

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

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

आ.अपी.सं / ITA No. 243/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

Sri Surendra Kumar Murarikar, Hyderabad [PAN No. AKPPM9317F]	Vs.	Dy.Commissioner of Income Tax, Central Circle-2(1), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Vijay Kumar Punna, AR
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 07/06/2023
घोषणा की तारीख/Pronouncement on: 21/06/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 09/01/2023 passed by the learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)"), in the case of Sri Surendra Kumar Murarikar ("the assessee") for the assessment year 2018-19, assessee preferred this appeal.

2. Brief facts of the case are that, a search and seizure operation under section 132 of the Income Tax Act, 1961 (for short "the Act") was conducted on 04/11/2020 at office cum residential premises in the case of

Sri Vittal Bandari and Bandari Srikanth & others. During the course of search proceedings, certain documents were seized. On verification of the same, it was found that absolute agreement of sale of the property situated at NTR Nagar, Gopanpally Village, Serilingampally was made on 16/11/2017 between Shri Surender Kumar Murarikar (Seller) and Smt. B. Sumitra (Purchaser) for a total sale consideration of Rs. 24,00,000/-. However, no explanation for the source of the investment in respect of the said property was explained by the assessee. Hence, the learned Assessing Officer treated the entire sale consideration as 'un-disclosed investment' in the hands of the assessee.

3. Accordingly, satisfaction note was prepared by the learned Assessing Officer and notice under section 153C of the Act was issued to the assessee. Subsequently, notice under section 142(1) of the Act was also issued to the assessee to furnish certain information i.e., income computation statements, bank account statements, form 26AS and other relevant information. The assessee is a non-filer and despite of providing several opportunities, assessee has not filed the return of income and not furnished any information/documents, which are necessary for completion of assessment proceedings. Finally, learned Assessing Officer completed the *ex parte* assessment under section 144 read with section 153C of the Act.

4. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the learned CIT(A). The impugned order reveals that the assessee did not respond to several notices issued by the learned Assessing Officer and, therefore, the learned CIT(A) opined that the assessee failed to submit any explanation regarding the sources of investment in the said immovable property or to provide reasons why the return of income was not filed, showing the said transaction. Finally, learned CIT(A) dismissed the appeal of assessee. Aggrieved by the action of learned CIT(A), assessee preferred appeal before the Tribunal raising various grounds.

5. It is the contention of the learned AR that learned CIT(A) erred in affirming the assessment order under section 144 read with section 153C of the Act inspite of same being vitiated by legal infirmity. He further contended that the assessee purchased the said immovable property and sold the same during the current year for Rs. 24,00,000/-. It was also contended by him that the learned CIT(A) erred in affirming the order of learned Assessing Officer without referring to the provisions of section 2(47)(v) read with section 53A of the Transfer of Property Act, since the searched documents is not registered, the learned CIT(A) could not have proceeded to hold that there is a sale during the relevant financial year. Learned AR finally prays the Bench to give an opportunity to the assessee so that the assessee can appear with all the necessary documents to prove his case.

6. Per contra, learned DR submitted that in spite of grant of several opportunities, the assessee failed to avail the same, and, therefore, the authorities below are justified in dismissing the appeal of assessee.

7. We have gone through the record in the light of the submissions made on either side. As per record, it is clear that the assessee did not respond to any of the notices of the learned Assessing Officer. Hence, the learned Assessing Officer finalised the assessment under section 144 read with section 153C of the Act with the available information. It is also clear from the record that the assessee failed to submit any explanation before the learned CIT(A) also regarding the sources of investment in the said immovable property or to provide reasons why the return of income was not filed, showing the said transaction.

8. Having regard to the facts and circumstances stated above, it could be seen from the orders of the authorities below that the assessment order is an order passed under section 144 read with section 153C of the Act and the assessee did not enter appearance before the learned Assessing Officer. Explanation now offered by the learned AR is that

assessee is an age old person with a wife working as a maid in school with no income source as such with an adopted child. Notices even if received was not brought to the notice of the assessee. Hence, the assessee could not appear before the learned Assessing Officer and pursue the proceedings effectively. In these circumstances, we are of the considered opinion that giving an opportunity to the assessee to produce all the relevant documents before the learned Assessing Officer for fact verification would meet the ends of justice. Hence, we set aside the orders of the authorities below and restore the issue to the file of the learned Assessing Officer to decide it, after hearing the assessee. It is made clear that it is the last opportunity to the assessee and no further lenience will be taken. Grounds are accordingly treated as allowed for statistical purposes.

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

Order pronounced in the open court on this the 21st day of June, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 21/06/2023

TNMM

Copy forwarded to:

1. Sri Surendra Kumar Murarikar, H.No. 14-11-871 to 873, Beerbanbagh, Navee Basti, Hyderabad.
2. Dy. Commissioner of Income Tax, Central Circle-2(1), Hyderabad.
3. Pr.CIT-Central, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD