

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

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.92/Hyd/2022		
Assessment Year: 2014-15		
M/s. GRR HOLDINGS Hyderabad PAN:AAQFG0867M	Vs.	Dy. CIT Circle 3(3) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri Murali Mohan Rao, CA	
Revenue by:	Shri Jeevan Lal Lavidiya, DR	
Date of hearing:	19/01/2023	
Date of pronouncement:	31/01/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 16.3.2022 passed u/s 263 of the I.T. Act, 1961 by the learned Pr.CIT (Central) Hyderabad relating to A.Y. 2014-15.

2. Facts of the case, in brief, are that the assessee is a partnership firm incorporated on 31.1.2014 and is in the business of real estate. It did not file its original return of income for the A.Y 2014-15. A search & seizure operation u/s 132 of the I.T. Act was conducted on 20.9.2017. In response to notice u/s 153A dated 11.5.2018, no return of income was filed. The AR of the assessee also refused to appear when contacted by the Assessing Officer. Subsequently, the partner of the assessee firm Shri Gaddam Shyam

Prasad Reddy, filed copy of the e-filed return of income in Tapal on 13.11.2018 without declaring the income as admitted by the Partner during the search on oath in the statement recorded u/s 132(4) on 20.9.2017 and sworn statements dated 20.9.2017, 25.9.2017 and 17.11.2017, and the affidavit dated 26.10.2017. The Assessing Officer referred to the sworn statements and the affidavit and noted that other than submitting the return of income in the Tapal on 13.11.2018, the partner of the assessee firm Shri Gaddam Shyam Prasad Reddy also made a submission in Tapal on 13.11.2018 retracting the statement on a stamp paper for the sworn statement. In the said submission, it was submitted that the assessee has withdrawn the statement recorded u/s 132(4) on 20.9.2017. After considering the affidavit containing the retraction of the statement and the forced sworn statement and statement recorded during the course of search and seizure proceedings, the Assessing Officer completed the assessment u/s 153A/147 of the I.T. Act, 1961 determining the total income of the assessee at Rs.42.00 lakhs by making addition u/s 69 of the I.T. Act.

3. Subsequently, the learned PCIT examined the record and observed that the assessee has purchased the following 3 properties in the name of the assessee firm:

Document No.	Date of execution	Sale consideration (Rs.)	Mode of payment (Rs.)	Date of registration
7200/2014	11.02.2014	10,88,50,000	10.85 Cr. Cash + 3 lakhs	4.9.2014
7201/2014	11.2.2014	14,38,50,000	14.31 Cr. Cash + 7 lakhs by cheque	4.9.2014
12540/2016	11.2.2014	14,38,50,000	14.3 Cr cash + 7 lakhs through bank	14.9.2016

4. He noted that Shri Gaddam Shyam Prasad Reddy, partner, in his statement recorded during the course of search u/s

132(4) had accepted that the payment for purchase of these properties were unaccounted and offered the same as undisclosed income for the A.Y 2014-15. However, the Assessing Officer while passing the order for the impugned A.Y, failed to bring to tax the said unaccounted investment in the three properties. Therefore, the order passed u/s 144/153A on 12.12.2019 was erroneous and prejudicial to the interest of the Revenue. He, therefore, issued a show-cause notice u/s 263 of the I.T. Act asking the assessee to explain as to why such unaccounted investment in the three properties should not be brought to tax and the assessment order should not be revised.

4.1 The assessee objected to the show-cause notice issued u/s 263 on 11.8.2021 and filed a letter requesting the PCIT to drop the proceedings. The PCIT dropped the proceedings-initiated u/s 263 vide notice issued dated 11.8.2021. Thereafter, he initiated separate proceeding u/s 263 to which the assessee again objected by contending as under:

“1. These sale deeds have already been brought to tax by the Assessing Officer in Assessment Year 2014-15 in the hands of Sri. Gaddam Shyam Prasad Reddy.

2. The Assessing Officer has also brought to tax these sale deeds in Assessment Years 2015-16 and 2017-18 in the hands of the assessee.

3. At the time of recording statement, Sri. Gaddam Shyam Prasad Reddy was not aware of facts of accounting and bookkeeping records and subsequently filed retraction statement.

4. The proceedings u/s. 263 are mere change of opinion as the Assessing Officer has already taken a view on the matter.

5. The assessee is before Commissioner of Income Tax (Appeals) against the order proposed to be revised. Hence, 263 order cannot be passed.”

5. However, the learned PCIT was not satisfied with the arguments advanced by the assessee. He noted that even though the contention of the assessee at Point No.1 & 2 above are correct, however, it does not make the present order proposed to be revised u/s 263, as not erroneous or not prejudicial to the interest of the Revenue. He observed that the order passed u/s 144 r.w.s. 153A by the Assessing Officer dated 12.12.2019 is erroneous and prejudicial to the interest of the Revenue as it failed to bring to tax the unaccounted investment in the three properties purchased in the name of the assessee during the A.Y 2014-15. He referred to the relevant portion of each of the three properties and thereafter held that the entire consideration for purchase of these three properties was paid by the assessee on or before the date of execution of these sale deeds, which is on 11.02.2014. This falls in Assessment Year 2014-15. Hence, even if the registration of these sale deeds took place in Assessment Years 2015-16 and 2017-18, it is of little consequence and the material fact of year of payment of purchase price does not change. The year of payment being Assessment Year 2014-15 and the payments being unaccounted, it has to be brought to tax in Assessment Year 2014-15 alone, which the Assessing Officer failed to do in the assessment order under review.

5.1. He observed that the claim of the assessee that while recording the statement of Sri. Gaddam Shyam Prasad Reddy, he was not aware of the facts of accounting and bookkeeping records, is a lame excuse. It is nowhere established at any time that the sale consideration, clearly mentioned in the sale deeds, was duly accounted in the Books of the assessee in the year under consideration. Further, claim of the assessee that the present 263 proceedings are only a change of opinion, lacks merit. He observed that while it is true that the Assessing Officer took a view on the

matter and brought the amounts under consideration to tax in Assessment Years 2015-16 and 2017-18, but that view is patently wrong looking to the clear wordings of the sale deed wherein the vendors clearly acknowledged that they have received the entire sale consideration as on the date of execution of the deeds. The Assessing Officer brought to tax cheque portion of payment totaling to Rs. 17 lakhs for the three properties in Assessment year 2014-15 and the cash portion in the years of registration i.e., Assessment years 2015-16 (Rs. 25.17 crores in respect of two properties) and 2017-18 (Rs. 14.31 crores in respect of one property), which is without any basis. Thus, the view taken by the Assessing Officer is patently wrong.

5.2 The learned PCIT observed that on a matter, where two views are legitimately possible and the Assessing Officer has taken one of those views, substitution of the other view by the Pr. Commissioner of Income Tax through order u/s. 263 may amount to mere change of opinion. However, the facts of the present case clearly show that no two views were legitimately legally possible and the view taken by the Assessing Officer was patently wrong and because of this patently wrong view taken by the Assessing Officer, the Assessment Order passed u/s. 144 r.w.s. 153A on 12.12.2019 become erroneous as well as prejudicial to the interests of Revenue and amenable to the revisionary powers u/s. 263.

5.3 He further noted that the appeal preferred by the assessee before the Commissioner of Income Tax (Appeals) against the order under review, has not been decided by the CIT(Appeals) as on date. Hence, the issue under consideration can be taken up and decided u/s. 263. In view of all the above, he held that the Assessment Order passed u/s. 144 r.w.s. 153A dated 12.12.2019,

in the case of the assessee for Assessment Year 2014-15, is erroneous and prejudicial to the interest of Revenue. He, therefore, set aside the order to file of the Assessing Officer for the limited purpose of bringing to tax for unaccounted investment in the Assessment Year 2014-15, after giving proper opportunity of being heard to the assessee and also enabling the assessee to furnish necessary evidence, if any, to the Assessing Officer during the proceedings being taken up in consequence to this order.

6. Aggrieved with such order of the PCIT, the assessee is in appeal before the Tribunal by raising the following grounds:

“1. The order u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act') passed by the Ld.Pr. Commissioner of Income Tax, Hyderabad (hereinafter referred to as 'the Ld. Pr.CIT) is erroneous both on facts and in law.

2. The Ld. Pr.CIT has grossly erred in passing the revisionary order without satisfying the twin conditions that the order should be both erroneous and prejudicial to the interest of the revenue, as the order is neither erroneous nor prejudicial to the interest of the Revenue.

2(a) The Ld. Pr. CIT erred in passing the revisionary order by forming different opinion from that of the Assessing Officer taken during the Course of assessment proceedings, after thorough examination in the matter of year of assessment of a particular transaction.

2(b) The Ld. Pr. CIT ought to have well appreciated that the issue was already) examined by the AO thoroughly in the course of assessment proceedings u/s 144 r.w.s 153A of the Act on 12.12.2019 and has rightly taxed certain income in a particular year as he was fully satisfied with the details furnished and therefore, the Ld. Pr. CIT cannot direct the Ld.AO u/s 263 of the Act to re-examine the same issue or conduct further enquiries on the issue already considered by the AO, only to bring to tax already assessed income in preceding assessment year.

2 (c) The Ld. Pr. CIT ought to have appreciated that there is no mistake of application of law or shortcoming or failure on the part of the AO in the making further enquiry or examination of the issues and thus the order not erroneous.

2(d) The Ld. Pr. CIT ought to have appreciated that the AO has verified all issues which, in the opinion of the AO, needs examination and therefore, taking recourse u/s 263 of the Act on the issues examined is erroneous.

2(e) *The Ld. Pr. CIT ought to have appreciated the fact that AO has examined the issues during the course of assessment proceedings, when the assessment order is passed by a quasi-judicial authority, the same is to be considered as final when there is neither wrong application law nor omission of any issue to be examined.*

2(f) *The Ld. Pr. CIT ought to have appreciated that there is no lapse on the part of the Assessing Officer to examine the issues raised by the Pr. CIT and that there is no need to record in the assessment order all the issues examined and satisfied by the Assessing Officer and thus there is no error in the order calling for revenue u/s 263.*

2(g) *The Ld. Pr. CIT ought to have appreciated the fact that the amounts of purchase consideration paid have already been brought to tax by the AO Fa in AY 2014-15 in the hands of Sri. Gaddam Shyam Prasad Reddy and thus, Gr the order is not prejudicial to the interest of Revenue entailing the order to be revised u/s 263.*

2(h) *The Ld. Pr. CIT ought to have appreciated the fact that the AO has also brought to tax these sale deeds transactions in AY 2015-16 and 2017-18 in the hands of the assessee and thus, there is no escapement of any portion of income to tax and thus there is no prejudicial interest calling for Revenue u/s 263.*

3. *The Ld. Pr. CIT ought to have appreciated the fact that the order passed 3. by the Assessing officer is not erroneous and nowhere prejudicial to the interest of the revenue as the taxation of the same transaction was already done in the individual hands of Gaddam Shyam Prasad Reddy & the appellant firm. Thus, here there is no loss of Revenue and hence the revision and direction for adding back the same amounts to double taxation and unjustified in law.*

4. *The Ld. Pr. CIT failed to appreciate the legal position that no single incidence of accrual of revenue to an assessee can be brought to tax in two years and that when once a certain transaction has been brought to tax in a particular year by an AO, the Ld. Pr. CIT cannot direct the same income to be taxed in other year, unmindful of already made assessment and creation of liability in another year.*

5. *Without prejudice to above grounds, we strongly contend that the Ld. Pr. CIT has failed to appreciate that even if, for a moment it is presumed or considered and not accepted, that there is error in the order of the AO in taxing an income in one year as against correct year of taxation, the order is not prejudicial to the interest of revenue, as the receipt has already suffered to tax in certain other years.*

6. *The Ld. Pr. CIT ought to have also reviewed the assessment orders for AY Factu2015-16 & 2017-18 and direct the AO to delete the additions to be added in 2014-15 to meet the ends of Justice.*

7. *The Ld. Pr. CIT erred in appreciating the facts emanating in the case that there will be additional tax liability in AY 2014-15, if the 263 order is taken effect, while there exists tax liability already on the same income in AY 2015-*

16 & 2017-18, which is anomalous, as the Act does not intend for the double taxation.

8. The Ld. Pr. CIT ought to have well appreciated that the statute of IT Act Techni only contemplates taxing of correct income in the year of its accrual and not in multiple years, more number of times on single income.

9. The appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”

7. The learned Counsel for the assessee strongly challenged the order passed by the learned PCIT u/s 263 of the Act by setting aside the assessment passed by the Assessing Officer u/s 144/153A of the I.T. Act. He submitted that the PCIT issued notice u/s 263 of the Act on 30.06.2021 proposing to set aside the assessment order dated 12.12.2019 for the impugned A.Y. However, he dropped the same on 22.2.2022 and on the very same day he again issued another notice u/s 263 of the Act to set aside the same assessment order dated 12.12.2019. Therefore, once the PCIT initiated the proceedings u/s 263 of the I.T. Act and dropped the same, therefore, again he should not have issued notice u/s 263 of the I.T. Act for the same issues.

8. The learned Counsel for the assessee in his next plank of argument submitted that the issues for which the PCIT invoked jurisdiction u/s 263 of the Act has been thoroughly examined by the Assessing Officer in the assessment order and thereafter he has taken a possible view. He submitted that the only issue raised by the PCIT in the 263 proceedings is regarding the year of taxability. He submitted that while according to the PCIT, the cash amount paid for the purchase of the land has to be taxed in the year under consideration, however, the assessee in the subsequent years has offered the same to tax and therefore, it is revenue neutral. Relying on the following decisions, he submitted that when the tax rate is

uniform in present A.Y and subsequent A.Ys, then there is no need to continue the litigation as the dispute is purely academic in nature.

- i) Hon'ble Supreme Court in the case of Berger Paints India Ltd vs. CIT (2004)(135 Taxman 586).
- ii) Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd (2013) 38 Taxmann.com 100
- iii) Hon'ble Bombay High Court in the case of CIT vs. Nagri Mills Co. Ltd (1958) 33 ITR 681.
- iv) Hon'ble Bombay High Court in the case of PCIT vs. Rohan Projects (2020) 113 Taxmann.com 339.

9. He submitted that the Partners in the statement recorded u/s 132(4) had admitted the source of such cash payment as out of their undisclosed income and the Assessing Officer had brought the same to tax in the hands of the Partners for A.Y 2014-15 which is admitted by the PCIT himself. He submitted that the Assessing Officer has thoroughly discussed the issue and thereafter has taken a possible view which is neither erroneous nor prejudicial to the interest of the Revenue therefore, the PCIT is not justified in invoking jurisdiction u/s 263 of the I.T. Act.

9.1 The learned Counsel for the assessee referring to the following decisions submitted that the jurisdictional order u/s 263 is not valid where the order is neither erroneous nor prejudicial to the interest of the Revenue:

- a) Hon'ble Supreme Court in the case of Malabar Industries Co. Ltd (109 Taxmann 66)
- b) Hon'ble Karnataka High Court in the case of CIT vs. D.G. Gopala Gowda (34 Taxmann 154)

- c) ITAT Hyderabad in the case of Pravardhan Seeds (P) Ltd (ITA 667/Hyd/2017)
- d) ITAT Hyderabad in the case of Visu International Ltd (ITA 394/Hyd/2016).

10. Referring to the following decisions, he submitted that if the Assessing Officer has taken one of the possible views for the issue under consideration, then the assessment order cannot be said to be erroneous or prejudicial to the interest of the Revenue:

- i) Hon'ble A.P High Court in the case of Spectra Shares & Scrips (P) Ltd (36 Taxman 348)
- ii) ITAT Hyderabad Bench in the case of Manisha Agri Biotech (P) Ltd (ITA 223/Hyd/2014)
- iii) ITAT Hyderabad Bench in the case of Zelan Projects (P) Ltd (ITA 1361/Hyd/2013).

11. Referring to the following decisions, he submitted that the Explanation (2) to proviso of section 263 introduced by the Finance Act, 2014 w.e.f. 1.5.2015 does not have retrospective effect:

- a) ITAT Delhi in the case of Brahma Center Dev. (P) Ltd vs. PCIT (ITA Nos.4341 & 4342/Del/2019).
- b) ITAT Delhi in the case of M/s. Arun Kumar Garg HUF vs. PCIT (ITA No.3391/Del/2018).
- c) ITAT Amritsar in the case of Smt. Surinder Kaur Brar vs. Income Tax Officer (ITA 204 to 205/ASR/2017).
- d) ITAT Mumbai in the case of M/s. Indus Best Hospitality & Realtors (P) Ltd vs. PCIT (ITA 3125/Mum/2017).

12. Referring to the following decisions, he submitted that the addition of the same amount will amount to double taxation,

therefore, the order of the learned PCIT invoking the jurisdiction u/s 263 of the I.T. Act is not in accordance with law.

- i) Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd (2013) 38 Taxmann.com 100 (S.C)
- ii) Hon'ble Bombay High Court in the case of Skyline Great Hills (68 Taxmann.com 188)
- iii) Hon'ble Supreme Court in the case of Calcutta Co. Ltd (1959) 3 ITR 1
- iv) Hon'ble Delhi High Court in the case of CIT vs. Canon India (P) Ltd (2016) 66 Taxmann.com 88
- v) ITAT Kolkatta in the case of Magma Fincorp Ltd vs. DCIT (2017) (82 taxmann.com 481)
- vi) ITAT Mumbai in the case of Mahindra Telecommunications Investment (P) Ltd vs. Income Tax Officer (ITA 2832/Mum/2012)
- vii) ITAT Hyderabad in the case of CM Gopal vs. DCIT (ITA 883/Hyd/2019).

13. The learned Counsel for the assessee referring to copy of sale deed No.12540/16 dated 11.02.2014 copy of which is placed at Page 45 to 64 of the Paper Book filed by the Revenue, drew the attention of the Bench to Page 48 and submitted that the sale deed was presented before the Office of the SRO on 22.5.2014 although this deed was prepared on 11.2.2014. Referring to copy of sale deed 7201/14 dated 11.2.2014 copy of which is placed at page 65 to 80 of the Paper Book filed by the Revenue, he drew the attention of the Bench to Page 68 and submitted that the sale deed was presented in the office of the SRO on 19.5.2014 although the deed was prepared on 11.2.2014. Referring to copy of the sale deed 7200/14 dated 11.2.2014 copy of which is placed at Page 81 to 99 of the Paper Book, he drew the attention of the Bench to page 84 of the Paper Book and

submitted that the same was presented before the office of the Sub Registrar on 19.5.2014. He submitted that a perusal of the sale deed copies filed by the Revenue shows that all these deeds were executed by the SRO in the financial year 2014-15 relevant to A.Y 2015-16. He submitted that nobody will pay cash and wait for months together for getting the documents registered. He submitted that the learned PCIT without going through the dates of the copy of the sale deeds presented to the SRO held that the Assessing Officer has not brought to tax the full amount in the A.Y 2014-15 whereas the same relates to the A.Y 2016-17. Therefore, under these situations also, the revisionary order passed by the learned PCIT without application of mind deserves to be set aside.

14. The learned Counsel for the assessee in his third plank of argument submitted that the assessment order has been passed taking prior approval from the Add./Jt.CIT u/s 153D of the I.T. Act. Referring to the various decisions, he submitted that when the order is passed after taking prior approval from the Add/Jt.CIT u/s 153D, provisions of section 263 cannot be invoked by the PCIT.

15. The learned DR, on the other hand, heavily relied on the order of the PCIT. He submitted that the PCIT has given justification in his elaborate order while setting aside the assessment passed by the Assessing Officer u/s 143(3) of the Act. He submitted that the order of the PCIT being in accordance with law should be upheld and the grounds raised by the assessee should be dismissed.

16. Referring to the decision of the Delhi Bench of the Tribunal in the case of Kapil Mehta vs. CIT in ITA No.533/Del/2021, dated 11.10.2021, he submitted that the CIT has jurisdiction u/s 263 in case of orders passed by the Assessing Officer after taking

approval from the Add/Jt.CIT u/s 153D of the Act. Referring to the decision of the Mumbai Bench of the Tribunal in the case of Crompton Greaves in ITA Nos.1994 & 2863, dated 1.2.2016 for the A.Y 2007-08, he submitted that the CIT can invoke the provisions of 263 of the I.T. Act where the Assessing Officer failed to make proper inquiry, examination and verification as warranted for proper completion of the assessment. He accordingly submitted that the grounds raised by the assessee should be dismissed.

17. We have heard the rival arguments made by both the sides, perused the orders of the AO and PCIT 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 M/s GRR Holdings is a partnership firm in which Shri Gaddam Shyam Prasad Reddy and Shri Sayed Mohammad Fayaz are the partners. A search & seizure operation u/s 132 of the I.T. Act was conducted in the case of the assessee on 20.09.2017. The Assessing Officer in the assessment order at Para 11 of the order has mentioned as under:

“12. The assessee firm’s partner Shri Gaddam Shyam Prasad Reddy duly admitted the additional income of Rs.34.65 crores on oath in written statements for a land admeasuring Ac 11.33 guntas in Sy No.218/11 and 218/13 situated at Kondapur Village, Serilingampally Mandal R.R.Dist and an amount of Rs. 17 Lakhs paid through the banking channels to the vendor, as his undisclosed sources of income for the Asst. Year 2014-15 and sale deed registered in name of M/s GRR Holdings, Hyderabad on 11.02.2014, stamp duty paid total Rs. 5,51,43,754/- As per the statement recorded during Search and seizure operations Sh Gaddam Shyam Prasad Reddy stated that Rs 5 crores was paid by the other partner of the firm Mr. Sayed Mohammad Fayaz and the balance amount of Rs. 51,43,754/- was paid by him. Shri Gaddam Shyam Prasad Reddy also submitted the affidavit 26.10.2017 duly admitting the income as admitted on the oath statement but Shri Gaddam Shyam Prasad later while filing his return of income did not disclose the income as admitted during search admission. Shri Gaddam Shyam Prasad Reddy filed the returns of income both for individual and the assessee firm in tappal of this office on 13.11.2018 without accepting the income admitted during the

search and post search affidavit is clearly a willful attempt to evade tax, etc.”

18. We find the Assessing Officer in the assessment order had also reproduced the statement recorded u/s 131(1) of the I.T. Act in respect of M/s. GRR Holdings by the Investigation Wing before the ADIT (Inv.) Unit-II(2) Hyderabad on 25.9.2017 where the questions & answers are as under:

“Q3. I am showing you, document no. 7200/2014,7201 and 12540/2016 being a sale deed(s) executed on 11.02.2014, which were found and seized during the course of search proceedings at your residence on 20.09.2017 and annexed as page no.5 to 37 of annexure A/GSPR/Res/01, where in land admeasuring Ac.3-11 guntas equivalent to 15,851 sq.yards, Ac.4.11 guntas (20,697 sq.yards) and Ac.411 guntas (20,691 sq. yards) respectively situated at Kondapur Village. Serilingampaly, Ranga Reddy district was purchased by M/s GRR Holdings, Hyderabad, a partnership firm represented by you and Mr. Syed Mohammed Fayaz for a valuable sale consideration of Rs.10,88,50,000/, Rs. 14,38,50,000/- and Rs.14,38,50,000/- respectively and that the said consideration was paid in cash. Please identify the same and explain the sources for the said consideration paid along with documentary evidence.

S.No	Document No./date	Extent of land	Total consideration on paid	Cheque/DD/Pay order No.	Paid in cash
1	7200/2014 dated 11.02.2014	Ac 3.11 guntas (15,851 sq.yards)	Rs.10,88,50,000	(5) Cheque of Rs.1.50 lakhs vide No.701837 of SBI Abids Branch dated 11.2.2014 6) Pay order No.002209 for Rs.1.50 lakhs dated (7) 4.2.2014 drawn on HDFC Bank, Hyderguda Branch, Hyderabad	Rs.10,85,50,000
2	7201 of 2014 Dated 11.02.2014	Ac 4.11 guntas (20-,691 sq.yards)	Rs.14,38,50,000	1) Cheque of Rs.3.50 lakhs vide No.701835 of SBI Abids Branch dated (8) 11.2.2014 (2) Pay order No.804423 for Rs.3.50 lakhs dated 4.2.2014 drawn on SBI Hyderabad Gunfoundry Branch, Hyderabad	Rs.14,31,50,000
3	12540/2016 Regd. On 11.02.2014	Ac. 4.11 guntas (20691 sq.yards)	Rs/14.38,50,000	(1) Cheque of Rs.3.50 lakhs vide No.701836 of SBI Abids Branch dated 11.2.2014 (2) Pay order No.804424 for Rs.3.50 lakhs dated 4.2.2014 drawn on State Bank of Hyderabad Gunfoundry Branch	Rs.14,31,50,000
Total		Ac. 11.33 guntas	Rs.39,65,50,000	Rs.17,00,000	Rs.39,48,50,000

Ans Yes. I have perused the above documents bearing no.(s) 7200/14, 7201/14 & 12540/16 and the said documents pertain to purchase of total land admeasuring to Ac.1133 guntas for a total consideration of Rs. 39,65, 50,000- registered in the name of M/s. GRR Holdings a partnership firm in which myself and

Mr. Syed Mohd. Fayaz are partners. Regarding the sources for the considerations paid, it is to submit that Rs.17 lakhs has been paid through banking channels only and the entire remaining consideration of Rs. 39, 48,50,000/ was paid by way of cash. Out of the total consideration paid of Rs. 39, 48,50,000/, I have paid/contributed an amount of Rs. 34,48,50,000, for which I cannot explain the sources and accordingly admit the same as undisclosed income in my individual hands for the assessment year 2014-15 and accordingly pay the taxes on such income of Rs.34,48,50,000/- (emphasis supplied by us).

In this regard, I submit that in my statement recorded on 20.09.2017, u/s. 132(4) of the Act, at my residence ie. Villa No.19, Bhavya's Alluri Meadows, Whitefields, Kondapur, Hyderabad in the case of M/s.GRR Holdings, Hyderabad, Shri G.Shyam Prasad Reddy and M/s.GRR Holdings Pvt Ltd, Hyderabad, in reply to question no.9, I have admitted undisclosed income of Rs.34,48,50,000/- in my individual hands for the financial year 2013-14, relevant to asst, year 2014-15. I re-affirm the same and pay the taxes on the undisclosed income of Rs. 34,48,50,000/- for the asst, year 2014-15. (emphasis supplied by us).

Further, I submit that out of the total consideration of Rs. 39,65,50,000/- an amount of Rs. 17 lakhs paid through banking channels. However, though the amount of Rs.17 lakhs was paid by the firm through banking channels, the sources for the same cannot be explained. In view of which in reply to question no.11, in my statement recorded on 20.09.2017, u/s. 132(4) of the Act, at my residence i.e., Villa No.19, Bhavya's Alluri Meadows, Whitefields, Kondapur, Hyderabad in the case of Mis. GRR Holdings, Hyderabad, Shri G.Shyam Prasad Reddy and Ms. GRR Holdings Pvt. Ltd., Hyderabad, I have admitted the amount of Rs. 17 lakhs as my undisclosed income for the financial year 2013-14, relevant to asst, year 2014-15. I re-affirm that the amount of Rs. 17 lakhs paid to the vendors by the firm were out of my undisclosed income for the financial year 2013-14, relevant to the asst, year 2014- 15 and shall pay taxes on such amount accordingly.

19. The various other questions put by the Investigation Wing has also been considered by the Assessing Officer in the body of the assessment order which are as under:

“Q.5 Please go through the registered sale deed(s) bearing nos. 7200/14,7201/14 and 12540/16 registered in the name of Mis. GRR Holdings, Hyderabad on 11.02.2014 wherein the stamp duty paid works out to Rs.1,68,91,012/, Rs.1,90,28,892/ and Rs.1,92,23,850 respectively. Please explain the sources for payment of stamp duty paid totaling to Rs.5,51,43,754/-.

Ans: Out of the said amount of Rs.5, 51, 43, 754/- paid towards stamp duty for purchase of above properties, I have paid Rs. Rs.51, 43, 754/- out of my personal income which are not undisclosed to the department and now I admit the amount of Rs.31,43,754/- for the asst, year 2014-15 as my undisclosed income and pay the taxes on the same accordingly. In this regard I submit that in my statement recorded on 20.09.2017, us. 132(4) of the Act, at my residence i.e., Villa No.19, Bhavya's Alluri Meadows, Whitefields, Kondapur, Hyderabad in the case of M/s.GRR Holdings, Hyderabad, Shri G.Shyam Prasad Reddy and M/s.GRR Holdings Pvt. Ltd., Hyderabad in reply to question no.13, I have admitted that out of the total stamp duty paid (registration charges) of Rs.51,43,754, I have contributed/paid an amount of Rs. 51,43,754/-for which I cannot explain sources accordingly admitted such payment of Rs.51,43,754/- as my undisclosed income for the financial year 2013-14, relevant to assessment year 2014-15. I reaffirm the same and pay the taxes on such undisclosed income. Thus, the total undisclosed income admitted by in reply to question no(s) 3,4 and 5 of this statement works out to Rs. Rs.37,83,02,754/- and shall accordingly pay taxes on such amount(5) for the relevant asst, year(s).

12.02 The relevant part of the sworn statement recorded of Shri Gaddam Shyam Prasad Reddy in the ITO (Inv), Unit II, Hyderabad on 17.11.2017 is as under.

Q.3 During the course of search proceedings conducted at your residence on 20.09.2017, your statement us. 132(4) of the Act was recorded wherein in reply to question no.9 you had deposed that you had paid/contributed an amount of Rs.34,48,50,000/- out of the total consideration of Rs. 39, 65, 50, 000/- paid to Mrs. S.Jugnee Bhai and D. Murali towards purchase of land admeasuring Ac. 1 1.33 guntas at Kondapur, Hyderabad by M/s. GRR Holdings, Hyderabad In which you and Mr. Syed Mohammed Fayaz are partners. And it was further deposed that the balance amount of Rs.5 crores was stated to have been paid by Mr. Syed Mohd. Fayaz.

On 10.10.2017, statement of Mr. Syed Mohammed Fayaz recorded u/s. 131 (1) Act, wherein vide question no.14 he was asked to give details of his investment in M/s.GRR Holdings, Hyderabad. In his reply he deposed that as his share, he had invested Rs.20 lakhs in M/s. GRR Holdings, Hyderabad. Accordingly, while recording question no.15 of the said statement, he was shown your statement recorded u/s. 132(4) of the Act on 20.09.2017, wherein you had deposed that Mr Syed Mohammed Fayaz had paid/invested/contributed an amount of Rs.5 crores. Ongoing through your statement, he deposed as under:

Yes I have through the statement of Sri G. Shyam Prasad Reddy recorded u/s. 132(4) of the IT Act at his residence on 20-09-2017 at his residence. In his statement, he has deposed that I have paid/contributed Rs. 5,00,00,000/- towards purchase of land

by M/s. GRR Holdings, Hyderabad in which I am a partner, I once again reiterate that I have paid/contributed Rs. 20,00,000/- (Twenty Lakhs only) towards purchase of land. I do not know under which circumstances Mr. G. Shyam Prasad Reddy has deposed that I have paid/contributed Rs. 5,00,00,000/- towards purchase of land by M/s. GRR Holdings, Hyderabad. I once again confirm that I have paid/contributed of Rs. 20,00,000/- only. The above deposition was once again reiterated by Mr. Syed Mohammed Fayaz in his statement recorded u/s.132(4) of the Act. I am showing you the above two statements. Please go through the same and give your comments.

Ans. I do not know as to why Mr. Syed Mohammed Fayaz has denied that he has paid/contributed Rs.5 crores towards purchase of land at Kondapur, Hyderabad by M/s.GRR Holdings, Hyderabad. I once again reiterate that Mr. Syed Mohammed Fayaz did pay/contribute an amount of Rs.5 crores towards purchase of land admeasuring Ac. 11.33 guntas by M/s.GRR Holdings, Hyderabad for a total consideration of Rs.39,65,50,000/-.

Q.4 In your sworn statement recorded u/s.132(4) of the Act on 20.09.2017, in reply to question no. 13 of such statement, you had deposed that M/s.GRR Holdings, Hyderabad had paid stamp duty of Rs.5,51,43,754/- towards registration of land admeasuring Ac.11.33 guntas for a total consideration of Rs.39,65, 50,000/-. When you were asked to explain the sources for payment the stamp duty paid of Rs. 5,51,43,754/, you had deposed that out of the said amount, an amount of Rs.51,43,754/- was paid by you out of your undisclosed income and the balance amount of Rs.5 crores was paid by Mr. Syed Moham1med Fayaz. n the statement of Mr. Syed Moha1med Fayaz, recorded u/s. 131 of the Act on 10.10.2017, in reply to question no. 17 of such statement, he denied to have paid Rs.5 crores towards stamp duty charges. I am showing you his statement recorded u/s 10.10.2017, please go through the same and give your comments.

Ans have gone through the statement and I once again reaffirm that Mr. Syed Mohammed Fayaz, has paid the stamp duty charges of Rs.5 crores on behalf of M/s GRR Holdings, Hyderabad.

13.0 This is a fact on record that the above land is registered to M/s GRR Holdings as per these sale deeds. Further it is also a fact on record that heavy stamp duty and other charges on various dates as tabulated below have been paid to register these lands and both the partners executed these sale deeds in favour of M/s GRR Holdings. The stamp duty & other charges paid towards the land is worked out from the document and tabulated below:

S.No	Document No.	Page No.in document	Amount of duty & other charges paid	Date of payment	Relevant A.Y	A.Y 2014-15- Addition as per facts	A.Y 2015-16- Addition as per facts	A.Y 2015-16- Addition as per facts	Total paid
1	7201/14 (P659/14)	Behind Page No.2	1000000	11/02/14	2014-15	1000000			
2	7201/14 (P659/14)	Behind Page No.2	8311180	25.5.14	2015-16		8311180		
3	7201/14 (P659/14)	Behind Page No.3	2650120	30.5.14	2015-16		2650120		
4	7201/14 (P659/14)	Behind Page No.4	1073960	1.9.14	2015-16		1073960		
6	7200/14 (P658/14)	Behind Page No.2	500000	11.2.14	2014-15	500000			
7	7200/14 (P658/14)	Behind Page No.2	6633180	22.5.14	2015-16		6633180		
8	7200/14 (P658/14)	Behind Page No.3	1966120	30.5.14	2015-16		1966120		
9	7200/14 (P658/14)	Behind Page No.4	886760	4.9.14	2015-16		886760		
10									
1	12540/16 (P660/14)	Behind Page No.2	1000000	4.2.14	2014-15	1000000			
1	12540/16 (P660/14)	Behind Page No.2	1000000	22.5.14	2015-16		100000		
1	12540/16 (P660/14)	Behind Page No.3	5188125	9.9.16	2017-18			5188125	
1	12540/16 (P660/14)	Behind Page No.3	5847500	22.9.16	2017-18			5847500	
1									
1									
1	TOTAL PAID		36056945			2500000	22521320	11035623	36056945
6									

13.01 Further, a letter confirming the stamp duty & other charges was asked from the SRO Rangareddy RO. The amount tabulated above matched with the letter given by the SRO office too. The copy of the SRO letter is pasted below for the reference purpose.

GOVERNMENT OF TELANGANA
REGISTRATION AND STAMPS DEPARTMENT

From
The Joint Sub Registrar I
Registration and Stamps Department,
R.O (OB), Prasanthinagar, Balanagar,
Ranga Reddy District
Hyderabad – 500 072, Telangana State.

To
The Deputy Commissioner
Income Tax, Central Wing
Central Circle – 3(3)
Hyderabad

Ref No: RO (OB) /477 Dated 30.11.2019

Sir

Sub: Calling for information under Sec 133 (6) of Income Tax in case of
M/s GRR Holdings – Regarding


Ref: Your office letter ref No ITBA/COM/17/2019-20/1021260723 (1)
Dated 28-11-2019

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In response to the above mentioned letter, we give hereunder the
information required by you:

Doc No	Market value	Duties paid	date of payment	mode of payment
7200/14	16,64,35,500	99,86,060/-	various dates	challan
7201/14	21,72,56,000	1,30,35,260/-	various dates	challan
12540/16	21,72,55,500	1,30,35,625/-	various dates	challan

The challans for document no 12540/16 were already submitted. The challans for
the documents no 7200/14 and 7201/14 are not readily traceable.

Yours faithfully

Joint Sub Registrar I
Ranga Reddy Dist.

13.02 The details of amount paid in the firm for AY 2014-15 for registering the land is as follows.

Sl. No	Document No.	Sale Consideration paid during the relevant FY	Total Stamp duty and other charges paid
1	7200/2014	(1) By Cheque No 701837 of SBI, Abids Branch dated 11.02.2014 for Rs 1.50 Lakhs. (2) By Pay Order No 002209 drawn on HDFC Bank, Hyderguda Branch, Hyderabad, dated 04.02.2014 for Rs 1.50 Lakhs.	5,00,000
2	7201 of 2014	(1) By Cheque No 701835 of SBI, Abids Branch dated 11/02/2014 for Rs 3.50 Lakhs. (2) By Pay order No 804423 drawn on State Bank of	10,00,000

		Hyderabad, Gunfoundry branch, Hyderabad, dated 04.02.2014 for Rs.3.50 lakhs	
3	12540/16 (P660/2014)	(1) By Cheque No 701836 of SBI, Abids Branch dated 11.02.2014 for Rs 3.50 Lakhs. (2) By Pay order No 804424 drawn on State Bank of Hyderabad, Gunfoundry Branch, Hyderabad, dated 04.2.2014 for Rs 3.50 Lakhs.	10,00,000
Total Consideration		17,00,000	25,00,000

Thus, as could be seen from the above table, the assessee has paid an amount of Rs.17 lakhs towards sale consideration and an amount of Rs.25,00,000/- towards stamp duty and other charges. Since the asset in the form of land is in the name of the firm M/s GRR Holdings, the payment of stamp duty and other charges are unexplained investment u/s 69 of the IT Act totaling to Rs.42,00,000/- is made in the hands of the firm on substantive basis. Penalty proceedings u/s 271(1)(c) are initiated separately for concealment of income.

[Addition u/s 69 – Rs.42,00,000/-]

20. A perusal of the statement shows that for the payment of on-money, the partners have owned up in their individual hands for which the Assessing Officer in their hands has made the addition and this fact has also been accepted by the PCIT where the submission of the assessee before the PCIT and relevant portion of the findings are as under:

“Further contentions of the assessee in the written submission are as under:

1. These sale deeds have already been brought to tax by the Assessing Officer in Assessment Year 2014-15 in the hands of Sri. Gaddam Shyam Prasad Reddy.

2. The Assessing Officer has also brought to tax these sale deeds in Assessment Years 2015-16 and 2017-18 in the hands of the assessee.

3. At the time of recording statement, Sri. Gaddam Shyam Prasad Reddy was not aware of facts of accounting and

bookkeeping records and subsequently filed retraction statement.

4. The proceedings u/s. 263 are mere change of opinion as the Assessing Officer has already taken a view on the matter.

5. The assessee is before Commissioner of Income Tax (Appeals) against the order proposed to be revised. Hence, 263 order cannot be passed.

4. The contentions of the assessee are not acceptable as they do not hold any merit. Even if the assessee's contention at points (1) and (2) above are correct, it does not make the present order proposed to be revised u/s. 263, as not erroneous or not prejudicial to Revenue. The present order dated 12.12.2019 passed u/s. 144 r.w.s. 153A by the Assessing Officer is erroneous and prejudicial to Revenue as it fails to bring to tax the unaccounted investment in the three properties purchased in the name of the assessee during the Assessment Year 2014-15.”

21. It is also an admitted fact that the Assessing Officer has brought to tax the amounts paid in cash for purchase of the properties in the respective A.Ys when these properties were registered. A perusal of the assessment order as well as the submissions made before the PCIT shows that the Assessing Officer has brought to tax the cash portion paid by the assessee for purchase of the properties in the hands of the partners, a fact not disputed by the PCIT. Similarly, the Assessing Officer has also brought to tax the amount of cash paid in the year of registration of the property instead of bringing to tax in the impugned A.Y as suggested by the PCIT. Under these circumstances we have to see as to whether the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue or the view taken by the Assessing Officer is a possible view.

22. A perusal of the questions put by the Inv. Wing during the course of search reveals that the partners have admitted the cash amount paid for the purchase of the properties as their

undisclosed income and offered the same to tax. The Assessing Officer in the assessment order has considered the cheque amount paid and the registration expenses in the hands of the firm whereas he has not brought to tax the cash portion in the hands of the partnership firm but added the same as undisclosed income in the hands of the partners, a fact not disputed by the PCIT in the order passed u/s 263. Once the cash amount is brought to tax in the hands of the partners as per their admission before the Investigation Wing at the time of search, the same should not have been brought to tax in the hands of the firm because that would have amounted to double taxation. Therefore, the view taken by the Assessing Officer in the instant case cannot be said to be not a possible view or that a view which cannot be said to be unsustainable in law.

23. It has been held in various decisions that when the Assessing Officer has taken a possible view, merely because the PCIT does not agree with the view taken by the Assessing Officer, he cannot invoke the jurisdiction u/s 263 of the I.T. Act. The various decisions relied on by the learned Counsel for the assessee support the above proposition.

24. We further find the tax rate for all the three years are same. The assessee in the instant case has offered to tax the cash portion in the respective year of registration as against the date of agreement as suggested by the learned PCIT. We find the Hon'ble Bombay High Court in the case of Rohan Projects (Supra) while holding that when the tax rate is uniform in the present and subsequent A.Ys, then there is no need to continue the litigation has observed as under:

“8. In any event, the amount of Rs.20 crore has been offered to tax in the subsequent assessment year and also taxed.

This Court in the case of CIT v. Nagri Mills Co.Ltd. [1958] 33 ITR 681 (Bom.) has observed as follows:

“3. We have often wondered why the Income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year Corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no Consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other.”

Nothing has been shown to us as to why the above observation will not apply to the present facts.”

25. We, therefore, are of the opinion that once the Assessing Officer has brought to tax the amounts as per the sale deeds in A.Y 2015-16 & 2016-17 in the hands of the assessee firm, a fact brought on record by the PCIT himself, therefore, we are of the considered opinion that the PCIT was not justified in invoking the jurisdiction u/s 263 of the I.T. Act. In this view of the matter, we set aside the order of the PCIT and the grounds raised by the assessee are allowed.

26. In the result, appeal filed by the assessee is allowed.
Order pronounced in the Open Court on 31st January,2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 31st January, 2023
Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. GRR Holdings, C/o P. Murali & Co. C.A. 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Dy. CIT, Circle 3(3) Hyderabad
3	Pr. CIT- Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order