

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.2049/Hyd/2017		
Assessment Year: 2009-10		
Harish Bhatt Natarajan, Hyderabad. PAN : ADFPN7488R	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Sri K.C. Devdas, C.A.
Revenue by:		Sri Rajendra Kumar, CIT-DR
Date of hearing:		28.03.2023
Date of pronouncement:		28.04.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.22.09.2017 invoking proceedings under section 143(3) r.w.s. 153A of the Act for the assessment year 2009-10.

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

“1. The order of the Ld. Commissioner of Income-tax (Appeals)-11, Hyderabad [CIT(A)], in sustaining an addition of Rs. 30 lakhs as unexplained investment arising out of declaration given to Bank to prove the credit worthiness of the Appellant is wholly unsustainable in law and on facts.

2. The CIT(A) failed to note that the value of the residential flat at 302, 'B' Block, Front Royal, Indian Airlines Colony, Begumpet was purchased for Rs. 50 lakhs only and its value was shown at Rs. 30 lakhs in the Sale deed and shown s Rs. 80 Lakhs only for the purpose of compiling net worth statement of the Appellant for bank loan purposes and there was no investment to the extent of Rs. 80 lakhs.

3. The CIT(A) failed to note that no incriminating material was found during 132 proceedings to show that the value of the flat was more than 30 lakhs and therefore erred in sustaining the addition of Rs. 50 lakhs being the difference between Rs. 80 lakhs as per the net worth statement and Rs, 30 lakhs as per the registered value.

3. The additional ground raised by the assessee reads as under :

“The CIT(A) failed to note that no incrimination material was found during the search on 25/09/2014 as seen from the Panchanama and seized material and therefore erred in making additions under various heads which are totally contrary to the evidence on records and therefore the income returned by the Appellant ought to have been accepted.”

4. The brief facts of the case are that assessee is an individual, who filed his return of income for A.Y. 2009-10 on 06.10.2009, returning a total income of Rs.11,83,560/-. A search and seizure operation u/s 132 of the Act was carried out in the residential premises of the assessee on 25.09.2014. Accordingly, notice u/s 153A of the Act was issued to the assessee on 14.09.2016. In response thereto, assessee filed his return of income for A.Y. 2009-10 on 20.10.2016. Thereafter, the Assessing Officer had completed the assessment on 30.12.2016 by making an addition of Rs.50 lakhs towards difference in the registered sale deed value vis-à-vis Net Worth Statement. Thus, determined the taxable income at Rs.61,83,560/-.

5. Feeling aggrieved with the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A) who partly allowed the appeal of assessee:

6. Aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

7. Before us, Id. AR has submitted that the Assessing Officer has made addition in the hands of assessee on the basis of the Net Worth Statement found during the course of search wherein the value of the property has been mentioned at Rs.80 lakhs. He has drawn our attention to the statement of Net Worth which was also placed by the Revenue at page 10 of the paper book wherein it was shown as under :

MGRK ASSOCIATES	
CHARTERED ACCOUNTANTS	
S : NESH RAO, B.B.M., FCA HEBBAR, FCA	96. Seshachala Colony, East Marredpally, Secunderabad - 500 026. Tel: 27731817; 55215447
<u>NET WORTH STATEMENT</u>	
	Date
	Market/ Book Value Rs in Lakhs
<u>IMMOVABLE PROPERTY</u>	
Residential Flat - 302, B block, Front Royale, Indian Airlines colony, Begumpet , Hyderabad	80.00
25% share in Residential House at Koustubha, Near Guest House, Mooledam, Kottayam (see Note 2)	1.75
Residential Flat at Classic Manor, Devalokam.Kottayam	9.00
) 25% share in land at Kurian Uthaup Rd.Kottayam	5.75
) Agricultural Land in Kodimatha, Kottaym	5.00
25% Share in Agricultural Land at Kodimatha, Kottayam	1.00
	102.50
<u>MOVABLE PROPERTY</u>	
) Gold & Silver	7.24
) Personal assets	87.10
) Investment in Bhima & Bros. Jewellers	70.49
	164.83
Total	267.33
<u>Liabilities</u>	
) Housing Loan from IDBI Bank Ltd	40.00
	227.33
Net worth as on 31.3.2007	227.33

8. Ld. AR further submitted that from the perusal of Net Worth Statement, it cannot be said that either the assessee has paid 'on money' on the registered value of the property which was at Rs.80 lakhs which was wrongly shown by the assessee at Rs.50 lakhs. Ld. AR has also submitted that the assessee had furnished the said Net Worth Statement of assets showing the market value for the purpose of submitting it to the bank for obtaining loan and therefore, the said document cannot be considered as an incriminating document. He has also drawn our attention to the definition of section 153A of the Act and it was submitted that no addition can be made on the basis of this document. He further submitted that on the basis of Net Worth Statement, it cannot be inferred that assessee had paid 'on money' or value of property mentioned as Rs.50 lakhs, as mentioned in the annual wealth tax return filed by the assessee. Ld. AR has also submitted that even the said statements recorded during the search were not confronted to the assessee and he has drawn our attention to the wrong narration made by the ld.CIT(A) wherein the ld.CIT(A) had referred to the reply in para 6.7 of his order, which is to the following effect :

"6.7. The Assessing Officer further enclosed a copy of letter wherein it has been confirmed that the copies of statement recorded u/s 132(4) on 25.09.2014, 29.09.2014 and 01.10.2014 marked as "A/HNB/RES/01" and "A/HNB/RES/PO/01" were provided to the assessee on 20.10.2014 itself. The relevant portion of letter is placed as under :

***Image left intentionally.*

Therefore, the contention that copies of statements were not provided is baseless and hence rejected."

9. Ld. AR further submitted that the copies of the statements dt.25.09.2014, 29.09.2014 and 01.10.2014 were never provided to the assessee. The relevant statements were not recorded on any of these dates.

10. Per contra, ld. DR in response to the additional ground has submitted as under :

“For A.Y. 2009-10

1. The CIT(A) failed to note that no incriminating material was found during the search as seen from the panchanama and seized material and therefore erred in making additions under various heads which are totally contrary to the evidence on records and therefore the income returned by the Appellant ought to have been accepted.

With respect to the above, it is clearly evident from the Assessment order in page no 2(copy enclosed), the addition made by the Assessing Officer is from the incriminating material and the Annexure and page no is also mentioned in the Assessment order. Hence, the additional ground raised by the Assessee does not hold good.”

11. Ld. DR further submitted that the addition was made by the Assessing Officer and confirmed by the ld.CIT(A) based on the Net Worth Statement and therefore, the action on the part of the lower authorities is in accordance with the law.

12. We have heard the rival submissions and perused the material on record. Admittedly, in the present case, a search and seizure action took place on 25.09.2014 in the premises of the assessee and during the course of search and seizure, Net Worth Statement was found and seized. As per the said statement, the value of the flat i.e., Flat No.302, B block, Front Royale, Indian Airlines Colony, Begumpet, Hyderabad, was mentioned as Rs.80 lakhs on 31.03.2007. Whereas, as per the registered sale deed, the value of the property has been mentioned as Rs.30 lakhs and as per the statement of affairs as on 31.12.2009, the value of the

property was shown as Rs.50 lakhs. On account of variation in the value of flat i.e., Rs.80 lakhs in Net Worth Statement and Rs.50 lakhs in the statement of affairs as per wealth tax return, the Assessing Officer had made the addition and Id.CIT(A) had also confirmed the same. In the light of the above, the question which is required to be answered by us is - Whether the Assessing Officer can make the addition based on the Net Worth Statement negating the value of the property shown in the registered sale deed and also the value shown by the assessee in the Wealth Tax Return mentioning the value of the property as Rs.50 lakhs?

13. In the present case, addition was made in the hands of the assessee based on the Net Worth Statement prepared by MGRK ASSOCIATES, Chartered Accountants on 31.03.2007 signed by Sri U. Ganesh Rao, partner of said Chartered Accountant firm. A copy of which is also reproduced hereinabove. From the perusal of Net Worth Statement, it is clear that though the said C.A. had mentioned market / book value of the flat at Rs.80 lakhs as against the value shown by the assessee in the wealth tax return as on 01.01.2009 at Rs.50 lakhs. The question arises, is whether the said certificate issued by the C.A. can be said to be an incriminating document, in the absence of any other corroborative evidence and also in the absence of cross-examination of the issuing authority i.e. partner of MGRK Associates. In our considered opinion, to classify a document as incriminating evidence, it is essential that there should be direct nexus between the income escaped or sought to be evaded with the said document. In the present case, the registered sale deed and wealth tax return are staring at the Net Worth Statement prepared by the Chartered Accountants. Law is fairly settled in this regard that the contents of the registered sale deed are required to be given precedence vis-à-vis the certificate issued by the Chartered Accountant, which is uncorroborated and

unsubstantiated. In the present case, no evidence has been brought to our notice by the Revenue, justifying that any 'on money' was paid by the assessee over and above the registered value of the property or the basis of issuing the Net Worth Statement was correct. No inference of payment of 'on money' can be inferred based on Net Worth Statement.

14. Further, the Revenue authority have failed to examine the partner of said MGRK Associates, namely, U. Ganesh Rao, C.A. and brought on record on what basis he has issued the certificate mentioning the value of property as Rs. 80 lakhs. Similarly, they have also not examined the seller to find out if any 'on money' has been paid. In view of the above, we are of the considered opinion that Net Worth Statement alone cannot form basis of making addition unless some corroborating evidence is produced, more particularly, it sought to prove that the contents of registered sale deed / statement of affairs were incorrect. In the light of the above, the appeal of the assessee deserves to be allowed. Accordingly, we allow the same.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 28th April, 2023.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th April, 2023.

TYNN/sps

Copy to:

S.No	Addresses
1	Harish Bhatt Narayan, C/o. Sekhar & Co., Chartered Accountants, 133/4, R.P. Road, Secunderabad – 500 003.
2	The Deputy Commissioner of Income Tax, Central Circle – 2(4), Hyderabad.
3.	The PCIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order