

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. 178/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2014-15)

Soubhagya Rani Vaddireddy, Hyderabad [PAN No. ADIPM9263E]	Vs.	Assistant Commissioner of Income Tax, Central Circle-1(2), Hyderabad
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 30/08/2023
घोषणा की तारीख/Pronouncement on: 31/08/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 01/02/2023 passed by the learned Principal Commissioner of Income Tax (Central), Hyderabad (Ld. PCIT) under section 263 of the Income Tax Act, 1961 (for short "the Act") in the case of Smt. Soubhagya Rani Vaddireddy ("the assessee") for the assessment year 2014-15, assessee preferred this appeal.

2. Briefly stated relevant facts are that the assessee is an individual dealing with manufacture related projects and contracts. She did not file

the return of income for the assessment year 2014-15. There was a search and seizure operation carried out on 27/09/2018 in the case of the assessee. In response to the notice under section 153A of the Act, assessee filed the return of income declaring an income of Rs. 2 lakhs. On the basis of the evidence available in the material seized during the course of search and seizure operations, learned Assessing Officer made an addition of Rs. 2.72 crores.

3. Subsequently, on a perusal of the assessment record, learned PCIT found that form 26AS for the financial year 2013-14 disclosed that the assessee had sold immovable property in respect of which tax was deducted under section 194-IA of the Act. Learned Assessing Officer however, failed to notice this fact and failed to take cognizance of the information available in Form 26AS, thereby missed an opportunity to verify whether this amount represents the business income or income from the capital gains thereby he failed to verify whether tax at the rate of 30% or 20% is applicable to the facts of the case, apart from the applicability of the provisions under section 50C of the Act. Learned PCIT further observed that even in response to the notice under section 263 of the Act, except contending that the twin conditions under section 263 of the Act, namely, error in the order and its prejudicial impact to the Revenue, there was no submissions on the factual aspect of non-disclosure of income arising from the sale of property. Learned PCIT, therefore, concluded that the order needs to be set-aside with a direction to the learned Assessing Officer to verify the nature of the immovable property, sale transaction reported in Form 26AS of the assessee for the year under

consideration, after affording an opportunity to the assessee to make submissions.

4. Aggrieved by such an action of the Learned PCIT, assessee preferred this appeal contending that in an assessment under section 153A of the Act, addition could only be with reference to the material seized and therefore, the learned Assessing Officer was right in making the addition only in respect of the income relatable to the incriminating material that was seized during the search and seizure operations, and therefore, there is neither any error in the order nor was it prejudicial to the interest of Revenue. Learned AR contended that the jurisdiction of the learned Assessing Officer is limited to the extent of the incriminatory material that was found during the search and therefore, the Learned PCIT cannot exercise jurisdiction under section 263 of the Act.

5. Per contra, learned DR contended that when once incriminatory material found during the search, the learned Assessing Officer made not confined to the incriminating material alone and he would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the learned Assessing Officer, including the income declared in the returns.

6. We have gone through the record in the light of the submissions made on either side. The Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell P. Ltd. [2023] 149 taxmann.com 399 (SC) while in complete agreement with the view taken by the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, (2015) 61 taxmann.com 412 (Delhi) and the

Gujarat High Court in the case of PCIT Vs. Saumya Construction (2016) 387 ITR 529 and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material, concluded that-

- i) that in case of search under Section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- ii) all pending assessments/reassessments shall stand abated;*
- iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*
- iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

7. It is, therefore, clear that the matter is set at rest by the Hon'ble Supreme Court in the case of Abhisar Buildwell P. Ltd (supra) by holding that, in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the learned Assessing Officer would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the learned Assessing Officer including the income declared in the returns.

8. Since there is no dispute that the learned Assessing Officer in this case failed to notice the information contained in Form 26AS of the relevant financial year, to make necessary enquiries and verification with regard to the sale of immovable property and to determine the nature of transaction to know whether the applicable tax was at 30%, if the transaction is in the nature of business, under 20% if the transaction and is a Long Term Capital Gains. Learned PCIT rightly held that the assessment order dated 24/3/2021 is erroneous insofar as it is prejudicial to the interest of Revenue, and accordingly exercised the jurisdictional section 263 of the Act.

9. We, therefore, do not find anything illegality or irregularity in the exercise of jurisdiction by the Learned PCIT and, therefore, decline to interfere with the same. Consequently, the appeal fails and is dismissed.

Order pronounced in the open court on this the 31st day of August, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 31/08/2023

TNMM

Copy forwarded to:

1. Smt. Soubhagya Rani Vaddireddy, 8-2-293/82/J III/473/B, Road No. 87, Jubilee Hills, Hyderabad.
2. Asst. Commissioner of Income Tax, Central Circle-1(2), Hyderabad.
3. PCIT (Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD