

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

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri K.Narasimha Chary, Judicial Member**

ITA Nos.1642,1643 & 1644/Hyd/2013		
Assessment Years: 2004-05,2005-06 & 2006-07		
M/s. Anuradha Properties & Townships Private Limited, G-1, Reliance Krishna Apartments, Hillfort Road, Adarshnagar, Hyderabad PAN : AAFCA0724R	Vs.	Addl.CIT,Range-1 Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri K.A.Sai Prasad, CA	
Revenue by:	Shri T.Sunil Gowtham, Sr.AR	
Date of hearing:	11.05.2023	
Date of pronouncement:	07 .06.2023	

ORDER

Per Shri Rama Kanta Panda, A.M.

The above three appeals filed by the assessee are directed against the common order dated 14.10.2013 of the Learned Commissioner of Income Tax (Appeals)-II, Hyderabad relating to AY 2004-05,2005-06 & 2007-08 respectively. Since, identical grounds have been raised by the assessee in all the above three appeals, therefore, for the sake of convenience, these appeals were heard together and are being disposed of by this common order.

2. The above three appeals were earlier dismissed by the Tribunal. Subsequently, the Tribunal vide M.A Nos. 16,17 & 18/Hyd/2023 order dated 26.04.2017 recalled the earlier order. Hence, these are recalled matters.

ITA No.1642/Hyd/2013 (AY 2004-05)

3. Facts of the case, in brief, are that the assessee is a Private Limited Company engaged in the business of real-estate developer. It filed its return of income on 31.10.2004 disclosing income of Rs.4,86,240/-. A survey action u/s. 133A was conducted in the case of the assessee on 26.10.2005 and thereafter, the assessment was completed u/s. 143(3) on 31.03.2006 determining the total income of the assessee at Rs.27,51,650/-based upon the revised return filed by the assessee adopting profits @ 15% of sale consideration & development charges shown during the year.

4. Subsequently, fresh information was received from Addl. CIT, Central Range-1, Hyderabad on 16.06.2010 (forwarding letter of DCIT, Central Circle-2, Hyderabad) that search & seizure action took place in the case of Mr. Mir Mazharduddin and during the search incriminating evidence was seized in his case which indicates concealment of receipts in the hands of the assessee. These details were available in seized document belonging to Mr. Mir Mazharuddin and marked as annexure A/HHPL/Po-/3. From the documents it was evident that the assessee received Rs. 7,19,31,870/- from Mr. Mir Mazharuddin and his associates. The transactions were both in cheque and cash wherein the last two zeros are omitted. He noted that the assessee did not clarify the amounts when enquiries were made by DCIT, Central Circle-2, Hyderabad in the proceedings in the case of Mr. Mir Mazharduddin. He noted that out of the amount of Rs.7.19 Cr, the amounts received in cheque are reflected by the assessee in his books but the cash payments of Rs.2,13,98,500/- were not reflected in the books of account.

4.1 On the basis of the above, the case of the assessee was reopened by recording reasons and after obtaining previous approval from the competent authority. Accordingly, notice u/s. 148 of the Act was issued to the assessee on 05.08.2010 which was duly served on the assessee on 09.08.2010. However, the assessee did not file the return of income in response to the same notice. Subsequently, the AO issued a show cause notice indicating details of material seized in the case of Mr. Mir Mazharuddin. Since there was no response from the side of the assessee penalty proceedings u/s. 271F were initiated. Subsequently, the assessee filed a letter stating that the revised return filed on 30.12.2005 be considered as return filed in response to notice u/s. 148. It was further submitted that due to heavy losses the Hyderabad operations were abandoned and there was no staff, and the assessee is unable to collect the papers relevant for the year. It was also submitted that assessee has offered voluntarily profit @15% of sale consideration as recorded in the books despite no incriminating evidence found during the course of survey.

5. However, the AO was not satisfied with the arguments advanced by the assessee. During the course of assessment proceedings, he conducted enquiries with Mr. Mir Mazharuddin and his statement u/s. 131 was also recorded who stated that he has paid certain cash payments over and above the registered sale value of the property. The Assessing Officer noted that the payments made by Mr. Mir Mazharduddin in cheques were reconciled with the bank statements of the assessee. However, the cash payments are not reflected in the books though they are integral part of the pages of the seized record. On being confronted by the AO the assessee filed a detailed written submission, on all the issues, which the AO summarized in his orders, and which reads as under:

a) After survey u/s 133A, the assessee voluntarily offered to revise the income to 15% of the turnover for each of the Asst Years 2003-04 to 2005-06. The aggregate amount of income calculated at the percentage mentioned above, works out to Rs.67,61,150/- for all the assessment years 2003-04 to 2005-06. This was done owing to the innate constraints in this line of business it may be possible to conclude that sometimes a part of the sale consideration has to be accepted in cash from the customers.

b) Similarly, it is an established practice in the market to pay a part of the purchase consideration of the lands purchased developed in cash and such expenditure is generally not debited in the regular books of account for obvious reasons. In any case, most of the times, such expenditure incurred outside the books of account compensates the income so received outside the books of the account. Therefore, the income already returned may be accepted.

c) With reference to "Golconda Heights" venture, it is admitted by the assessee that the payments reflected in seized record in case of Mr. Mir Mazharuddin omits two zeros from the actual value with reference to payments received from Mr. Mazharuddin and 36 others. However, the record is inconclusive because the value of average consideration per Sq.Yd calculated from the information contained in the said pages ranges from the absurdly low value of Rs.118/- from Mr. Anwaruddin to as high as Rs.7,295/- from Mr. Mazharuddin. It thus leads to the conclusion that the information contained in the pages supplied by the Department is inconclusive.

d) None of the plots agreed to have been sold to Mr. Mazharuddin and associates have been sold during the any of the financial years 2003-04 to 2005-06 corresponding to the Asst Years 2004-05 to 2006-07, for want of obtaining final approval from HUDA. However, these plots were registered in the financial year 2008-09 corresponding to the Asst Year 2009-10. As such whatever amounts reflected in the papers seized from Mr. Mazharuddin, or the amounts stated to have been paid to assessee according to Mr. Mazharuddin, stand as advances only for the financial years mentioned above. The consideration recorded by assessee for the sales effected to the above parties in the financial year 2009-10 is more than the amounts reflected in the seized papers. Therefore technically, the said amounts cannot be treated as undisclosed income.

e) The assessee has been recording all transactions with respect to the collections made from Mr. Mazharuddin and associates and all the transactions effected through bank have already been tallied, identified and verified. However, as mentioned above the cash transactions as reflected in the seized material of Mr. Mazharuddin were not traceable in our books of account. A statement showing such unreflected cash transactions was enclosed as Annexure A to the submissions.

f) As the assessee offered higher percentage of profits and the assessments have already been accepted by the Department, even after assuming that the turnover is not recorded in our books, entire receipts of on-money cannot be treated as undisclosed income of assessee; only net profit rate can be applied on unaccounted sales/receipts for making addition. Reliance is placed on decision of ITAT in the case of K.C.K.A. Gupta 90 TTJ Hyd 555 and of Abhishek Corpn (1999) 63 TTJ (Ahd) 651, wherein it was held that "the entire receipts on account of on-money/premium charged by the assessee on booking of flats cannot be the undisclosed income of the assessee for the block period because the assessing officer had not proved by bringing any material on record that the assessee did make any investment to make the alleged unaccounted receipts/sales. In this view of the matter only net profit rate can be applied on unaccounted sales/receipts for the purpose of making the addition.

g) In the case of R.R. Carrying Corpn [2009] 126 TTJ 240 also, it was held that in the case of discrepancies between the sales or receipt amount as per books of accounts and the amount shown in TDS certificate, for taxability purpose, only the embedded portion of the profits is to be considered as taxable and not the entire amount.

h) However, in order to buy peace with the Department and in order to avoid protracted and vexatious litigation, the assessee agrees to offer the cash payments reflected in the seized documents of Mr.Mazharuddin, with a request to consider the extra expenditure incurred on purchase of land.

i) The assessee purchased lands at Chilkur from Mr. Sunil D. Shah and others, admeasuring Acres 19.22 gts. The consideration recorded in the books of account ranged from 3 lakhs per acre to about 7 lakhs per acre depending upon the time of registration. However the consideration paid in cash aggregating to Rs.1 ,78,15,000/- has not been reflected in the books of account. The payment of the said extra consideration has been confirmed by the said parties during the course search operations in their premises. Details of payments of the said consideration were furnished as Annexure B to the submissions.

j) The assessee requests that the expenditure incurred on purchase of land be allowed against the unrecorded advances received from Mr. Mazharuddin and associates.

6. However, the AO was not satisfied with the arguments advanced by the assessee and made addition of Rs. 67,15,000/- being unaccounted cash received by the assessee from Mr. Mazaharduddina and others by recording the following:-

i) After examination of the evidence and arguments of the assessee, it is observed that the evidence in the form of payments received from Mr. Mir Mazharuddin and others as well as payments made to the Shah group over and above the amounts recorded in books were not admitted by the assessee during the survey proceedings. Even when higher income was offered, these payments were not mentioned. Therefore, the earlier disclosure made for the reasons best known to the assessee can not be treated as a permanent immunity scheme for all unaccounted payments. It is a fact on record that the assessee never disclosed these amounts when enquiries were made in search proceedings in cases of Mr Mazharuddin. Also, the unaccounted payments are more than the profits worked out @ 15%.

ii) The argument that only profit element needs to be considered is also not tenable in the present case. The cases cited by the assessee are clearly distinguishable on facts. In the present case, the assessee booked all the relevant expenditure and there is no proof of any additional expenditure except for the payments allegedly made to the Shah group out of receipts from Mr Mazharuddin and others. In case of land deals, it is an undesirable practice to receive and pay unrecorded amounts in cash. Therefore, the assessee cannot claim that there is some unknown expenditure over and above recorded in books. Hence, the plea of the assessee is not accepted. It is also incorrect on the part of the assessee that the amounts were only advances. If the advances were received in cash, it is incumbent on the part of the assessee to explain how the cash was deployed for a long period between 2004 and 2009. Therefore, this argument is also not tenable. The cash cannot be part of the sale consideration which is already recorded in books. It is also noted that the assessee himself is willing to offer the amounts now but seeking set-off.

iii) Details of receipts of unaccounted cash by the assessee from Mr. Mazharuddin and others are attached as Annexure-A to this order. During the year, the assessee received unaccounted cash of Rs.67,15,000/- and the same is added suppressed sale consideration received by the assessee.

7. The AO further made addition of Rs.6,33,960/- being 20% of the cash payments made by the assessee in violation of provisions of section 40A(3). However, this issue is not before us and therefore, we are not concerned with the same. Thus, the AO determined the total income of the assessee at Rs. 1,01,00,610/-.

8. Before the Id.CIT(A), the assessee apart from the addition on merit, challenged the validity of the reassessment proceedings. However, the Id.CIT(A) dismissed the legal grounds challenging

the validity of the reassessment proceedings. She also dismissed the grounds challenging the additions on merit.

9. Aggrieved with such order of the Ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal.

1. The order of the learned CIT(A) is erroneous both on facts and in law and is perverse.

2. The learned CIT(A) erred in not allowing telescoping of the additional income admitted in revised return of income after survey without appreciating the fact that such additional income is admitted in view of receipt of cash outside the books of account.

3. The learned AD erred in confirming the addition of Rs.44,16,500 holding that each year's receipt is to be assessed in the same year without appreciating the fact that the assessee admitted income on sale of plots on the basis of registration of plots and that it has admitted the additional income in the asst. year 2009-10 on the basis of registration and thereby erred in confirming assessment of same income twice.

4. The learned CIT(A) erred in confirming the finding that there is on money payment to Shah group without appreciating the legal position that it is mandatory to allow cross examination of the person whose statement is relied upon and without such procedure the action against the assessee is abintio void as held by Supreme Court.

5. Without prejudice to the stand that all the receipts are admitted in the , asst. year 2009-10, the learned CIT(A) erred in holding that the unaccounted receipts are allowed set off against unaccounted payments and therefore the difference is profit and further erred in holding that the case is distinguishable from the case decided by Gujarat High Court in

Panna Corporation reported in 74 DTR 89 (2012) instead of directing to assess only a percentage of unaccounted receipts as income.

6. Any other ground that may be urged at the time of hearing.

10. Grounds of appeal No.1 and 6 being general in nature are dismissed. The ld.counsel for the assessee did not press the ground of appeal No.2, for which the ld.DR has no objection. Accordingly, the above ground is dismissed as not pressed.

10.1. So far as the remaining grounds are concerned, the grievance of the assessee is that, since all the receipts are

admitted in the AY 2009-10 and assessee admitted the additional income in the AY 2009-10 on the basis of actual registration, therefore, the additions sustained by the Id.CIT(A) is not justified.

10.2 The Id. Counsel for the assessee, at the outset submitted that the assessee admitted the income on sale of plots on the basis of registration in the A.Y 2009-10 and therefore addition of the same again in this year will amount to double addition. He submitted that despite no incriminating evidence found during the survey, the assessee has declared additional income by offering 15% profit on the turnover. Further, these are only advances and cannot be considered as sale. In his alternate contention, the Id.counsel for the assessee referring to a series of decisions submitted that since the assessee has received certain amount in cash and has also incurred certain expenditure in cash, therefore, only some percentage should be adopted towards profit of the same and not the entire amount can be added. For the above proposition, the Id.counsel for the assessee relied on the following decisions.

i. ITAT, Hyderabad Tribunal in case of Satyam Constructions(P) Ltd. vs DCIT(Assts), Spl, Range-3 vide ITA No.895/Hyd/1995, order dated 17.10.2000

ii. ITAT, Hyderabad Tribunal in case of Gruhanirman India Pvt.Ltd. vs. ACIT vide ITA No. 2237-2241/Hyd/2017 (for AYs 2010-11 to 2014-15) order dated 27.07.2018.

iii. ITAT, Hyderabad Tribunal in case of Gruhanirman India Pvt.Ltd. vs ACIT vide ITA No. 94/Hyd/2019,532/Hyd/2020, 128/Hyd/2019 and 141/Hyd/2021 (for AYs 2015-16 & 2016-17),order dated 28.02.2023

iv. AMZ Agro India Pvt.Ltd. vs ACIT reported in (2020) 59 CCH 0077 (Del.Trib)

11. The Id.DR on the other hand heavily relied on the orders of the Assessing Officer and the learned CIT(A). He submitted that clear cut evidences were found during the course of search in

the premises of Mr.Mir Mazaharuddin, according to which they have paid certain cash amounts to the assessee over and above the registered sale value. Since the assessee has not disclosed such cash components, therefore, the AO was fully justified in bringing to tax the said amount and the Id.CIT(A) was fully justified in upholding the same. So far as the argument of the Id.counsel for the assessee that after the survey they have filed the revised return disclosing profit @15% of the turnover is concerned, he submitted that the same will not help the assessee since the addition being presently made is on the basis of search conducted in the premises of Mr. Mir Mazharuddin which is after the date of survey. He submitted that the Id.CIT(A) has given justifiable reasons while sustaining the additions made by the Assessing Officer. He accordingly submitted that the order of the Id.CIT(A) be upheld and the grounds raised by the assessee be dismissed.

12. We have heard the rival arguments made by both the sides, perused the orders of the AO and Ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case, made addition of Rs. 67,15,000/- to the total income of the assessee being the unaccounted receipt in cash from Mr. Mir Mazharuddin and associates over and above the registered sale value of plots. We find the Id.CIT(A) upheld the action of the AO by observing as under:-

7. The fourth ground of appeal is:

4. The AO erred in making addition of Rs.44,16,500 as unaccounted receipts without appreciating the fact that such receipts are already considered as revenue in the asst. year 2009-10 and that income is admitted accordingly and thereby making double assessment of such receipts.

7.1 This ground of appeal is again incorrect. What is accounted for in the A.Y. 2009-10 pertains to the transactions carried out by him of that particular year. It does not pertain to the unaccounted transactions of earlier years. The unaccounted cash receipts and unaccounted cash payments pertaining to the A.Ys.2003-04 to 2006-07 are clearly matched

date wise and were correctly assessed in the respective years. If the appellant's contention that the unaccounted receipts are already considered as revenue in A.Y.2009-10, he has to explain the following issues:

(a) As per the seized material, the unaccounted receipts clearly pertain to FY.2003-04 to 2005-06 and they cannot be considered for the AY.2009-10.

(b) As per the request of the assessee himself the Assessing officer was generous enough to set off unaccounted payments against unaccounted receipts. If the assessee takes the plea that the unaccounted receipts are to be considered for A.Y.2009-10, he should explain how the unaccounted payments were made in those financial years (F.Y.2005-06 & 2006-07) to the family members of Shah.

7.2 This ground is totally baseless. The unaccounted receipts and payments were correctly considered in the respective A.Ys. and during the assessment proceedings vide letter dated 26.12.2011, the assessee clearly submitted the date wise unaccounted receipts and payments and requested for set off, which was favourably considered by the AO. Now the appellant is going back on the admission made by him only to avoid penal consequences.

*7.3 During the course of appeal proceedings the appellant claimed that he sold the property to Mr.Mazaruddin in F.Y 2003-04 (AY.2004-05) and the unaccounted receipts from Mr.Mazaruddin were only advances received and further claimed that all the receipts were offered to tax in AY 2009.10. This claim of the assessee is not supported by the balance sheets of the respective years, further, if this plea of the assessee is accepted, then he has to explain the unaccounted payments made to Shah group, Therefore, this ground of appeal is **dismissed**.*

[Although the ground taken before the Id.CIT(A) was Rs. 67,15,600/- as per the addition made by the AO, however due to typographical error, the amount is wrongly mentioned at Rs. 44,16,500/-]

13. It is the submission of the Id.counsel for the assessee that since certain cash payments were received and at the same time certain cash payments were also made, therefore, under these circumstances and considering the fact that assessee after the survey proceedings has already disclosed profit @15% of the turnover to coverup the discrepancy, only a percentage should be

adopted for the cash receipts and the entire amount cannot be added. It is also his submission that certain plots were sold in the A.Y 2009-10 but the amounts were received during the year. Therefore, such amounts are advance in nature and cannot be brought to tax in this year since the assessee has offered the income on such sales in A.Y 2009-10.

14. We find some force in the above argument of the learned Counsel for the assessee. It is an admitted fact that the assessee in the revised return filed on 30.12.2015 has declared profit @ 15% on the turnover despite no incriminating evidences being found, a statement made during the course of assessment proceedings and not controverted by the Assessing Officer. The case of the Assessing Officer is that the earlier disclosure made for the reasons best known to the assessee cannot be treated as permanent immunity in all unaccounted payments. Further, the contention of the assessee that the unaccounted receipt from Mr. Mazaharuddin are only advances during the impugned A.Y and the registrations were completed in the A.Y 2009-10 and such income was also offered to tax in A.Y 2009-10 was summarily rejected by the CIT (A) in absence of balance sheet of the respective A.Y. It was also the observation of the CIT (A) that the assessee has to explain the unaccounted payments made to Shah Group during the impugned A.Y. During the course of hearing before the Tribunal, the learned Counsel for the assessee drew the attention of the Bench to the Annexure enclosed to the assessment order and demonstrated before us certain sale deeds for which cash was received during the impugned A.Y, were actually registered in A.Y 2009-10 and therefore, these are only advances. It is also his submission that given an opportunity, he can substantiate that there is no unaccounted receipt during the year and the earlier amount of advance has been offered to tax in the A.Y 2009-10. Considering the fact that the assessee has

declared additional income @ 15% of the turnover to explain the source of certain payments during the impugned A.Y and considering the fact that certain sale deeds were registered in A.Y 2009-10 for which the assessee has received certain amounts which according to him are advances received during the year, 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 adjudicate the issue afresh. 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. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

ITA No.1643/Hyd/2013 (AY 2005-06)

14. Grounds raised by the assessee are as under: -

1. The order of the learned CIT(A) is erroneous both on facts and in law and is perverse.

2. The learned CIT(A) erred in not allowing telescoping of the additional income admitted in revised return of income after survey without appreciating the fact that such additional income is admitted in view of receipt of cash outside the books of account.

3. The learned AO erred in confirming the addition of Rs,44,16,500 holding that each year's receipt is to be assessed in the same year without appreciating the fact that the assessee admitted income on sale of plots on the basis of registration of plots and that it has admitted the additional income in the asst. year 2009-10 on the basis of registration and thereby erred in confirming assessment of same income twice.

4. The learned CIT(A) erred in confirming the finding that there is on money payment to Shah group without appreciating the legal position that it is mandatory to allow cross examination of the person whose statement is relied upon and without such procedure the action against the assessee is abintio void as held by Supreme Court.

5. Without prejudice to the stand that all the receipts are admitted in the asst. year 2009-10, the learned CIT(A) erred in

holding that the unaccounted receipts are allowed set off against unaccounted payments and therefore the difference is profit and further erred in holding that the case is distinguishable from the case decided by Gujarat High Court in Panna Corporation reported in 74 DTR 89 (2012) instead of directing to assess only a percentage of unaccounted receipts as income.

6. The learned CIT(A) erred in confirming the addition of deficit cash on the ground that AO has rightly worked out the deficit without appreciating the fact that the AO has not considered the addition of on money made in the earlier year as available as cash while arriving at the deficit cash.

7, Any other ground that may be urged at the time of hearing.

ITA No.1644/Hyd/2013 (AY 2006-07)

15. Grounds raised by the assessee are as under:-

1. The order of the learned CIT(A) is erroneous both on facts and in law and is perverse.

2. The learned CIT(A) erred in not allowing telescoping of the additional income admitted in revised return of income after survey without appreciating the fact that such additional income is admitted in view of receipt of cash outside the books of account.

3. The learned AO erred in confirming the addition of RS.44,16,sOO holding that each year's receipt is to be assessed in the same year without appreciating the fact that the assessee admitted income on sale of plots on the basis of registration of plots and that it has admitted the additional income in the asst. year 2009-10 on the basis of registration and thereby erred in confirming assessment of same income twice.

4. The learned CIT(A) erred in confirming the finding that there is on money payment to Shah group without appreciating the legal position that it is mandatory to allow cross examination of the person whose statement is relied upon and without such procedure the action against the assessee is abintio void as held by Supreme Court.

5. Without prejudice to the stand that all the receipts are admitted in the asst. year 2009-10, the learned CIT(A) erred in holding that the unaccounted receipts are allowed set off against unaccounted payments and therefore the difference is profit and further erred in holding that the case is distinguishable from the case decided by Gujarat High Court in Panna Corporation reported in 74 DTR 89 (2012) instead of directing to assess only a percentage of unaccounted receipts as income.

6. Any other ground that may be urged at the time of hearing”.

16. After hearing both the sides, we find the above grounds raised by the assessee are identical to the grounds of appeal raised in ITA No. 1642/Hyd/2013 for AY 2004-05. We have

already decided the issue and the effective grounds raised by the assessee have been allowed for statistical purposes. Following similar reasonings, the effective grounds raised by the assessee in the above two appeals are also allowed for statistical purposes.

17. In the result, all the above three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 7th June, 2023.

Sd/-

Sd/-

(K.NARASIMHA CHARY) JUDICIAL MEMBER	(RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 7th June, 2023

Thirumalesh/PVV-sps

Copy to:

S.No	Addresses
1	M/s. Anuradha Properties & Townships Private Limited G-1, Reliance Krishna Apartments, Hillfort Road Adarshnagar, Hyderabad
2	Addl.CIT,Range-1 Hyderabad
3	DR, ITAT Hyderabad Benches
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By Order