

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

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

आ.अपी.सं / ITA No. 137/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

Narasimha Rao Venkata Lakshmi Vs. Income Tax Officer,
Nandury, ITO (International Taxation)-2,
Hyderabad Hyderabad
[PAN No. AFFPN2603G]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Ch. Abhiroop Bhargav, AR
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 02/05/2023
घोषणा की तारीख/Pronouncement on: 11/05/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the final assessment order dated 17/01/2023 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of Narasimha Rao Venkata Lakshmi Nandury ("the assessee") for the assessment year 2015-16, under section 147 r.w.s. 144 of the Income Tax Act, 1961 (for short "the Act") assessee filed this appeal.

2. Brief facts of the case are that assessee is an individual, he has been a non-resident, deriving remuneration from M/s. LES Energy Services Limited, Nigeria with effect from 13/09/2011. Since he is a non-resident

and has been deriving income in respect of the services rendered outside India, in terms of section 5 of the Act, which is not taxable in India, assessee did not file the return of income for the assessment year 2015-16.

3. Learned Assessing Officer, however, noted from the ITBA Portal that assessee purchased immoveable property and also investment in Fixed Deposit. He, therefore, issued notice to the assessee. Assessee informed the learned Assessing Officer that he purchased immoveable property from M/s. Lodha Builders and paid the sale consideration of Rs. 2.90 crores and also furnished the bank account statement.

4. Learned Assessing Officer recorded that the assessee did not submit any relevant verifiable sources for the investment made towards the acquisition of property. However, while considering the payments made through Canara Bank account, reached a conclusion that an amount of Rs. 2.60 crores go unexplained and proposed to bring it to tax vide draft assessment order dated 30/03/2022.

5. Assessee filed objections before the learned DRP and submitted certain documents before the learned DRP. Learned DRP sought the remand report from the learned Assessing Officer. Assessee submitted the sale deed in respect of the property, loan sanction letter from financier DHFL, payment summary, Canara Bank NRO/NRE Account statement showing the disbursal from housing loan etc.

6. On a consideration of the material furnished by the assessee, learned Assessing Officer submitted the remand report stating that the payment schedule as furnished by the assessee from Lodha Group does not match with the bank account of the assessee and also that the assessee did not furnish any account statement for verification nor the sale deed. Learned Assessing Officer further observed that the payment summary dated 29/03/2022 was unsigned copy and letter of offer cum acceptance by DHFL is just a loan sanction letter, from which nothing could be ascertained.

7. Considering the remand report, learned DRP sustained the addition holding that there was no evidence to establish the date on which the loan amount was credited or the date of payment to the Lodha Group with reference to the bank statement.

8. Assessee is, therefore, before us in this appeal, stating that the addition made by the learned Assessing Officer and sustained by the learned DRP is without appreciating the facts on record with reference to the material available. As a matter of fact, the assessee explained the transaction and the source of funds for investment in the residential property. However, both the authorities sought the copies of the documents, which were not readily available with the assessee.

9. At the outset, assessee filed before us an application to admit the additional evidence in the shape of

- i. Housing loan statement from Piramal Capital & Housing Finance Limited (PHFL) of the assessee namely Narasimha Rao Venkata Lakshmi Nandury;
- ii. Bank of Baroda Housing Loan Agreement – taken over from DHFL;
- iii. Canara Bank NRE Account Statement of the assessee;
- iv. Canara Bank NRO Account Statement of the assessee;
- v. Receipts issued by Lodha (Builder) in respect of payments made;
- vi. News item depicting takeover of DHFL loans by Bank of Baroda;
- vii. News item depicting takeover of DHFL by Piramal Group;

10. Learned AR submits that the authorities below were labouring under the impression that the payment of Rs. 2.90 crores being the sale consideration was paid by the assessee in the financial year ending with 31/03/2015 since the property was registered in that year, as a matter of

fact as is evident from the payment schedule and summary issued by the Lodha Group, it has to be paid at a particular mile stone date and the entire sale consideration was not paid during the assessment year 2015-16 itself. He further submitted that DHFL which advanced funds to the assessee had undergone insolvency proceedings and the said company was taken over by the Piramal Group, which was subsequently named as Piramal Capital & Housing Finance Limited (PHFL) and this particular loan of the assessee was taken over by Bank of Baroda as DHFL declared insolvency. In these circumstances, the documents that were to be issued by the financier were to be obtained from Piramal Group, which provided loan statement in respect of assessee's housing loan and the loan payment statement was to be issued by Bank of Baroda. These documents could not be secured by the assessee In view of the insolvency proceedings against the financier and because he is a non-resident in India. Learned AR submits that the assessee could secure all these documents, but with some delay due to the factors beyond control of the assessee.

11. In these circumstances, learned AR submits that in the interest of justice, these documents may be received and considered. He submits that these documents would conclusively establish that the entire sale consideration was not paid by the assessee to the financier in the assessment year 2015-16 itself and the assessee adhered to by the mile stones fixed by the financier for repayment. Assessee also submits with the chart, debiting the mile stones, payments made, source of payments viz., Canara Bank NRO/NRE account vis-à-vis loan account receipts issued by the Lodha Group would prove his case.

12. Learned DR vehemently opposed the prayer made on behalf of the assessee to receive the additional evidence and to consider the same on the ground that sufficient opportunity was afforded to the assessee during the assessment year as well as the first appellate proceedings. He submits that since the assessee failed to avail the same, it is not proper to give a long rope to the assessee.

13. We have considered the issue in the light of the circumstances adverted to above. Though the learned DR opposed the prayer of the assessee, there is no material to contradict the fact that there were insolvency proceedings against DHFL and ultimately PHFL took over the DHFL company and also that Bank of Baroda entered the shoes of DHFL in respect of this particular loan. Assessee procured the documents from PHFL and Bank of Baroda and submitted now in the shape of additional evidence. The case of the assessee is that if these documents are considered in the light of the contentions raised by the assessee, assessee has got a fair chance of winning the matter. In such situation, we are of the considered opinion that a meritorious case cannot be thrown out at the threshold, without giving an opportunity to the assessee that too when the assessee produced the documents from proper custody.

14. With this view of the matter, we find it just and proper to receive the additional evidence and to direct the learned Assessing Officer to verify and to take a plausible view, after affording an opportunity to the assessee. Accordingly, we set aside the impugned orders and restore the matter to the file of learned Assessing Officer to verify the additional evidence and to take a view according to law by giving an opportunity to the assessee.

15. In the result, appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 11th day of May, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 11/05/2023

TNMM

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Shri Narasimha Rao Venkata Lakshmi Nandury, E-2, Aruna Enclave,
Opp: Amba Bhavani Temple, Santosh Nagar, Malkajgiri, Hyderabad.
2. Income Tax Officer, ITO (International Taxation)-2, Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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