

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.218-220/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2018-19 to 2020-21)**

M/s Dollars Colony
Phase-1, D.No.40-3/1-46
Krishna Nagar, Venkateswarapuram
Vijayawada
[PAN : AACAD6957E]
(अपीलार्थी/ Appellant)

Vs. Asst.Commissioner of
Income Tax
Central Circle-2
Rajahmundry
(प्रत्यर्थी/ Respondent)

**आयकर अपील सं./I.T.A.No.176/Viz/2022 & 177/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2018-19 & 2019-20)**

Asst.Commissioner of Income Tax
Central Circle-2
Rajahmundry

Vs. M/s Dollars Colony
Phase-1, D.No.40-3/1-46
Krishna Nagar
Venkateswarapuram
Vijayawada
[PAN : AACAD6957E]
(प्रत्यर्थी/ Respondent)

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri M.V.Prasad, AR
: Shri M.N.Murthy Naik, CIT(DR)

सुनवाई की तारीख / Date of Hearing

: 21.02.2023

घोषणा की तारीख/Date of Pronouncement

: 16.03.2023

आदेश / O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

I.T.A.No.218-220/Viz/2022

These appeals are filed by the assessee against the order of
Commissioner of Income Tax (Appeals) [CIT(A)], Visakhapatnam-3

dated 11.07.2022 for the Assessment Year (A.Y.) 2018-19 to 2020-21. Since the grounds raised in these appeals are common, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under. Facts are extracted from I.T.A. 218/Viz/2022 .

2. Briefly stated the facts are that the assessee is an AOP deriving income from real estate business, filed it's return of income for the A.Y.2018-19 on 30.09.2018, declaring a total income of Rs.2,25,34,620/-. A search and seizure operation u/s 132 of the Income Tax Act, 1961 (in short "Act") was conducted on 28.01.2021 in the group cases of M/s Ushabala Group in order to unearth the undisclosed income. A notice u/s 153C was issued to the assessee AOP, calling for the return of income. In response to the same, the AOP filed it's return of income, declaring total income of Rs.2,25,34,620/-. During the search & seizure operation, a separate premises at Raja Rammohanroy Street, Powerpet, Eluru was identified, where books containing the date wise receipts and payments, locker keys, blank signed cheques, blank signed promissory notes, blank signed stamp papers, original sale deeds and other documents were found and seized vide Annexures UPF/RP/E/1. The locker keys were identified to be in the name of several individuals who were the


employees and relatives of key persons of Ushabala Group. A total cash of Rs.14.77 crores was seized from such lockers. A statement of Shri Harinath Babu was recorded u/s 132(4) of the Act, wherein, it was confirmed by him, that the loose sheets / books of accounts and all the documents were found and seized vide annexures Ann/UPE/RP/EL-1 to 155 during the course of search operation conducted on 30.01.2021 at the rented premises of M/s Usha Pictures & Financiers and other concerns of M/s Ushabala Group at Raja Rammohanroy Street, Powerpet, Eluru and he did not know contents of loose sheets / books of accounts of all the documents at Raja Rammohanroy Street, Powerpet, Eluru.

2.1. Shri V.V.Bala Krishna Rao is the key person of M/s Ushabala Group and as per the statement recorded u/s 132(4) of the Act on 28.01.2021 and 29.01.2021, in reply to Q.11, he stated that he looks after the financial matters of all the group concerns in the capacity of Managing Director of M/s Ushabala Chits Pvt. Ltd., Ushabala Agro Farms Pvt. Ltd., UBK Chits Pvt. Ltd and VVB Resorts and Hotels Pvt. Ltd., partner in Sai Balaji Theatre and Usha Pictures and main person in Usha Pictures and Finance (HUF). Further Shri V.V.Balakrishna Rao was asked about the concealed record room, wherein, he stated that he does not know about that premises as he has not visited the premises, but he only knows some

old documents are maintained in some rented premises and his accountant, Shri M.Satyanarayana looks after the affairs of that rented record rooms and confirmed that he is shown the statement recorded from one of his employees, Shri Sakinala Harinadh Babu recorded at the rented premises of M/s Usha Pictures & Financiers and other concerns. During the course of statement recorded u/s 131 on 29.07.2021, it was stated that seized cash of Rs.14,77,49,000/- and Rs.47,75,000/- derived from the unaccounted income was not recorded in the regular books of accounts. In reply to the question No.10 of the statement recorded on 18.08.2021, Shri V.V.Balakrishna Rao submitted entity wise cash seized as under :

1	Usha Bala Agro Farms Pvt. Ltd.	3,00,24,000
2	UBK Hotel & Resors Pvt. Ltd.	70,00,000
3	70,00,000/-	65,00,000
4.	Usha Pictures	1,00,00,000
5.	Sai Balaji Theatre	60,00,000
6.	Usha Pictures & Financiers (HUF)	6,00,00,000
7.	Usha Bala Chits Pvt. Ltd.	1,70,00,000
8.	L.V.Beach City	1,60,00,000
	Total	15,25,24,000

2.2. For the sake of clarity and convenience, we reproduce the statement of V.V.Baalkrishna Rao, wherein, it was mentioned by him as under :

**I.T.A. No.218-220/Viz/2022 & 176-177/Viz/2022, A.Y.2018-19 to 2020-21
Dollars Colony Phaze—1, Vijayawada** 

“The AO reproduced the statement of the appellant wherein it was mentioned by him as under :

“Sir, annexures A/UPE/EL/41, 74, 81, 82 and 88 to 155 contains date wise receipts and payments with respect to Usha Bala Group. I submit that these transactions pertaining to the group entities in the above mentioned annexure are rough version of the daily cash receipts and payments. Sir, I declared an amount of Rs.33.37 crores towards IDIS scheme and paid taxes in the F.Y.2016-17.

Sir, Now as a result of search u/s 132 of Income Tax Act, I am admitting an estimated income of Rs.40 crores for all the entities in Ushabala Group put together for the assessment years 2015-16 to 2021-22. The breakup of admission year wise and entity wise will be disclosed at the time of filing of the returns u/s 153A.

Sir, I request the department to adjust the seized cash of Rs.15.26 crores against the admitted income. Please take a lenient view in initiation of penalty proceedings.”

It was further observed by the AO in the assessment order as under :

“The sister concerns of M/s Ushabala Group, M/s L.V.Beach City Property Promoters and M/s LS Property Promoters are deriving income from the assessee AOP, M/s Dollars Colony, towards share of profit from real estate activity. As per the tripartite agreement entered into, the lands belonging to M/s LV Beach City Property Promoters and M/s L.S.Property Promoters in Chennai were agreed to be developed by M/s SK Developers, Chennai as per the “Agreement of Development” dated 14.08.2014, vide pages 22 to 43 of seized material annexure A/UBC/17, under the assessee AOP. The share of plots based on extent of land was made vide “Supplementary Agreement” dated 16.01.2017, vide pages 73 to 77 of seized material annexure A/UBC/17. As per the agreement, land to the extent of Acs. 15.0 is to be developed in the name of the assessee AOP and to be materialized by M/s SK Developers. After development of the plots, SK Developers is to be given 15% (in the extent ratio) and the remaining 85% to be held by the assessee AOP. The plots are to be sold by making the registration by M/s LV Beach City Property Promoters and M/s LS Property Promoters.”

2.3. From the above statement, the AO stated that on money was received over and above the sale consideration in respect of plots and land sold in Chennai. The AO illustrated through screen shots, wherein,

he stated that excess consideration was received for various plots sold. He held that entries in the handwritten books were compared with the plots sold as submitted by Sri VV Balakrishna Rao and various amounts of on money received over and above the sale consideration shown in the sale deed was observed with regard to the sale of plots in Dollars Colony, Phase-1. The AO has tabulated the excess consideration received in cash as was observed from the narration of entries in the handwritten books. The AO further observed that the seized material containing in the handwritten books, some of the transactions pertaining to receipt of on money was entered in the regular books of accounts. He further held that the excess consideration received to the tune of Rs.2.69 crores is 55.5% share of Sri V.V.Balakrishna Rao and Smt. V.Usha Rani and the remaining share of 44.50% was received by the remaining directors / partners. Hence, the total on money received above the sale consideration on sale of plots was worked out at Rs.4.85 crores in the hands of the assessee for the financial year under consideration. The AO worked out the undisclosed income of Dollars Colony, AOP at Rs.1,60,41,171/-. The AO asked the assessee to explain as to why the above amount should not be brought to tax towards unaccounted income determined as per seized handwritten books and documents seized during the course of search,

vide annexures UPF/RP/EL/41,74,81,82,90 to 155. In response to the above, the assessee stated as under :

- a. There is duplication of entries and transactions which were not materialized.*
- b. Rough version of daily cash receipts and payments which contain some duplicate entries, most of the transactions are recorded in the regular books of accounts.*
- c. These books are made for internal purpose and to have the idea of the transactions, rather than the amount of transactions.*
- d. Rough workings and hence cannot be categorised as real and authentic.*
- e. The receipts and payments which were written on some loose papers / slips were considered as real transactions by the department and the notings on such loose papers cannot constitute cogent evidence.*

2.4. After considering the submissions, the AO did not accept the above objections / explanation of the assessee by holding that he had already discussed the modus operandi of unaccounted income earned by the assessee on the basis of seized material and also the failure of the assessee to furnish any evidence in support of his claim about duplication of entries, rough books and some transactions. The AO further concluded that the assessee failed to furnish any credible evidences in support of his claim made by him. Accordingly, the unaccounted income of excess sale consideration received in cash for sale of plots of Rs.1,60,41,171/- worked out on the basis of the stated incriminating material found and

seized was treated as undisclosed income of the assessee and added to the returned income.

3. On being aggrieved, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) after considering the submissions made by the assessee, estimated the profit on unaccounted sales @12.5%.

4. On being aggrieved, the assessee preferred an appeal before the Tribunal by raising the following grounds :

1. *The learned CIT(Appeals) is erred in facts and law while passing the order.*
2. *The Learned CIT(Appeals) is not justified in estimating the income at 12.5% basing on the unaccounted sales arrived at by the Assessing Officer which itself arrived without proper evidences that the assessee has derived unaccounted sales.*
3. *The Learned CIT(Appeals) ought to have appreciated that very issue of notice u/s 153C is bad in law and without jurisdiction.*
4. *The Learned CIT(Appeals) ought to have appreciated that the assessment made by the Assessing Officer itself is not valid as the satisfaction is not Assessment Year specific and incriminating evidence specific.*
5. *The Learned CIT(Appeals) ought to have appreciated that the Assessing Officer is not justified in considering the receipts and payments made in the hand written book as genuine transactions even though the appellant categorically stated that they are only rough estimates and rough workings.*
6. *The Learned CIT(Appeals) also ought to have appreciated that while arriving at the unaccounted sales by estimating the price of the plots with surmises and conjectures without any corroborative evidences.*

7. The Appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of appeal.

The Ld.Counsel for the assessee brought to the notice of the Tribunal that the assessee furnished a detailed reply opposing for the proposed addition. Further, it was the contention of the assessee that on perusal of such material, it was found that the material contained copies of Tripartite agreement entered between S.K.Developers, Usha Pictures and Financiers, L.V.Beach City property promoters and LS Property promoters and vouchers / acknowledgements signed by Shri V.V.Balakrishna Rao, indicating receipt of certain amounts through cheque. The rest of the papers are simple scribbling made on certain papers, which do not contain any description, author of the document, signature of any party etc. and therefore, they are only dumb documents carrying no evidentiary value. It was the further contention of the assessee that the department has only estimated excess consideration received which could not derive any concrete evidence out of such scribbling found in the impounded diaries which itself shows that they are only rough estimates and same version was also deposed and stated by Shri V.V.Balakrishna Rao. Further the member of AOP, Shri V.V.Balakrishna Rao, at the time of recording statements u/s 132(4) of the Act dated 29.07.2021 and 18.08.2021, reiterated the fact that the

receipts and payments in the seized annexure are rough version of cash book and it also includes certain bank transaction shown in the regular books of accounts, certain transactions which were not materialized and duplication of entries. Further the assessee AOP in it's reply had stated that it had not received any consideration over and above the sale value reflected in the regular books of accounts. The assessee further contended that after considering the arguments, the AO has made an addition of Rs.1,60,41,171/- as undisclosed income and the Ld.CIT(A) estimated the profit @12.5% on 1,60,41,171/-.

Before us, the main contention of the assessee is there is no evidence in the seized material did not contain any evidence to show that the assessee AOP had received sale consideration over and above the amount mentioned in the books of accounts. Search was conducted in the Ushabala group and other sister concerns, but, there is no evidence to substantiate that the assessee AOP had received Rs.1,60,41,171/- over and above the sale consideration mentioned in the books of accounts. But the Ushabala Group, LV Beach City Property Promoters and LS Property Promoters are members in AOP. The Ld.Counsel for the assessee has brought our attention to the seized documents which were mainly relied by the AO. The Ld.AO also affixed these impugned documents in the

assessment order. The extract of para 14.1.1 and 14.1.2 in page No.24 and 25 of the assessment order, in which the AO stated is as under :

“14.1.1. Excess consideration received in cash : In the case of the assessee AOP, M/s Dollars Colony, it is observed from the seized material containing the said handwritten books that, on money is received over and above the sale consideration in respect of plots and lands sold in Chennai. As an illustration, the screenshot below has entry “LV Beach City Plot No:18 – Rs.1,93,800/- and LV Beach City Plot 19 – Rs.6,43,600”, which pertains to excess consideration received from Dollars Colony Phase-1 for various plots sold. In the said entry, “55.50% is mentioned, which indicates the shareholding of Sri VV Balakrishna Rao and Smt. V.Usharani in both LS Property Promoters and LV Beach City Property Promoters at 55.50%.

	19-11-18	Request	
17-11-18 Balance			1,78,73,541.00
20-11-18 @ 2026 Transfered	174		14,638.00
USE + M/s Salary Advance			22,792.00
Dividend L-19-3 Bar 2018			2,400.00
LV Beach City Plot No. 18			1,93,800.00
LV Beach City Plot No. 19			6,43,600.00
20-11-18 @ 2026 Transfered			7,87,50,771.00
20-11-18 @ 2026 Transfered			6,19,491.00
			78,14,02,800.00

14.1.2. As another illustration, with regard to the transactions pertaining to LV Beach City Promoters, Dollars Colony and LS Property Promoters in the said handwritten books is reproduced as below :

I.T.A. No.218-220/Viz/2022 & 176-177/Viz/2022, A.Y.2018-19 to 2020-21
Dollars Colony Phaze—1, Vijayawada

8-5-19 Receipts

7.5.19 Balance	5,91,19,928.95
WBC 874 Salaries	1,66,670.00
WBC Hyd Treatment	19,981.00
WBC to do LSA	60,000.00
WBC P. to do LSA	22,450.00
WBC P. to do LSA	30,000.00
LV - 874 Salaries	9,62,430.00
874 Salaries	1,12,21
874 Salaries	6,08,51,544.95
874 Salaries	3,20,337.00
	<u>6,05,31,20,145</u>

After considering the seized material, the AO has opined that the entries in the said hand written books were compared with the list of plots sold as submitted by Sri VV Balakrishna Rao and the following amounts of on money received over and above the sale consideration shown in the sale deed are observed with regard to the sale of plots in Dollars Colony Phase-1 and he has given the details of excess consideration received in cash as observed from the narration of the receipt entries in the handwritten books. On this aspect, the main contention of the assessee is that there is no mention of name of assessee AOP in the above mentioned seized material. Therefore, the AO has wrongly come to a conclusion that the assessee AOP has received on money to the extent of Rs.1.6 crores. He further contended that the share of Shri V.V.Balakrishna Rao and Smt. V.Usha Rani is 55.5% and the

Directors of AOP are having 44.5% share. Accordingly, the AO has bifurcated the excess sale consideration received at Rs.2,69,59,755/- and made the addition in the hands of AOP at Rs.1,60,41,171/- towards its share. He further contended that there is no single piece of evidence to establish that the assessee AOP has received on money and the AO also failed to examine the purchasers of the plots. Therefore, he pleaded that in the absence of any incriminating material regarding on money transaction, the AO is not justified to make addition in the hands of assessee AOP and the Ld.CIT(A) also without considering the incriminating material wrongly estimated the profit @12.5% against the addition made by the AO. The assessee has strongly relied on the decision reported in the case of DCIT Vs. Angel Infra vide I.T(SS)A No.94/AHD/2018 and the decision of Hon'ble Gujarat High Court in CIT Vs. Maulik Kumar K.Shar [2008] 307 ITR 137, wherein, it was held that *“where no enquiry was made by the AO to substantiate the veracity of loose paper to collect cogent material / evidence to establish that cash received by the assessee, the “other person” (there should be evidence of actual cash transaction to support the entries in the loose paper) no addition can be made in the hands of “other person”. Similarly, revenue has no to prove with corroborative evidence that on-money was received as recorded in the*

loose paper, or the entries in the seized documents actually represented the sales made by the assessee, before he acquires jurisdiction to make assessment u/s 153C.” In the present case on hand also, the AO has not made any enquiries and even the impugned documents do not contain the name of the assessee AOP to establish that the assessee AOP has received on money over and above the sale consideration.

4.1. The assessee also brought to our notice that satisfaction should be assessment year specific. He further submitted that satisfaction should be indicating the assessment year and incriminating evidence should be relatable to the assessment year. A general satisfaction which is vague, will not meet the requirement of law to initiate the proceedings u/s 153C of the Act. In the present case also, the AO failed to indicate the assessment year and incriminating evidence relatable to the relevant assessment year. On this aspect, the Ld.Counsel for the assessee has relied on the decision of Hon’ble Bombay High Court in the case of CIT Vs. Sinhgad Technical Education Society [2015] 63 Taxmann.com 14, wherein, it was held that where the seized documents are not in the name of the assessee, no action can be taken u/s 153C and further entire decision being based on huge amounts revealed from seized documents not being supported by actual cash passing hands, additions were not

sustainable. In the present case on hand also, we have already discussed supra that the impugned documents which were affixed in page No.25 of the assessment order did not contain the name of the assessee, establishing that the assessee received on money beyond the sale consideration mentioned in the sale deeds. The assessee also relied on the decision in the case of K.V.Laxmi Savitri Devi Vs. ACIT 60 DTR 148, wherein it was held by the ITAT Hyderabad Bench that “ no addition can be made on the basis of a loose paper which does not contain the name and the date of payment. The department is precluded in drawing inferences on the basis of suspicion, conjecture and surmises and no addition can be made on the basis of such dumb document or loose sheets. Therefore, he pleaded that the orders passed by the AO as well as the Ld.CIT(A) be set aside.

5. On the other hand, the Ld.DR submitted that Shri V.V.Balakrishna Rao, Ushabala Group, LV Beach City Property Promoters and LS Property Promoters are members of AOP and the documents which were seized by the revenue clearly establish that the on money received over and above the sale consideration mentioned in the sale deeds and the AO has rightly made the addition of Rs.1.6 crores in the hands of the assessee. He further contended that the Ld.CIT(A) also erred in estimating at 12.5% on

the addition made by the AO. Revenue preferred cross appeal vide I.T.A. No.176/Viz/2022. He pleaded that the assessment order passed by the AO is to be upheld.

6. We have heard both the parties and perused the material available on record. It is an admitted fact that the impugned document does not contain the name of the assessee AOP and there is no evidence to establish that the AOP had received on money beyond the sale consideration mentioned in the documents. It is also an admitted fact that the AO has not specified the assessment year and the incriminating evidence related to the assessment year. During the course of search proceedings, the AOP premises were also searched, but they have not seized any incriminating material to establish that the assessee AOP has received sale consideration by way of on money beyond the sale consideration mentioned in the sale deed. In this case, admittedly the AO has not examined the purchasers, to establish whether the purchasers have paid any on money beyond the sale consideration mentioned in the sale deed. In view of the aforesaid facts and circumstances and various decisions relied by the assessee, we are of the view that the revenue failed to establish that the assessee AOP had received sale consideration over and above the sale consideration mentioned in the books of

accounts. Therefore, the Ld.CIT(A) is also erred in estimating the profit at 12.5% on the addition made by the AO in the absence of any incriminating material against the assessee AOP. Therefore, the grounds raised by the assessee are allowed. We direct the AO to delete the additions made in the hands of assessee AOP.

I.T.A.No.176/Viz/2022, A.Y.2018-19

7. The revenue filed appeal before the Tribunal on 16.09.2022, since, the Ld.Principal Commissioner of Income Tax had issued authorisation in view of the tax effect reported at Rs.52,09,794/- in the AAO report, which is more than the threshold limit prescribed in CBDT Circular No.17/2019 dated 08.08.2019. However, it is subsequently verified and found by the revenue that the tax effect was inadvertently reported at Rs.52,09,794/- as against correct tax effect of Rs.49,87,701/-. In view of the above circumstances and on the facts of the case, since the appeal filed before the ITAT is due to inadvertent mistake in working out the tax effect and since the appeal filed is not maintainable, the revenue pleaded, that it may be permitted to withdraw the appeal.

8. We have heard the Ld.DR. As submitted by the revenue, it is observed, the appeal was filed before the Tribunal since the tax effect

was inadvertently reported at Rs.52,09,794/- as against the correct tax effect of Rs.49,87,701/-, which is below the threshold limit as per the CBDT Circular No.17 of 2019 dated 08.08.2019. Keeping in view the CBDT Circular and also since the case does not fall under any of the exceptions cited in the CBDT Circular No.3 of 2018, dated 11.07.2018, the appeal filed by the revenue is not maintainable and hence, dismissed.

I.T.A.No.177/Viz/2022, A.Y.2018-19

9. The revenue filed cross appeal against the order of the Ld.CIT(A) vide DIN & Order No.ITBA/APL/S/250/2022-23/1043801301(1), saying that the Ld.CIT(A) is not correct in estimating the profit @12.5% on the addition made by the AO to the extent of Rs.1,60,41,171/-. On this aspect, we have already given finding in I.T.A. No. 218-220/Viz/2022 for the A.Y.2018-19 to 2020-21. Since the appeals filed by the assessee are allowed as adjudicated above, the cross appeal filed by the revenue are dismissed.

10. In the result, appeals filed by the assessee are allowed and the cross appeals filed by the revenue are dismissed.

Order pronounced in the open court on 16th March, 2023.

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 16.03.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Dollars Colony, Phase-1, D.No.40-3/1-46 Krishna Nagar, Venkateswarapuram, Vijayawada
2. राजस्व/The Revenue - The Asst.Commissioner of Income Tax, Central Circle-2, Rajahmundry
3. The Principal Commissioner of Income-Tax (Central), Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam