

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. Nos.12, 13 & 14/Viz/2023

(निर्धारणवर्ष/ Assessment Years: 2017-18, 2018-19 & 2019-20)

Navya Hasini And Harshitha  
Constructions and Developers,  
D.No. 8/1/47, Opp. ST Marys  
School, P.P. Road,  
Bhimavaram-534201.  
PAN: AAJFN 6431 F

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Appellant by

प्रत्यार्थीकीओरसे/ Respondent by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs. The Asst. Commissioner of  
Income Tax,  
Central Circle-1,  
Rajahmundry.

(प्रत्यार्थी/ Respondent)

Sri M.V. Prasad, CA

Sri MN Murthy Naik, CIT-DR

02/03/2023

04/05/2023

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

The captioned three appeals are filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam [CIT(A)] vide DIN & Order No. ITBA/APL/S/250/2022-23/1047271137(1), dated 14/11/2022

arising out of the order passed U/s. 153A of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. Since the assessee has raised identical grounds in all its three appeals under consideration, for the sake of convenience, they are clubbed, heard together and disposed off in this consolidated order. Since the issues involved in all these appeals are identical, we shall take up ITA No. 12/Viz/2023 (AY: 2017-18) as a lead appeal.

3. Brief facts are that the assessee is a partnership firm filed its return of income on 30/10/2017 for the AY 2017-18 admitting a total income of Rs. 11,41,260/-. A search and seizure operation U/s. 132 of the Act was conducted on 28/3/2019 in the case of the assessee and its registered premises. Subsequently, an order U/s. 127 of the Act for centralization of the cases was passed by the Principal Commissioner of Income Tax-2, Visakhapatnam vide order in F.No. Pr. CIT-2/VSP/127/2019-20, dated 14/10/2019. Accordingly, notice U/s. 153A of the Act dated 4/1/2021 was issued and served electronically. In response, the assessee firm filed its return of income on 6/2/2021 admitting a total income of Rs. 11,41,260/-. Thereafter, notice U/s. 143(2) of the Act dated 13/2/2021 was issued and served electronically. Further,

notice U/s. 142(1) along with a detailed questionnaire was issued and served on 17/3/2021. In response to the notices issued U/s. 143(2) and 142(1) of the Act, the assessee furnished the information as called for by the Ld. AO. The Ld. AO after considering and examining the various information furnished by the assessee completed the assessment by making an addition of Rs. 52,55,000/-. The Ld. AO made the above addition based on the search conducted at the residential premises of Mr. Ch. Murali, partner of the firm wherein certain loose sheets were found and seized by the search team. Based on the seized material the Ld. AO found that the assessee-firm has not recorded actual receipts and actual profits in the books of accounts and concluded that the assessee has indulged in suppression of cash receipts in the books of accounts. Considering the seized material in the premises of the partner, Mr. Ch. Murali, of the assessee firm, the Ld. AO projected that the firm has received an income of Rs. 4,20,40,000/- and estimated the net profit @ 12.5% on the same. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT (A), the assessee's Representative contended that the Ld. AO has made addition based on a sale of Flat No. 307 as mentioned in the scribbling note book found and

seized vide A/CM/RES/04 in page Nos 41 and 43 that the assessee has received Rs. 42 lakhs for the sale of one flat admeasuring 1051 sq feet. Further, the Ld. AR contended before the Ld. CIT(A) that the Ld. AO arrived sale rate of Rs. 4000/- per sq ft based on the loose sheet material and found that the assessee has sold 1051 sq. ft and thereby applied the rate of Rs. 4000/- to arrive at the estimated turnover of Rs. 4,20,40,000/- for the entire sq ft sold by the assessee during the relevant Asst. Year. The Ld. AR further contended before the Ld. CIT(A) that the Ld. AO has ignored the declared turnover of Rs. 2,60,00,000/- while filing the return of income and hence pleaded that the balance turnover may be considered for estimation of profit. The Ld. CIT(A) considering the submissions made by the Ld. AR admitted the plea of the assessee's Representative and directed the Ld. AO to estimate the profit @ 8% on the unaccounted turnover ie., 1,51,13,380/-. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

4. The assessee has raised six grounds in its appeal for the AY 2017-18, however, the main legal ground before us is regarding the issuance of notice U/s. 153A of the Act in the assessee's grounds of appeal.

5. Before us, the Ld. AR argued that the Ld. AO has issued a notice U/s. 153A of the Act based on the documents seized from the premises of the Managing Partner Mr. Ch. Murali. The Ld. AR pleaded that no incriminating material was found in the premises of the assessee during the search in the premises of the assessee and hence the making of additions based on the material seized from the third party premises should have been done U/s. 153C of the Act and not U/s. 153A of the Act. Before us, the Ld.AR filed a paper book containing 71 pages which includes, Panchanama in the name of M/s. Navya Hasini and Harshitha Constructions & Developers; Panchanama in the name of Ch. Muralidhar; copies of impounding material of Annexure A/CM/RES/02 and relied on the following case laws:

- (i) Decision of the ITAT, Delhi Bench in the case of DCIT vs. Smt. Shivali Mahajan in ITA No. 5585/Del/2015 and others, dated 19/3/2019.
- (ii) ITAT, Delhi "G" Bench decision in the case of Mr. Trilok Chand Chaudhary vs. ACIT I ITA No. 5870/Del/2017 (aY 2009-10), dated 20/08/2019.

- (iii) ITAT, Visakhapatnam Bench decision in the case of Sri Goluguri Nagi Reddy vs. ACIT in ITA No. 139 & 140/Viz/2022, dated 28/02/2022.

6. The Ld. AR further submitted that the search warrant was issued separately in the name of the assessee and in the name of the Managing Partner of the assessee-firm Mr. Ch. Muralidhar. Further, the Ld. AR submitted that the impounded material was found in the premises of the Managing Partner Mr. Ch. Muralidhar and no corroborative evidence was seized while searching the premises in the case of the assessee. Therefore, the Ld. AR pleaded that the notice issued U/s. 153A is void ab initio and the assessment made is null and void.

Per contra, the Ld. DR submitted that the assessee's premises was also searched and hence the notice issued u/s. 153A of the Act is valid. The Ld. DR further pleaded that the proceedings concluded U/s. 153A cannot be considered as void ab initio.

7. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly, the Ld.AO has invoked section 153A of

the Act instead of invoking section 153C in the instant case. Section 153C of the Act is reproduced herein below for ready reference:

*"153C.[(1)] [Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person] [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person [for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A] :]"*

8. From plain reading of the above section it is intended by the Legislature that section 153C can be invoked by the Revenue and can utilize incriminating material found in the search of any other person different to the assessee. In the instant case, such incriminating material was found in the premises of the Managing Partner of the assessee firm Mr. Ch. Muralidhar which

was used against the assessee while framing the assessment. Various judicial pronouncements have held that during the course of the assessment U/s. 153A of the Act, the incriminating material, if any, found during the course of the search of the assessee can only be utilized and not material found in the search of any other person. We found from the order of the Ld. AO that in the instant case the Ld. AO has used the loose sheet in page No. 41 of the Annexure A/CM/RES/04 to arrive at the consideration for the sale of flats. A similar corroborating evidence was not found in the premises of the assessee during the search operations in the assessee's premises. In the absence of any evidence either incriminating or any corroborative evidence found in the premises of the assessee, the issuance of notice U/s. 153A could not be made and the assessment could not be framed U/s. 153A of the Act. In the case relied on by the assessee in ITA No. 140/Viz/2022 (supra) this Bench has held that the assessment made by the Ld. Revenue Authorities U/s. 153A of the Act is not valid in law and therefore considered as void ab initio. Respectfully following the above decision, we are of the considered view that in the instant case, the assessment made U/s. 153A is not valid in law and void ab initio and thereby allow the legal ground raised by the assessee.

9. The other grounds raised by the assessee are academic in nature since the legal ground raised by the assessee is adjudicated in its favour.

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

11. With respect to ITA No. 13/Viz/2023 and 14/Viz/2023 for the AYs 2018-19 & 2019-20 respectively, since the assessee has raised identical grounds in these appeals with that of the appeal in ITA No. 12/Viz/2023 which is adjudicated in the above paragraphs of this order, our decision given therein (in ITA No. 12/Viz/2023) mutatis mutandis applies to these appeals also. Accordingly, the appeals filed by the assessee for the AYs 2018-19 and 2019-20 are allowed.

12. In the result, all the three appeals filed by the assessee are allowed.

Pronounced in the open Court on the 04<sup>th</sup> May, 2023.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 04.05.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Navya Hasini and Harshitha Constructions and Developers, C/o. CA MV Prasad, D.No.60-7-13, Ground Floor, Siddhartha Nagar, 4<sup>th</sup> Lane, Vijayawada, Andhra Pradesh-520101.
2. राजस्व/The Revenue – The Asst. Commissioner of Income Tax, Central Circle-1, Aayakar Bhavan, Dabagardens, Rajahmundry, Andhra Pradesh – 530020.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (A)-3, Visakhapatnam.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam