

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

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

ITA Nos.135 & 136/Hyd/20221		
Assessment Years: 2012-13 & 2015-16		
Daffodils Avenues (P) Ltd Hyderabad PAN: E	Vs.	ACIT Central Circle 2(4) Hyderabad
(Appellant)		(Respondent)
ITA Nos.137/Hyd/20221		
Assessment Year: 2015-16		
Vasudeva Realtors (P) Ltd, Hyderabad PAN:AABCV9331K	Vs.	ACIT Central Circle 2(4) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri Ravi Bharadwaj, CA	
Revenue by:	Shri Jeevan Lal Lavidiya, CIT (DR)	
Date of hearing:	26/04/2023	
Date of pronouncement:	27/04/2023	

ORDER

Per Bench:

ITA 135 & 136/Hyd/2021 are directed against the separate orders dated 28.12.2020 of the learned CIT(A)-12 Hyderabad, relating to A.Ys.2012-13 & 2015-16 respectively. ITA No.137/Hyd/2021 filed by the assessee is directed against the order dated 28.12.2020 of the learned CIT (A)-12 Hyderabad relating to A.Y 2015-16. Since identical issues are involved in all these appeals, therefore, for the sake of convenience, all the three

appeals were heard together and are being disposed of by this common order.

ITA 135/Hyd/2021 – A.Y 2012-13

2. Grounds raised by the assessee are as under:

“1. On the facts and circumstances of the case, the Assessment order u/s 143(3) I.W.s 147 is erroneous and bad in law.

2. The Ld CIT(A) erred in making addition of Rs. 79,68,000 rejecting the submissions made by the appellant.

3. The Ld CIT(A) ought to have appreciated the fact that the amount was paid by the Director through the bank account and the same was disclosed as Loans from Directors in the books of account .

4. The Appellant craves leave to add to, alter, amend, modify, substitute, delete and rescind all or any of the grounds of appeal on or before the final hearing.”

3. Grounds of appeal 1 & 4 being general in nature are dismissed.

4. In Grounds of appeal No. 2 & 3, the assessee has challenged the order of the learned CIT (A) in sustaining the addition of Rs.79,68,000/- made by the Assessing Officer as unexplained investment.

5. Facts of the case, in brief, are that the assessee is a company engaged in the business of real estate and construction. It was incorporated on 10.01.2009. For the impugned A.Y, the company had not filed its return of income. A search & seizure operation u/s 132 of the Act was conducted on 14.07.2016 in the group of M/s. Vasudeva Realtors Pvt. Ltd. during which a copy of sale deed document bearing no.4729/2011 dated 27.05.2011 was seized at the residential premises of Smt. D. Sunitha, Managing Director of M/. Vasudeva Realtors Pvt. Ltd. As per the sale deed,

the assessee viz., M/s. Daffodils Avenues Pvt. Ltd. has purchased a plot bearing no. 29 admeasuring 681 sq. yds in survey number 136, 137 and 156 situated at Kajaguda Village, Serilingampaly Mandal, R.R. Dist. from Mrs. Arunjyothi Aekka and Mr. Venkata Aekka represented by their GPA holder Shri P. Balakrishna for a consideration of Rs. 74,91,000/-. During the search proceedings, a statement u/s.132(4) was recorded from Smt. D. Sunitha, wherein, she has stated that there was a dispute among the landlords and the case was before the High Court and therefore the landlords have sold the said plot in favour of M/s. Daffodils Avenues Pvt. Ltd. Further, in response to statement u/s. 131(1) of the I.T. Act, Shri N. Achuta Rayudu, Managing Director of M/s. Daffodils Avenues Pvt. Ltd., has stated that M/s. DAPL has purchased the said plot from Smt. Arunjyothi Aekka and Mr. Venkata Aekka represented by their GPA holder Shri P. Balakrishna on paper consideration of Rs. 74,91,000/-.

6. During the assessment proceedings, it was stated that the sale consideration of Rs. 74,91,000/- was paid by the Directors of the Company in the earlier previous years to the vendor of the property. Further it was stated that part of the registration expenses amounting to Rs.85,000/- was paid from the company and the balance amount of registration expenses were incurred by the Directors of the company directly. The total cost and registration expenses amounting to Rs. 79,68,000/- incurred by the Directors is still payable to them.

6.1 However, the AO was not convinced with this argument. He observed that as per the sale deed, the entire sum of Rs. 74,91,000/- was paid by the vendee, M/s. DAPL and the vendors have also acknowledged the same. The AO also held that

the assessee company has not produced any evidence to prove that the Directors have explainable sources to pay on behalf of the company. It was also observed by the AO that one of the Directors, Shri N. Achutha Rayudu in his statement stated that he was a non-filer of return of income. The AO, therefore, concluded that the entire submission of the assessee is afterthought to conceal the fact that the assessee company paid the entire sale of consideration out of undisclosed sources. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.79,68,000/- on account of unexplained investment in the hands of the assessee.

7. In appeal, the learned CIT (A) sustained the addition made by the Assessing Officer by observing as under:

“6.3.1 I have considered the contentions of the AO and the submissions of the appellant. It is not in dispute that the sale deed document that was seized during the search mentioned that the appellant had purchased the plot admeasuring 581 Sq. Yds from the vendors viz., Mrs. Arunjyothi Aekka and Mr. Venkata Aekka. The vendors have also acknowledged the receipt of the entire sum of Rs. 74,91,000/-. The question now is whether the explanation offered by the appellant that the Directors have paid directly to vendors on behalf of the appellant is acceptable or not. There is no evidence produced during appellate proceedings to prove that the Directors have paid the said amount to the vendors. No bank statements/ledger accounts have been produced to prove that the said sum has been paid through bank accounts of the Directors. No confirmations from the Directors were filed. Mere filing of Balance Sheet and P&L account without supporting documents would not support the case of the appellant. The appellant has shown NIL income and expenses during the year and the only entry shown in the Balance sheet is Long Term Borrowings of Rs. 73,91,000/- as "Loan form Director". As mentioned before, no evidence whatsoever has been produced to prove that the Directors have paid the consideration directly to the vendors. Further, no evidence has been filed to show that the company has returned the said amount to its Directors. It was also observed by the AO that one of the Director was, a non-filer of return of income. In view of the above, it is held that the appellant could not prove with evidences that the sale consideration was paid directly by the Directors to the vendors. Therefore, the finding of the AO that the consideration of RS. 79,68,000/ was unexplained

investment of the appellant company is confirmed. Accordingly, the appeal of the appellant is DISMISSED."

7.1 Aggrieved with the order of the learned CIT (A) the assessee is in appeal before us.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. It is an admitted fact that the assessee M/s. Daffodils Avenue (P) Ltd purchased a plot admeasuring 681 sq. yards in Survey No.136, 137 and 156 situated at Kajaguda Village, Serilingampally Mandal, RR Ditst.from Mrs. Arunjyothi Aekka and Mr. Venkata Aekka represented by their GPA holder Shri P. Balakrishna for a consideration of Rs.74,91,000/-. The vendors have also acknowledged the entire sum of Rs.74,91,000/-. Since the assessee company had purchased the land and there is no evidence that the Directors have paid directly to the vendors on behalf of the assessee as claimed by the assessee company and since no bank statement or any other documents were produced to prove that the said sum has been paid through banking channels by the Directors and since the directors are also non-filers of I.T. Return, therefore, the natural corollary is that the money has been paid by the assessee company for purchase of the land. On a pointed query by the Bench, the learned Counsel for the assessee also expressed his inability to produce any evidence to substantiate that the directors have paid the money, therefore, the Assessing Officer, in our opinion, is fully justified in making the addition of Rs.74,91,000/- as unexplained investment and the learned CIT (A) is also fully justified in sustaining the same. Accordingly, the order of the learned CIT(A) is upheld and the grounds raised by the assessee are dismissed.

ITA 136/Hyd/2021 – A.Y 2015-16

9. Grounds raised by the assessee are as under:

“1. On the facts and circumstances of the case, the Assessment order u/s 143(3) r.w.s 147 is erroneous and bad in law.

2. The Ld CIT(A) erred in confirming the addition of Rs. Rs.2,79,72,304/-

3. The Ld CIT(A) ought to have appreciated the fact that the tax is payable only on real income but not on notional income;

4. The Ld CIT(A) ought to have appreciated the fact that the payment was Not made by the Appellant and the transfer is subject to such payment;

5. Ld CIT(A) ought to have taken into cognizance the cancellation agreement dated 24-12-2018 submitted by the appellant.

6. The Appellant craves leave to add to, alter, amend, modify, substitute, delete and rescind all or any of the grounds of appeal on or before the final hearing.”

10. Facts of the case, in brief, are that the assessee, a domestic company, is in the business of Real Estate and construction. The company was incorporated on 10.01.2009. The assessee company did not file return of income for A.Y 2015-16. A search and seizure operation u/s 132 of the Act was conducted on 14.07.2016 in the case of M/s. Vasudeva Realtors Pvt. Ltd (VRPL). During the course of search, sale deed bearing No. 1204/2015 dated 31.01.2015 was seized. As per the sale document, the assessee company purchased plots bearing nos.13, 14, 19 and 20 at Bloomfield Elation Villas, Phase-I, Khajaguda Village, Serilingampally Mandal, RR Dist. from M/s. Vasudeva Realtors Pvt. Ltd. (M/s. VRPL) for a consideration of Rs. 2,63,88,400/- on 31.01.2015. During the search proceedings, a statement u/s. 132(4) was recorded from Smt. D. Sunitha, wherein, she has stated that there was a dispute among the landlords and the case was before the High Court and therefore

M/s. Vasudeva Realtors Pvt. Ltd. has registered the land to M/s. Dafodils Avenues (P) Ltd for a consideration of Rs. 2,63,88,400/-. Further, in response to statement u/s. 131(1) of the I.T. Act, Shri N. Achuta Rayudu, Managing Director of M/s.Daffodils Avenues Pvt. Ltd Daffodils Avenues Pvt. Ltd., has stated that the company has purchased the plots from M/s. VRPL to safeguard the properties which is under litigation and had not paid any consideration on this transaction.

10.1 However, the Assessing Officer did not accept the assessee's contention by observing as under:

✓ 7 Firstly this document was seized vide Annexure no A/DNVS/RES/PO/01 during the course of PO operation in the residential premises of SmtDevabhaktuniSunitha, R/o Villa No 13, SLN Lumbini Springs, Gachibowli, Hyderabad on 04-08-2016. Based on the seized material a statement U/s 132(4) was recorded and question relevant to this document was put to the assessee. The relevant question and answer is reproduced here;

Q.7 I am showing you a sale deed executed dated 31-01-2015 duly numbered from S.No.1 to 14 vide A/DNVS/RES/PO/01. Please state the actual contents of the same.

Ans. M/s Vasudeva Realtors Pvt Ltd has taken land from Sri SangamDattaihGoud and others for the purpose of development agreement. But due to certain disputes between the landlords, litigation started and the case was pending before court. As I could not appear before court all the time, M/s Vasudeva realtors Pvt Ltd has registered the land to M/s Daffodils Avenues Pvt Ltd for a consideration of Rs.2,63,88,400/-.

Q.8 You have answered to the Q No 7 above, that you have executed a sale deed in favour of M/s Daffodils Avenues Pvt Ltd for a sale consideration of Rs.2,63,88,400/-. In this regard, please state that, whether the said amount of Rs.2,63,88,400/- was accounted in the books of M/s Vasudeva Realtors Pvt Ltd for the FY 2014-15 or not. Please offer your comments.

Ans. I wish to submit that, I am unable to recollect whether this amount was accounted in the books of account of M/s Vasudeva Realtors Pvt Ltd or not. I request you to give some more time to submit the documentary evidence for the same."

Same question was put to Mr. N AchuthaRayudu, MD of M/s Daffodils Avenues Pvt Ltd while recording statement on Oath U/s 131(1) of the I T Act on 1/11/2016. The relevant question and answer is reproduced here;

M/s. Daffodils Avenue Pvt Ltd.

AY 2015-16

Q.7 I am showing you the sale deed document bearing number 1204/2015 registered on 31-01-2015 which was found during the course of search and seizure proceedings in the case of M/s Vasudeva Realtors Pvt Ltd., and during the course of lifting of PO at the residential premises of Smt D Sunitha, Managing Director, M/s Vasudeva Realtors Pvt Ltd on 4-8-2016. Please go through the same and confirm the document and explain the contents?

Ans: Yes, I have gone through the same and confirm that our company M/s Daffodils Avenue Pvt. Ltd has purchased four plots bearing numbers 13,14,19 and 20 at Bloomfield Elation Villas, Phase -I, Khajaguda, Hyderabad from M/s Vasudeva realtors Pvt Ltd., Hyderabad for an on paper consideration of Rs.2.63 Crores. As the said plots are under legal litigations and the director of the company Smt D Sunitha is my close relative, hence our company has taken over the land to avoid legal litigations/complications.

Q.8 what is meant by legal litigation/complications?

Ans: As one of the land lords who have sold land of bloomfield Elation Villas total 5 Acres 7 Guntas phase-1, has not signed the development agreement cum sale deed document and has filed a case in the court of law and made property in litigation. So far two cases were filed in the court. Hence, to protect the properties and also as per our advocate's directions, the said plots were sold to us by vasudeva realtors Pvt Ltd.

Q9. Did your company or yourself pay any consideration to Vasudeva Realtors Pvt Ltd?

Ans: Myself or my company M/s Daffodils Avenue Pvt Ltd have not paid any consideration on this transaction.

Q.10 On verification of the document, it is clearly written that an amount of Rs.2,63,88,400/- has been paid to M/s. Vasudeva realtors Pvt.Ltd. Please explain the same?

Ans: It was mentioned there in the document only to complete the registration process. But we have not paid any consideration. Only to face the legal complications, we made the transaction."

9 As seen from the above mentioned statements and submissions, it clearly established that both assessee companies M/s Daffodils avenues Pvt Ltd and M/s Vasudeva realtors Pvt Ltd have jointly concealed the entire transaction. The argument put forth by both assessee companies is beyond acceptable limits. When a document is registered before the registered Authority with both parties signed and accepted the said consideration has changed hands and position of the property was handed over to the buyer and the buyer still holds the land. All the regular procedure is complied, when it comes to taxation, the assessee company claiming that no consideration was paid, is way beyond common parlance. Just because both parties agreed to cancel the transaction, immunity from taxation cannot be granted. As the assessee company could not explain the sources for consideration paid towards purchase of the said property for the AY 2015-16. Hence, the entire investment made on plot bearing no.s 13, 14,19 and 20 at Bloomfield Elation Villas,



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Phase-I, Khajaguda village, SerilingampallyMandal, RR Dist for a consideration of Rs. 2,79,72,304/- (including registration charges) is treated as unexplained investment for the AY 2015-16 and added back to the returned income U/s 69 of the IT Act, 1961.

10.2 Before the learned CIT (A) the assessee reiterated the contentions that were made before the Assessing Officer. It was pointed out that at the time of registering the sale deed, it was mutually agreed between the parties that the Sale Deed will be cancelled if the sale consideration was not paid. Since the income was not paid by the company to M/s. VRPL, the Sale deed was cancelled with mutual consent subsequently vide Document No.21263/2018 dated 24.12.2018 and therefore requested that the said addition may be deleted.

11. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and sustained the addition by observing as under:

“6.3.1 I have considered the rival arguments. In order to ascertain the nature of transaction and whether consideration has been received, it is incumbent to refer to the sale deed documents. For ready reference, the relevant para at page 4 of the sale deed that discusses the sale consideration is reproduced below:

"NOW THIS DEED OF SALE WITNESSETH AS FOLLOWS : 1. That the Vendee has agreed to pay a sum of Rs. 2,63,88,400/- (Rupees Two Crores Sixty-Three Lakhs Eighty-Eight Thousand and Four Hundred only) to the Vendor towards Sale consideration. That the Vendee has already paid the entire sum of Rs. 2,63,88,400/- (Rupees Two Crores Sixty-Three Lakhs Eighty-Eight Thousand and Four Hundred only) being full and final sale consideration at time of Agreement of Sale dtd. 27th June 2008, the receipt of which the Vendors hereby admit and acknowledge. That the Vendors hereby absolutely convey, sell, transfer, assign, grant and assure the vendee/purchaser (s) all their rights, title and interest whatsoever in Scheduled Property."

6.3.2 From the above para, it is evident that the vendee (the appellant) confirms to have paid the entire sum of Rs. 2,63,88,400/- being full and final sale consideration and the receipt of which vendor (M/s. Vasudeva Realtors Pvt. Ltd.) has admitted and acknowledged. Further, the vendors have absolutely conveyed all their rights, title and interest whatsoever in the Scheduled Property to the vendor. Thus, there is no doubt that the vendee (the appellant) has paid the entire consideration of RS. 2,63,88,400/ pertaining to the sale transaction. The said document was also registered as Document No. 1204 of 2015 by the Sub-Registrar, Ranga Reddy Dist. The Stamp Duty towards this transaction amounting to Rs. 14,51,362/- and Registration fees of Rs. 1,31,942/- was duly paid

before the registration. Therefore, the appellant cannot now turn around and claim that it has not paid the sale consideration and it was a paper transaction. Even if it were so, once the receipt of the consideration is acknowledged and the stamp duty, registration charges were paid and registration done before the sub-registrar, the sale is complete and all rights, title and interests in the property pass on to the vendee not only de jure but de facto as well. The appellant cannot now deny the tax liability that has arisen on account of the purchase transaction. The fact that the purchase agreement was cancelled in a later year does not alter the taxability status in the current year. Therefore, the AO is right in treating the purchase consideration of Rs. 2,79,72,304/- (including registration charges) paid by the appellant as investment from undisclosed sources. The addition made by the AO of Rs. 2,79,72,304/- is sustained and all the grounds pertaining to this issue are DISMISSED."

12. Aggrieved with such an order, the assessee is in appeal before the Tribunal.

13. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.2,79,72,304/- u/s 69 of the I.T. Act, the reasons of which are reproduced at Para 10.1 of this order. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. A perusal of the order of the learned CIT (A) shows that as per the clause (i) of the sale agreement, the assessee has paid the entire sale consideration of Rs.2,63,88,000/- on 27.6.2008 at the time of agreement of sale and the receipt of the same has been accepted by the vendors. Once the money has been paid in the financial year 2008-09 as mentioned in the sale deed, the same cannot be added as unexplained investment in the impugned A.Y. At the same time, a perusal of the statement recorded of Smt. Devabhakthuni Sunitha recorded u/s 132(4) of the I.T. Act shows

that she has flatly denied having received any amount. The relevant questions and answers are as under:

“Q21 Have you shown the consideration received from M/s. Daffodils Avenues Pvt. Ltd amounting to Rs.2.63 Crores in the books of accounts. Further, I am showing the copy of the document wherein it was clearly mentioned in page number the document that the payment of Rs.2,63,88,400/- was made and the vendor has acknowledged the receipt of the same. Please explain why the same cannot be taxed in the hands of the company?”

Ans: As stated above, we have not received any consideration for the above said transaction, hence, the same was not reflected in our books of accounts. The market value of the property was Rs. 2,63,88,4 00/-. Actually, we have not received the consideration because the same is under legal litigations. Only to avoid legal litigations, our company has sold and registered the property to our related person who is the Managing Director of M/s Daffodils Avenues Pvt Ltd, Hyderabad.

Q.22 During the course of search, it was noticed that your company M/s Vasudeva Realtors Private Limited has not filed Returns of income for A Y 2013-14 onwards. Further, during the course of search the audited financials for AY 2013-14 to 2015-16 were found. It was also noticed that the books of account for FY 2015 16 relevant to A.Y 2016 17 were not audited. In this regard, you are requested to furnish the copy of the computation of income showing net profit from A.Y 2013-14 to A.Y 2016-17.

Ans. The computation of income along with net profits A.Y wise are submitted as under:

S.No	A.Y	Taxable income (net profit in Rs.)
1	2013-14	7,89,51,430
2	2014-15	4,85,74,280
3	2015-16	62,35,210
4	2016-17	1,37,46,780

14. Since the learned Counsel for the assessee also expressed his inability to produce the copy of the sale agreement and the bank statement right now evidencing the payment of Rs. 2,63,88,400/- at the time of agreement of sale dated 27.6.2008 according to which the entire consideration was paid at the time of agreement, therefore, 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 Assessing Officer with a direction to give an opportunity to the assessee to produce the sale of agreement

dated 27.6.2008 produce bank statement of the assessee company evidencing the payment of the full consideration on or before 27.6.2008 and decide the issue as per fact and law. While doing so he shall keep in mind the provisions of section 53A of the Transfer of Properties Act. We hold and direct accordingly. Grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA No.137/Hyd/2021 – A.Y 2015-16 (Vasudeva Realtors (P) Ltd)

15. Grounds raised by the assessee are as under:

1. On the facts and circumstances of the case, the Assessment order u/s 143(3) r.w.s 153A is erroneous and bad in law.
2. The Ld CIT(A) erred in treating repayment of loan in cash Rs.15,00,000/- as undisclosed business income, as the amount represents refund of balance of money after attending to the customers requirement for extra specifications.
3. The Ld CIT(A) erred in treating Rs.9,00,000/- as unexplained expenditure and Appellants undisclosed income though the amount represents payments made on behalf of customers from their money kept in appellant custody to meet the costs of extra specifications required by them.
4. The Ld CIT(A) erred in treating the entire price difference of Rs.2,63,88,400/- on sale of 27 Villas as undisclosed income, though Net profit on such unaccounted sales only is to be brought to tax. The Assessing Officer erred in rejecting the appellant submission for estimating Net profit at 10 percent of unaccounted sales

16. Grounds of appeal No. 1 & 5 being general in nature are dismissed.

17. In Ground of appeal No.2, the assessee has challenged the order of the learned CIT (A) in sustaining addition of Rs.15.00 lakhs made by the Assessing Officer as undisclosed income.

18. Facts of the case, in brief, are that the assessee is a company engaged in the business of construction of residential apartments and residential villas. A search and seizure operation u/s 132 of the I.T. Act was conducted in the case of the assessee group of companies on 14.07.2016. In response to notice u/s 153A of the Act issued on 20.01.2017, the assessee filed its return of income on 22.12.2017 admitting total income of Rs.62,35,206/-. Statutory notices u/s 143(2) & 142(1) were issued to the assessee to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

19. The Assessing Officer made addition of Rs.15.00 lakhs towards repayment of loan made by the assessee company by recording the following:

- 7.1 With regard to first proposed addition of Rs.15,00,000/- towards repayment of loan made in cash by the assessee company. Firstly the MD of the company admitted these payments as undisclosed income. Later she started claiming these payments were made for extra works completed through sub- contractors, from the money collected from the customers on cost to cost basis. Even then the assessee company was asked to provide the details of the persons to whom these payments were made and what basis. However no such information was provided. From this it is very much clear that the assessee company tries to mislead the department by changing its version from one to another. The statement was recorded on 8-9-2016 after gap of nearly two months from the date of search i.e., 14-7-2016. The MD of the company was fully aware of the facts of the seized material accordingly she made a declaration stating that above said payments were made in cash against loans taken earlier. Subsequently she never made any complaint of any stress or duress while giving statement. After a gap of 2 years she came up with a retraction letter with affidavit stating that the payments made in cash are nothing but payments made to contractors out of cash receipts from customers for extra works performed. For this claim also the assessee company never supported with corroborative evidences. The entire claim of the assessee company is in general nature. The fact is established beyond doubt that the assessee company as per page no 86 of A/VR/OFF/01 has made these cash payments amounting to Rs.15,00,000/- and accordingly admitted as undisclosed income by its MD Smt D Sunitha. Accordingly the amount of Rs.15,00,000/- is treated as undisclosed business income for the AY 2015-16 and added back to returned income.

20. Before the learned CIT (A) it was submitted that the amount relates to the additional work carried out by the assessee from the additional money received from 27 villa owners. It was further stated that these moneys were received on cost-to-cost basis and sought telescoping benefit with receipts of Rs.3,72,39,130/- as the amount of expenditure is made from such additional unaccounted cash receipts.

21. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and sustained the addition made by the Assessing Officer by observing as under:

“5.3.1. The submissions were carefully considered. It is not disputed by the appellant that these amounts represent expenses which were unrecorded in the books. No proofs of bills / vouchers were furnished by the appellant. To prove that these expenses were relating to the additional works carried out on cost-to-cost basis, the appellant is required to furnish the supporting bills/ vouchers. The submission of the appellant that the said amount should be telescoped with the unaccounted cash receipts of Rs. 3,72,39,130/- is not acceptable. The appellant has contended that only 10% of the unaccounted cash receipts should be brought to tax as these were received for extra works on cost-to-cost basis. The appellant cannot seek benefit of both telescoping as well as taxing only 10% of the undisclosed receipts. Therefore, the addition on account of cash payments amounting to Rs. 15,00,000/- is confirmed and the Ground No.1 pertaining to this issue is DISMISSED”.

21.1 Aggrieved with such order of the learned CIT (A), the assessee is in appeal before us.

22. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the Assessing Officer in the instant case made addition of Rs.15,00,000/- on the ground that as per the seized document, the assessee has made repayment of loan in cash to the extent of Rs.15,00,000/- and no detailed bills and vouchers were produced

to substantiate the claim that these payments were made for extra works completed through the sub-contractors from the money collected from the customers on cost-to-cost basis. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate this issue with evidence to the satisfaction of the Assessing Officer regarding the nature of payment of Rs.15,00,000/-. 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 Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate his case by filing the requisite details. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground of appeal No.2 raised by the assessee is accordingly allowed for statistical purposes.

23. In Grounds of appeal No.3, the assessee has challenged the addition of Rs.9.0 lakh sustained by the CIT (A) which was made by the Assessing Officer as unexplained expenditure.

24. Facts of the case, in brief, are that the Assessing Officer made addition of Rs.4.00 lakhs being cash payment made to M/s SSA Construction and Rs.5.00 lakhs to M/s. Divya Sai Infra Projects by recording as under:

8. ADDITION ON ACCOUNT OF CASH PAYMENTS TO CONTRACTORS

8.1 With regard to second proposed addition of Rs.9,00,000/- towards cash payments made to M/s SSA Constructions of Rs.4,00,000/- and Rs.5,00,000/- to M/s Divya Sai Infra Projects by the assessee company. Firstly the MD of the company admitted these payments as undisclosed income. Later she started claiming these payments were made for extra works completed through sub-contractors, from the money collected from the customers on cost to cost basis. Even then the assessee company was asked to provide the details of the persons to whom these payments were

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M/s Vasudeva Realtors Pvt. Ltd.

AY 2015-16

made and what basis. However no such information was provided. From this it is very much clear that the assessee company tries to mislead the department by changing its version from one to another. The statement was recorded on 8-9-2016 after gap of nearly two months from the date of search i.e., 14-7-2016. The MD of the company was fully aware of the facts of the seized material accordingly she made a declaration stating that above said payments were made in cash to sub-contract works given above said parties and are from undisclosed sources. Subsequently she never made any complaint of any stress or duress while giving statement. After a gap of 2 years she came up with a retraction letter with affidavit stating that the payments made in cash are nothing but payments made to contractors out of cash receipts from customers for extra works performed. For this claim also the assessee company never supported with corroborative evidences. The entire claim of the assessee company is in general nature. The fact is established beyond doubt that the assessee company as per page no 3 of A/VR/OFF/03 and page nos 11 to 13 of A/VR/OFF/03 has made these cash payments amounting to Rs.11,20,000/- and accordingly admitted as undisclosed income by its MD Smt D Sunitha. Accordingly the amount of Rs.9,00,000/- is treated as undisclosed business income for the AY 2015-16 and added back to returned income.

25. Before the learned CIT (A) it was submitted that the amounts do not pertain to repayment of loan but represent repayment of additional work carried out by the assessee from 27 villa owners. It was further submitted that these moneys were received on cost-to-cost basis and sought telescoping benefit with receipts of Rs.3,72,39,130/- as the amount of expenditure is made from such additional unaccounted money received by the assessee.

26. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and sustained the addition made by the Assessing Officer by observing as under:

“5.4.2. The contentions of the appellant and the AO were perused. It is not disputed by the appellant that these amounts represents expenses

which were unrecorded in the books. No proofs of bills/vouchers were furnished by the appellant. To prove that these expenses relating to additional works carried out on cost-to-cost basis at the request of the 27 villa owners, the appellant is required to furnish the supporting bills and vouchers. The submission of the appellant that the said amount should be telescoped with the unaccounted cash receipts of Rs. 3,72,39,130/- is acceptable as the appellant has contended that only 10% of the unaccounted cash receipts should be brought to tax as these were received for extra works on cost-to-cost basis. The appellant cannot seek benefit of both telescoping as well as taxing only 10% of the undisclosed receipts. Therefore, the addition on account of cash payments amounting to Rs. 9,00,000/- is confirmed and the Ground No.2 pertaining to this issue is DISMISSED.”

27. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

28. After hearing both sides, we find that the above ground is identical to the issue raised by the assessee challenging the addition of Rs.15.00 lakhs made by the Assessing Officer and sustained by the learned CIT (A) as per ground of appeal No.2. We have already decided the issue and restored the same to the file of the Assessing Officer with certain directions. Following similar reasoning the ground of appeal No.3 filed by the assessee is allowed for statistical purposes.

29. In ground of appeal No.4 the assessee has challenged the order of the CIT (A) in sustaining the addition of Rs.2,63,88,400/- on sale of 27 villas as undisclosed income.

30. Facts of the case, in brief, are that during the course of search, sale deed bearing No.1204/2015 dated 31.01.2015 was found and seized. As per the sale document, the assessee company sold plots bearing nos. 13, 14, 19 and 20 at Bloomfield Elation Villas, Serilingampally Mandal, RR Dist to M/s. Daffodils

Avenue Pvt. Ltd. for a consideration of Rs. 2,63,88,400/- on 31.01.2015. On being confronted during assessment proceedings, the Director of the assessee company admitted that they have executed the said sale deed. It was also stated that due to a dispute between landowners which went under litigation, the assessee company transferred the said four plots to its sister Concern viz., M/s. Daffodils Avenue Pvt. Ltd. to avoid legal complications. This was apparently done to protect the properties from the cases filed in the Court, but no consideration was received by them.

31. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee on the ground that the assessee has fulfilled all the formalities required for selling the property viz. registration, etc. and therefore is bound to pay tax on the concluded sale transaction.

32. Before the learned CIT (A), the assessee reiterated the same arguments as made before the Assessing Officer. It was also sought to bring out a distinction between real income and fictional income and to point out that real income has not been received by the seller and the transaction was made only to protect the property from legal disputes.

33. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and confirmed the addition made by the Assessing Officer by observing as under:

“6.3.1 I have Considered the rival arguments. In order to ascertain the nature of transaction and whether consideration has been received by the appellant company, it is incumbent to refer to the sale deed documents of the appellant. For ready reference, the relevant para at

page 4 of the agreement that discusses the sale consideration is reproduced below:

"NOW THIS DEED OF SALE VWITNESSETH AS FOLLOWS: I. That the Vendee has agreed to pay a sum of Rs. Eighty-Eight Thousand 2,63,88,400/- (Rupees Two Crores Sixty-Three Lakhs and Four Hundred only) to the Vendor towards Sale Vendee has consideration. That the Eighty-Eight already paid the entire sum of Rs. 2,63,88,400/- (Rupees Two Crores Sixty-Three Lakhs Agreement Thousand and Four Hundred only) being full and final sale consideration at time of Sale dtd. 27th June 2008, the receipt of which the Vendors hereby admit and acknowledge. That the Vendors hereby absolutely convey, sell, transfer, assign, grant and assure the Vendee/ purchaser (s) all their rights, title and interest whatsoever in Scheduled Property."

6.3.2 From the above para, it is evident that the vendee confirms to have paid the entire sum of Rs. 2,63,88,400/- being full and final sale consideration and the receipt of which vendor has admitted and acknowledged. Further, the vendors have absolutely conveyed all their rights, title and interest whatsoever in the Scheduled Property to the vendor. Thus, there is no doubt that the vendor (the appellant) has received entire consideration of Rs. 2,63,88,400/- pertaining to the sale transaction. The said document was also registered as Document No. 1204 of 2015 by the Sub Registrar, Ranga Reddy Dist. The Stamp Duty towards this transaction amounting to Rs. 14,51,362/- and Registration fees of Rs. 1,31,942/- was duly paid before the registration. Therefore, the appellant cannot now turn around and claim that it has not received the sale consideration and it was a paper transaction. Even if it were so, once the receipt of the consideration is acknowledged and the stamp duty, registration charges were paid and registration done before the sub-registrar, the sale is complete and all rights, title and interests in the property pass on to the vendee not only de jure but de facto as well. The appellant cannot now deny the tax liability that has arisen on account of the sale transaction. Therefore, the AO is right in treating the sale consideration of Rs. 2,63,88,400/- as undisclosed business income. The addition made by the AO of Rs. 2,53,88,400/- is confirmed and all the grounds pertaining to this issue are DISMISSED.

7.0 In the result, the appeal of the appellant for the AY 2015-16 is DISMISSED."

34. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

35. We have heard the rival contentions made by both the sides and perused the record. Since the facts of the instant case are directly correlated to the facts of the case in ITA

136/Hyd/2021 in the case of Daffodils Avenues (P) Ltd, therefore, following similar reasonings we restore the issue to the file of the Assessing Officer for fresh adjudication of the issue. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. Ground of appeal No.3 raised by the assessee is accordingly allowed for statistical purposes.

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

37. To sum up, ITA Nos.135/Hyd/2021 is dismissed and ITA Nos.136 &137/Hyd/2021 are partly allowed for statistical purposes.

Order pronounced in the Open Court on 27TH April, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 27th April, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Daffodils Avenues (P) Ltd 8-3-167/A/12 Vikaspuri AG Colony, Hyderabad 500039
2	Vasudeva Realtors (P) Ltd, 1-61/BC/10/1 Survey No.4 Khajaguda, Nanadram Gudas Road, Sherilingampally Hyderabad 500008
3	ACIT Central Circle 2(4) Aayakar Bhavan, Basheerbagh, Hyderabad 500004
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order