आयकर अपीलीय अधिकरण, हैदराबाद पीठ

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

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA Nos.390 to 392/Hyd/2022 & S.A. Nos. 20 to 22/Hyd/2022		
Assessment Years: 2011-12, 2013-14 & 2015-16		
Shri Sanjeeva Prasad Ponnapula, New Delhi PAN:AAMPP4844K	Vs.	Dy. C.I.T Central Circle 3(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	15/03/2023	
Date of pronouncement:	12/06/2023	

ORDER

Per R.K. Panda, A.M

The above 3 appeals filed by the assessee are directed against the separate orders dated 29.07.2022 of the learned CIT (A)-11, Hyderabad relating to A.Ys. 2011-12, 2013-14 & 2015-16 respectively. Since identical grounds have been raised by the assessee in these 3 appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.390/Hyd/2022 – A.Y 2011-12

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income u/s 139(1) of the I.T. Act on

9.7.2011 declaring total income of Rs.1,24,014/-. Subsequently, the case was reopened and the assessment u/s 143(3) r.w.s. 147 of the I.T. Act was completed on 29.11.2018 wherein addition of Rs.13,67,30,000/- was made being capital gain on account of sale of land in Survey No.172 of Hydernagar Village vide document No.4354/2011 dated 26.08.2010. The assessee preferred an appeal before the learned CIT (A) who allowed the appeal in favour of the assessee on merit. Aggrieved by the order of the learned CIT (A), the Revenue preferred appeal before the Tribunal and the Tribunal vide ITA No.476/Hyd/2020 order dated 8.9.2021 dismissed the appeal filed by the Revenue.

3. Subsequently, a search and seizure operation u/s 132 of the I.T. Act was conducted in the case of M/s. Goldstone Infratech Ltd and its other associated companies on 9.11.2017. The residential premises of the assessee was also covered u/s 132 of the I.T. Act. In response to notice u/s 153A, dated 23.5.2019, the assessee filed the return on 5.9.2019 declaring total income of Rs.1,24,014/-. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 153A on 26.11.2019 determining the total income of the assessee at Rs.70,42,84,340/- by making the following additions by invoking the provisions of section 50C of the I.T. Act:

S.No	Addition	Amount
1.	Capital gains in respect of sale of land vide Doc. No.5188/2010 dated 26.08.2010	Res.48,40,00,000
2	Capital gains in respect of sale of land vide several documents	Rs. 8,34,30,330
3	Capital gains in respect of sale of land vide Doc. No.4354/2011 dated 26.08.2010	Rs.13,67,30,000
	Total	Rs.70,41,61,330

4. The assessee preferred appeal before the CIT (A) who vide order dated 29.7.2022 partly allowed the appeal filed by the assessee by deleting the addition of Rs.13,67,30,000/-. He however, sustained the remaining two additions. The relevant observation of the learned CIT (A) reads as under:

6. The Decision:

In the instant case, the assessment was completed u/s 143(3) r.w.s. 153A by making the following additions:

Additional income on account of Capital Gains	*Rs. 48,40,00,000/-*
Additional income on account of Capital Gains	*Rs. 8,34,30,330/-*
Additional income on account of Capital Gains	*Rs. 13,67,30,000/-*
TOTAL ADDITION	*Rs.70,41,60,330 /-*

Going into the facts of the case, the appellant had filed the original return declaring an income of Rs.1,24,014/- and the case was reopened u/s 147 and the assessment was completed u/s 143(3) r.w.s. 147 of the I.T Act on 29.11.2018 by making an addition of Rs.13,67,30,000/- being capital gains on account of sale of land. The appellant filed an appeal against the order u/s 143(3) r.w.s. 147 and the CIT(A) vide order dated 31.01.2020 (which is subsequent to the completion of assessment u/s 153A) in Appeal No.10154/2018-19 allowed the appeal of the appellant.

In the meanwhile, a search and seizure action u/s 132 of I.T.Act was conducted in the case of M/s Goldstone Infratech Ltd and the appellant's case

was centralized and a notice u/s 153A was issued on 23.05.2019 and in response to the notice, the appellant filed return of Income on 05.09.2019 declaring an income of Rs.1,24,014/-. During the course of assessment proceedings, the AO observed that the appellant had executed sale deeds as under:

Particulars	***Doc No.***	***Stamp Duty value***	***Sale consideration***
Sale of property dated 26.08.2010	*4354/2011*	*Rs. 13,67,30,000/-*	*Rs.5,00,00,000/-*
Sale of property dated 26.08.2010	*5188/2010*	*Rs.48,40,00,000/-*	*Rs.10,00,00,000/-*
Sale of property	*Various documents*	*Rs. 8,34,30,330/-*	*-*
Total		***Rs.70,41,60,330 /-***	

The AO issued a show cause notice as to why the provisions of section 50C should not be applied in computation of capital gains. However, the appellant did not furnish any response and the AO completed the assessment u/s 143(3) r.w.s. 153A by making the additions as under:

Additional income on account of Capital Gains	*Rs. 48,40,00,000/-*
Additional income on account of Capital Gains	*Rs. 8,34,30,330/-*
Additional income on account of Capital Gains	*Rs. 13,67,30,000/-*
TOTAL ADDITION	*Rs.70,41,60,330 /-*

During the course of appeal proceedings, the appellant contended that it has acted only as a GPA holder of M/s Cyrus Investments Ltd and the capital gains arising out of the transactions shall be taxed in the hands of M/s Cyrus Investments Ltd and not in appellant's hands.

In this regard, it will be relevant to mention the background and history of the subject properties and its relation to the appellant.

The subject lands were originally part of estate of the Late Paigah Khurshid Jah and the various heirs of the late Paigah Khurshid Jah filed a Suit in the City Civil Court, Hyderabad for partition of the estate. The said Civil Suit was thereafter withdrawn and filed in the High Court at Andhra Pradesh and subsequently renumbered as C.S. No. 14 of 1958. Thereafter, during the pendency of the said Suit, HEH Mir Osman Ali, Asif Jah VII, the Nizam of Hyderabad purchased share out of 13/16th share of the said Suit property from the preliminary decree holders and impleaded himself as Defendant No. 157 in the said Suit.

Subsequently, the Nizam approached M/s Cyrus Investments Ltd which was then known as F.E. Dinshaw Limited, with an offer for M/s Cyrus Investments Ltd to purchase the share of the Nizam in the said Suit and vide Indenture dated 23.02.1967 acquired the entire share of the Nizam in the said Suit and filed an Application in the said Suit seeking to be impleaded as a party Defendant to the said Suit, which was allowed and M/s Cyrus Investments Ltd was accordingly impleaded as Defendant No.206 to the said Suit. Since the properties were under litigation and were required to be managed, **M/s Cyrus Investments Ltd executed the following Powers of**

Attorney dated 18.08.1994, 30.03.1995, 20.05.1996, 30.06.2003, 02.04.2004 and 07.01.2005 in favour of Mr. PS Prasad (appellant) to act in accordance.

The subject properties in the present assessment year were sold by the appellant on the basis of above Power of Attorneys which infact gave the appellant effectively full ownership and no sale consideration was required to be given to M/s Cyrus Investments Ltd and also the possession was in the hands of the appellant which was handed over to the transferee. The above facts are further clarified and fortified from the discussion in the following paragraphs.

Later, in the Year 2014, M/s Cyrus Investments Ltd issued a notice dated 19.03.2014 terminating the said Powers of Attorney without giving any reasonable / fair opportunity to Mr. PS Prasad (appellant) to clarify and explain all the ground realities and facts and therefore, Mr. PS Prasad (appellant) filed an application in No.356 of 2014 before High Court at Hyderabad and by order dated 07.04.2014, **the High Court at Hyderabad passed an ex-parte ad-interim Order by which M/s Cyrus Investments Ltd was restrained from giving effect to the termination notice dated 19.03.2014 as well as interfering with the possession of the Suit properties, which resulted in filing of Suit by M/s Cyrus Investments Ltd vide Suit No.643 of 2014.**

It is also to be noted that the title was already conferred on Mr. PS Prasad (appellant) by the Hon'ble High Court at Hyderabad vide various

orders, wherein Mr. PS Prasad (appellant) had to move Court on account of termination notice by M/s Cyrus Investments Ltd, viz.,

1) The High Court at Hyderabad passed an ex-parte ad-interim dated 07.04.2014 by which M/s Cyrus Investments Ltd was restrained from giving effect to the termination notice dated 19.03.2014 as well as interfering with the possession of the Suit properties.

2) The High Court at Hyderabad disposed off Application No. 356 of 2014 vide its Order dated 29.01.2016 confirming the interim order.

3) **The Division Bench vide order dated 27.04.2016 dismissed both the Applications in OSA M.P.Nos.348 & 349/2016 filed by Plaintiff M/s Cyrus Investments Ltd seeking interim relief** against order dated 29.01.2016. After all the above legal procedures and orders, the issue has culminated into the consent terms which has merely ratified the stand of Mr. PS Prasad (appellant) and M/s Cyrus Investments Ltd has agreed not to litigate.

This Suit No.643 of 2014 was settled by the Hon'ble High Court of Bombay wherein the plaintiff was M/s Cyrus Investments Ltd and the defendants being Mr. PS Prasad and others. The order is dated 28.04.2017 and reads as under:

PROD-S643-14.DOC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 643 OF 2014
WITH
NOTICE OF MOTION NO. 996 OF 2016
WITH
CHAMBER SUMMONS NO. 1086 OF 2016

Cyrus Investments Pvt Ltd ...Plaintiffs
Versus
Dr PS Prasad & Anr ...Defendants

Mr Janak Dwarkadas, Senior Advocate, *with Arif Doctor & TD Desai, i/b PD Desai, for the Plaintiffs.*
Ms Jyoti Sinha, *with Rujuta Patil, i/b Negandhi, Shah & Himayatullah, for Defendant No. 1.*

CORAM: G.S. PATEL, J
DATED: 28th April 2017

PC:-

1. The Suit is settled. Consent Terms are tendered. These are signed by FK Bhathena, Director of the Plaintiffs and by Defendant No. 1, and their respective advocates. Mr. Bhathena and Defendant No. 1 are both personally present in Court.

PROD-S643-14.DOC

2. I have seen the Consent Terms. They are in order. I am satisfied that they have been drawn by the parties of their own volition in reflection of their true intentions. The Consent Terms are taken on record and marked "X" for identification. The undertakings in the Consent Terms are accepted as undertakings to the Court.

3. The Suit against Defendant No. 1 is disposed of in accordance with the Consent Terms. As against the 2nd Defendant, the Suit is dismissed as withdrawn.

4. The Decree will be drawn up exactly in consonance with the Consent Terms.

5. Refund of court fee in accordance with the Rules.

6. The pending Notice of Motion is disposed of as infructuous. By consent, the pending Chamber Summons for revocation of leave under Clause XIV is dismissed as withdrawn.

7. A scanned copy of the Consent Terms will be made available and will be uploaded as Order No. 2 in this matter.

8. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)

The above states that the suit is settled as per the consent terms and the suit against the defendant no.1 being Mr. PS Prasad (appellant) is drawn and disposed off in accordance with consent terms. **The subject properties transferred during the year are part of Schedule II of the consent terms.**

The perusal of the relevant consent terms reflects the following in the para 6:

"……

6. Plaintiff hereby agrees, confirms and declares as follows viz.

a) That ***Plaintiff will not hereinafter dispute and / or question any of the acts, matters, deeds and things done by Defendant No. 1*** *for and on behalf of Plaintiff under the said Powers of Attorney as mentioned in Schedule II to these consent terms.*

b) ***That Plaintiff will not object to any third party right, title or interest already created under the said Powers of Attorney by Defendant No. 1 in favour of any third party in respect of the properties more particularly set out in Schedule II of these consent terms.***

c) Plaintiff also confirms that ***Defendant No. 1 is at liberty to use the said Powers of Attorney solely for the purpose of giving effect to the past transactions done by him in respect of the said properties more particularly mentioned in Schedule II*** *hereto with intimation to Plaintiff.*

d) That Plaintiff in relation to such ***lawful acts, deeds and things already done by Defendant No.1 in respect of the said properties more particularly mentioned in Schedule II under the said Powers of Attorney as set out to these consent terms will not claim any compensation for the same from Defendant No.1.***

e) That ***Plaintiff hereby acknowledges and confirms all the actions initiated and taken by Defendant No.1 in pursuant to the said Powers of Attorney exercised powers (directly and/or indirectly) in***

respect of the 9 (nine) properties more particularly set out in Schedule II of these consent terms are valid.

f) *That* ***Plaintiff shall also not in any manner or under any circumstances be liable for any costs, charges and expenses incurred by Defendant No.1*** *in the course of Defendant No.1 having acted and / or discharged his duties under the said Powers of Attorney.*

....."

From the above, it is clear that the plaintiff M/s Cyrus Investments Ltd has agreed not to litigate and recognise the right of the appellant to dispose off the properties with regard to past transactions, if any, already entered by the defendant No.1 Mr. PS Prasad (appellant) with respect to properties mentioned in Schedule II of consent terms and also confirms all the action.

The above very clearly brings out that M/s Cyrus Investments Ltd had no power or role to play with regard to these transfers, thus M/s Cyrus Investments Ltd was not even a *de facto* owner as the Power of Attorney clearly vested all the rights in the property in the hands of Mr. PS Prasad (appellant). There is no mention in the consent terms that any payment has to be made to M/s Cyrus Investments Ltd by Mr. PS Prasad (appellant) which is also a matter of fact that nothing has been paid to M/s Cyrus Investments Ltd out of the transfer of these properties. Further, in the consent terms in the para 5, it is stated as under:

"b) ***Defendant No.1 hereby undertakes to pay any arrears of taxes, charges and expenses in relation those acts, deeds and things done by Defendant No. 1 in respect of the Nine (9) properties more particularly mentioned in Schedule II of the consent terms*** *hereto save and except what is agreed in respect of item No. shown in Plaint (C.S. 14 of 1958) Schedule i.e. 39, 1,2,4,5 and 8 of Schedule II as set-out in these consent terms.*

c) ***That all costs, charges and expenses including statutory liabilities arising out of acts, deeds and things done by Defendant No. 1 in exercising the powers under the aforesaid Powers of Attorney shall be borne exclusively by Defendant No. 1 only. Defendant No. 1 undertakes to take full personal responsibility to bear all the expenses/liabilities towards the acts done or to be done under the said Powers of Attorney and confirms and declare that Plaintiff shall not be liable and/or responsible in any manner whatsoever in respect of the 9 (nine) properties more particularly set out in Schedule II*** *save and except what is agreed in respect of item No- shown in Plaint (C.S. 14 of 1958) Schedule i.e. 39, 1,2,4,5 and 8 of Schedule II as set-out in these consent terms.*

d) *That* ***Defendant No. 1 shall indemnify and hold safe the Plaintiff with regard to the above undertakings as set out herein in relation to all claims, actions and / or proceedings of whatsoever nature arising out of and pertaining to all acts done by Defendant No. 1 (directly and/or indirectly) under the said Powers of Attorney in respect of the properties more particularly mentioned in Schedule II.***

e) *That* ***Defendant No. 1 is solely responsible for and takes full personal responsibility for all the acts, deeds and things done (either directly or indirectly) under the said Powers of Attorney in respect of Properties more particularly described in Schedule II herein and confirms that Plaintiff shall not in any manner liable and / or responsible for any of the said Acts.*** *Defendant No. 1 assures the Plaintiff that all the acts, deeds and things done by Defendant No.1 in pursuance of the said Powers of Attorney in respect of Properties more particularly set out in Schedule II herein are valid and/or not violative of any provisions of law and/or in breach of any contract based on which Plaintiff accepts the same.* ***The Plaintiff hereby confirms that they shall not dispute any of the acts, deeds, and things done (either directly or indirectly) by Defendant No. 1 under the said Powers of Attorney in respect of the properties more particularly described in Schedule II.*** *Plaintiff hereby accepts the final decrees issued by the High Court at Hyderabad in respect of 9 Properties,*

which are more particularly described in Schedule II and undertakes that they shall not take any steps to challenge the same under any circumstances whatsoever. Defendant No.1 will ensure that the Third Parties (including his family members, friends and group companies) in whose favour Defendant No. 1 has created rights shall not initiate any civil and / or criminal proceedings and or make any monetary claim against Plaintiff in such a situation at his own cost in respect of the properties more particularly described in Schedule II subject to what is set-out in these consent terms.

....."

It is also important to note that subsequent to consent terms, the other properties are to be with joint Power of Attorney which implies that prior to this, Mr. PS Prasad (appellant) had full power of attorney and also in the consent terms, no payment issue has been brought out by M/s Cyrus Investments Ltd with regard to past transactions executed by Mr. PS Prasad (appellant) including the subject properties.

It is important not to lose sight of the fact that the litigation was forced by M/s Cyrus Investments Ltd and M/s Cyrus Investments Ltd lost in the litigation, which clearly implies that Mr. PS Prasad (appellant) was the defacto owner and one should not consider that this litigation implied a subsequent clear title with Mr. PS Prasad (appellant).

M/s Cyrus Investments Ltd had lost in all the courts and further has agreed not to challenge past transactions executed by Mr. PS Prasad (appellant). The above makes it very clear that Mr. PS Prasad (appellant) was the owner of the subject lands in legal terms.

Now coming down to a very basic common sense rule, if one was just a Power of Attorney holder and having no interest in the property or the

consideration, one would just handover and agree to the termination of power of attorneys, if the holding of the POA was on a pro bono basis and as and when the consideration was received, it would have been transferred to M/s Cyrus Investments Ltd (which was never the case).

In the present case, Mr. PS Prasad (appellant) was in the possession of land and also disposing off the properties at will and at the value it decided. It is also seen that in the present case, the transfer has been below the SRO value and no challenge has been made by either of the parties i.e., the transferor and transferee regarding the stamp duty valuation.

It is also important to note that M/s Cyrus Investments Ltd has not received a single penny out of any of these transactions effected by Mr. PS Prasad (appellant). The reason Mr. PS Prasad (appellant) has won in all the Courts is because he was holding the title rightfully and the consent terms are mere fact that M/s Cyrus Investments Ltd has succumbed to this reality of the ownership of Mr. PS Prasad (appellant). A litigant surrendering in the favour of the rightful owner cannot be in any manner leave to a conclusion that Mr. PS Prasad (appellant)'s right to ownership was ever in doubt, which is also clear in the manner in which the properties were disposed off and the value at which they were disposed off.

From the above, it is clear that with regard to these properties for which the sale has been made by Mr. PS Prasad (appellant), no financial benefit or liability accrued to M/s Cyrus Investments Ltd and Mr. PS Prasad (appellant) is supposed to enjoy all the benefits and incur all the liabilities with regard to these properties.

From the above, it is clear that the ownership was conferred on Mr. PS Prasad (appellant) and M/s Cyrus Investments Ltd had no control over the property and the consent terms brought out the same facts. It is thus clear that the taxability and its liability will also be in the hands of Mr. PS Prasad (appellant).

Further, as stated and reproduced above, as per the consent terms, it has been clearly mentioned that the defendant no.1 Mr. PS Prasad (appellant) undertakes to pay any arrears of taxes, charges and expenses in relation to those acts, deeds and things in respect of properties mentioned in Schedule II of the consent terms. The subject properties under discussion are part of the Schedule II of the consent terms which is as under:

SCHEDULE-II

Schedule of Properties under C S 14 of 1958

Sr. No.	Item No. shown in Plaint Schedule	Description	Name of the Palace
1	2	3	4
		Plaint Schedule – IV	
31.	37	Hafizpetpatta lands, compact area of 1220 acres	HydernagarGarbi
32.	38	Hydernagarpatta lands compact area of 1210 acres	-do-
33.	39	Hafeezpur Compact area of 2684 acres	Hafizpur
34.	40	Ghansimianguda patta lands, compact area of 743 acres	Ghansimianguda
		Plaint Schedule IV-a	
48.	1	Malkarampetta lands	Malkaramtq. Shahbad
49.	2	Hasmatpetpatta lands	Hashmatpeth taluk Garbi
51.	4	Sahebgudpatta lands	Vl. Sahebguda, Tq. Ibrahimpatan
52.	5	Kaderbadpatta lands.	KaderbadTq. Ibrahimpatnan
55.	8	Lallagudapatta lands	Lallagudatq. Sharqui

From the above, it is clear that Mr. PS Prasad (appellant) has to pay taxes/liabilities for the properties mentioned. The subject lands are part of Sy. No.172 of Hydernagar, which is mentioned at Sr. No.32 as Item no.38 in plaint schedule and Sy. No.78 of Hafeezpet, which is mentioned at Sr. No.31 as Item no.37 in plaint schedule, in the above reproduced Schedule.

It is important to note that once the ownership is established in the hands of Mr. PS Prasad (appellant), therefore, the liability of taxation will also lie in the hands of Mr. PS Prasad (appellant) and thus the income and the

consequent taxes are to be borne by Mr. PS Prasad (appellant). The consent terms again clarifies this fact that any taxes with regard to the transaction of these properties will be borne by Mr. PS Prasad (appellant) as it has received the income also and M/s Cyrus Investments Ltd has nothing to do with the taxes pertaining to these transactions as the income also never pertained to them. The consent terms, thus clarifies these things on record.

From the above, it is very clear that the appellant is the owner of the properties having the possession and has also decided to sell to the person it desires and also decides the consideration in respect of the properties. Thus, the appellant is held as the owner of the property within the meaning of Income Tax Act and the said transfer of these properties will liable for capital gains in the hands of Mr. PS Prasad (appellant) as per the manner provided in the Act and this is not a case of holding a simple Power of Attorney.

It would be not out of place to mention that the judgment of the Hon'ble Apex Court in the case of M/s Suraj Lamps & Industries vs. State of Haryana will have no bearing on the taxability in the hands of the appellant as the SRO has recognised the GPA in the records and also the relevant stamp duty has been paid and also the SRO has not objected to the transaction of GPA at all and that the title just before the transaction vested with the appellant.

The judgment of the Hon'ble Apex Court was given in the light of the following background of menace of abuse of GPA to defraud and to escape stamp duty:

".....3. The earlier order dated 15.5.2009, noted the ill-effects of such SA/GPA/WILL transactions (that is generation of black money, growth of land mafia and criminalization of civil disputes) as under:

"Recourse to `SA/GPA/WILL' transactions is taken in regard to freehold properties, even when there is no bar or prohibition regarding transfer or conveyance of such property, by the following categories of persons:

(a) Vendors with imperfect title who cannot or do not want to execute registered deeds of conveyance.

(b) Purchasers who want to invest undisclosed wealth/income in immovable properties without any public record of the transactions. The process enables them to hold any number of properties without disclosing them as assets held.

(c) Purchasers who want to avoid the payment of stamp duty and registration charges either deliberately or on wrong advice. Persons who deal in real estate resort to these methods to avoid multiple stamp duties/registration fees so as to increase their profit margin.

Whatever be the intention, the consequences are disturbing and far reaching, adversely affecting the economy, civil society and law and order. Firstly, it enables large scale evasion of income tax, wealth tax, stamp duty and registration fees thereby denying the benefit of such revenue to the government and the public. Secondly, such transactions enable persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby encouraging circulation of black money and corruption.

This kind of transactions has disastrous collateral effects also. For example, when the market value increases, many vendors (who effected power of attorney sales without registration) are tempted to resell the property taking advantage of the fact that there is no registered instrument or record in any public office thereby cheating the purchaser. When the purchaser under such `power of attorney sales' comes to know about the vendors action, he invariably tries to take the help of musclemen to `sort out' the issue and protect his rights. On the other hand, real estate mafia many a time purchase properties which are already subject to power of attorney sale and then threaten the previous `Power of Attorney Sale' purchasers from asserting their rights. Either way, such power of attorney sales indirectly lead to growth of real estate mafia and criminalization of real estate transactions."

It also makes title verification and certification of title, which is an integral part of orderly conduct of transactions relating to immovable property, difficult, if not impossible, giving nightmares to bonafide purchasers wanting to own a property with an assurance of good and marketable title....."

In the present case, the document has been registered on the basis of the GPA which was found to be in order by the SRO and full stamp duty has been paid and the document is registered. Therefore, this act of registration through GPA would not find primary defect in the eyes of the state government, under whose jurisdiction the land being a state subject, has duly recognised this transfer and registered the document in the land records.

Further, the Hon'ble Apex Court in the said case has made the following observations, even when the deeds were not registered:

".....They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act....."

Needless to reiterate, the Income Tax Act u/s 2(47)(v) recognizes the above as transfer for the purpose of taxability under the head "Capital Gains".

The Hon'ble Apex Court further observed as under:

".....We make it clear that if the documents relating to `SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision....."

Thus, in the present case, the document has been registered in the favour of transferee and the SRO has charged the relevant stamp duty, thus, it is a transfer and further, in the above discussion, it has been established

that this is not a simple GPA but effectively an ownership within the meaning and intent of the Income Tax Act and all the benefits have gone to the appellant and the same has been ratified again and the owner which is the appellant in the present case has been vested with all the rights for the properties mentioned in Schedule II

In view of the above discussion, the appellant is held as the owner of the property within the meaning of Income Tax Act and the said transfer of these properties will liable for capital gains in the hands of the appellant Mr.PS Prasad as per the manner provided in the Act and the ground no.9, 13, 19, 20 and 21 are dismissed accordingly.

Further, with regard to the issue of computation and liability of capital gains as per provisions of Section 50C, it is to be noted that the SRO has registered the properties, which very clearly shows that at the time of transaction there was no dispute in the properties and also the appellant has not litigated regarding the FMV of the properties before the SRO and thus it is accepted that the SRO value is the FMV of the properties. If there was any dispute regarding the title as on the date of transaction, the SRO would not have gone ahead with the registrations. Thus, the ownership is not disputed and also the SRO value.

The ingredients of the above cited sale deed, results in a ***"transfer"*** *(of the capital asset being subject land)* within the meaning of section 2(47) of the IT Act, 1961 and thus the appellant is liable to pay capital gains on the said transfer during the year.

Further, the value so adopted by the stamp valuation authority has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court. Therefore, it is fair to conclude that the appellant had accepted the valuation as done by the valuation authority in this regard and that was the FMV of the properties.

The Section 50C reads as under:

"50C. *(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :*

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer:

75a[Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.]

(2) Without prejudice to the provisions of sub-section (1), where—

(a) ***the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;***

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."

It is further seen that the appellant has not challenged the valuation before the Assessing Officer as per Sub-section (2) of Section 50C as per the submissions on record but for mentioning the history of litigation. The same have been duly registered and if there was a dispute as on that date, the SRO would not have registered the same. The appellant has never made a request for reference to valuation rather the appellant has been claiming that the same cannot be taxed, which is a truly bizarre claim as the properties have been transferred and consideration has been exchanged, then by default it is

liable for taxation under the head "Income from Capital gains" as per the computation method provided in the IT Act. The Assessing Officer has only followed the said method.

Further, even if there are subsequent directions of the court cancelling mutations on the encumbrance does not impact the chargeability of tax on account of transfer as per section 2(47) of the Act and the liability to pay tax on capital gains in the year of transfer.

The same view has been held by the Hon'ble High Court of Kerala while adjudicating on a similar issue in the case of CIT Vs Harbour View in Appeal No. 33 of 2010 vide order dated 24/09/2018. The relevant part of the judgment is reproduced as under:

"Once the sale agreement comes under the provisions of section 53A of the TP Act, handing over of possession takes place and the provisions under section 2(47) would squarely apply. ***That apart, the argument of the learned senior counsel for the assessee that contract was subsequently rescinded will not be of any help because the contract was rescinded only subsequent to the assessment year and what we are concerned for the purpose of the Act is the transactions which took place during the assessment year.*** *The fact that the contract was subsequently terminated on mutual consent will not improve the case of the assessee to wriggle out of the purview of section 2(47) of the Act and the liability to pay tax on short-term capital gains under section 45 of the Act.*

18. Here, to dispel any reasonable doubt which may arise, we extract below one of the conditions stated in Shrimant Shamrao Suryavanshicase (supra) :

"(6) the transferee must have performed or be willing to perform his part of the contract."

Here the agreement was rescinded between the parties but long after the assessment year in which the agreement was entered into and possession handed over. At least when the returns were filed there was a right conferred on the transferee as per section 53A of the Transfer of Property Act. The transferor though subsequently was absolved from the rigour of section 53A ; in the close of assessment year was obliged to return the capital gains as per section 2(47)(v) of the Income-tax Act. The Income-tax

Act by the definition clause includes a transaction in accordance with section 53A as a transfer in relation to a capital asset. The consequence flowing from the inclusive definition has to be given effect to as on the subject assessment year and the transferor being absolved subsequently from the rigour of section 53A as against the transferee is of no consequence in applying the rigour under the taxation enactment. The transaction failed and the parties settled between themselves, but the voluntary act of the parties cannot efface the tax liability. We hence answer the questions of law on the facts arising in the above case against the assessee and in favour of the Revenue."

In view of the aforesaid decision of the Hon'ble High Court, it is held that any subsequent circumstances affecting the encumbrance will not affect the liability of capital gains to be charged in the year of transfer as per provisions of IT Act.

Therefore, the claim of the appellant that the subsequent development as stated in the submission will result in the same being not a transfer is completely incorrect and not in consonance with the provisions of the IT Act and the definition of transfer u/s 2(47) of IT Act, 1961. It is important to note that the owner has sold the land and the buyer has paid the consideration and has handed over possession and the document was duly registered, thus the above is a transfer and liable for capital gains as per IT Act. The subsequent development has no bearing on the taxation of the transaction. It will be important to note on a similar analogy, if the debt goes bad, it is only written off subsequently but not in the year of the debt arising. The subsequent developments cannot change the taxation of the transaction. It is important to note that in case of any subsequent development, it is the buyer who suffers and not the transferor (appellant). The property is sold and the mutation has taken place and the SRO has registered the deed. **The appellant is liable for capital gains as per Section 50C as laid down by the**

Parliament and Section 2(47) is very clear in this regard that the taxability arises in the present year. This argument has no legs to import a situation which has happened after multiple years of transfer and to come to the rescue of the appellant for not reflecting income and tax liability as per Section 50C. There is no provision in the Act to give such effect at all and this has been done to provide a completeness to taxation and to import the concept of real income etc would be bizarre in the case of appellant as the governing provisions of Section 50C pertains to either deemed income or real income whichever is higher and this is the code of taxation approved by the Parliament. **The title of the land being taken away is the problem for the buyer and it is his loss and it does not and will not come to the rescue of the vendor's tax liability of that particular year. The Section 50C does not leave any room for further interpretation and also in the agreement there is no such condition provided,** therefore, in no manner the tax liability of the appellant changes with regard to subsequent developments especially when the Act is very clear in that regard.

The appellant has not given any quantification of cost of acquisition, therefore, the appellant is not eligible to claim cost of acquisition while computing capital gains and the Assessing Officer has rightly taxed the capital gains in the hands of the appellant.

With regard to addition of Rs.13,67,30,000/-, the appellant had stated that the amount pertains to sale of land to M/s. Shroff Apparels Pvt Ltd vide doc no. 4354/2011 dated 26.08.2010 situated in Sy. No.172 of Hydernagar village of land admeasuring 2.33 Acres and that the sale deed was executed

by the appellant in the capacity of General Power of Attorney Holder and as such shall not be liable to tax in the hands of the appellant. The said addition was already made in the assessment u/s 147 and therefore the addition is not out of a new finding/evidence. If the assessment u/s 147 was pending at the time of search assessment u/s 153A, then the proceedings u/s 147 could have subsumed in the proceedings u/s 153A, however, in the instant case, the assessment u/s 147 was completed before the assessment u/s 153A. As the addition was already made in the assessment u/s 143(3) r.w.s. 147 which was completed before the assessment u/s 153A , there was no need to make the addition again in the assessment u/s 153A, instead the AO should have started the computation of income from the income assessed vide order u/s 143(3) r.w.s. 147. Further, CBDT Circular No.7 of 2003 dated 05.09.2003 issued on Explanatory Notes on provisions relating to Direct Taxes with regard to Finance Act, 2003 has stated as under:

*"**.....65.5** The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. **It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate**. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest, penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year...."*

Thus, the earlier appeal proceedings in the case of the above assessment would determine the fate of the addition made by Assessing Officer in that assessment proceedings u/s 147 and therefore, the Assessing Officer had no jurisdiction to make this addition a subject matter of present proceedings. However, it is clarified that the income determined after the assessment u/s 147 would be the base for the income to be determined in the subject assessment and the order giving effect, if any, for that assessment u/s 147 will change the base income for the present subject assessment. The concept of last assessed income would prevail for that earlier proceedings subject to appeal effects. In view of the above discussion, the addition of Rs.13,67,30,000/- is hereby deleted as it has been freshly discussed and no addition/adjudication can be done with regard to addition already done before and is a subject matter of that assessment and consequent appeal proceedings, if any. However, the Assessing Officer was within the right to compute the income for the present assessment by taking the base as the last assessed income which was in this case as per assessment u/s 147 for making the additions in the present proceedings as the appellate order was not received till the completion of these assessment proceedings. In view of the above, the addition of Rs.13,67,30,000/- is hereby deleted as the addition has already been made for the same assessment year in earlier proceedings and the ground no.16 is allowed accordingly.

In view of the above discussion, the additions made by the Assessing Officer on account of capital gains is hereby confirmed with regard to amounts of Rs.48,40,00,000/- and Rs.8,34,30,330/- and accordingly the

ground no.12 is partly allowed and the ground no.18 is dismissed accordingly.

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

"1. The Ld. CIT(A) erred in partly allowing the appeal.

a. The Ld. CIT(A) erred in dismissing ground nos. 3, 6 & 7 taken before him.

b. The Ld. CIT(A) erred in holding that the sale deeds found during the course of search would surely constitute incriminating material dehors the fact that the sale deeds are public documents which are available on public domain.

c. The Ld. CIT(A) ought to have appreciated that there is no seized material based on which all the additions are made.

d. The Ld. CIT(A) ought to have deleted all the additions made in the assessment made u/s 143(3) r.w.s. 153A of the Act on the ground that they are not based on any seized material.

e. The Ld. CIT(A) ought to have appreciated that the assessment for the year under consideration is an "unabated assessment".

f. The Ld. CIT(A) ought to have appreciated that an addition which is not based on seized material, can be considered to be made in the assessment completed u/s 143(3) r.w.s. 153A of the Act only when the assessment is abated.

g. The Ld. CIT(A) ought to have appreciated that since the time for issue of notice u/s 143(2) of the Act has already lapsed on 31.03.2012 in the appellant's case, the assessment cannot be said to be an "abated assessment".

h. The Ld. CIT(A) ought to have appreciated that for the assessment under consideration i.e., assessment year 2011-12, notice u/s 143(2) of the Act could be given only within the time specified u/s 139(4) of the Act i.e., on or before 31.03.2012 and that, therefore, the assessment for the assessment year 2011-12 is an unabated assessment.

i. The Ld. CIT(A) ought to have appreciated that since the impugned assessment is unabated, all the additions made in the assessment which are not based on any seized material, are void ab initio.

j. The Ld. CIT(A) ought to have appreciated that by no stretch of imagination, the impugned registered documents based on which all1 the additions have been made u/s 50C of the Act, can be taken as the material seized in the search.

k. The Ld. CIT(A) ought to have appreciated that the entire information with regard to the impugned documents is available on regard not only with the Assessing Officer but also in public domains much earlier to the date of search.

(3) a. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in confirming the addition of Rs.48,40,00,000/- made u/s 50C of the Act.

b. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in dismissing ground nos.9, 13, 14, 17 to 25 taken before him.

(4) a. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in| dismissing ground nos.18, 19, 20, 21, 23, 24, 25 taken before him.

b. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in confirming the addition of Rs.8,34,30,330/- made u/s 50C of the Act.
(5) a. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in | appreciating that the transaction with regard to the document | no.5188/2010 has already been offered for taxation by the Company viz., Infraventures Limited in its returns of income for the assessment a. years 2009-10 and 2010-11 which has been accepted by the Ld. CIT(A)-11, Hyderabad in his appeal order dated 03.08.2020 in respect of the | order u/s 143(3) r.w.s. 147 in the appellant's case for the same assessment year 2011-12.

b. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in appreciating that the appellant has transferred the impugned land to M/s. Inn Tack Control Pvt. Ltd., vide document no.5188/2010 dated 26.08.2010 in his capacity of General Power Attorney Holder and not in his individual capacity.

c. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in appreciating that the sale consideration with regard to the impugned land has already been offered to tax by the real transferor, M/s. Trinity Infraventures Limited for the assessment years 2009-10 and 2010-11.

d. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in | appreciating that when the sale consideration in respect of document no.5188/2010, has been offered to tax for the assessment years 2009-

10 and 2010-11, by M/s. Trinity Infraventures, taxing of the sale consideration again in the hands of the general power of Attorney holder, the appellant, tantamounts to double laxation.

6.Without prejudice to ground nos. 2(a) to 2(k), the Lal. CIT(A) ought to have appreciated that there is no valid transfer of the impugned property because the title of the impugned lands in Sy.No.172 of Hydernagar Village and Sy.No.78 of Hafezpet is the subject matter of Civil Suit in C.S.No.14/1958 in Telangana High Court where in the property is shown at item no.37 &38 of Schedule IV (A) of the Plaint Schedule Properties.

7. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) ought to have appreciated that the title of the impugned property is in dispute as on date vide Gazette Notification of Govt. of Telangana in G.0. M.S. No.863 dated 26.09.2013.

8. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in being silent on the appellant's argument that the capital gains arising out of the sale of the impugned land has already been taxed in the hands of M/s. Trinity Infraventures Limited for the assessment years 2009-10 and 2010-11.

a. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) having extracted certain paras of the Bombay High Court order in Suit No.643 of 2014 dated 28.04.2017 where in the appellant herein, was none other than the holder of Power of Attorney and not the owner of the impugned land, has erred in holding that it clearly implies that the appellant was the owner of the subject lands in legal terms.

b. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in holding that the appellant is supposed to enjoy all the benefits and incur all the liabilities with regard to the impugned properties.

c. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in holding that the taxability and its liability will also be in the hands of the appellant.

d. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred inholding that the appellant is the owner of the impugned properties having the possession and has also decided to sell to the person it desires and also decides the consideration in respect of the properties.

e. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in holding that the appellant is held as the owner of the property within the meaning of Income Tax Act and the said transfer of the properties will be liable for capital gains in the hands of the appellant as per the manner provided in the Act and this is not a case of holding a simple Power of Attorney.

f. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in observing that it is not a simple GPA but effectively an ownership within the meaning and intent of the Income Tax Act and all the benefits have gone to the appellant.

g. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in observing that the appellant has been vested with all the rights for the properties mentioned in Schedule II of the impugned documents.
10. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in holding that the transfer of the impugned properties will be liable for capital 1gains in the hands of the appellant.

11. a. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) erred in holding that it is fair to conclude that the appellant has accepted the valuation of the impugned properties. b. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) ought to have appreciated that the Assessing Officer has not referred the valuation to the DVO as stipulated in section 50C(2) of the Act.

c. Without prejudice to ground nos. 2(a) to 2(k), the Ld. CIT(A) ought to have appreciated that if the stamp duty valuation is higher than the consideration received, the Assessing Officer is obliged to refer the valuation to the DVO even if there is no request made by the assessee in this regard.

12. The appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal."

6. Ground of appeal No.1 & 12 being general in nature are dismissed.

7. The learned Counsel for the assessee did not press Ground of appeal No.2 for which the learned DR has no objection. Accordingly, ground of appeal No.2 is dismissed as not pressed.

8. The remaining grounds relate to the order of the learned CIT (A) in sustaining the addition of Rs.48,40,00,000/- and Rs.8,34,30,330/- respectively.

9. So far as the first addition of Rs.48,40,00,000/- is concerned, the learned Counsel for the assessee submitted that the transfer of land in Survey No.172 of Hydernagar Village vide document No.5188/2010 dated 26.08.2010 has been made in his capacity of "General Power of Attorney holder" and not in the capacity of real owner. Similarly, the transfer of land in survey No.78 of Hafeezpet vide several documents has also been made by the assessee in his capacity as "GPA holder" and not in the capacity of real owner. The above fact is not disputed by the Revenue authorities. Therefore, the income arising from transfer of all the above-mentioned properties by the assessee, who is a mere GPA holder, cannot be taxed in the hands of the assessee. For the above proposition, he relied on the following decisions:

i) JCIT vs. D. Seshagiri Rao (2018) 89 Taxmann.com 3 (Hyd. Trib)

ii) Suraj Lamps & Industries (P) Ltd vs. State of HNaryana (2012) 340 ITR 1 (S.C)

10. The learned Counsel for the assessee drew the attention of the Bench to the order of the CIT (A) in assessee's own case for the same A.Y in the first round of litigation vide order passed u/s 143(3) r.w.s. 147 of the Act dated 29.11.2018 wherein the CIT (A) has observed as under:

> *"5.3 On consideration of the above, it is seen that the above consent terms has not conferred any right as owner to the assessee. The consent terms reiterate that the assessee is GPA holder and remains so. The finding of the Assessing Officer that in terms of the consent terms the appellant is conferred ownership rights is not established. The undertaking of appellant to pay arrears of taxes cannot be considered as transfer of ownership. At the best the appellant liable to reimburse the taxes, if any, payable on*

account of transactions in the scheduled property. In view of the above, the appellant is only GPA holder in respect of the above property and the capital gains arising out of the transaction is not assessable in appellant's hands. The addition made is accordingly, deleted".

11. He submitted that when the Revenue filed appeal against the order of the learned CIT (A), the Tribunal vide ITA No.476/Hyd/2020 dated 8.9.2021 at para 5 of the order has upheld the order of the learned CIT (A) by holding that the income arising from transfer of property by the GPA holder would not be taxable in the hands of the assessee. He accordingly submitted that since the issue stands covered in favour of the assessee by the decision of the Hon'ble Supreme Court and by the decision of the Coordinate Bench of the Tribunal in assessee's own case to the proposition that the income arising from transfer of property by the GPA holder would not be taxable in the hands of the GPA holder, therefore, both the additions made by the Assessing Officer i.e. Rs.48,40,00,000/- and Rs.8,34,30,330/- u/s 50C of the Act do not survive and is liable to be deleted.

12. Without prejudice to the above submission, the learned Counsel for the assessee submitted that the sale proceeds have already been offered to tax in the hands of M/s. Trinity Infraventures Ltd in the earlier A.Ys i.e. in the A.Y 2009-10 and 2010-11 which is discernible from the order of the learned CIT (A)-11 Hyderabad vide his order dated 3.8.2020 in the case of Trinity Infraventures Ltd. He drew the attention of the Bench to the order of the learned CIT (A) in the case of M/s. Trinity Infraventures Ltd for the A.Y 2010-11 copy of which is placed at page 29 to 91 of the Paper Book, and submitted that the learned CIT (A) has clearly accepted that the sales in question have

already been taxed in the hands of M/s. Trinity Infraventures Ltd for the A.Y 2009-10 in respect of total consideration of Rs.155.00 crores in respect of the total land sold in the group case to the extent of 34 acres 61 guntas of survey No.172 at Hydernagar in A.Y 2009-10 and 2010-11. He accordingly submitted that addition of the same will amount to double taxation and therefore, the same should be deleted.

13. The learned Counsel for the assessee drew the attention of the Bench to the extracts of the sale deed wherein it is clearly mentioned that the sale consideration so made is in favour of Goldstone Exports Ltd (presently known as Trinity Infraventures Ltd).

> *"That a total sale consideration of Rs.10.00 crores (Rupees Ten Crores only) has been paid to the Vendor's Nominee hereto vide demand drafts bearings Nos.072381, 072382 and 072383 each of Rs.2,50,00,000/- (Rupees Two crores fifty lakhs only) drawn in favour of the Nominee of the Vendor hereto issued by Axis Bank Ltd, R.P. Road Branch, Secunderabad. The payments so made are made in favour of M/s. Goldstone Exports Ltd., the nominee of the vendor herein with the explicit consent and also at the instructions and request of the Vendor herein towards the full and final sale consideration due to it and the receipt of which is admitted and acknowledged by the Vendor hereto as well as the said nominee".*

14. Referring to page 13 of the sale deed, he drew the attention of the Bench to the status of the assessee according to which Vendor M/s. Cyrus Investment is represented by his GPA Dr. P.S. Prasad i.e. the assessee. He accordingly submitted that since the assessee is the GPA holder and not the real owner of the property and since the sale proceeds have already been offered to tax in the hands of M/s Trinity Infraventures Ltd for the earlier

A.Y i.e. A.Y 2009-10 and 2010-11, therefore, taxing the same again in the hands of the assessee for the A.Y 2011-12 is not correct and should be deleted.

15. So far as the addition of Rs.8,34,30,330/- is concerned, he submitted that the transfer of land in Survey No.78 of Hafeezpet vide several documents has also been made by the assessee in capacity of GPA holder and not in capacity of real owner. He further submitted that some portion of the land has already been occupied/encroached by villagers and whatever amount has been received by the assessee has been offered as "other income" and accordingly the taxes have been paid. Therefore, no addition is called for.

16. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that the learned CIT (A) has given justifiable reasons while sustaining the addition of Rs.48,40,00,000/- and Rs. 8,43,30,330/- respectively. Since he has passed an exhaustive order giving reasons while sustaining the addition, therefore, the same should be upheld and the grounds raised by the assessee on this issue should be dismissed.

17. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the 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 Assessing Officer in the assessment order passed u/s 143(3) r.w.s. 153A of the Act made three additions on account of sale of land by the assessee. The first addition of Rs.48,40,00,000/- on account of sale of land vide document No.5188/2010 dated

26.8.2010 was made by him being sale of land on agreed consideration of Rs.10,00,00,000/- as against the registered value of the property at Rs.48.40 crores and the assessee did not provide any details with regard to the cost price of the land and also any expenses incurred for the sale of the property. He, therefore, invoking the provisions of section 48 r.w.s 50C r.w.s. 2(47) of the I.T. Act made addition of Rs.48,40,00,000/- to the total income of the assessee. Similarly, the Assessing Officer made another addition of Rs.8,34,30,330/- being the sale of land vide several documents for a consideration of Rs.8,34,30,330/- which were purchased for Rs.20.00 lakhs under CS 14, as per GPA dated 7.1.2005on the ground that here also the assessee did not produce any details regarding the cost price of the land and any expenses incurred. So far as the 3rd addition is concerned i.e. the addition of Rs.13,67,30,000 in respect of sale of land vide document No.4354/2011 dated 26.8.2010, we find the learned CIT (A) deleted the same on the ground that the same addition was already made in the assessment u/s 147/143(3) which was completed before the 153A proceedings and the Revenue is not in appeal and therefore, we are not concerned with the same.

18. So far as the first two additions are concerned, the learned CIT (A) has sustained both the additions, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that since the assessee sold the above lands in his capacity as GPA Holder, therefore, in view of the various decisions cited by him and in view of the decision of the Tribunal in assessee's own case for the same year in the quantum proceedings u/s 147/143(3) no amount is to be taxed in the hands of the assessee. It is also his

alternate contention that charging to tax in the hands of the assessee will lead to double taxation in the hands of the assessee since the sale proceeds have already been offered to tax in the hands of M/s. Trinity Infraventures for the earlier A.Ys i.e. 2009-10 and 2010-11 which has been recorded by the CIT (A) in his order dated 3.8.2020 in the case of M/s. Trinity Infraventures.

19. We find the learned CIT (A) in the instant case has given finding (i) that the said properties were sold by the assessee on the basis of General Power of Attorney Holders which in fact give the assessee factually full ownership and no sale consideration was required to be given to M/s. Cyrus Investments Ltd, (ii) that the possession was in the hands of the assessee which was also transferred to the transferee, (iii) that the titles were already conferred on Mr. PS Prasad by the Hon'ble High Court at Hyderabad vide various orders wherein Mr. PS Prasad i.e. the assessee had to move to the Court on account of termination notices by M/s. Cyrus Investments Ltd (iv) that since the assessee was in the possession of the land and also disposed of the property at will and decided the value and not a single rupee has been paid out of any of these transactions to M/s. Cyrus Investment Ltd, then the natural corollary is that the assessee has enjoyed all the benefits and therefore, the liability of taxation will arise in the hands of the assessee.

20. However, in our opinion, if the company which has received the payments from the buyers at the instance of the assessee, has already paid taxes on account of the sale of the aforementioned properties, then in our opinion, there is no

question of taxing the same in the hands of the assessee. We further find under same analogy the addition of Rs.13,67,30,000/- added by the Assessing Officer was deleted by the CIT (A) in the first round of litigation inter alia by observing as under:

> *"5.3 On consideration of the above, it is seen that the above consent terms has not conferred any right as owner to the assessee. The consent terms reiterate that the assessee is GPA holder and remains so. The finding of the 'AO' that in terms of the consent terms the appellant is conferred ownership rights is not established. The undertaking of appellant to pay arrears of taxes cannot be considered as transfer of ownership. At the best the appellant liable to reimburse the taxes if any payable on account of transactions in the scheduled property. In view of the above, the appellant. is only GPA holder in respect of the above property and the capital gains arising out of the transaction is not assessable in appellant's hands. The addition made is accordingly, deleted".*

21. We find the Tribunal in appeal filed by the Revenue dismissed the appeal by observing as under:

> *"5. The first and foremost arguments between the parties before us is qua assessment of the impugned un-disclosed income in assessee's hands. The Revenue's case in light of the assessment findings is that the assessee had been declared as the original owner of the property in hon'ble Mumbai high court in suit No.643/2014, dt.28-04-2017. It fails to rebut the clinching fact that the CIT(A) has already examined the terms of dispute in the said civil suit wherein this appellant has been held as a GPA holder only than having title of the asset. We note in this clinching factual backdrop that the learned co- ordinate bench's order in JCIT Vs. V.D.Seshagiri Rao (2018) [89 taxmann.com 3 (ITAT Hyd) holds that the income arising from transfer of property by the GPA holder would not be taxable in his hands. We therefore affirm the CIT(A)'s action deleting the impugned addition for this precise reason alone.*

22. We therefore, find merit in the argument of the learned Counsel for the assessee that since the impugned sale proceeds have already been offered to tax in the hands of M/s Trinity Infraventures for the earlier A.Ys, therefore, taxing the same in the hands of the assessee in his capacity as GPA Holder will

amount to double taxation. We therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to re-adjudicate the issue keeping in mind the decision of the Tribunal in the case of the assessee regarding the applicability of provisions of section 50C to GPA Holder while adjudicating the issue of Rs.13,67,30,000/- in the first round of litigation. He shall also consider the argument of the learned Counsel for the assessee that tax has already been paid by M/s Trinity Infraventures on this very sale of land. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

23. So far as the 2nd addition is concerned, i.e., Rs.8,34,30,330/-, it is the submission of the learned Counsel for the assessee that he has sold the above property in his capacity as GPA holder and not in capacity of real owner and therefore, provisions of section 50C are not applicable. Since the above issue also has got a bearing in the light of our finding in the preceding paragraph, therefore, grounds relating to this issue are also restored to the file of the Assessing Officer with similar direction. The Assessing Officer shall re-adjudicate the issue after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

ITA Nos.391 & 392/Hyd/2022 – A.Y 2013-14 & 2015-16

25. After hearing both the sides, we find the grounds raised by the assessee in the above two appeals are identical to the grounds raised in ITA No.390/Hyd/2022 for the A.Y 2011-12 except the quantum. We have already decided the issue and the grounds raised by the assessee are allowed for statistical purposes. Following similar reasonings, the effective grounds raised in the above two appeals are also allowed for statistical purposes with similar directions.

26. In the result, all the 3 appeals filed by the assessee are partly allowed for statistical purposes.

SA Nos.20 to 22/Hyd/2022

27. The assessee through these stay applications has requested for stay of realization of outstanding demand. Since the appeals of the assessee have been heard and the matter is restored back to the file of the Assessing Officer, therefore, the stay applications have become infructuous. Accordingly, all the 3 Stay Applications filed by the assessee are dismissed.

28. To sum up, all the 3 appeals filed by the assessee are partly allowed for statistical purposes and the 3 SAs filed by the assessee are dismissed.

Order pronounced in the Open Court on 12th June, 2023.

Sd/-	**Sd/-**
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(R.K. PANDA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 12th June, 2023
Vinodan/sps

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5	DR, ITAT Hyderabad Benches
6	Guard File

By Order