

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. 47/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Deputy Commissioner of Income Tax,
Central Circle-1(4),
Hyderabad

M/s. Sri Subham Estates,
Vs. Hyderabad
[PAN No. ADDFS4144B]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 22/11/2023
घोषणा की तारीख/Pronouncement on: 29/11/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Challenging the order dated 12/10/2022 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of Sri Subham Estates ("the assessee") for the assessment year 2017-18, Revenue preferred this appeal.

2. Brief facts of the case are that, assessee is a partnership firm and is engaged in real estate business. It filed its return of income for the assessment year 2017-18 on 23/11/2017 declaring nil income. A search

and seizure operation under section 132 Income Tax Act, 1961 ('the Act') conducted in the case of M/ s. Subhagruha Projects (India) Pvt. Ltd. on 05/10/2018 and certain incriminating material containing the details of cash payments made through the assessee to various landlords, was found and seized. Subsequently, a consequential survey under section 133A of the Act was conducted in the case of the assessee on 23/01/2019. In the statement recorded, the Managing Partner of the assessee stated that the assessee was only a facilitator in the land dealings between M/s. Subhagruha Projects (India) Pvt. Ltd., and the landlords and, therefore, the cash component identified the department in the search in the case of M/s. Subhagruha Projects (India) Pvt. Ltd., has nothing to do with the assessee. The Managing Partner, however, volunteered to produce the landlords in support of such fact, failing which, the assessee would offer such amounts in their hands. Learned Assessing Officer noted that the cash received by the assessee firm from M/s. Subhagruha Projects (India) Pvt. Ltd., escaped assessment and accordingly, the assessment proceedings under section 147 of the Act were initiated by issuing notice under section 148 of the Act and completed the assessment under section 147 read with section 144 of the Act by assessing the total income of the assessee at Rs. 4,20,07,500/-.

3. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the learned CIT(A). Case of the assessee before the learned CIT(A) was that during the financial year 2016- 17, the assessee entered into an agreement with M/ s. Subhagruha Projects India Pvt. Ltd, Hyderabad, for purchase of lands at Kondakal Village, Sankarpalli Mandal, Ranga Reddy District and the admitted amount of

Rs. 4,20,07,000/- is cash received from M/s. Subhagruha Projects India Pvt. Ltd for onward payment to the farmers from whom the land was purchased and got registered in the name of M/s. Subhagruha Projects India Pvt. Ltd., whereas the assessee is eligible for a small portion of margin towards commission in the whole transaction. Though during the course of the survey proceedings, the Partner, Shri T. Singa Rao gave a statement and admitted a taxable income of Rs. 4,20,07,000/- for the assessment year 2017- 18 towards profit in the transaction with M/ s. Subhagruha Projects India Put Ltd., the fact of the assessee being a facilitator in the transactions of M/ s. Subhagruha Projects India Put Ltd., with the landlords was brought to the notice of learned Assessing Officer, but in spite of the verifiable information found with M/ s. Subhagruha Projects India Pvt. Ltd., who submitted the details in connection with the assessment year 2017- 18, learned Assessing Officer proceeded to add the entire amount in the hands of assessee to tax.

4. Learned CIT(A) on the entire reappraisal of material available before him, in the light of submissions made on behalf of the assessee, reached a factual conclusion that the assessee is only a facilitator and not even an aggregator in this matter and, therefore, it is unreasonable to add the cash component to be found in the seized material, in the hands of the assessee. He, accordingly, deleted the addition so made.

5. Revenue is, therefore, aggrieved of the said deletion and filed this appeal, stating that the addition was made by the learned Assessing Officer towards the undisclosed income, basing on the admission made by the Managing Partner, Shri T. Singa Rao, while deposing under section 131 of the Act on 30/01/2019 consequent to the survey proceedings and,

therefore, in the absence of any evidence to the contrary or to support the contention of the assessee that it is only a facilitator, such an addition cannot be deleted. Learned DR submitted that the assessee did not produce any landlord nor did it furnish any documentary evidence to show that it is only a facilitator.

6. Per contra, learned AR submitted that the evidence seized during the search and survey operations in the case of M/ s. Subhagruha Projects India Pvt. Ltd. indicate that there was a cash component in the land dealings covered by the whatsapp chat and it does not indicate that such cash was paid by the assessee to the landlords nor does it show that the assessee issued the amount under the cheque. It is only a statement showing the dealings of M/s. Subhagruha Projects (India) Pvt. Ltd., with the landlords directly and a copy of such statement was shared to the Managing Partner of the assessee. He further submitted that it is not the case of the Revenue that such an amount was not brought to tax in the hands of the M/s. Subhagruha Projects (India) Pvt. Ltd., and his instructions are that such an amount was considered in the hands of M/s. Subhagruha Projects (India) Pvt. Ltd., and the assessee cannot be mulcted with tax again.

7. We have gone through the record in the light of the submissions made on either side. the material on which the Revenue bases their claim is the statement found in the whatsapp chat between one Chakravarthy, Managing Director of M/s. Subhagruha Projects (India) Pvt. Ltd., and Singa Rao, the Managing Partner of the assessee. We have gone through this statement carefully. It shows the price of land, total amount payable to the landlords, and the amount paid by way of cash and cheque. It is not in

dispute that M/s. Subhagruha Projects (India) Pvt. Ltd., was the purchaser and the landlords were the sellers of the land referred to in the statement. It is, therefore, clear that the amount was paid by M/s. Subhagruha Projects (India) Pvt. Ltd., and received by the landlords. It is not the case of Revenue that the assessee paid such an amount to the landlords. Learned CIT(A), as a matter of fact, found that it is not a case of the learned Assessing Officer that M/ s Subham Estates has paid the cheques from its own account. Such a cheque was paid from the account of M/s. Subhagruha Projects (India) Pvt. Ltd. There is no material on record to show anything contrary to the finding of the learned CIT(A) that the assessee was merely a mediator and the evidence for the payment has been found in the hands of the person, who acquired the land through the assessee and the assessee has also effectively reported as to how much cash and how much in cheque has been paid.

8. It is the settled principle of law that during the survey under s.133A, the concerned officer is not authorised to record a statement on oath, though he can record the statement of any person which may be useful for or relevant to any proceedings under the Act. Thus, the said statement is only an information and has no evidentiary value. The information obtained by way of a statement during survey can be used only for corroboration purposes for taking a decision on an issue either in favour or against an assessee. We can find the authority by the order of Co-ordinate Bench of the Tribunal in the case of Unitex Products Ltd. vs. ITO, (2008) 22 SOT 429 [ITAT – Mumbai].

9. In the absence of any evidence to show that the assessee owned the amount represented by the cash component as an aggregator in the

matter, when the status of the assessee as a facilitator is not in dispute, we find it difficult to uphold the action of the learned Assessing Officer. As stated above, the material on record shows that the consideration amount had flown from M/s. Subhagruha Projects (India) Pvt. Ltd., to the landlords through the assessee, but not from the assessee, and the assessee was entitled only for its commission and nothing more and nothing less. In these circumstances, we agree with the detailed discussion made on this point by the learned CIT(A) and his conclusions. We accordingly find no merits in this appeal and dismiss the grounds raised.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 29th day of November, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Hyderabad,
Dated: 29/11/2023

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

TNMM

Copy forwarded to:

1. Deputy Commissioner of Income Tax, Central Circle-1(4), Hyderabad.
2. M/s. Sri Subham Estates, 201, Madhu Residency, Survey No. 78,
Madhapur, Hyderabad.
3. Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD