

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No. 56/Hyd/2021		
Assessment Year:2015-16		
Dy. C.I.T. Central Circle 3(3) Hyderabad (Appellant)	Vs.	Mechineni Projects (P) Ltd, Hyderabad PAN:AAECP4421H (Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri Jeevan Lal Lavidiya, DR	
Date of hearing:	17/11/2022	
Date of pronouncement:	19/12/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the Revenue is directed against the order dated 21.9.2020 of the learned CIT (A)-11, Hyderabad relating to A.Y.2015-16.

2. Facts of the case, in brief, are that the assessee, a company (formerly known as PBR Projects Pvt. Ltd) engaged in the business of construction of residential & commercial buildings, originally filed its return of income for the A.Y 2015-16 on 31.03.2017 admitting a total income of Rs.1,16,090/-. A search & seizure operation u/s 132 of the I.T. Act was conducted in M/s. Raghuram & Trishala group on 21.11.2017 and warrant in the case of M/s. Mechineni Projects (P) Ltd i.e., the assessee

was executed. In response to notice u/s 153A of the Act issued on 30.09.2018, the assessee filed its return of income on 1.11.2018 declaring total income of Rs.7,80,16,050/-.

2.1 During the course of assessment proceedings, the Assessing Officer noted that during the course of search and seizure operation, it was found that the company has given its land admeasuring 7,000 sq. yards situated at H.No 5-4-156,157, Indira Nagar, Ginwala Compound, MM G Road, Secunderabad for development to M/s Namishree Infratech to construct residential apartments and commercial space named as Project T-19 on which assessee had not paid any capital gain tax. He noted that while examining this issue, assessee submitted that there were certain litigation on this land which was settled in the City Civil Court in the year 2014. Assessee produced the copy of the court settlement order also. After this order, Assessee Company again entered into supplementary agreement on 16.03.2015 for executing constructions. Assessee submitted the copy of supplementary agreement too. As per supplementary agreement, the assessee company's share comes to 1,18,895 square feet in total. He noted that during the course of recording the statement on 22.11.2017, the director of the assessee company Shri Satchidanand had stated that against the land given for development to M/s Namishree Infratech, the assessee company has received 1,18,895 square feet of built up area on which the company has not paid any capital gain tax. The assessee stated that approximate cost of construction is Rs 2,500/-. The assessee worked out the capital gain and accordingly admitted Rs. 13.72 Crores on account of capital gains estimated by taking the approximate cost of construction of Rs. 2,500/- per sq. feet for

total company share of 1,18,895 sq.feet as per JDA and total indexed cost of acquisition is around Rs.16.00 crores. The Assessing Officer reproduced the relevant extract of the statement which is as under:

“Q.No. 12. I am showing you the Development Agreement cum General Power entered by M/s PBR Projects Pvt Ltd now known as M/s. Mechineni Namishree Projects Pvt Ltd with M/s Infratech on 30/08 2013. Please state whether company have offered capital gains?.

Ans: I have gone through the Development Agreement cum General Power of Attorney entered by M/s PBR Projects Pvt Ltd now known as M/s Mechineni Projects Pvt Ltd with M/s Namishree Infratech on 30/08/2013. It has not offered capital gains because there was a court case pending with High Court. Now, I have clarity and will offer capital gains. The company share as per JDA is 1,18,895 sq feet The approximate cost of construction is Rs 2,500 Hence the total consideration comes to Rs 29 72 crores The cost of indexed cost of acquisition is around 16 crores, I will pay the capital gains on Rs. 13.72 crores. I submit the details within a week”

3. The Assessing Officer further noted that during the course of P.O operation on 22.01.2018, Shri M. Satchidananda Rao, Managing Director of the assessee company stated that the cost of construction as per the agreement entered between Shri. M. Satchidananda Rao with the developers M/s Namishree Infratech in T-19 Project was Rs.1,600/- and he adopt the construction cost of Rs. 2.000/- for total commercial and residential space of 1.18,985. As per the revised working of total capital gain by taking cost of construction at Rs. 2.200/- Sq. feet. the capital gain arrived at Rs. 18.44 crores. Accordingly, the Managing Director of the assessee company admitted Rs. 18,44,77,048- on account of capital gains in the T-19 Project. The extract of the statement recorded is as below:

“Q17. During the course of search and seizure operation in your business premises situated at 5th floor. Anand Capital, Ameerpet. Hyderabad on 21.11.2017, it was replied vide question no 12 that, your company Ms. Mechineni Projects Pvt Ltd entered joint development agreement with M/s. Namishree Infratech to construct residential and commercial space against which your company

has got its share of 1,18,895. Further you have stated that the company M/s Mechineni Projects P Ltd has not offered any capital gains on joint development agreement and arrived a consideration of Rs 29.72 crores adopting construction cost of Rs 2500/- of total area allotted and admitted an amount of Rs 13.72 crores as Long Term Capita Gains after reducing the cost of acquisition of Rs.16 crores in the hands M/s. Mechineni of the Projects Pvt Lid. Please reconfirm the same.

Ans. During the course of search and seizure operation on 21.11.2017. I have admitted a total consideration of Rs.29.72 towards total built up area of 1,18,895 (residential: 46.310 commercial :72585) adopting the rate Rs.2,500/-which is very high. Subsequently, after verifying the copy of construction agreement entered between one of the landlords with developer M/s. Namishree Infratech, wherein it was mentioned at Rs. 1,600/-. In this regard. I adopt the construction cost of Rs. 2000/-for total commercial and residential space of 1,18,895 allotted to M/s. Mechineni Projects Pvt Ltd in the project T-19. The revised working of capital gains is as under:

Calculation of deemed capital gain			FY 2014-15
Particulars	Amount		
	Residential	Commercial	Total
Deemed sale consideration (1,18,895 sq.ft.@ Rs.2,200 per sq.ft.)	10,18,82,000	15,96,87,000	26,15,69,000
Cost of acquisition of land per sq. yard	15,792	15,792	
Indexed Cost of acquisition.	22,919	22,919	
Land forgone	1226.93	2136.74	3363.67
Cost of land forgone	2,81,20,008	4,89,71,994	7,70,91,952
Deemed Capital Gain	7,37,61,992	11,07,15,056	18,44,77,048

4. During the assessment proceedings the assessee filed the return of income u/s 153A for Rs. 7,78,99,957/- which deviates from the admitted income by Rs. 10,65,77,091/-. The Assessing Officer, therefore, issued a show-cause notice asking the assessee regarding the deviation of income admitted and returned. In response, assessee filed a letter submitting a brief note on difference in admitted and returned income. The assessee company submitted that the cost of construction adopted at Rs. 2,200/- per sq.feet during the course of search was considered

without going through the facts and circumstances of the case and submitted a revised computation of capital gain.

5. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made an addition of Rs.10,65,77,401/- on the ground that the assessee himself has admitted the capital gain @ Rs.2200/- per sq.ft during the post search proceeding and therefore, the submission made by the assessee cannot be accepted.

6. Before the learned CIT (A), the assessee made elaborate submission based on which the learned CIT (A) deleted the addition by observing as under:

“7.0) I have gone through the facts of the case and the submissions of the appellant. The contention of the AO is not acceptable for the following reasons:-

(1) Firstly, the AO has adopted the price Rs.2,200/- per sq.ft. per sq.ft. based on the statement given by Shri Satchidananda Rao u/s 132(4) who stated that against the land given for development to M/s Namishree Infratech, the assessee company received 1,18,895 Sq. ft of built-up area @ estimated cost of construction Rs.2200/- per sq.ft. Other than statement u/s 132(4), the AO has not brought anything on record to prove that the cost per sq.ft. was Rs.2200/ per sq.ft.

(2) No incriminating material was brought on record by the Assessing Officer to Corroborate with evidence that the cost per sq.ft. was Rs.2200/-

(3) The appellant on his part has furnished confirmation letter from the Developer M/s Namishree Infratech vide letter dated 21.10.2019 which stated that the estimated cost of construction was likely to be Rs.1600/- for the total project, before the AO. The AO has simply disregarded the evidence and explanation of the appellant. The Assessing Officer has made addition without considering the confirmation letter submitted by the developer and the construction agreement entered by the developer with the

other landowners for Rs. 1,600/- construction cost per sq.ft. has adopted Rs. 2,200/- per sq. ft as construction cost.

4) The AO has made addition which is only based on the statement of the Director of the appellant company u/s 132(4), the same is not tenable in the absence of any corroborative evidence suggesting that the cost per rate was Rs.2200/- per sq.ft.

5) As held in catena of judicial decisions, addition based on a statement u/s 132(4) without substantiating with any incriminating material, do not stand to the test of addition. The case laws relied by the appellant are squarely applicable in its case and the addition of Rs.10,65,77,091/- on account of capital gains, is not warranted and the same is ordered to be deleted and the relevant grounds are allowed”.

7. Aggrieved with such order of the learned CIT (A), the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The learned CIT (A) erred both in law and facts of the case in allowing relief to the assessee.

2. The ld.CIT(Appeal) erred in deleting the addition of Rs.10,65,77,091/- made on account of difference in capital gains admitted in the return.

3. The ld.CIT(Appeal) erred in accepting the assessee's computation of capital gains where in land foregone was taken at 4567 Sq.yds and the cost of land foregone at Rs.10,51,55,592/- without any supporting working as against 3363.67 sq.yds and Rs.7,70,91,642/- as per affidavit and also erred in ignoring the variation with cost of land as shown in the Balance Sheet as on 3103.2015.

4. The ld.CIT(Appeal) ought not have accepted the cost of construction at Rs.1600/- per sit. based on a construction agreement entered into by the Developer with the Director of the assessee company and registered subsequent to the Development Agreement entered into by the assessee.

5. The ld.CIT(Appeal) ought to have accepted the cost of construction of Rs.2200/- per sq.ft. adopted by the Assessing Officer. In the alternative, the CIT(A) ought to have remanded the matter to the Assessing Officer.

6. *The Hon'ble CIT(A) erred in granting the relief to the assessee accepting the cost of construction @ 1600/- as per agreement entered in, whereas Hon'ble ITAT's order in the case of Udai Hospitals Pvt. Ltd., Vs ITO, Ward-17(3), Hyderabad in ITA.No.1755 of 2017, dtd.28.09.2018 established the cost of construction at Rs.3199/- per sq.foot for the A.Y.2014-15. The learned CIT(A) ought to have compared the case while concluding the appeal proceedings.*

7. *The ld.CIT(Appeal) erred in stating that the addition was based on a statement u/s 132(4) without substantiating with any incriminating material without appreciating the fact that the assessee failed to retract from its admission within a reasonable time as held by the case of Hon'ble High Court of Rajasthan in the case of Pr. CIT (Central), Jaipur Vs Roshan Lal Sancheti.*

8. *The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary”.*

8. The learned DR strongly opposed the order of the learned CIT (A) in deleting the addition made by the Assessing Officer. He submitted that when the assessee himself during the course of search proceeding admitted the cost of construction at Rs.2200/- per sq.ft, therefore, the learned CIT (A) is not justified in deleting the addition made by the Assessing Officer. The learned DR also filed the following written submissions:

“Search & Seizure conducted on21-11-2017.

A Search and Seizure operation u/s.132 of the IT Act were conducted in the case of M/s.Raghuram & Trishala group on 21-11-2017 and warrant in the case of M/s. Mechineni Projects Pvt. Ltd., was executed.

Sworn statement of Sri M. Satchidananda Rao dated 21-11-2017:

During the course of search, a sworn statement was recorded on 21-11-2017 and answer to question to number 12, Sri M.Satchidananda Rao submitted that the company has given its land admeasuring 7,000 square yards for development to M/s. Namishree Infratech to construct residential apartments and commercial space named as T-19 on which the assessee had not paid any capital gain. As per supplementary agreement, the assessee company share comes to 1, 18,895 square feet of built-up area on which the company has not paid any capital gains. The assessee

stated that approximate cost of construction is Rs.2,500/- and worked out the capital gain. Accordingly, admitted Rs. 13.72 crores on account of capital gains estimated by taking the approximate cost of construction of 2500 per sq feet for total company share of 1,18,895 sq feet as per JDA and total index cost of acquisition is around 16 crores.

PO Operation dated 22-01-2018:

During the course of PO operation on 22-01-2018, Sri M.Satchidananda Rao in his answer to the question number 17 has stated that the cost of construction as per the agreement entered between shri M.Satchidananda Rao with the developers M/s.Namishree Infratech in T-19 project was Rs.1,600/- and he adopt the construction cost of Rs.2,000/- for total commercial and residential space of 1.18.985 allotted to M/s.Mechineni Projects Pvt. Ltd., in the project T-19.

Notice issued u/s. 153A dated 30-05-2018.

During the assessment proceedings the assessee filed return of income u/s 153A for 7,78,99,957/- which deviates from admitted income of 10,65,77,091/-. In reply to show cause notice, the assessee company has submitted that the cost of construction adopted at 2,200 per sq feet during the course of search as considered without going through the facts and circumstances of the case.

Further during the course of assessment proceedings, the assessee furnished the revised Capital Gain calculation by taking cost of construction at 1,600 per sq feet. The assessee submitted that while computing the Capital Gains there was a calculation mistake which resulted in reduction of income from Capital gains by 71,76,451/- and the assessee filed a revised computation statement before the Assessing Officer.

The submission made by the assessee was not accepted by the Assessing officer, as the assessee himself admitted the Capital Gain at 2,200 per sq feet during post search proceeding and accordingly the difference of Capital Gain admitted of Rs.18,44,77,048/- and Capital Gain return of Rs.7,78,99,957/- which comes to Rs. 10,65,77,091/- is added back to the income of the assessee as income from Capital Gain.

Submitted for kind perusal of your honours and necessary orders.”

9. The learned Counsel for the assessee, on the other hand, strongly relied on the order of the learned CIT (A). He

submitted that the addition cannot be made solely on the basis of 132(4) statement without bringing any corroborative material. He submitted that when the builder himself has considered the cost of construction at Rs.1600/- per sq. ft which has been accepted by the same Assessing Officer, therefore, he should not have determined the cost of construction at Rs.2200/- per sq. ft for determining the capital gain in the hands of the assessee. Relying on various decisions, he submitted that the learned CIT (A) was fully justified in deleting the addition. He also filed the following facts sheet:

S.No	Particulars	Date
1	Original return filed for the financial year 2016-17	31.3.2017
2	Date of search	21.11.2017
3	Notice u/s 153A issued	30.05.2018
4	Date of filing return in response to notice 153A	01.11.2018
5	Date of statement recorded	22.11.2017
6	Date of further statement recorded	22.01.2018

10. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case has given its land admeasuring 7000 sq. yards situated at H.No.5-4-156, 157, Indira Nagar, Ginwala Compound, M G Road, Secunderabad for development to M/s. Namishree Infratech to construct residential apartments and commercial space named as Project T-19 on which assessee had not paid any capital gain tax. We find the assessee during the course of search proceedings in the statement recorded u/s 132(4) had stated that the approximate cost of construction at Rs.2500/- per sq. ft which was subsequently revised to Rs.2200/- per sq. ft. However, in the return filed in

response to notice u/s 153A, the assessee computed its capital gain by taking the cost of construction at Rs.1600/- per sq.ft which was not accepted by the Assessing Officer on the ground that the assessee himself had admitted the capital gain at Rs.2200/- per sq. ft during the post search proceedings. Accordingly, the Assessing Officer made addition of Rs.10,65,77,401/- as capital gain in the hands of the assessee. We find the learned CIT (A) deleted the addition the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned DR that when the assessee himself has admitted the cost of construction at Rs.2200/- per sq. ft, the assessee now cannot change its stand and state that the cost of construction is Rs.1600/- per sq. ft. It is the submission of the learned Counsel for the assessee that when the Developer has determined and confirmed the cost of construction at Rs.1600/per sq.ft and when the same Assessing Officer has assessed such cost of construction at Rs.1600/per sq.ft in the hands of the Developer, therefore, in absence of any corroborative material available with the Revenue, addition cannot be made in the hands of the assessee by taking the cost of construction of Rs.2200/per sq.ft solely on the basis of the statement recorded u/s 132(4) of the I.T. Act during the course of search.

11. We find some force in the above arguments of the learned Counsel for the assessee. We find the CBDT Instruction No.F.No.286/2/2003-IT(Inv) dated 10.03.2003 regarding confession of additional income during the course of search and seizure and survey operation reads as under:

“Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income

during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstances, confession during the course of search & seizure and survey operation do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search and seizures operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely”.

11.1 We further find, the CBDT letter (F.No.286/98/2013-IT (In\NV.II) dated 18.12.2014 reads as under:

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assessee were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely.

4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.

5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.

6. This issues with approval of the Chairperson, CBDT”.

12. It has been held in various decisions that though the admission u/s 132(4) of the I.T. Act is an extremely important piece of evidence, but it cannot be said to be conclusive and it is open to the person who made it to show it that the impugned statement has been incorrectly made and the person making the statement should be given proper opportunity to show that it does not show the correct state of facts. In the instant case, we find the assessee during the course of his statement recorded during the course of search u/s 132(4) in reply to question No.12 had stated that “the approximate cost of construction is Rs.2500/-. Further, during the course of P.O operation dated 22.01.2018, the M.D of the assessee had categorically stated that the cost of construction as per the agreement entered between Shri M. Satchidananda Rao with the Developer M/s. Namishree Infratech Project was Rs.1600/-. We find during the course of assessment proceedings; the assessee had furnished a confirmation letter from the developer M/s. Namishree Infratech Project vide letter dated 21.10.2019 that the estimated cost of construction was likely to be Rs.1600/- for the total project. However, the Assessing Officer had completely disregarded the same although he is also the Assessing Officer of the Developer. In the instant case, we find the addition was based solely on the basis of the statement of the Director of the assessee company at the time of search in the statement recorded u/s 132(4) but not backed by any other tangible or cogent evidence. It has been held in various decisions that addition cannot be made solely on the basis of statement recorded u/s 132(4) without any corroborative evidence to substantiate the same especially when the assessee has retracted from his earlier statement by producing cogent evidence which has not been rebutted by the Assessing Officer in any manner. In this view of the matter and in view of the detailed discussion by

the learned CIT (A) while deleting the addition, we do not find any infirmity in the order of the learned CIT (A). Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 19th December, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
--	--

Hyderabad, dated 19th December, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	Dy.CIT, Central Circle 3(3) 6 th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad
2	M/s. Mechineni Projects (P) Ltd., H.No.7-1-79 & 80, Flat No.501, Anand Capital, Ameerpet, Hyderabad 500016
3	CIT (A)-11 ,Hyderabad
4	Pr. CIT-Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order