying on various decisions, the AO completed the assessment u/s. 144/147 of the Act determining the income in the hands of the assessee at Rs.8,09,10,000/-.

Similar addition has been made in the hands of Mazhar UI Ajaib Mirza at Rs.8,09,10,000/-, Gauhar Taj Aly at Rs.4,04,55,000/-, Ishrat Fatima Hussain at Rs.4,04,55,000/-. Sogera Shamsi at Rs. 4,04,55,000/- and Shamsu UI Zoha Jermain at Rs.4,04,55,000/- respectively.

14. In appeal, the Id.CIT(A) deleted the addition by observing as under:-

11. Through Grounds of appeal No.3, 5, 6 and 7, the appellant pleads the AO failed to consider the plethora of legal disputes with respect to the transfer of capital asset, and has adopted the valuation as per the SRO, u/s 50C, and has made an addition of Rs. 7,36,50,000/- as the appellant's share without considering actual facts in the case. The AR pleaded that adoption of a fictional value is unjust to the cause of the appellant.

11.1 In support, the ARs of the appellant made the following written submissions and given the total fact flow regarding the legal disputes. The index of the legal disputes is also made part of the order along with written submissions.

The assessing authority tried his level best to substantiate his actions of bringing the sale transaction for the purpose of levy of capital gain tax, by stating that even though the appellant was in receipt of sale consideration, the appellant has not filed any return of income for the A Y 2011-12 and therefore levy of capital gain tax was rightly made. Accordingly he has worked out the long term capital gain on sale of the properties and decided the total tax paid by the appellant. He while doing so, the Assessing Authority did not take into consideration, the genuine problems involved in the property and the disputes involved in the property and worked out the long term capital gain without deducting the cost of acquisition, Indexation etc.' The Assessing Authority in order to work out the long term capital gain had taken the sale consideration as per the market value fixed by the Sub Registrar Office instead of actual sale consideration received mentioned in the documents particularly in view of the fact that the properties are in dispute.

In this connection, it is further submitted that the basic valuation register prepared and maintained for the purpose of collecting stamp duty, could not form the foundation to determine the market value of the land. The burden squarely lies on the revenue in this regard to establish that the sale was for an additional sale consideration over and above the consideration that was mentioned in the sale deed. It may also be stated that the Honorable Supreme court -in the case of Devajee Naganatham V/s Revenue Divisional Officer, supports the said view of the appellant It is very clear from the facts of the case, though not accepted for the time

being as a proper sale as the original owners did not have clear title and the issues became legal and disputed.

The views of the appellant have been thoroughly discussed in the order passed by the Honourable ITAT Hyderabad in the case of Aruna Kommuri, Hyderabad Vs Assistant Commissioner of Income Tax, Circle-4(1), Hyderabad. In the said order it was clearly mentioned by accepting the appellants contention that invoking the provisions of Sec 50C in the hands of the assessee is not warranted, which contention of the appellant was accepted by the Honourable Tribunal by mentioning in their order that, from the submissions made by the Learned AR, it is quite evident that there was some litigation with respect to the properties sold by the appellant, which fact was not disputed by the Learned Assessing Officer. It is quite obvious that if the title of the immovable property is defective, the market value of the immovable property would be considerably reduced. It is further upheld in the said order by the Hon'ble Bench that in this situation: it would have been on the part of the -Learned AO to obtain a valuation report from the Learned DVO in accordance with the Provisions of Sec 50 C of the IT Act. Hence the appellant without prejudice to his submission that the sale transaction should not come under the present Assessment Year 2011-12 and also the submission with regard to reference to the valuation cell may kindly be considered favorably or the actual sale consideration may directed to be considered for the levy of capital gain tax. As series of events and court cases prove beyond doubt that even till today the property is not free from disputes, in which case also considering the sale transactions mentioned in the various sale deeds need not be taken for working out of long term capital gain.

The Flow of the legal disputes is as under _ supported by documentary evidence

Chronological order of Steps and Events occurred over the title of the Land under Survey No.310,311 and 312 of Budvel Village, Rajendra Nagar Mandal, Ranga Reddy District.					
Case of Mr. Nadi Ali Mirza, PAN:CLUPM0296D, AY 2011-12					
S.No	Year	Event& document description	Date of the Event	Remarks	Page Numbers
Event A:Creasion of illegitimate Title in favour of Sri.G.V.Satyanarayana					
1	1983	Agreement of Sale by Late Sri Hyder Ali Mirza in favour of Late Sri G.V.Satyanarayana	31-01-1983	Obtained under RTI Act	1 to 1
2	1992	Proceedings of Mandal Revenue Office, Rajendra nagar-Ref	14-07-1992	a) Regularization of unregistered agreement of	2 to4

		No.D/3870/198 9		sale in favour of GV Satyanarayan a b)Form 13(B) c)Pattadar pass Book and Title Documents d)village Adangal/Paha nis from year 1985-86 till 1999-2000	5 to 5 6 to 11 12 to 17
Event B:Transfer of Title by G V Satyanarayana in favour of Dr. Shaffiuddin Ahmad (Happy Homes Agro Farms)					
3	1994	Irrevocable General Power of Attorney by Mr. GV Satyanarayana in favour of Dr. Shaffiuddin Ahmad	30-09- 1994		18-20
4	-	Agreement handing over Letter By GV Satyanarayana to Dr. Shaffiuddin Ahmad (or Happy Homes Agro Farms)	07.10.19 94		21 to 23
5	1997	Possession handing over Letter By G V Satyanarayana to Dr.Shaffiuddin Ahmad(or Happy Homes Agro Farms)	25.10.19 97		24 to 24
Event C:Unauthorized conversion of land into plots by Dr.Shaffiuddin Ahmad(Happy Homes Agro Farms) and execution of Sale deeds or Agreement of Sale CUM GPA(AGPA)					
6	1995/9 6	Unauthorized conversion Layout of the land into residential plots		Dr Shaffiuddin under his Firm name Happy Homes Agro Farms, converted the land into residential plots	

7	1995-2015	Encumbrance Certificate. Showing the sale transaction under survey No.310,311,312. Budvel village by Dr.Shaffiuddin ahmed Quadri to various Parties		Total 132 Plots were sold in Survey No.310,311 and 312 by Dr.Shaffiuddin Ahmed/Happy Homes Agro Farms under GPA of GV Satyanarayan a to third parties during 1995-2015	26 to 74
8	1996 till 2016	Sale transactions were executed by way of Sale deed or Agreement of Sale Cum GPA for the plots under S.No.310,311 & 312		List of the Sale Transactions being attached. The same transactions are reflecting in the EC above	Nil

Step II Sale cum General Power of Attorney by the legal heirs of Late Hyder Ali Mirza to M/s. JMC Constructions Pvt Ltd. -Without Title and possession of the land.

S.No.	Year	Event & document description	Date of the Event	Remarks	Page Numbering
9	2010	Sale cum GPA as "AS IS WHERE IS BASIS" Wide Doc No.3033 dated 19/04/2010	19-04-2010	AGPA Executed but Sale consideration was not Received	75 to 106
Note: From the sequence of events and documents mentioned above, it can be construed that, as on the date of sale the assessee was not having either possession of the land nor clear title of the property. Due to these reasons the assessee was forced for distressed sale at the value mentioned in the registered document.					
10		Application for cancellation of the AGPA with SRO	16-04-2013	Refusal Order No. 2 of 2013	107 to 112
11	-	Writ Petition in Hon'ble High court for the	11.09.2013	W.P.No.26678 of 2013 before Hon'ble HC of	113 to 116

		<i>Cancellation of AGPA as the buyer was failed to honour payment of</i>		<i>AP</i>	
Step III: Restoration of the title by the buyer (JMC Construction Pvt Ltd./Tirumala Tirupati Construction Pvt.ltd.)					
12		<i>Revision Petition before Joint collector-II, Ranga Reddy District</i>	<i>12-06-2010</i>	<i>By setting aside the MRO Order in Step 2 above. Ref last para of page 7 land is not agriculture, but plots were made and sold off to third parties as per EC</i>	<i>117 to 124</i>
13	<i>2011</i>	<i>Hon'ble High court of AP Writ Petition filed against the order of Joint collector, Ranga Reddy Dist.</i>	<i>07.04.2011</i>	<i>Dismissed in favour of the Hyder Ali Mirza</i>	<i>125 to 126</i>
14		<i>Order of Joint collector ROR Corrections</i>	<i>08.04.2011</i>	<i>Proceedings of Deputy collector ordered to restore the name of Hyder Ali Mirza in the Pahani and revenue records</i>	<i>127 to 132</i>
Step IV: Rectification and Ratification of the Agreement of Sale cum GPA (AGPA) Doc.No.3033					
15	<i>2014</i>	<i>Rectification of document No.3033 by changing of the name of JMC Construction Pvt Ltd to Tirumal Tirupati Construction Pvt.Ltd.</i>		<i>Rectification was done with a firm commitment to make the good of the sale of consideration of Doc.No.3033 mentioned in point no.9 above</i>	<i>133 to 168</i>

11.2 Apart from the above, the assessment record also demonstrates the following. The genesis of the assessment proceedings is from the Survey proceedings conducted by DDIT(lnv.), Unit-I/(2), Hyderabad in the case of Sri K.P. V. Subbaiah group and others, and the relevant statement made by Sri K.P.V. Subbaiah regarding the purchase and sale of land at survey No.310, 311 and 312 in Budvel village is reproduced below.

"Q.9: Please state the details of purchase of land at Survey No.310,311 and 312 in Budvel village, Rajendra Nagar Mandal, RR.District in April 2010 by this Company?"

Ans: Two lands of Acre 19.25 gunta each were purchased by Tirumala Tirupati Construction(India) Pvt. Ltd, from Nadi Ali Mirza in April, 2010 for Rs. 5 crores. One land of Acre 19.25 Gunta was initially registered in the name of Mis JMM Constructions Pvt. l.td., in April, 2010. Thereafter in November, 2014, a rectification deed was 'registered wherein the name of purchaser was changed to Tirumala Tirupathi Construction (India) Pvt. Ltd. Sri A.Madanmohan was the common Director in both the companies. The full payment of Rs. 5 Cr. was made to the seller from the account of Tirumala Tirupathi Construction (India) Pvt. Ltd. Some amount of cash was also paid to the seller which I do not recollect now.

Sri Nadi Ali Mirza stays in London and visits India often at his residence at Mapher Exotica Apartments, Masab Tank, Hyderabad. I will submit the copy of rectification deed on 31-05-2016.

Q. 10: Please state the details of payments made to the seller i.e., Nadi Ali Mirza.

Ans.: The land was purchased for Rs. 5 Cr. from Nadi Ali Mirza by giving some cash and balance through cheques. The registration was done in favour of the purchasers. The land was claimed to be owned by one G. V.Satyanarayana who gave GPA to Happy Homes (represented by Dr. Shafi) to sell this land. Actually G.V. Satyanarayana had used some forged documents to claim ownership over this land. Therefore, Nadi Ali Mirza filed a civil case before Jt. Collector, Rangareddy Dist. claiming real ownership of this land. Therefore, when we took over this land, it was under dispute between G. V. Satyanarayana and Nadi Ali Mirza.

Since the payment by cheques could not be encashed by Nadi Ali Mirza due to pending court cases, he returned the cheque to our company and we in turn paid cash of Rs. 5 Cr. to Nadi Ali Mirza out of the withdrawal from the account of Tirumala Tirupathi Construction (India) Pvt. Ltd., with Andhra Bank, Bowenpally and Axis Bank, Toli Chowki and L.B.Nagar Branch.

11.3 The above statement goes on to establish that the total consideration agreed to by Nadi Ali Mirza for sale of two lands of Acre 19.25 and 1/2 gunta at Survey No 310,311 and 312 totalling to Ac.39.11 guntas is Rs 5 Cr and as per the purchaser the same has been paid via cash.

11.4 However, the record also demonstrates that all the cheques issued to the appellant were dishonoured as funds insufficient or account blocked, as evidenced below

दिनांक DATE	विवरण PARTICULARS	चेक क्र. CHEQUE NO.	आहरण WITHDRAWAL	जमा DEPOSIT	शेष BALANCE	आद्यक्षर INITIALS
06-11-2013	Int. 01-03-2013 to 31-10-2013			1787.00	19213.00 Cr.	
25-01-2014	SELF		40000.00		49213.00 Cr.	
31-01-2014	BY INST 309696 : NICH CLG (OTH BANK)			500000.00	359013.00 Cr.	
31-01-2014	REJECT:309696-FUNDS INSUFFICIENT		500000.00		209013.00 Cr.	
01-02-2014	BY INST:046658 : NICH CLG (OTH BANK)			5000000.00	5009013.00 Cr.	
01-02-2014	REJECT:046658-ACCOUNT BLOCKED		5000000.00		5095.00 Cr.	
01-02-2014			140.00		855.00 Cr.	
04-02-2014	BY INST 309696 : NICH CLG (OTH BANK)			500000.00	508955.00 Cr.	
04-02-2014	REJECT:309696-FUNDS INSUFFICIENT		500000.00		505.00 Cr.	
05-02-2014	BY INST 046658 : NICH CLG (OTH BANK)			500000.00	300955.00 Cr.	
05-02-2014	BY INST 046658 : NICH CLG (OTH BANK)			2500000.00	750955.00 Cr.	
06-02-2014	REJECT:046658-ACCOUNT BLOCKED		5000000.00		250955.00 Cr.	
06-02-2014	REJECT:046658-FUNDS INSUFFICIENT		150000.00		100955.00 Cr.	
06-02-2014	INWARD RETURN CHARGES		787.00		23225.00 Cr.	
20-02-2014	BY INST 217451 : NICH CLG (OTH BANK)			200000.00	212225.00 Cr.	
20-02-2014	REJECT:217451-FUNDS INSUFFICIENT		200000.00		212225.00 Cr.	
04-03-2014	BY INST 217450 : NICH CLG (OTH BANK)			200000.00	412225.00 Cr.	
04-03-2014	BY INST 06615 : NICH CLG (OTH BANK)			1000000.00	1412225.00 Cr.	
04-03-2014	BY INST 06615 : NICH CLG (OTH BANK)			1000000.00	2412225.00 Cr.	
04-03-2014	REJECT:06615-FUNDS INSUFFICIENT		1000000.00		1412225.00 Cr.	
04-03-2014	REJECT:217450-FUNDS INSUFFICIENT		200000.00		912225.00 Cr.	
04-05-2014	Int. 01-11-2013 to 30-04-2014			375.00	912600.00 Cr.	
18-10-2014	BY INST 48005 : NICH CLG (OTH BANK)			100000.00	612600.00 Cr.	
20-10-2014	SELF		5000.00		512600.00 Cr.	
27-10-2014	SELF		5000.00		507600.00 Cr.	
Clr Bal: 5,09,656.00				Unclr Bal: 0.00		

दिनांक DATE	विवरण PARTICULARS	चेक क्र. CHEQUE NO.	आहरण WITHDRAWAL	जमा DEPOSIT	शेष BALANCE	आद्यक्षर INITIALS
00-03-2014	BY INST 06615 : NICH CLG (OTH BANK)			1000000.00	1,29,8675.00 Cr.	
00-03-2014	BY INST 06615 : NICH CLG (OTH BANK)			1000000.00	2,29,8675.00 Cr.	
00-03-2014	REJECT:06615-FUNDS INSUFFICIENT		1000000.00		1,29,8675.00 Cr.	
00-03-2014	REJECT:06615-FUNDS INSUFFICIENT		1000000.00		29,8675.00 Cr.	
00-03-2014	REJECT:217450-FUNDS INSUFFICIENT		200000.00		27,8675.00 Cr.	
04-05-2014	Int. 01-11-2013 to 30-04-2014			375.00	28,242.50 Cr.	
18-10-2014	BY INST 48005 : NICH CLG (OTH BANK)			100000.00	62,242.50 Cr.	
20-10-2014	SELF		5000.00		57,242.50 Cr.	
27-10-2014	SELF		5000.00		52,242.50 Cr.	
Clr Bal: 5,09,656.00				Unclr Bal: 0.00		

11.5 On the basis of the above, the appellant filed for cancellation of sale deed before the Registrar which was rejected on 05.08.2013 and the appellant has filed a Writ petition in High Court on 12.09.2013 along with his brother, as available on record.

11.6 The record also shows that a writ petition was filed by M/s. Happy Homes Sagar Hills owners Welfare Association vs. UOI and others No.2850 against the appellant as well as other parties on 17.03.2020, and the dispute continues.

11.7 The Ratification deed entered into by the younger brother of the appellant with the purchaser, with respect to document NO.3030/2010 on 26-04-2019 reads as under

"The first party confirm the receipt of the unpaid 50% consideration of Rs. 2,25,00,000/- (Rupees Two Crores Twenty Five Lakhs only) against document No. 303312010 through his brother/GPA holder Mr. Nadi Ali Mirza, as the amount was actually due at the time of execution of Doc. No. 3033/2010 which was subsequently paid and the same is acknowledged and no fresh consideration paid in this deed."

11.9 In view of the above documented evidence, with regard to illegal encroachment and disputes over title, the AO should have referred the matter to the Valuation Officer as stipulated u/s 50C(2), which the AO failed to do. The Hon'ble ITAT vide its order in Aditya Narain Verma(HUF) in ITA No. 4166/DE/2012(78-220-ITAT2017(DELHI)), has annulled the assessment order, holding as under, while examining sec. 50C(2).

"On the very perusal of the provisions laid down under sec. 50C of the Act reproduced hereinabove, we fully concur with the finding of the Learned CIT(A) that when the assessee in the present case had claimed before-AO that the value adopted or assessed by the Stamp Valuation Authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer, the AO should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by the state authority for the purpose of stamp duty. The very purpose of the legislature behind the provisions laid down under sub-section (2) of sec. 50C of the Act is that a valuation officer is an expert of the subject of such valuation and is certainly in a better position than the AO to determine the valuation. Thus, non-compliance of the provisions laid down under sub-section (2) by the AO cannot be valid and justified. The Hon'ble Jurisdictional High Court of Allahabad in the case of Shashi Kant Garg(supra) has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner. Similar view has been expressed by the other decisions cited by the Ld. AR in this regard herein above. The first appellant order on the issue is thus upheld".

Thus, the Hon'ble ITAT, Delhi A Bench has declared the assessment order as invalid upholding the CIT(A)'s order.

11.10 However, the Hon'ble ITAT, Bench 'SMC-B', Hyderabad, vide its order in ITA No. 2030/Hyd/2017 dated 23-07-2020 in the case of Aruna Kommuri vs. ACIT, Circle 4(1), Hyderabad, has held as under:

" I have heard the rival submissions and carefully perused the materials available on record. From the submissions made by the Ld. AR it is quite evident that there was some litigation with respect to the property sold by the assessee. This fact is also not disputed by the Ld. Revenue Authorities. It is quite obvious that if the title of the immovable property is defective then the market value of the immovable property will be considerably reduced. In this situation, it would have been appropriate on the part of the Ld. AO to obtain a valuation report from the Ld. DVO in accordance with the provisions of sec. 50C of the Act as the assessee has challenged the same before him and thereafter adopted the value determined by the Ld. DVO for the purpose of computing the capital gains in the hands of the assessee. However, the Ld. AO has failed to do so. In the present circumstances, I also do not find it appropriate to remit the matter back to the Ld. AO in order to obtain the valuation report from the Ld. DVO as it will cause great inconvenience to the assessee. Further, from the facts of the case it is apparent that the sale value declared by

the assessee is only 46% of the SRO value of Rs. 16, 54, 500/-(Rs. 7,56,250 x 100/16,54,500). Since the property sold by the assessee is a litigated property, I am of the considered view that the market value of the property cannot exceed the actual sale consideration received by the assessee of Rs. 7,56,250/-. Hence, I do not find it appropriate to adopt the SRO value for the purpose of computation of the capital gains in the hands of the assessee, rather it would be appropriate to adopt the actual market value of the property taking into consideration of the litigation involved in the property, which is nothing but the actual sale consideration received by the assessee. Therefore, I hereby direct the Ld. AO to compute the capital gains in the hands of the assessee based on the actual sale consideration received by the assessee of Rs. 7,56,250/-".

11.11 In view of the above, I do not find it appropriate to remit the matter back to the AO for reference to DVO as it would result in delay and protracted litigation. Hence, I direct the AO to adopt the actual sale consideration received/accrued to the appellant to the extent of Rs. 1,25,00,000/-.

11.12 The reference to Hon'ble ITAT(Delhi, A Bench) decision is only to understand a legal principle but not to declare the assessment proceedings as invalid. The AO is not justified in not referring to the valuation officer under the provisions of sec. 50C(2), before invoking the provisions of section 50C, when the AO is completely and fully aware of the legal battle. Thus, the Invocation of 50C itself does not have legs to stand in the instant case, and hence 'the above direction to adopt actual sale consideration received/accrued to the appellant to the extent of Rs. 1,25,00,000/- in this assessment year. Thus, the Grounds of appeal No 3, 5,6 and 7 are allowed in full.

15. Aggrieved with such order of the Id.CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds of appeal.

1. The CIT (Appeals) erred in directing the Assessing Officer to adopt the actual sale consideration received/accrued to the appellant ignoring the provisions of Sec.50C of the IT Act and also ignoring the fact that the assessments were completed u/s. 144 rws 147 rws 161 of the I.T. Act in view of the noncooperation of the assessee at the time of assessment proceedings.

2. The CIT(Appeals) erred by not calling for a remand report from the Assessing Officer on the additional evidence filed by the assessee during appeal proceedings, which was not furnished before the AO, as per provisions of Rule 46A of Income Tax Rules.

3. The CIT(Appeals) ought to have appreciated the fact that the assessee has not co-operated in the assessment proceedings by replying to the

notices issued and also furnishing evidences for claiming indexed cost of acquisition.

4. The CIT (Appeals) erred in ignoring the fact that the assessee has never made any claim before the AO that the value adopted or assessed by the Stamp Valuation Authority exceeds the fair market value of the property as on the date of transfer, which is a condition mandatory under sub-section(2) of Sec.50C for making reference to the Valuation Officer.

5. The CIT(Appeals) erred in holding that remitting the matter back to the to the AO for reference to DVO would result in delay and protracted litigation and directing AO to adopt actual sale consideration received/ accrued to the assessee.

6. The case laws relied upon by the CIT(Appeals) are distinguishable from the facts of the present case, as the assessee never furnished any documentary evidence before the AO against any contentions raised by him during the appellate proceedings.

7. Any other ground that may be urged at the time of hearing.

CO.No.02/Hyd/2022 for AY 2011-12 (By Assessee)

16. The assessee has also raised the following grounds in the cross objection.

1.The order passed by the ld.CIT(A) partly allowing the appeal filed by the respondent against the order passed by the AO is legal, proper and not perverse.

2. The ld.CIT(A) rightly directed the AO to consider the actual sale consideration received but not notional consideration referred to in Sec 50C of the I.T.Act in the facts and circumstances of the case.

3. The ld.CIT(A) rightly directed the AO to consider the actual sale consideration received but not the notional consideration referred to in Sec 50C of the IT Act, 1961 in view of the fact that the property is under long drawn legal dispute.

4. The Ld. CIT -A rightly held that the actual sale consideration is to be considered in view of the fact that there is a long drawn dispute over the title of the property based on the records placed before the Ld. CIT -A.

5. The Ld. CIT -A had rightly appreciated the investigation report of the DDIT (Investigation), Unit-2 to arrive at a judicious conclusion that the total actual sale consideration received for the entire property in dispute is Rs 5 Crores.

6. The Ld CIT -A followed the provisions of Rule 46A, as all the essential and material records were already filed with the AO during the assessment proceedings and what had been adduced in the appellate proceedings is only the status of the cases relating to the land dispute at the High Court basing on the public documents in the form a flow chart of events.

7. Even otherwise, there is no requirement for calling a remand report from the AO as what had been produced before the Appellant Authorities (i.e case status in the form of flow chart of events) is very much within the knowledge of the AO.

8. In view of the above, it is prayed that the Revenue's appeal may please be set aside in the interest of justice and fair play.

I, Mr. Nadi Ali Mirza, the respondent in the cross objections, do hereby declare that what is stated above is true to the best of my information and belief.

17. The ld. DR strongly objected to the order passed by the ld.CIT(A) deleting the addition made by the AO. Referring to the order of the AO, he submitted that neither the assessee responded to the notice issued u/s. 148 nor responded to the notices issued u/s. 142(1) of the Act and therefore, the AO was constrained to pass the order u/s. 144 of the I.T.Act. He submitted that the ld.CIT(A) accepted the additional evidences filed before her, which were not furnished before the AO and thereby violated the provisions of Rule 46A of the I.T.Rules. The ld.CIT(A) has not even called for a remand report from the AO. He submitted that the order of the ld.CIT(A) stating that referring the matter to the DVO, now will prolong the litigation process cannot be a ground to delete the addition especially when the conduct of the assessee speaks in volumes. Referring to various decisions he submitted that the order of the ld.CIT(A) being not in accordance with law should be set aside and that of the order of the AO be restored.

18. The ld.counsel for the assessee on the other hand while supporting the order of the ld.CIT(A) drew the attention of the Bench to various documents filed before the ld.CIT(A), which are available on public domain and submitted that even though the

assessee had not filed these documents before the AO, however, the assessee filed these documents before the Id.CIT(A) for effective hearing of the appeal. Further, the buyer of the property was examined by the DDIT(Inv.) and his statement was recorded wherein the buyer had categorically confirmed that they paid an amount of Rs.5 crores only to the assessee both in cash and cheque and no extra amount has been paid over and above what has been mentioned in the sale deed. He submitted that when this document was with the department only, it cannot be said to be an additional evidence. He submitted that when a property is under litigation, its market value cannot be equated with the value adopted by the stamp valuation authority. He submitted that the stamp valuation authority determines the value on the basis of particular locality but that cannot be sacrosanct in all cases. He submitted that if the case of the assessee is considered in proper perspective and when the property was under litigation, which is still continuing even after the passing of the assessment order, the value adopted by the stamp valuation authority in the instant case cannot be substituted for the actual consideration. He submitted that even though the assessee had not categorically stated before the AO to refer the matter to the DVO, however, it is a matter of fact that it was brought to the notice of the AO that some fraud has been committed on the assessee. He accordingly submitted that the order passed by the Id.CIT(A) being in accordance with law should be upheld and the grounds raised by the revenue should be dismissed. So far as the grounds raised in the cross objections are concerned, he submitted that the same are in support of the order of the Id.CIT(A). He also relied on various decisions.

19. We have heard the rival arguments made by both the sides, perused the orders of the AO and Id.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the

various decisions cited before us. We find on the basis of survey conducted u/s.133A of the Act by the Investigation wing, it was found that the assessee along with his siblings has sold a land at Budvel village for a consideration of Rs. 5 crores during the FY 2010-11 relevant to AY 2011-12 but has not offered the capital gain by filing the return of income. Accordingly, notice u/s. 148 of the Act was issued to the assessee by the concerned AO. However, there was no response from the side of the assessee for which notice u/s.142(1) was also issued. A perusal of the assessment order shows that the assessee filed scanty details for which the AO completed the assessment u/s. 144 of the Act and determined the capital gain at Rs.8,09,10,000/- being 25% share of the assessee in the property by invoking provisions of section 50C of the I.T.Act, 1961. We find in appeal the ld.CIT(A) deleted the addition, the reason of which have already been reproduced in the preceding paragraph. It is the submission of the ld.CIT-DR that the order of the ld.CIT(A) is not in accordance with law since she has accepted the additional evidences in violation of Rule 46A and allowed the appeal filed by the assessee on the ground that referring the matter to DVO at this juncture will prolong the litigation process. It is the submission of the ld.counsel for the assessee that although the assessee had filed certain evidences before the ld.CIT(A), however all these details are available in public domain and therefore, there was no requirement for calling a remand report from the AO. It is also his submission that the buyer of the property had confirmed the sale consideration at Rs. 5 crores and the property was a litigated property on account of some fraud committed on the assessee.

20. We find in the instant case, although, the assessee has not filed the requisite details before the AO, however, he filed certain additional evidences before the ld.CIT(A). The order of the ld.CIT(A) does not speak any application filed by the assessee for

admission of additional evidences. Further, the Id.CIT(A) has not called for any remand report from the AO after the assessee filed those evidences before her. At the same time, it is also an admitted fact that assessee from the very beginning was stating before the AO that some fraud has been committed on him. It is also a fact that the buyer of the property was questioned during the survey proceedings by the investigation wing and his statements was recorded u/s. 131 of the I.T.Act wherein the buyer had confirmed to have purchased the property at Rs. 5 crores, which is the registered sale value of Acre 99.25 and ½ gunta at survey No.310,311 & 312 totaling Acre. 39.11 guntas. However, the AO has not mentioned anything about this statement in the assessment order.

21. 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 a direction to adjudicate the issue of capital gain afresh by considering the evidences which were filed before Id.CIT(A) during the appeal proceedings as additional evidences. Further, the AO shall keep in mind the fraud committed on the assessee, the litigation of the property that is still going on and the statement of the buyer K.P.V.Subbaiah of K.P.V. Subbaiah group obtained during the course of survey proceedings conducted by the DDIT(Inv.) Unit(I)-2, Hyderabad. The AO, if considers proper, may also refer the matter to the DVO and obtain his report before computing the capital gain. Needless to say the AO shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the revenue are accordingly allowed for statistical purposes.

22. So far as the grounds raised by the assessee in the cross objections are concerned, the same are in support of the order of

the Id.CIT(A). Since, we have allowed the appeal filed by the revenue for statistical purposes and the matter is being restored to the file of the AO for fresh adjudication, therefore, the grounds raised by the assessee in the cross objection become infructuous and accordingly, the cross objection is dismissed.

23. Since the facts in remaining appeals and cross objections are identical to facts decided in ITA No.505/Hyd/2021 & CO.No.02/Hyd/2022 for AY 2011-12, therefore following similar reasonings, the above appeals filed by the revenue are allowed for statistical purposes and the respective cross objections filed by the assesseees are dismissed as infructuous.

24. In the result, all the six appeals filed by the revenue are allowed for statistical purposes and six cross objections filed by the respective assesseees are dismissed as infructuous.

Order pronounced in the Open Court on 03rd November, 2022.

Sd/- (K.NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 03rd November, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Shri Nadi Ali Mirza Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028
2	Shri Nadi Ali RA of Shamsu UI Zoha Jermain Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028
3	Shri Nadi Ali Mirza RA of Sogera Shamsi

	Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028
4	Shri Nadi Ali Mirza of Gauhar Taj Aly Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028
5	Shri Nadi Ali Mirza of Mazhar UI Ajiab Mirza Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028
6	Shri Nadi Ali Mirza RA of Ishrat Fatima Hussain Flat No.403, H.No.10-2-289/7/A&B Maphar exotica Apartments, Shanti nagar Colony, Hyderabad-500 028
7	DCIT-1, International Taxation Room No.505, 5 th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
8	CIT(A)-10, Hyderabad
9	CIT(IT&TP), Hyderabad
10	CIT(IT)(SZ), Bengaluru
11	DR, ITAT Hyderabad Benches
12	Guard File

By Order