

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.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
441/Hyd/2019	2010-11	Gopisetty Satyanarayana, Nellore [PAN: AIIPG4150B]	Deputy Commissioner of Income Tax, Circle-1, Nellore
652/Hyd/2019	2010-11	Deputy Commissioner of Income Tax, Circle-1, Nellore	Gopisetty Satyanarayana, Nellore [PAN: AIIPG4150B]

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR
राजस्व द्वारा/Revenue by: Shri Waseem UR Rehman, DR

सुनवाई की तारीख/Date of hearing: 28/02/2024
घोषणा की तारीख/Pronouncement on: 29/02/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax (Appeals)-Tirupati ("learned CIT(A)"), in the case Sri G. Satyanarayana ("the assessee") for the assessment year 2010-11, both Assessee and Revenue preferred these appeals. For the sake of convenience, these appeals are decided by this common order.

Assessee's appeal:

2. Brief facts of the case are that the assessee, who is an individual and carrying on business of builder and developer, filed return of income for the assessment year 2010-11, declaring income of Rs. 19,38,120/- and the same was processed under section 143(1) of the Income Tax Act, 1961 ('the Act'). Subsequently, pursuant to the survey under section 133A of the Act on 24/11/2011, proceedings under section 147 of the Act were taken up by issuing notice under section 148 of the Act. Basing on the material impounded during the survey, learned Assessing Officer called upon the assessee to explain the sources for the advances towards purchase of plots to the tune of Rs. 2,00,62,500/- on his name and in the name of one K. Venkataiah, which is not reflected in the books of accounts. Observing that the assessee did not explain the sources as requested, learned Assessing Officer brought such amount of Rs. 2 crores to tax under section 69 of the Act.

3. During the first appellate proceedings, assessee contended that the learned Assessing Officer did not provide the copies of the impounded material and, therefore, the assessee could not produce the material to rebut the proposal of the learned Assessing Officer to make the addition of Rs. 2 crores. Learned CIT(A), however, observed that there is no material on record to show that the assessee ever made any request for copies of such impounded material and, therefore, the contention of the assessee deserves rejection. Learned CIT(A) accordingly rejected the contention of the assessee for want of material to rebut the findings of the learned Assessing Officer.

4. Assessee is, therefore, before us in this appeal, stating that subsequently the assessee obtained the copies of the agreement sale deeds etc., to effectively prove his contentions and to rebut the proposal of the learned Assessing Officer to make the addition. He submitted that in the interest of justice, the verification of such documents would only lead to the determination of the correct tax liability of the assessee, otherwise it will lead to miscarriage of justice since the assessee was not in a position to know what he has to meet.

5. It could be seen from the impugned order that before the learned CIT(A), assessee pleaded that he did not know the impounded documents for effective conduct of his defense. Learned CIT(A), however, observed that assessee never requested for the copies of such documents, but at the same time, learned CIT(A) missed the point that the learned Assessing Officer also did not seek any such material. Ignorance of the assessee cannot be the basis for concluding that whatever that is found in the impounded material can be taken by face value, without causing any further enquiry either to substantiate or rebut the contents of such document. Both the assessment order and the impugned order clearly refer to the impounded material and 21 names show certain amounts against two names, one is assessee and the other is Shri K. Venkataiah. The impugned orders do not reveal any other details to fasten liability on the assessee. There is no reason for us not to believe the statement made by the assessee before the first appellate authority that for want of access to the copies of the impounded material, he was prevented from effective conduct of his defense.

6. Assessee filed the petition for admitting the additional evidence and prayed that given an opportunity, the assessee is ready to conduct his defense diligently and it would be in the interest of justice and determination of his legal tax liability.

7. On a careful consideration of material before us, we are of the considered opinion that there is nothing to disbelieve that the assessee could not conduct his defense diligently before the Revenue authorities because of non-availability of copies of impounded documents. We, therefore, admit the additional evidence and restore the issue to the file of the learned Assessing Officer to take a fresh view, by giving an opportunity of hearing to the assessee. Grounds are accordingly treated allowed for statistical purposes.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Revenue's Appeal:

9. This appeal is filed by the Revenue against deletion of the penalty levied under section 271(1)(c) of the Act, by the learned CIT(A), pursuant to the assessment order dated 25/03/2014. Since the assessment made under section 143(3) r.w.s. 147 of the Act, is set aside and restored the issue to the file of the learned Assessing Officer, the penalty order is also set aside and we restore the same to the file of the learned Assessing Officer, to take a view in consonance with the assessment, to be made.

10. In the result, appeal of Revenue is treated as allowed for statistical purposes.

11. To sum-up, both the appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 29th day of February, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 29/02/2024

TNMM

Copy forwarded to:

1. Gopisetty Satyanarayana, C/o. CH. Parthasarathy & Co., 1-1-298/2/B/3,
1st Floor, Ashok Nagar, Hyderabad.
2. Dy. Commissioner of Income Tax, Circle-1, Nellore.
3. Pr.CIT- Tirupati.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD