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.66/Hyd/2022		
Assessment Year: 2006-07		
Sukesh Gupta, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082. PAN : AERPG3535M.	Vs.	The Asst. Commissioner of Income Tax, Central Circle (3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri P. Murali Mohan Rao, C.A.	
Revenue by:	Sri Rajendra Kumar, CIT-DR	
Date of hearing:	20.04.2023	
Date of pronouncement:	26.04.2023	

O R D E R

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dt.25.02.2022 invoking proceedings under section 143(3) r.w.s. 153A of the Act for the assessment year 2006-07.

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

> *"1. On the facts and in the circumstances of the case the order passed by the ld.CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.*
>
> *2. The Ld.CIT(A) erred in dismissing the appeal and the ld.CIT(A) ought to have annulled the assessment passed u/s 143(3) r.w.s. 153A of the Act.*

3. The ld.CIT(A) ought to have appreciated the fact that the Assessing Officer erred in making the assessment u/s 143(3) r.w.s. 153A without there being any incriminating material belonging to the assessee.

4. The ld.CIT(A) ought to have appreciated the fact that the Assessing Officer erred in making the addition for a sum of Rs.4,78,200/- towards the alleged unexplained investment in acquisition of property without considering the submissions and evidences made by the assessee.

5. The ld.CIT(A) ought to have appreciated the fact that the Assessing Officer erred in making the above said addition without brining on record any evidence to prove his assertion or disprove our contentions.

3. The brief facts of the case are that a search and seizure operation u/s 132 of the Act was carried out in the case of assessee on 11.03.2010. Accordingly, notice u/s 153A of the act was issued to the assessee on 26.10.2010. In response to the said notice, assessee filed return of income for A.Y. 2006-07 on 18.10.2011 declaring a total income of Rs.9,92,912/-. Notice u/s 143(2) and 142(1) of the Act and questionnaire was issued to the assessee on 20.07.2011 calling for information. In response to the same, assessee furnished the information. Thereafter, the Assessing Officer had gone through the information furnished by the assessee in reply to notice dt.18.11.2011.

3.1. Thereafter, on verification of the seized documents, Assessing Officer found that assessee had purchased a land Ac.0.20 guntas vide two separate sale deeds for a consideration of Rs.2,39,100/- each including stamp duty and registration charges totaling to Rs.4,78,200/-. Since, the assessee had not disclosed the same in his return of income for the A.Y. 2006-07, Assessing Officer treated the said investment as unexplained investment and added the same to the return of income and thereby completed the assessment, assessing the income of the assessee at Rs.14,71,112/-.

3.2. The relevant portion of the order of Assessing Officer reads as under :

> *"3. During the course of assessment proceedings vide para 2(iii) of the questionnaire dated 18.11.2011, the assessee was asked to give the details of movable and immovable properties. For which the assessee has not filed any information / submissions. It is noticed from the seized documents that the assessee has purchased a land Ac.0.20 guntas vide two separate sale deeds nos.13599/05 dated 13.09.2005 and 13918/05 dated 16.09.2005 for a consideration of Rs.2,39,100/- each including stamp duty and registration charges totaling to Rs.4,78,200/-. Since, the assessee has not disclosed in his return of income for the A.Y. 2006-07, the said investment the same is treated as unexplained investment and is added to the income returned."*

4. Feeling aggrieved with the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of assessee by holding as under :

> *"6. The Decision:*
>
> *In the instant case, the assessment was completed by making an addition of Rs.4,78,200/- being unexplained investment.*
>
> *Going into the facts of the case, it was observed by the Assessing Officer from the seized documents that the appellant has purchased a land of Ac. 0¬20 guntas vide two separate sale deeds No. 13599/05 dated 13.09.2005 and 13918/05 dated 16.09.2005 for a consideration of Rs.2,39,100/.- each including stamp duty and registration charges totaling to Rs.4,78,200/- and the said investment was not disclosed in the return of income for the A.Y. 2006-07. During the course of assessment proceedings, the appellant did not furnish any details/sources for the said investments and accordingly the assessment was completed by treating the said investments as unexplained investments.*
>
> *During the course of appeal proceedings, the appellant merely contended that it has neither received any amount nor paid any amount for the above land and thus the addition on account of unexplained investment is not correct. The sale deeds seized during the course of Search very clearly brings out that the properties were acquired for the said consideration, the source of which is not explained by the appellant. The submission of the appellant is devoid of any merits or remotely in connection to the issue under consideration. The appellant was searched and the deeds were found in its possession with the relevant registration numbers which also gave the quantum of consideration and is a factual evidence without any possibility of any other view of the*

same. The appellant, during the course of appeal proceedings, has been giving submissions without addressing the issue or explaining the sources of the same as highlighted by the Assessing Officer.

From, the above it is clear that the appellant has paid the consideration of Rs.4,78,200/- for the said sale deeds and in view of the same, the contention of the appellant that it has not paid any amount for the said lands is rejected.

Further, it is seen that the appellant has not provided any explanation towards sources for the said investment. It is to be noted that the properties were purchased in the year 2005 and the assessment was completed in the year 2011. It has been almost 17 years since the purchase of lands and 11 years since the completion of assessment, however, the appellant has not filed any explanation for the sources of the said investment. Moreover, the said investment is also not reflected in the books of the appellant and the investment of the appellant has come to light only on account of Search operation conducted. As per provisions of Section 69 of the IT Act, any investment which is not recorded in the books of accounts and the source of which is not explained to the satisfaction of the AO, then value of such investment may be deemed to be the income of the assessee u/s 69 for such financial year. The provision of section 69 of the IT Act is reproduced as below:

"69. Unexplained investments.

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered - by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

In the instant case, neither the appellant recorded the investment in the books of accounts nor offered a tenable explanation for the source of investment. In view of the above, the action of AO in treating the said investment as unexplained is upheld and accordingly, the ground no.4 and 5 are dismissed.

The ground no.3 and 4 mentions that there is no incriminating material on record to make the addition in the case of the appellant. In this regard, it is to be noted that the addition in the case of the appellant was made based on the sale deeds found and seized during the course of Search u/s 132 on the appellant. The said investments were also not reflecting in the books of the appellant. In view of the same, it is clear that the seized material was the basis for making the addition and on account of non-disclosure in the return of income filed by the appellant, the same constitutes incriminating material and in view of the same, the contention of the appellant is rejected and the ground no.3 and 4 are dismissed accordingly.

Even otherwise, it is important to note that the execution of warrant makes it obligatory on the part of the Assessing Officer to initiate proceedings u/s. 153A for the 6 years and scrutiny proceedings for the Search year as per the provision u/s. 153A(1).

It is also important to note that initiation of Search proceedings results in an automatic initiation of notice u/s 153A and there is no mention of the seized material by the legislature in the Section 153A. Further, there is no mention of the concept of undisclosed income in Section 153A as it was in the case of Section 158B. The procedure for Search assessments has been introduced in the form of Section 153A and the Section 158B and others as mentioned in Chapter XIV-B which was a special procedure is no longer applicable. The Section 158B to 158B1 had the concept of undisclosed income and which was further based on documents or incriminating material. The legislature has introduced the new provision u/s 153A w.e.f. 01.06.2003 which mandates assessment for the stipulated years.

without drawing any satisfaction and only on the basis of initiation of Search action u/s 132. The concept of undisclosed income has been made consciously absent as can be seen on the comparison of both the provisions and procedure, the same thus implies that the Assessing Officer is mandated to complete assessment for 6 years as per law and is not bound or limited to undisclosed income or seized material.

Anything which is clearly absent in the provision and importing the same without any reference or justification is completely arbitrary and beyond the scope of the provision, especially when the concept of abatement of pending proceedings have been provided in the Act. There is no mention that whatever has been seized has to be only used in the proceedings u/s 153A, once there is nothing of this sort mentioned, then it is only an imaginary belief that the reliance has to be only placed on seized material. The Assessing Officer is duty bound to issue notice for 6 years, irrespective of seizure.

It is also mentioned that all pending proceedings of the above years shall abate and the proceedings are to be initiated afresh u/s. 153A. The above implies that once a Search warrant is executed, the assessment as provided u/s. 153A is mandatory and all other assessment years pending for those years shall abate.

Thus, if there was a notice u/s. 148 issued in any of the above years prior to the date of issue of notice- u/s. 153A (obviously the reasons as are, prior to Search, are not based on seized material) then the reasons so recorded leading to any addition in the reopened years naturally has to be made u/s. 153A, as the proceedings u/s 148 has abated and therefore seized material cannot be a limiting factor of Assessing Officer's jurisdiction to assess u/s 153A.

The section 153A(2) makes it further explicit that in case of 153A getting annulled then the pending proceedings u/s. 148 or any other section will revive. Thus, it is clear that the pending proceedings which were not based on seized material are to be merged for the assessment years mentioned u/s. 153A and the assessment has to be made considering the same to be an open proceedings based on seized material and any other material.

The section 153A does not limit the jurisdiction of the Assessing Officer to the seized material rather it very clearly provides from the abatement of pending proceedings as a kind of assessment

which could be made based on records and seized material or either.

It is very clear that the parliament did not desire that two proceedings for the two assessment years to be continued in the case of any appellant causing hardship and also confusion. Therefore it has been very clearly provided that the pending assessment proceedings to abate and only one proceeding to continue as provided u/s. 153A.

The above also implies that if there is any subsequent information received pending the completion of assessment proceedings u/s. 153A or information other than seized material available before the initiation of notice u/s. 153A for which the Assessing Officer was contemplating issue of notice u/s. 148 would also merge with the proceedings u/s. 153A. Otherwise, it would be an exercise of initiating u/s. 148 and then issuing u/s. 153A and dropping the initiated proceedings u/s. 148 which would be a just unnecessary paper work. However, the above discussion has been made just for explanation, the section 153A is very clear and it is an obligation on the part of the Assessing Officer to initiate proceedings without any discretion or judgment. It is mandatory on the part of the Assessing Officer to initiate the proceedings as provided u/s. 153A as it is mentioned the Assessing Officer shall in the said section, which leaves no room for interpretation. Thus, the Assessing Officer is empowered and rather obliged to make additions as a regular assessment also while completing the assessment proceedings."

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

6. It is the contention of the ld. AR that the assessee had returned income of Rs.9,92,912/- and the addition has been made in the hands of the assessee for Rs.4,78,200/- on the pretext that the assessee has not disclosed the source of investment in purchasing the immovable property i.e., Ac.0-20 guntas vide two separate sale deeds, in the return of income for A.Y. 2006-07. It was submitted that there is no requirement in law to disclose the investment in the return of income and therefore, the action on the part of Assessing Officer is incorrect. Further, it was submitted that the assessee has income of Rs.9,92,912/- which is sufficient to make the investment for purchasing the immovable property for an amount of Rs.4,78,200/-. The ld. AR further submitted that the assessee was having the disclosed sources for

making the investment and therefore, the conclusion drawn by the learned lower authorities are not in accordance with the law. The ld. AR had vaguely argued that the addition cannot be made in the hands of assessee based on dumb document or in other words, sale deed cannot be said to be incriminating document.

8. Per contra, ld. DR relied upon the orders passed by the lower authorities. Ld. DR further submitted that despite of granting various opportunities by the Assessing Officer as well as ld.CIT(A), the assessee failed to produce any evidence to show that the investment in the immovable property was made out of the disclosed sources. It was submitted that once the assessee failed to justify the investment and the registered sale deeds were found to that effect during the course of search, then addition was rightly made for unexplained investment by the Assessing Officer and confirmed by the ld.CIT(A).

9. We have heard the rival submissions and perused the material on record. Though, it is the case of the Assessing Officer / ld.CIT(A) that the assessee had failed to produce any details / sources for the investment made in purchasing the immovable property, however, once we see the profile of assessee that he is an income tax payee and regularly paying the tax and filing return of income for the year under consideration, the assessee had filed return of income at Rs.9,92,912/-, then in our view, the assessee was having disclosed the sources / income for the assessment year under consideration and earlier accumulated income prior thereto, on that basis it may be presumed that the assessee was having the means and capacity to invest an amount of Rs.4,78,200/- in purchasing the said immovable property.

10. Though there is distinction between having means and capacity to invest and using said means and capacity to invest, in law it is for the assessee to prove the explained / disclosed source of investment. The assessee despite grant of numerous opportunities had not proved the source of investment before any of the lower authorities. As is clear from the record that the present appeal is for A.Y. 2006-07 and the additions were made in the hands of the assessee in the year 2011 and the present appeal is pending for adjudication before the ITAT. In our view, though, sufficient evidence has not been produced before the ld.CIT(A) / Assessing Officer, however, to remit the matter back to the file of the ld.CIT(A) as prayed by parties with a direction to the assessee to furnish details / sources of said investment would be a tedious exercise and the assessee cannot be expected to prove the source of investment after a period of 16 years i.e., from A.Y. 2006-07. Hence, considering the totality of the facts of the case, considering the income declared by the assessee during the year at Rs.9,92,912/-, it would be in the interests of justice, if we restrict the addition to an amount of Rs.1.50 lakhs. Hence, we restrict the addition for an amount of Rs.1.50 lakhs and the remaining addition of Rs.3,28,200/- is deleted. Thus, the appeal of the assessee is partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 26th April, 2023.

Sd/-	**Sd/-**
(RAMA KANTA PANDA)	**(LALIET KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, dated 26th April, 2023.

TYNM/sps

Copy to:

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1	Sukesh Gupta, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082.
2	The Asst. Commissioner of Income Tax, Central Circle (3), Hyderabad.
3.	The PCIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order