

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos. 114 & 94/Hyd/2021
(निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16)

Joint Commissioner of Income Tax (OSD),
Circle-5(1) /
Asst. Commissioner of
Income Tax,
Circle-5(1),
Hyderabad
अपीलार्थी / Appellant

Vs. Sri Siva Prasad Nidamarthy,
Hyderabad
[PAN No. ABVPN0435E]
प्रत्यर्थी / Respondent

सी.ओ./ C.O. Nos. 14 & 15/Hyd/2021
(Arising out of ITA Nos. 114 & 94/Hyd/2021)
निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16

Sri Siva Prasad Nidamarthy,
Hyderabad
[PAN No. ABVPN0435E]
क्रॉस ऑब्जेक्टर / Cross-Objector

DCIT, Circle-5(1),
Vs [Erstwhile Circle-16(1)]
Hyderabad
प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P.N. Murthy, AR
राजस्व द्वारा/Revenue by: Shri K.P.R.R. Murthy, DR

सुनवाई की तारीख/Date of hearing: 11/04/2023
घोषणा की तारीख/Pronouncement on: 26/04/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Challenging the order(s) passed by the CIT(Appeals)-4, Hyderabad,
("Ld.CIT(A)") in the case of Sri Siva Prasad Nidamarthy ("the assessee") for

the assessment years 2014-15 & 2015-16, Revenue preferred these appeals and the assessee preferred cross-objections. For the sake of convenience, we dispose of these appeals by this common order, taking the appeal of Revenue and cross objections of assessee for the assessment year 2014-15 as lead cases.

2. It could be seen from the record that the appeals and cross objections are filed with delay and the reasons attributed for the delay in filing these appeals of Revenue is pandemic whereas the assessee pleads that he was being diagnosed with Covid-19 and admitted to Yashoda Hospital, Somajiguda, Hyderabad on 13/03/2021 and discharged on 19/03/2021. In respect of pandemic period, the Hon'ble Supreme Court in the Suo Motu proceedings in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 held that in cases, where the limitation would have expired during the period between 15/03/2020 and 28/02/2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01/03/2022, and in the event of actual balance period of limitation remaining with effect from 01/03/2022 is greater than 90 days, that longer period shall apply. On account of this, delay in Revenue's appeal is condoned.

3. Insofar as the delay in cross objection is concerned, there is no reason as to why the explanation of the assessee cannot be accepted. As a matter of fact, learned DR fairly concedes to condone the delay. Recording the same, we condone the delay and proceed to hear the matter on merits.

4. Two additions are in question in this appeal. One is in respect of unexplained cash deposit of Rs. 1,00,53,000/- under section 69A of the Act and the other is Rs. 2.35 crores under section 68 of the Act. Brief facts of the case are that the assessee is the Managing Director of M/s. Lampex Electronics Ltd., Hyderabad and did not file his return of income for the

assessment year 2014-15. However, pursuant to the notice under section 148 of the Income Tax Act, 1961 ('the Act'), he filed the return of income declaring an income of Rs. 17,01,920/-.

5. During the course of assessment proceedings, learned Assessing Officer found a sum of Rs.6,39,42,000/- stood deposited in SBH, Sanathnagar and Kukatpally Branches. According to the learned Assessing Officer, assessee explained such deposits only to the extent of Rs. 5,38,89,000/- leaving a balance of Rs. 1,00,53,000/- unexplained and, therefore, added the same to the income of the assessee.

6. Further, learned Assessing Officer observed that out of the total cash deposits in various bank accounts, an amount of Rs. 2.35 crores was received from M/s. Royal Home Constructions towards Refundable Fidelity Guarantee as per the Development Agreement dated 26/02/2007. According to the learned Assessing Officer assessee, though furnished the confirmation from M/s. Royal Home Constructions, but failed to furnish the copy of accounts of the assessee in the books of M/s. Royal Home Constructions nor the return of income of M/s. Royal Home Constructions. Though M/s. Royal Home Constructions was assessed to tax earlier, from assessment year 2013-14, they also stopped filing return of income and the Income Tax Inspector deputed to serve the notice to M/s. Royal Home Constructions reported that no such office was existing. Learned Assessing Officer, therefore, concluded that the creditworthiness of M/s. Royal Home Constructions and the genuineness of transaction is not established and, therefore, added such amount to the income of the assessee.

7. In appeal, the assessee submitted copies of the declaration under the Income Disclosure Scheme, 2016 (IDS), bank account statements, reconciliation statement, copy of the letter submitted before the learned Assessing Officer. In respect of the first addition on a reappraisal of all this material, learned CIT(A) concluded that only Rs. 5,21,199/- remain unexplained and has to be sustained. In respect of the second addition,

learned CIT(A) recorded that the assessee filed the copies of the Deed of Infrastructure Development Agreement dated 14/03/2017, confirmation letter 23/04/2015 from the Managing Director of M/s. Royal Home Constructions supported by his affidavit and after obtaining the remand report. On a perusal of the same, learned CIT(A) reached a conclusion that the assessee satisfactorily discharged the onus cost upon it and, therefore, the second addition also was to be deleted.

8. Aggrieved by the action of the learned CIT(A), the Revenue filed this appeal; whereas, the assessee filed the cross objection supporting the findings of the learned CIT(A).

9. It is the submission on behalf of the Revenue that while deciding the additions in this matter, learned CIT(A) did not give an opportunity to the learned Assessing Officer to verify the various bank accounts and the other material furnished by the assessee and, therefore, the learned Assessing Officer needs to be given an opportunity to verify the material and offer his comments. It is the submission of the Ld. DR that the total cash deposits were taken at Rs. 6,08,60,199/- by the learned CIT(A) as against Rs. 6,64,06,799/- adopted by the learned Assessing Officer in the assessment order and in this process the learned CIT(A) failed to seek the remand report from the learned Assessing Officer. Learned DR submits that IDS declaration made by the assessee was taken by the learned CIT(A) at Rs. 5,53,68,000/- whereas the actual amount declared by the assessee in IDS was only Rs. 5,37,17,000/- and thus the excess relief granted to the tune of Rs. 16,51,000/- is not tenable. Learned DR further submitted that the agricultural income of Rs. 28.5 lakhs was stated by the learned CIT(A) as accepted in the original assessment itself whereas there is no original assessment in this matter for the assessment year 2014-15 and as per the letter of the assessee filed on 06/02/2017, the amount of Rs. 3,02,17,000/- declared in IDS includes agricultural income of Rs. 28.5 lakhs and therefore the learned CIT(A) committed error in granting relief of such amount. Even in respect of Rs. 11,84,400/- which was claimed to have been received by

the assessee from his sister, the assessee failed to submit any proof in respect of identity and creditworthiness of such person or the genuineness of transaction. For these reasons, learned DR submitted that the matter needs to be verified by the learned Assessing Officer and therefore, the same has to be restored to the file of the learned Assessing Officer.

10. Per contra, it is the submission of the learned AR that it could be seen from the letter dated 20/12/2017 submitted by the assessee during the course of assessment proceedings before the learned Assessing Officer that the assessee furnished all the bank account details to the learned Assessing Officer and also clarified the receipts of Rs. 28.5 lakhs and also Rs. 11,84,400/- which learned DR is not disputing but the learned Assessing Officer simply brushed aside the submissions made by the assessee and without advertent to the contentions of the assessee in his explanation offered during the assessment proceedings, the learned Assessing Officer proceeded to make the addition. Learned AR submits that the learned CIT(A) only reappraised the material that was available on record on this aspect and proceeded to decide the issue. Since the learned CIT(A) did not do anything more than what the learned Assessing Officer was expected to do but did not do, there is no need to restore the issue to the file of the learned Assessing Officer and the learned CIT(A) is right in his approach. It could be seen from the grounds of the cross objections the assessee supported the order of the learned CIT(A) on this aspect.

11. We have gone through the record in the light of the submissions made on either side. There is no dispute that the letter dated 20/12/2017 was filed by the assessee before the learned Assessing Officer during the assessment proceedings. This letter reads that in the notice issued under section 148 of the Act the learned Assessing Officer referred to the total cash deposits to the tune of Rs. 6,64,06,799/- and the assessee explained to the learned Assessing Officer that such amount was incorrectly mentioned, but as a matter of fact, the cash deposits in the respective bank

accounts were only to the tune of Rs. 5,98,72,400/-. The assessee had also given the breakup figures in respect of various bank accounts.

12. Learned Assessing Officer did not comment on this aspect of verification of these figures. The learned Assessing Officer however, spoke of the figures of Rs. 3,23,31,000/- in respect of state bank of Hyderabad, Sanathnagar branch and Rs. 3,16,11,000/- in respect of state Bank of India, Kukatpally branch. When the assessee furnished the account wise details giving the figure of Rs. 2,35,60,000/- in respect of state bank of Hyderabad, Sanathnagar branch and Rs. 3,03,29,000/- in respect of state Bank of India, Kukatpally branch, it is imperative for the learned Assessing Officer to verify the details and to comment on this aspect, which the learned Assessing Officer did not do.

13. As a matter of fact, the assessee furnished the details of four accounts out of which two accounts are with SBH, Sanathnagar Branch, one account with SBI, Kukatpally and yet another with ICICI Bank, Kukatpally. It could be seen from the record that the assessee declared the agricultural income his return and the learned Assessing Officer did not dispute the same. So also the learned Assessing Officer did not dispute the internal transfers in the cash withdrawals and re-deposits.

14. Learned CIT(A) considered the information furnished by the assessee in the light of the account statements with various banks and in that process, as could be seen from the impugned order, the learned CIT(A) considered the amount lying with the Standard Chartered Bank. What all the learned CIT(A) did in this matter is that he considered the figures furnished by the assessee in the letter dated 20/12/2017 and also the bank statement of the assessee in the Standard Chartered Bank, the total of which came to Rs. 6,08,60,199/- and subtracted therefrom the amount that was declared in IDS and the undisputed agricultural income, internal transfers and cash withdrawals and re-deposits. It is not open for the

Revenue now to contend that opportunity is not granted to the learned Assessing Officer to verify the details of the bank accounts.

15. As stated earlier, the assessee furnished such details in the letter dated 20/12/2017 and the other details in the return of income but, having an opportunity, the learned Assessing Officer did not verify the same. The amount in Standard Chartered Bank account is only Rs. 9,86,799/- and this amount is considered by the learned CIT(A) only after verification of the bank statement. Since the learned CIT(A) did nothing more than what the learned Assessing Officer was expected to do, on the same material that was available before the learned Assessing Officer, we do not find any need to restore the issue to the file of the learned Assessing Officer.

16. With this view of the matter, we are of the considered opinion that the ground No. 1 of Revenue's appeal is devoid of merits and is liable to be dismissed. Ground No. 1 of cross objections is consequently allowed.

17. Now coming to ground No. 2 of Revenue's appeal and ground No. 2 of assessee's cross objections, it relates to the addition of Rs. 2.35 crores on the ground that the assessee failed to establish the creditworthiness of the M/s. Royal Home Constructions and the genuineness of transaction of the Refundable Fidelity Guarantee as per the development agreement dated 26/02/2007. According to the learned Assessing Officer, the assessee furnished the copy of certification of confirmation from M/s. Royal Home Constructions, but failed to furnish the copy of accounts of the assessee in the books of M/s. Royal Home Constructions or their return of income or the copy of agreement dated 20/02/2007.

18. Learned Assessing Officer recorded that the confirmation letter furnished by the assessee shown that an amount of Rs. 2.35 crores was paid to the assessee during the financial year 2013-14 and Rs. 3.03 crores was paid during the financial year 2014-15 in cash from M/s. Royal Home Constructions towards refundable fidelity guarantee under the

development agreement dated 26/02/2007 and also a further supplementary agreement. Notices sent to M/s. Royal Home Constructions to different addresses could not be served stating that 'office left'. The assessee was served with notice to produce the Managing Partner/Authorised Representative of M/s. Royal Home Constructions. The notice sent to M/s. Royal Home Constructions through the Inspector of the office also could not be served because no such office is found in such address. Even in the subsequent address furnished by the assessee, the notice could not be served because no office was running there, but only some furniture was there. Enquiries revealed that M/s. Royal Home Constructions has not filed its return of income from assessment year 2013-14 onwards. In these circumstances, learned Assessing Officer concluded that the creditworthiness of M/s. Royal Home Constructions and the genuineness of the transaction of their paying Rs. 2.35 crores during the year under consideration was not established by the assessee. He accordingly proceeded to add such Rs. 2.35 crores to the income of the assessee, under section 68 of the Act.

19. Impugned order reveals that assessee pleaded before the learned CIT(A) that during the assessment proceedings, an affidavit of the Managing Partner was furnished with details of the source of M/s. Royal Home Constructions along with their account with Axis Bank, and the assessee pleaded that due to the dispute between the partners, the office of M/s. Royal Home Constructions was kept closed which does not mean that there was no office at all and the material placed before the learned Assessing Officer clear show that sources of M/s. Royal Home Constructions to pay such money to the assessee, which is in the nature of capital receipt in the hands of the assessee, but not an unexplained income.

20. Impugned order further reveals that the assessee produced the copy of Deed of Infrastructure Development Agreement dated 14/03/2017 and the same could not be produced before the learned Assessing Officer,

because it was traced out subsequently with the advocate, who drafted it. Assessee submitted before the learned CIT(A) that as a matter of fact, the assessee produced the Managing Partner of M/s. Royal Home Constructions on 15/11/2017, but instead of examining him on the contents of confirmation letter relating to the fidelity guarantee amounts, the learned Assessing Officer grew wild stating that wrong address was furnished and, therefore, such Managing Partner was liable to be prosecuted and thereupon the Managing Partner left the office. Assessee, however, produced the affidavit of the Managing Partner on 17/11/2017 confirming the fact of paying the amounts as per refundable fidelity guarantee, supported by the firm's bank account with M/s. Axis Bank and abstract of cash withdrawals made by M/s. Royal Home Constructions towards payment of the fidelity guarantee, thereby revealing the sources for such funds. Assessee further pleaded that there were disputes among the partners of M/s. Royal Home Constructions due to which, the delay occasioned in filing the affidavit of the Managing Partner.

21. When the additional evidence was sent to the learned Assessing Officer, the learned Assessing Officer submitted remand report dated 20/02/2019 acknowledging the fact that the assessee furnished the copy of confirmation letter and also produced the Managing Partner of M/s. Royal Home Constructions on 10/09/2018 before the learned Assessing Officer and such person confirmed that the firm has made payments to the assessee. Learned Assessing Officer, however, observed that accounts of M/s. Royal Home Constructions was not produced and the Managing Partner stated that they are not maintaining books of accounts.

22. Learned CIT(A) perused the confirmed letter dated 23/04/2015 from the Managing Partner of M/s. Royal Home Constructions and also his affidavit confirming the development agreement and payment of Rs. 2.35 crores in the financial year 2013-14. Since the Managing Partner of M/s. Royal Home Constructions appeared in person before the learned Assessing Officer and also filed an affidavit before the learned CIT(A),

confirming the issuance of confirmation letter and also the fact of their entering into a development agreement with the assessee and paying the fidelity guarantee money of Rs. 2.35 crores in the financial year 2013-14. There was copy of the account statement with Axis Bank of M/s. Royal Home Constructions and abstract of cash withdrawals made by M/s. Royal Home Constructions from Axis Bank. As a matter of fact, learned CIT(A) found the sufficiency of funds available in that account and the payment of the fidelity guarantee amount well supported by the withdrawals.

23. In these circumstances, learned CIT(A) observed, and rightly so, that insofar as the fact relating to the deposit of Rs. 2.35 crores in the bank account of the assessee is concerned, it is well established and the fact of non-service of notice on M/s. Royal Home Constructions or M/s. Royal Home Constructions not filing the returns from assessment year 2013-14 is of no consequence on this issue. It was open for the learned Assessing Officer to inform the said fact to the learned Assessing Officer of M/s. Royal Home Constructions for further action on that aspect. But that cannot be a ground to penalise the assessee.

24. All these things make it clear that the entries in the bank account of the assessee in respect of Rs. 2.35 crores towards refundable fidelity guarantee amount received from M/s. Royal Home Constructions are well supported by the statement of the Managing Partner of M/s. Royal Home Constructions, his affidavit, his confirmation letter, bank statement and the abstract of withdrawals from the account. Revenue does not show any reason as to how the learned CIT(A) was wrong in holding that by producing the copy of the Development Agreement dated 26/02/2007 and Deed of Infrastructure Development Agreement dated 14/03/2017 Managing Partner of M/s. Royal Home Constructions, his affidavit, his confirmation letter, bank statement and the abstract of withdrawals from the account the assessee discharged the onus of establishing the creditworthiness of M/s. Royal Home Constructions or the genuineness of the transaction.

25. We are in agreement with the learned CIT(A) that when once the Managing Partner of M/s. Royal Home Constructions was produced and he confirmed the agreements and the payments and such confirmation is well supported by the bank statement of M/s. Royal Home Constructions with Axis Bank where the funds available and the withdrawals were sufficient to meet the obligations under the Development Agreement dated 26/02/2007, the assessee stands discharged of his burden to establish the creditworthiness of M/s. Royal Home Constructions and the genuineness of transaction. The closure of office of M/s. Royal Home Constructions for any period or M/s. Royal Home Constructions not maintaining any accounts is of no consequence in this matter. There is nothing illegality or irregularity in the findings of the learned CIT(A) and accordingly we decline to interfere with his such findings.

26. For the reasons stated in the preceding paragraphs, we are of the considered opinion that the learned CIT(A) is right in deleting the addition of Rs. 95,31,801/- added under section 69A of the Act and Rs. 2.35 crores added under section 68 of the Act and such findings do not warrant any interference. Appeal is found to be devoid of merits. Consequently, appeal is dismissed and the cross objection is allowed.

Assessment year 2015-16:

27. Three additions are involved in the appeal for the assessment year 2015-16. Those are addition of Rs. 3.03 crores under section 68 of the Act in respect of the refundable fidelity guarantee amount, Rs. 28.50 lakhs on account of income from agricultural operations and Rs. 5 lakhs under section 69A of the act on account of unexplained cash deposits.

28. Insofar as the refundable fidelity guarantee amount is concerned, the facts are identical to those involved in the assessment year 2014-15 and covered this issue. Going by the view taken for the assessment year 2014-15, we dismiss this ground of appeal of Revenue and allow the ground in cross objection of the assessee.

29. Coming to the second addition of Rs. 28.5 lakhs, according to the learned Assessing Officer the assessee failed to produce any documentary proof and the confirmation letter produced by the assessee is not supported. Learned Assessing Officer further observed that the agricultural land is not in the name of the assessee and the assessee was appointed as GPA, learned Assessing Officer recorded that such an arrangement was impracticable.

30. Assessee pleaded before the learned CIT(A) that under section 2(1A) of the Act, it is not necessary that the person claiming agricultural income should own the land, but such a plea was not countenanced by the learned CIT(A). Learned CIT(A), however, found that the assessee made IDS declaration for assessment year 2015-16 to the tune of Rs. 34.35 lakhs and declared the agricultural income of Rs. 28.50 lakhs in the return of income. Learned CIT(A) found that the assessee declared Rs. 34.35 lakhs under IDS and it falls under clause (c) of sub-section (i) of section 183 of the Act. In these circumstances, learned CIT(A) accepted the plea of the assessee that the IDS declaration of Rs. 34.35 lakhs should be considered as inclusive of agricultural income.

31. Nothing contrary is brought to our notice on behalf of the Revenue and the IDS declaration and the declaration of agricultural income by the assessee in the return of income are all borne by record. It is also not in dispute that the case of the assessee falls within the permissible categories of un-disclosed income under IDS vide 183(1)(c) of the Finance Act, 2016. We, therefore, decline to interfere with the findings of the learned CIT(A) on this aspect and dismiss the relevant grounds of appeal and allow the ground in cross objection of the assessee.

32. Lastly coming to the addition of Rs. 5 lakhs under section 69A of the Act, learned CIT(A) on a perusal of the bank statement of the assessee found that the deposited a sum of Rs. 5 lakhs on 23/09/2014, withdrew the same on the same day, again deposited it on 24/09/2014 and withdrew the same on the same day, which phenomenon recurred on 25/09/2014

and 26/09/2014 also. According to the learned CIT(A), the cash deposits of Rs. 5 lakh each on 24th, 25th, 26th and 29th stood properly explained by the cash withdrawals and, therefore, the addition remains unreasonable.

33. On this aspect also, there is no denial of the deposits and withdrawals. Further, such a fact was verified by the learned Assessing Officer also and admitted in the remand report. Learned CIT(A) is, therefore, quite justified in accepting the same and deleting the addition. We confirm the same and dismiss the grounds of appeal and allow the ground in cross objection of the assessee.

34. In the result, both the appeals are dismissed and cross objections are allowed.

Order pronounced in the open court on this the 26th day of April, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 26/04/2023

TNMM

Copy forwarded to:

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3. ACIT, Circle-5(1), Hyderabad.
4. Sri Siva Prasad Nidamarthy, D.No. 6-2-231/B, Kukatpally, Hyderabad.
5. Pr.CIT-4, Hyderabad.
6. DR, ITAT, Hyderabad.
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