

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 No. 1943/Hyd/2018		
Assessment Year: 2016-17		
Dy. CIT Central Circle 1(1) Hyderabad	Vs.	Shri Korpolu Laxma Reddy, Hyderabad PAN:AEUPK2478N
(Appellant)		(Respondent)
Assessee by:	Shri K.C. Devdas, Ca	
Revenue by:	Shri K. Madhusudan CIT(DR)	
Date of hearing:	18/12/2023	
Date of pronouncement:	20/12/2023	

ORDER

Per Laliet Kumar, J.M

This appeal filed by the Revenue is directed against the order dated 29.06.2018 of the learned CIT (A)-11, Hyderabad relating to A.Y.2016-17.

2. The grounds raised by the Revenue read as under:

"1. The Ld. CIT(A) failed to appreciate the fact that the assessee along with others entered into Arbitration Settlement relinquishing his shareholding in M/s Cybercity Builders & Developers (P) Limited and also relinquished his stake in the firms of M/s. Cyber Homes & M/s. Bhagyanagar Infra. As part of the terms and conditions of the Arbitration Settlement, the assessee has received total consideration of Rs. 5,79,18,333 /- on 04.02.2016.

2. The Ld.CIT(A) erred in not appreciating the fact that the assessee has received 4,00,000 sft of both residential and commercial space in lieu of relinquishing his stake of in

M/s. Cybercity Builders and Developers Pvt Ltd and two other firms in which he is a shareholder.

3 The Ld. CIT(A) erred in not appreciating the fact that the assessee has received an amount of Rs.5,79, 18,333/- as total consideration as on 04.02.2016 in lieu of 4,00,000 Sft of both residential and commercial space.

4. The learned CIT(A) failed to note the fact that the assessee has received the consideration as per the arbitration settlement settled before Justice B Jeevan Reddy by the shareholders of M/s. Cybercity Builders and Developers Pvt Ltd and two other firms.

5. The Ld.CIT(A) erred in not appreciating the fact that the assessee has received Rs.5,79,18,333/- as total sale consideration and not in the form of advances against sales as held by the Ld.CIT(A).

6. The Ld. CIT(A) failed to note the fact that the total sale consideration was received as on 04.02.2016 which pertain to the FY 2015-16 relevant to AY 2016-17 and not for the AY 2017-18 as submitted by the assessee before the Learned CIT(A).

7. The Ld.CIT(A) ought to have appreciated the fact that during the course of search proceedings, the assessee himself admitted that he has received the total consideration and not paid any taxes on it which was also confirmed by his son Shri K Uttam Reddy.

8. The Ld .CIT(A) ought to have appreciated the fact that though the additional ground raised by the assessee before the Ld.CIT(A) that the statement recorded from his son is not binding on him but the fact remains that the assessee has admitted the total consideration in his hands during the search proceedings and the same was also confirmed by his son, Shri K Uttam Reddy.

9. The Learned CIT(A) erred in not appreciating the fact that the initial statement was given u/s. 132(4) admitting the undisclosed income after due consideration of all facts and therefore the retraction made by the assessee after much delay while filing the Return of Income does not constitute good evidence.

10. The Learned CIT (A) ought to have appreciated that by making voluntary admission at the time of search and retracting after a long gap of one year, the assessee prevented the Department from causing further investigation in the matter.

11. The Learned CIT (A) ought to have appreciated that the principle of estoppels is applicable to the facts of the case as the assessee prevented the Department from causing

further investigation by giving voluntary admission at the time of search.

12. The Learned CIT (A) erred in allowing relief on fresh evidence filed by the assessee during appellate proceedings without giving opportunity to the AO as per Rule 46A of IT Rules.

13. Any other ground that may be urged at the time of hearing.”

3. It is the case of the Revenue that the learned CIT (A) while passing the order had taken into consideration the documents filed by the assessee at the appellate stage albeit without confronting the same to the Assessing Officer. Our attention was drawn to Ground No.10 to 12 of the Revenue's appeal. Further, the learned DR drew our attention to para 7 of the order passed by the learned CIT (A) which is to the following effect:

“7. I have considered the assessment order, submissions of the assessee and the material placed on record. It is seen from the material that the amounts received by the assessee are only advances and not complete sale proceeds. None of the properties were registered before the day of Search or during the period relevant to the Asst. Year under consideration. These flats have been registered on various dates after Search only. So, it is clear that the nature of receipt is advances only. The statement of the assessee recorded during the Search and that of his son on 19.02.2016 does not contain any statement that flats/space has been sold the assessee. They have only stated that the notings on the seized material is the amounts received from various persons as on date of Search. Since there is no sale of flats/space, it cannot given rise to taxable capital gains on receipt of advances, as the properties have been sold registered on later date. The capital gains is not chargeable to tax in this year as the sale is not complete. In view of the above, it is held that no capital gains chargeable to tax has arisen in the period relevant to this assessment year. Accordingly, the addition made by the AO is deleted.”

4. It was the contention of the learned DR that the learned CIT (A) had deleted the addition without verifying the

record and the order passed by the learned CIT (A) is very cryptic one and further there is violation of Rule 46A of I.T Rules.

5. Per contra, the learned Counsel for the assessee drew our attention to the written submission filed before the CIT (A) at page 2 to 14 of the Paper Book. It was submitted that the advances were taxed by the Assessing Officer while passing the assessment order. It was submitted the sale was executed in subsequent A.Y and the sale consideration was duly disclosed by the assessee in the return of income for the A.Y 2018-19 the year in which the consideration was received. In the return of income for the A.Y 2018-19 the entire sale consideration was offered for Long-Term Capital Gain and the assessee has not claimed any cost of acquisition while computing the LTCG. The learned AR also drew our attention to the copy of the sale deed filed by the assessee at pages 23 to 96 of the Paper Book. It was submitted that the order passed by the learned CIT (A) is in accordance with law.

6. We have heard the rival arguments made by both the sides and perused the available material on record. The right of the assessee in the present case in receiving the built-up area of 4 lakhs sq.ft (both residential and commercial) was premised on page 70 found during the course of search at the residential premises of the assessee. It was the case of the Assessing Officer that the assessee and the family members of the assessee were partners/directors in Cyber Homes, M/s. Bhagyanagar Infra Projects and M/s Cybercity Builders and Developers P Ltd (CBDPL). It was the case of the Assessing Officer that the assessee after relinquishing stake in these companies had received 4 lakhs sq.ft built-up area of residential and commercial

space. The above 4 lakhs sft was built-up forming part of the arbitration award passed on 7.12.2014. Thus, the case of the Assessing Officer that based on the award, the assessee had received the consideration and therefore, the Assessing Officer has made the addition in the case of the assessee during the year under consideration.

7. The reading of the order passed by the learned CIT (A) clearly shows that the learned CIT (A) has not bothered to consider the fact of relinquishment made by the assessee in the companies during the arbitration proceedings and also has failed to take into consideration the fact of the arbitration award passed on 7.12.2014. On the contrary, the learned CIT (A) had concluded that the amounts received by the assessee were in the nature of advances and no complete sale proceeds have been received during the year under consideration. In our view, the order passed by the learned CIT (A) is cryptic, non-speaking and perfunctory order and it was incumbent upon the learned CIT (A) to examine the various documents namely arbitration award, terms & conditions mentioned therein, fact of the relinquishment of the right and receipt of the 4 lakhs sq.ft area in lieu of their relinquishment made in firms namely Cyber Homes, M/s. Bhagyanagar Infra Projects and M/s Cybercity Builders and Developers P Ltd (CBDPL). The learned CIT (A) without considering the above said documents and also the seized documents had passed the above said order.

8. Hence the above order is required to be set aside being passed without appreciating the evidence on record and further the learned CIT (A) while passing the order had relied upon the

documents which were not confronted to the Assessing Officer. The above said exercise of the CIT (A) is clearly in violation of the natural justice and the powers and duties vested on the CIT (A) by virtue of Rule 46A of Income Tax Rules. In the light of the above, the order of the learned CIT (A) is set aside and is remanded back to the file of the Assessing Officer for denovo adjudication of the appeal. Needless to mention that the Assessing Officer shall decide the issue in the above said direction after giving due opportunity of being heard to the assessee.

9. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 20th December, 2023.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 20th December, 2023.

Vinodan/SPS

Copy to:

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3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order