

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.158 to 163/Hyd/2023		
Assessment Years: 2013-14, 2014-15, 2015-16, 2016-17, 2018-19 and 2019-20		
Shri Pawan Kumar Reddy Kadigari, USA PAN:CHFPP1987D (Appellant)	Vs.	Income Tax Officer (International Taxation) ² Hyderabad (Respondent)
Assessee by:	Adv. Mohd.Afzal	
Revenue by:	Shri K Madhusudan, CIT(DR)	
Date of hearing:	13/09/2023	
Date of pronouncement:	14/09/2023	

ORDER

Per Bench:

The above batch of 6 appeals filed by the assessee are directed against the separate orders dated 17.01.2023 passed by the Assessing Officer u/s 153C r.w.s. 144 of the I.T. Act for the A.Y 2013-14, 2014-15, 2015-16, 2016-17, 2018-19 and 2019-20 respectively. Since identical grounds have been taken by the assessee in all these appeals, therefore, for the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

ITA No.158/Hyd/2023 (A.Y 2013-14)

2. Facts of the case, in brief, are that the assessee is an individual. A search and seizure operation u/s 132 of the I. T. Act,

1961 was conducted at the residential premises of Shri Allam Raja Reddy on 26.04.2018 being connected case of M/s. Giridhari Construction Group. During the search proceedings, incriminating information(s)/ document(s)/ loose sheets/documents pertaining to the assessee Shri Pavan Kumar Reddy Kadigari were found and seized as per Annexure – A/Annexure/APR/RES/01. Accordingly, after recording satisfaction as per provisions of section 153C, the Assessing Officer, i.e. DCIT, Central Circle 1(4) Hyderabad issued notice u/s 153C to the assessee for the A.Y 2013-14 to 2016-17 and 2018-19 to 2019-20 on 22.3.2021. Since there was no response from the side of the assessee, another notice u/s 142(1) was issued on 18.11.2021 requesting the assessee to file the return of income and also to explain the nature and source of income for the relevant A.Y.

3. Subsequently, it was noticed that the assessee is a Non-Resident-Indian. Therefore, the case was transferred from the DCIT, Circle 1(4) to Income Tax Officer (International Taxation)-2, Hyderabad vide proceedings u/s 127 dated 19.01.2022. Since there was no response to the earlier notices issued, fresh notice u/s 142(1) was issued to the assessee on 08.02.2022 and he was asked to show cause as to why the proceedings may not be finalized as ex-parte based on the material available on record.

4. Vide reply on 14.02.2022, it was submitted that a land admeasuring 2420 sq.yard was purchased on 20.03.2012 along with two others for a consideration of Rs.30,62,780/- and the cost as per his share is calculated at Rs.10,20,817/- being 1/3rd share in the total property. It was submitted that during the relevant

A.Y 2013-14, subsequently the assessee along with two others has entered into development agreement with M/s. Giridhari Constructions on 12.08.2012 vide document bearing No.23/2013 with a sharing ratio of 30:70 (land owners 30% and developer 70%) for the project "Isola". Accordingly, the assessee has declared the resultant short term capital gains calculated at Rs.52,58,007/- by filing the computation and also submitted that the taxes of Rs.14,49,626/- has been paid under self-assessment tax.

5. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that although the assessee has worked out the capital gain and paid the taxes, however, the return of income in response to the notice issued u/s 153C has not been filed. According to him, there is a deemed transfer as per provisions of section 2(47) r.w.s. 53A of the Transfer of Property Act in view of the Hon'ble jurisdictional High Court in the case of Potla Nageswara Rao vs. ACIT (2014) 365 ITR 249 (A.P) therefore, the assessee is liable for capital gains on entering into the joint development agreement. He noted that the assessee, in the instant case, has entered into the development agreement within a span of five months. Therefore, there will be short term capital gains on the said transfer which the assessee has correctly reflected in the return of income filed in response. However, he noticed that the assessee has considered sale consideration at Rs.1,79,59,750/- and the cost of acquisition at Rs.21,85,711/- and has computed the short-term capital gains at Rs.1,57,74,039/-. Accordingly, the assessee has offered an amount of Rs.52,58,007/- being 1/3rd of the share. The Assessing Officer noted that the copy of the development agreement shows the total value of the consideration at Rs.3.00 crores and out of

the same, the share of 70% of built-up area forgone on account of said development agreement would work out to Rs.2,10,00,000/-. He therefore, asked the assessee to explain as to why the same may not be considered for working out short term capital gains. However, in absence of any response from the side of the assessee despite number of opportunities granted, the Assessing Officer made addition of Rs.62,71,429/- to the total income of the assessee being 1/3rd share of the capital gain by observing as under:

10.1 As discussed in the preceding paragraphs, the assessee along with two others has entered into a development agreement with the developer M/s Giridhari Constructions for the development of land admeasuring 2420 Sq. Yards. The consideration reflected in the said document bearing no. 23/2013 is at Rs.3,00,00,000/- and as the assessee has foregone his share of 70% of land, the value so foregone is at Rs.2,10,00,000/- being 70% of Rs.3,00,00,000/-. Hence, the deemed sale consideration to be taken at Rs.2,10,00,000/-. The proportionate cost of acquisition on the 70% of land foregone is at Rs. 21,85,711/-. The short term capital gains is to be worked out as under:

Deemed sale consideration	:	Rs.2,10,00,000/-
Less: Cost of acquisition	:	Rs. 21,85,711/-
Short term capital gains	:	Rs.1,88,14,289/-
1/3 rd Share of capital gains	:	Rs.62,71,429/-

In view of the above, the short term capital gains of **Rs.62,71,429/-** is being brought to tax under short term capital gains for the relevant A.Y. 2013 - 14.

Rs.62,71,429/-

6. The Assessing Officer further made addition of Rs.3,53,000/- being cash deposit in the bank account in absence of any explanation given by the assessee regarding the nature and source of the same.

7. Thus, the Assessing Officer determined the total income of the assessee at Rs.66,37,395/-.

8. The assessee approached the DRP against the draft assessment order passed by the Assessing Officer. However, the DRP upheld both the additions made by the Assessing Officer. The Assessing Officer thereafter in the order passed u/s 153C r.w.s. 144 made addition of the same and determined the taxable income of Rs.66,37,395/- which was originally determined in the draft assessment order.

9. Aggrieved with such order of the Assessing Officer/DRP, the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Assessing Officer ought to have appreciated that time limit for completion of assessment as per clause (ii) of the second proviso section 153B expires 30.9.2020, therefore, assessment made on 17.01.2023, is barred by limitations, therefore, the same is to be held as invalid.

3. The learned Assessing Officer ought to have appreciated that the assessee is not an assessee for "eligible the subject assessment year, as per the provisions of section 144C(15)(i) as the term "non-resident not being a company" is introduced by the Finance Act 2020 w.e.f 01.04.2020, therefore, the assessment made 17.01.2023 is barred by limitations, therefore, the same is to be held as invalid.

4. The learned Assessing Officer ITO (Int Taxn)-2, being a jurisdictional officer of the assessee has not issued notice u/s 153C of the IT Act, whereas the notice was issued by the DCIT Central Circle-1(4), Hyderabad, therefore, the assessment completed by the ITO (Int-Taxn) without issuing notice u/s 153C is an invalid assessment.

5. The learned Assessing Officer ITO (Int-Taxn) erred in referring the matter to the Dispute Resolution Panel (DRP) as the assessee is not an eligible assessee for the assessment year 2013-14, as the term "Non Resident not being a company" was introduced by the Finance Act 2020 w.e.f from 01.04.2020, therefore, the learned Assessing Officer erred in availing the extended time, therefore, the order u/s 153C r.w.s 144 passed on 17.01.2023 is an invalid assessment.

6. The learned Assessing Officer erred in adopting the deemed sale consideration at Rs.2,10,00,000/-on account of development agreement as the transaction made through the development agreement is not a

transfer. Therefore, erred in determining the short term capital gains at Rs.62,71,428/- being 1/3rd of the assessee in the total capital gains determined at Rs.1,88,14,289/-.

7. The learned Assessing Officer erred in making an addition of Rs.3,53,000/- u/s 69A of the I.T. Act.

8. The appellant craves leave to add to amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary."

10. The learned Counsel for the assessee at the outset submitted that sufficient opportunity was not granted by the Assessing Officer while passing the draft order and the DRP without considering the submissions made by the assessee confirmed the additions made by the Assessing Officer. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case. He accordingly submitted that the matter may be remanded to the file of the Assessing Officer for fresh adjudication.

11. The learned DR, on the other hand, strongly supported the orders of the Assessing Officer and the DRP. He submitted that despite adequate opportunities granted by the Assessing Officer & DRP, the assessee failed to file the requisite details, therefore, the order of the Assessing Officer should be upheld and the grounds raised by the assessee should be dismissed.

12. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the assessee, during the course of assesment proceedings, did not furnish the requisite details as asked by the Assessing Officer for which the Assessing Officer made addition of Rs.62,71,429/- on account of short-term capital gain and Rs.3,53,000/- being unexplained cash deposit in the Bank Account. We find the

learned DRP also upheld the action of the Assessing Officer. However, we find the order of the Assessing Officer is silent about the fate of the other two co-owners. So far as the unexplained cash deposit is concerned, we find the DRP sustained the addition made by the Assessing Officer on the ground that the assessee did not furnish any documentary proof in support of the cash gift received from his mother either before the DRP or the Assessing Officer. It is the submission of the learned Counsel for the assessee given an opportunity, the assessee is in a position to substantiate his case by producing the requisite details before the Assessing Officer that no addition can be made towards short term capital gains and also explain the nature and source of the cash deposit of Rs.3,53,000/- in the bank account. 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 grant one last opportunity to the assessee to substantiate his case and decide the issue as per fact and law. We hold and direct accordingly.

13. It is pertinent to mention here that although a number of grounds have been raised by the assessee, however, the learned Counsel for the assessee only requested for restoration of the issue to the file of the Assessing Officer for fresh adjudication by giving an opportunity to the assessee and did not argue any of the legal grounds which have been taken. Therefore, all the legal grounds raised by the assessee are dismissed as not pressed.

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14. In all these appeals, the orders have been passed by the Assessing Officer u/s 153C r.w.s. 144. In A.Y 2014-15 the Assessing Officer made addition of Rs.17,84,900/- as unexplained money and Rs.43,473/- as income from other sources. Similarly, for A.Y 2015-16, the Assessing Officer has made addition of Rs.28,07,142/- and Rs.1,48,78,611/- as short term capital gain and Rs.17,66,172/- as unexplained investment. For A.Y 2016-17, the Assessing Officer has made addition of Rs.109,484/- as short term capital gain, made disallowance of Rs.1,50,000/- under Chapter VIA and denied local tax paid at Rs.1,09,484/-. For the A.Y 2018-19, the Assessing Officer made addition of Rs.32,60,000/- as undisclosed income. Similarly for A.Y 2019-20, the Assessing Officer has made addition of Rs.40.00 lakhs as undisclosed income, Rs.1,50,000/- on account of disallowance of claim made under Chapter VIA and Rs.1,28,585/- on account of disallowance towards local taxes. Since all these assessments have been completed u/s 153C r.w.s 144 and it is the request of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate his case, therefore, considering the totality of the facts of the case and in the interest of justice and in the light of our discussion in ITA No.158/Hyd/2023 for the A.Y 2013-14, the issues raised in all these appeals are also remanded to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer and produce the requisite details as asked for without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per

law. We hold and direct accordingly. The grounds raised by the assessee in all these appeals are allowed for statistical purposes.

15. In the result, all the captioned six appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 14th September, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 14th September, 2023.

Vinodan/sps

Copy to:

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2	Income Tax Officer (International Taxation)-2, Aayakar Bhavan, Hyderabad
3	DRP-1, Bengaluru
4	Pr. CIT - Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order