

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

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.728/Hyd/2020**
(निर्धारण वर्ष / Assessment Year: 2011-12)

Asst. Commissioner of Income Tax, Central Circle – 2(4), Hyderabad.	Vs.	M/s. Vasudeva Realtors Private Limited, 1-61/BV/10/1, Survey No.4, Khajaguda, Nanakaram Guda Road, Serilingampally, Hyderabad – 500008. PAN: AABCV9331K
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Ravi Bharadawaj, C.A.
राजस्व द्वारा/Revenue by: Shri K. Madhusdan, CIT-DR.

सुनवाई की तारीख/Date of hearing: 10.01.2024
घोषणा की तारीख/Pronouncement on: 31.01.2024

ORDER

PER LALIET KUMAR, J.M.

The captioned appeal is filed by the Revenue feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.24.09.2020 invoking proceedings under sections 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short, “the Act”), respectively, for the A.Y 2011-12.

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

- “1. *The Ld CIT (A) erred both in law and on facts of the case.*
2. *The Ld CIT(A) ought to have upheld the relevant part of the addition made towards difference in cash receipts of Rs. 2,77,74,784/- pertaining to the sale of 27 villas.*
3. *The Ld CIT(A) should have appreciated that the MD of the assessee company in her statement recorded on 08.09.2016 accepted the entire cash receipts of Rs. 3,08,60,871/- from sale of 27 villas as company's undisclosed income for AY 2011-12.*
4. *The seized papers reflected only cash receipts for the villas but there is no material to suggest there is unaccounted expenditure. Hence the CIT(A) should have applied the presumptive clause 132(4A) and taxed the entire receipts as unaccounted income.*
5. *The Ld CIT(A) should not have considered the notarised affidavit given by the MD on 09.10,2018 retracting part of the declarations given during the course of search operation towards unaccounted cash receipts of 27 villas, after a gap of more than 2 years without any justification or without any supporting evidence.”*

3. The brief facts of the case are that assessee is engaged in the business of Real Estate Developers & Builders. The assessee originally filed its return of income for the A.Y. 2011-12 on 30.09.2011 admitting total income of Rs. 1,29,13,667/-. The return was processed u/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny and the assessment u/s. 143(3) was completed on 31.03.2014 determining the total income at Rs. 2,61,95,960/-. A search and seizure operation u/s. 132 was conducted on 14.07.2016. Notice u/s. 153A of the Act was issued on 20.01.2017 calling for return of income. In response, the assessee filed a letter on 10.6.2018 requesting that return filed on 30.09.2011 might be treated as return of income filed in response to notice issued u/s. 153A. The case was taken up for scrutiny and notices u/s. 143(2) and 142(1) were issued and served on the assessee. After examining the material on record and the

information furnished, assessment was completed by the Assessing Officer u/s. 143(3) r.w.s. 153A of the Income Tax Act, 1961, by making the addition towards undisclosed income of Rs. 2,77,74,784/-.

4. Feeling aggrieved with the order passed by the assessing officer, assessee filed appeal before the Id.CIT(A), who allowed the appeal of assessee.

5. Aggrieved with the order of Id.CIT(A), Revenue is now in appeal before us on the grounds mentioned hereinabove.

6. Before us, Id. DR submitted that the Managing Director of the assessee by name D. Sunitha in her statement recorded on 08.09.2016 had admitted to have received the cash of Rs.7.56 crores from the sale of 27 villas as undisclosed income. The M.D. of the assessee in reply to Q.No.15 has submitted as under :

Q.No.15. I am showing you the sworn statement recorded dated 15.07.2016 and vide reply to question number 8, you have stated that you will furnish the details after verifying the agreement of sale with regard to 27 villas. Please explain the content of the page and also furnish the details of the 27 villas ?

** Table left intentionally....*

Ans. Total difference in considerations amounted to Rs.7,56,00,000/-. Out of this, an amount of Rs.3,08,60,871/- was already admitted during the course of survey operations held on 06.08.2012 and paid taxes accordingly. The balance amount of Rs.4,47,39,130/- is now admitting as undisclosed income. It is to further state that an amount of Rs.7,50,000/- was received during the A.Y. 2013-14 and the balance amount of Rs.3,72,39,130/- was received during the AY 2014-15 during the course of sale of 27 villas.

6.1. The Id. DR has submitted that the M.D. of the assessee has submitted that the amount of Rs.3,08,60,871/- was declared in A.Y. 2011-12, however this statement was not found to be correct as the assessee had merely disclosed 10% of the amount

as income. For the above said purposes, the ld. DR has drawn our attention to the order of Assessing Officer dt.31.03.2014 and our attention was drawn to para 4 of the order, which is to the following effect :

“4. During the survey proceedings conducted on 06.08.2012, it was observed that the assessee had received cash of Rs.3,08,60,871/- as per the impounded material. When enquired, it was explained that the assessee had received this cash from customers who had requested the company to undertake extra / alteration works for their respective units on a cost-to-cost basis. The company had entrusted this responsibility to its director, who acted as a mediator / facilitator in executing these works and also to take the reimbursement of the expenses incurred from the customers. Since, such receipts were not reflected in the books of the company the same were offered to tax during the survey proceedings even though he receipts were received on a cost-to-cost basis. It was also submitted that the assessee would file computation of income admitting 10% of the above said cash receipts as its income. Based on the above observations, an addition of Rs.30,86,087/- is brought to tax by adding the same to the income returned.

6.2. The ld. DR further submitted that since no evidence was filed by the assessee in the search proceedings, therefore, the remaining 90% of the total cash receipts was added to the income of assessee as the assessee has failed to explain the source and details of the expenditure incurred to the tune of Rs.3,08,60,871/-. It was also submitted that the Assessing Officer had made the addition not only on the basis of the statement given by the M.D of the assessee but also had not accepted the retraction made by the M.D. of the assessee and the ld. DR has invited our attention to the affidavit filed on 09.10.2018 retracting the statement. It was submitted that the M.D. of the assessee cannot retract the statement given during the search after a period of 2 years. For the above said purposes, ld. DR has relied on various judgments. It was submitted that the deletion made by the ld.CIT(A) is without any basis. The ld. DR further submitted that once the evidence was found during the

course of search and the survey, the addition is required to be confirmed in the hands of the assessee.

7. Per contra, ld. AR for the assessee has submitted that no fresh / tangible material was found during the course of search which has taken place in the premises of the assessee on 14.07.2016. The material which was impounded at the time of survey, only was considered by the Assessing Officer at the time of making the assessment under section 143(3) r.w.s. 153A of the Act. It was submitted that once the material has been examined by the Assessing Officer while making the assessment under section 143(3), the Assessing Officer cannot sit in appeal against the order passed by the Assessing Officer u/s 143(3) dt.31.03.2014 and take a contrary view. The ld. AR further contended that the submission of the ld. DR that the assessee has retracted the statement is without any basis as the M.D of the assessee has not retracted with respect to the statement given by her in A.Y. 2011-12 is concerned.

8. The Bench has enquired from the ld. DR that whether there is any retraction of the statement by the M.D. of the assessee for the assessment year under consideration, to that the ld. DR was not able to reply to our satisfaction.

9. We have heard the rival submissions and perused the material on record. Admittedly, as per para 4 of the assessment order passed by the Assessing Officer for A.Y. 2011-12 dt.31.03.2014 u/s 143(3) of the Act reproduced hereinabove, it is clear that the survey was carried out in the premises of the assessee on 06.08.2012 and some documents were impounded by the investigating team. The Assessing Officer had made the addition in the hands of the assessee to the extent of the income earned by the assessee as the amount received by assessment

towards extra / alteration works done and brought the amount of Rs.30,86,087/- to tax.

9.1. Admittedly, no fresh / tangible material has been brought to our notice by the Id. DR or by the Assessing Officer based on which the addition of remaining amount of Rs.2,77,74,784/- was made in the hands of the assessee. In our view, when no fresh / tangible material was found during the course of search except the material which was already impounded by the survey team, no fresh addition can be made in the hands of the assessee on the basis of material which has to be already examined by the Assessing Officer while passing the original assessment order. There has to be some fresh / tangible incriminating material which has to be found during the course of search and was not found at the time of survey carried out in the premises of the assessee on 06.08.2012. In our view, the requirement of incriminating material found during the course of search is a *sine qua non* for making the addition in the hands of the assessee u/s 153A of the Act. No fresh / tangible material has been found on the basis of which the addition can be made in the hands of the assessee. The whole basis of the addition made by the Assessing Officer is the statement of M.D. of the assessee and the material which was already impounded by the survey team. In our view, the statement recorded by the investigating team during the course of survey is of no use to the department as the assessee at no point of time has admitted to have made the payment as portrayed by the Assessing Officer. On the contrary, the M.D. of the assessee to Q.No.15 has categorically replied the answer, which was reproduced hereinabove.

10. From the perusal of the above said reply of the M.D. of the assessee, it is abundantly clear that the assessee has admitted

only an amount of Rs.3,08,60,871/- during the course of search and paid taxes accordingly. Further, if we look into the affidavit filed by the assessee on 09.10.2018, it is abundantly clear that the M.D. of the assessee has not retracted her statement given during the course of search as mentioned hereinabove. On the contrary, in Para 5 of the affidavit dt.09.10.2018, the assessee had submitted as under :

“5. On verification of my earlier income tax records for the assessment year 2011-12 onwards, and declaration given by me before the income tax authorities during and post search sworn statements, we had taken a stand retracting from my declaration made u/s 132(4). For the assessment year 2011-12, after survey u/s 133A, we have admitted a sum of Rs.3,08,60,871/- Assessing Officer has accepted on money payments as contract receipts for which works were executed on cost to cost basis and we were compelled to declare estimated income at 10% on these payments though there was too low margin of profit.

11. After reading the above noted para and the answer given in reply to Question No.15 supra, it is clear that the assessee has already disclosed the income in the return of income filed by it after survey and has paid the taxes accordingly. Since the issue has already attained finality at the stage of Assessing Officer at the time of passing of the order on 13.01.2014, therefore, no fresh adjudication was permissible u/s 153A of the Act by the Assessing Officer in the garb of search and in absence of any incriminating material for this year which is not permissible. Furthermore, recently, the Hon'ble Supreme Court in the case of CIT Vs. Abhisar Buildwell Pvt. Ltd. has held that in the absence of fresh incriminating material having direct link with escapement of income of the assessee, no addition can be made in the hands of assessee. In the present case, there is no fresh incriminating material found during the course of search forming basis for making addition in the hands of the assessee for this assessment year. Therefore, in our view, no addition can be made in the hands of the assessee for the assessment year under

consideration. Accordingly, the grounds raised by the Revenue are dismissed. Thus, the appeal of Revenue is dismissed.

12. In the result, the appeal of Revenue in ITA No.728/Hyd/2020 is dismissed.

Order pronounced in the Open Court on 31st January, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 31st January, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s. Vasudeva Realtors Private Limited, 1-61/BV/10/1, Survey No.4, Khajaguda, Nanakaram Guda Road, Serilingampally, Hyderabad – 500008.
2	Asst. Commissioner of Income Tax, Central Circle – 2(4), Hyderabad.
3	Pr.CIT (Central), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order

