

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

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

ITA Nos. 71 & 72/Hyd/2023		
Assessment Years: 2018-19 & 2019-20		
Smt. Ponguru Sharani Nellore PAN:DGRPS0272Q (Appellant)	Vs.	Asstt. C. I. T. Central Circle 2(3) Hyderabad (Respondent)
Assessee by:	Smt. S. Sandhya, Advocate	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	16/03/2023	
Date of pronouncement:	17/03/2023	

ORDER

Per R.K. Panda, A.M

The above two appeals filed by the assessee are directed against the common order dated 30.11.2022 of the learned CIT (A)-12 Hyderabad, relating to A.Ys.2018-19 & 2019-20 respectively. Since identical grounds have been raised by the assessee in both the appeals, therefore, for the sake of convenience, both the appeals were heard together and are being disposed of by this common order.

2. First we take up ITA 71/Hyd/2023 for the A.Y 2018-19. Facts of the case, in brief, are that the assessee is an individual and filed her return of income for the A.Y 2018-19 and 2019-20, the details of which are as under:

A.Y	Date of filing ITR	Total income admitted
2018-19	23.07.2018	Rs. 76,35,810
2019-20	07.08.2019	Rs. 75,09,970

3. Subsequently, a search and seizure operation u/s.132 of Income Tax Act was conducted in the case of M/s. KMR Estates and Builders Private Limited on 04-02-2019. During the course of the search, certain incriminating evidences with regard to receipt of on money from buyers of villas were found and seized, including the assessee, who is one of such buyers. Notice u/s 153C was issued to the assessee for AY 2018-19 on 23.02.2021 and in response to the same, the assessee filed her return of income u/s. 153C for A.Y 2018-19 on 09.03.2021 admitting total income of Rs.76,35,810/-. For A.Y 2019-20, assessment proceedings u/s. 143(3) were initiated by issuing notice u/s. 143(2) dated 23.02.2021. Subsequently, assessment were completed for both the AYs by making the following additions to the income returned:.

A.Y	Section	Nature of addition	Amount (in Rs.)	Assessed Income (in Rs.)
2018-19	153C	Unexplained investment in villa u/s 69	1,11,64,179	1,87,99,989
2019-20	143(3)	Unexplained investment in villa u/s 69	53,35,821	1,28,45,791

4. Before the CIT (A), the assessee apart from challenging the addition on merit challenged the validity of the notice issued u/s 153C. However, the CIT (A) dismissed the appeal filed by the assessee on both counts.

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

1. *The order of the Ld. Commissioner of Income Tax(A) (in short "CIT(A) is erroneous both on facts and in law.*
2. *The Id. CIT(A) ought to have provided proper opportunity of before disposing of the appeal.*
3. *The Id. CIT(A) erred in confirming initiation of proceedings u/s 153C of the I.T. Act when no material belonging to the appellant was found during search.*
4. *The Id. CIT(A) erred in confirming the addition of Rs. 1,11,64,179/- made by the Assessing Officer without considering the detailed explanation submitted by the appellant.*
5. *The Ld. CIT(A) ought to have seen that the total amount spent by the appellant for acquisition of the property is more than the amount found in the seized material belonging to KMR Estates and Builders Pvt. Ltd.*
6. *The Id. CIT(A) erred in relying on the assessments made in the case of other purchasers villas. The Id. CIT(A) ought to have seen that the appellant took possession of the constructed area which was incomplete and incurred additional expenditure by herself and the total cost incurred is more that the value for which the sales were effected which was by the builder.*
7. *The Id. CIT(A) erred in comparing the case of this assessee with the case of other purchasers of the villas without providing the data of the other purchasers to the appellant seeking his explanation.*
8. *The Id. CIT(A) ought to have seen that it is not correct to rely on the statement recorded from Sri K. Madhava Reddy without providing opportunity of cross examination of Sri Madhava Reddy by the appellant.*
9. *The Id. CIT(A) erred in confirming the action of the AO in charging interest u/s 234B of Rs. 42,06,076/- and 234C of Rs. 18,215/-.*
10. *Any other ground/grounds that may be urged at the time of hearing."*

6. The learned Counsel for the assessee submitted that no sufficient opportunity was granted to the assessee to substantiate her case. Further, the CIT (A) has not considered the written submission filed by the assessee properly. She submitted

that in the interest of justice, the assessee should be given an opportunity to substantiate her case.

7. The learned DR, on the other hand, strongly challenged the submissions made by the learned Counsel for the assessee. He submitted that the learned CIT (A), on the basis of the written submission filed by the assessee, has passed a detailed order and therefore, it cannot be said that no sufficient opportunity was granted to the assessee. He submitted that the order of the CIT (A) is very exhaustive and should be upheld and the grounds raised by the assessee should be dismissed.

8. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A). We find the AO in the instant case made addition of Rs.1,11,64,179/- u/s 69 of the I.T. Act as unexplained investment in Villa on the basis of certain incriminating evidences found during the course of search in the case of M/s. KMR Estates & Builders (P) Ltd on 4.2.2011 which has been upheld by the CIT (A). It is the submission of the learned Counsel for the assessee that the CIT (A) has not granted proper opportunity before disposal of the appeal and has not considered properly the detailed explanation submitted by the assessee. It is her submission that the CIT (A) while sustaining the addition made by the Assessing Officer has relied on the assessment made in the case of other purchasers of villa without considering the fact that the assessee took possession of the constructed area which was incomplete and incurred additional expenditure by herself and the total cost incurred is more than the value for which the sales were effected by the builders. It is also the submission of the learned Counsel for the assessee that no proper opportunity was granted

to cross examine Shri Madhav Reddy, Managing Director of KMR Estates & Builders (P) Ltd by the assessee on the basis of whose statement the addition has been made. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the learned CIT (A) with a direction to grant one last opportunity to the assessee to substantiate her case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the learned CIT (A) and substantiate her case by filing the requisite details without seeking any adjournment under any pretext failing which the learned CIT (A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee in ITA No.71/Hyd/2023 for the A.Y 2018-19 are allowed for statistical purposes.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

ITA No.72/Hyd/2023 – A.Y 2019-20

10. The grounds raised by the assessee read as under:

“1 The order of the Ld. Commissioner of Income Tax(A) (in short "CIT(A)) is erroneous both on facts and in law.

2 The Ld. CIT(A) ought to have provided proper opportunity of before disposing of the appeal.

3. The Ld. CIT(A) erred in confirming the addition of Rs 53.35,821/ made by the Assessing Officer without considering the detailed explanation submitted by the appellant.

4. The Ld. CIT(A) ought to have seen that the total amount spent by the appellant for acquisition of the property is more than the amount found in the sized material belonging to KMR Estates and Builders Pvt Ltd.

5. The Ld. CIT(A) erred in relying on the assessments made in the case of other purchasers villas. The Ld. CIT(A) ought to have seen that the appellant took possession of the constructed area which was incomplete and incurred additional expenditure by herself and the total cost

incurred is more than the value for which the sales were effected by the builder.

6. The Id. CIT(A) erred in comparing the case of this assessee with the case of other purchasers of the villas without providing the data of the other purchasers to the appellant seeking his explanation.

7. The Id. CIT(A) ought to have seen that it is not correct to rely on the statement recorded from Sri K. Madhava Reddy without providing opportunity of cross examination of Sri Madhava Reddy by the appellant.

8. The Id. CIT(A) erred in confirming the action of the AO in charging interest u/s 234B of Rs. 14,45,148/- and 234C of Rs. 3,906/-.

9. Any other ground/grounds that may be urged at the time of hearing”.

11. After hearing both sides, we find the grounds raised by the assessee in the instant appeal are identical to the grounds raised in ITA No.71/Hyd/2023 for the A.Y 2018-19. We have already decided the issue and the grounds raised by the assessee have been allowed for statistical purposes. Following similar reasonings, the grounds raised by the assessee are allowed for statistical purposes.

12. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 17th March, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated March, 2023.

Vinodan/sps

Copy to:

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3	CIT-12, Hyderabad
4	Pr. CIT, Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order