

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, VICE PRESIDENT  
&  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 297/Hyd/2022  
(निर्धारण वर्ष / Assessment Year: 2015-16)

Asst. Commissioner of Income Tax ,  
Central Circle-2(2),  
Hyderabad

Vs. Smt. Laxmi Komatireddy,  
Hyderabad  
[PAN No. AKTPK2762Q]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

सी.ओ./ C.O. No. 25/Hyd/2022  
(Arising out of ITA No. 297/Hyd/2022)  
निर्धारण वर्ष / Assessment Years: 2015-16

Smt. Laxmi Komatireddy,  
Hyderabad  
[PAN No. AKTPK2762Q]

Asst. Commissioner of  
Income Tax ,  
Central Circle-2(2),  
Hyderabad

क्रॉस ऑब्जेक्टर / Cross-Objector

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR  
राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 08/02/2024  
घोषणा की तारीख/Pronouncement on: 21/03/2024

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Challenging the order dated 27/04/2022 passed by the learned Commissioner of Income Tax (Appeals)-12, Hyderabad, in the case of Smt. Laxmi Komatireddy (“the assessee”) for the assessment year 2015-16, Revenue preferred this appeal. Assessee filed Cross-Objections against the same.

2. Facts, in brief, are that the assessee is an individual, derives income from salary, house property, Long Term Capital Gain and other sources. She also derives salary in the capacity of Director of M/s. Sushee Infra & Mining Limited. A search and seizure operation was conducted in the case of the assessee on 21/07/2016. In response to the notice under section 153A of the Income Tax Act, 1961 (“the Act”) issued on 27/12/2016, the assessee filed return of income on 28/03/2017, declaring total income of Rs. 72,90,100/-.

3. During the course of search proceedings, learned Assessing Officer noticed that the assessee entered into agreement with M/s. Sushee Realty LLP for purchase of four villas at the rate of Rs. 4 crores each and paid the entire consideration of Rs. 16 crores in cash. These villas (Numbered 6, 37, 39 and 42) are situated at Eden Garden, Kokapet Village, Rajendranagar. The transaction was between the assessee and M/s Sushee Reality LLP. The designated partner of M/s. Sushee Reality LLP, Shri Laxmikanth Reddy has confirmed the above transaction. Assessee was questioned about the said transaction in the sworn statement recorded under section 131(1) of the

Act on 31/08/2016. Relevant extract of the statement is reproduced as under:

*“Q.12. I am showing you page no.1 to 33 and 34 to 76 of annexure A/SIML/CO/HYD/09 seized during the course of during the course of Search and Seizure operation at the corporate office of M/s. Sushee Infra and Mining Ltd. on 21.07.2016, containing details of cash payments of Rs.16 crores for purchase of 4 villas in the name of yourself and your son Sri K. Sankeerth Reddy from M/s. Sushee Realty LLP. Please offer your comment.*

*Ans. I confirm the above payments made for the purchase of 4 villas in 'Eden Garden Project' of M/s. Sushee Realty LLP. I voluntarily offer the amount of Rs.16 crores as additional income in my individual hands for the FY 2015-16 relevant to the AY 2016-17 and will pay tax accordingly. I shall file an affidavit in this regard. ”*

4. Assessee also filed an affidavit dated 17/08/2016 before the Dy. Director of Income tax (Inv), Unit-I(4), Hyderabad confirming the payment of Rs. 16 crores to M/s. Sushee Realty LLP. In the said affidavit, she offered the said amount of Rs. 16 crores as additional income for the AY. 2016-17. In the return filed by the assessee in response to notice issued under section 153A of the Act, however, the said income was not offered to tax.

5. Learned Assessing Officer therefore, issued a show cause notice, asking the assessee to explain as to why the amount of Rs. 16 crores should not be added to the total income of the assessee? Assessee in response to the same, replied as under, which is reproduced in the body of the assessment order, vide para No. 6 :

*“6. AY 2015-16.*

*With reference to this assessment year, it is submitted that Search and Seizure Operations have been conducted in the residential premises and during the course of Search and Seizure operations, the Investigating Officer has issued prohibitory orders,*

*seized certain documents and recorded statement on that day and later on 17.08.2016 and as the prohibitory order issued was lifted on 17.08.2016, search was concluded. There was no disclosure under Section 132 (4) and there was no seizure of any assets in assessee case.*

*It is further submitted that in the course of search, Investigating Officer has recorded a statement from Mr. Laxmikanth Reddy, Managing Partner of M/s Sushee Realty LLP, wherein The assessee also a partner. In the course of that statement, he seems to have disclosed that Smt. K. Laxmi and her son Sri Sankeerth Reddy have purchased four (4) Villas at Rs. 4 Crores each and he seems to have stated that entire consideration of Rs.16 Crores was paid in cash and the same was undisclosed in the hands of Smt. K. Laxmi. He also seems to have stated that the said amounts were accounted by the firm M/s Sushee Realty LLP. However even though the said statement was taken on 21.07.2016, there was no such statement recorded from the Assessee on that issue either at the time of search or subsequently when the Prohibitory order was lifted on 17.08.2016.*

*The assessee submits that she neither purchased any villa in "Eden Gardens" the Project being undertaken by M/s Sushee Realty LLP nor paid any amount either by way of cash or by way of cheque to the said firm. There is no registration of the said property in the name of the assessee' s son Mr. Sankeerth Reddy. The assessee hereby deny any transaction of purchase of property in the said project.*

*Sushee Realty LLP has formed for developing Villas named as Eden Projects at Kokapet. It has entered into a development agreement cum General Power of Attorney on 19<sup>th</sup> November 2014 for development of 9.14 Acres situated at Kokapet Village, Rajendranagar Mandal, RR Dist, on 50:50 sharing basis. For the year ending March-13, even though the LLP was formed no business was done. For the Year ending March-2014 assessee has not done any sales even though advances were received from customers to an extent of Rs. 2.27Cr. As on March-2015 the advances have increased to Rs. 17.37Cr. Work in progress was at Rs. 14.37Cr. The firm declared revenue from operations for the year ending 31-03-2016 to an extent of Rs. 23.70Cr., on percentage completion basis. For the year ending 31-03-2017 further amount of Rs. 23.09Cr., were shown as revenue from operations.*

*Initially, even though 42 villas are to be constructed, permission was granted for 30 villas by the approval dated 16-03-2015. Revised plans for approved on 05-11-2016 for only 41 villas. Thus on the day of search only approval for 30 villas was available, therefore question of entering into agreements for 37,39, 42 villas does not arise.*

*The assessee have not sure how four villas numbered 6, 37, 39, 42 were stated to have been sold to her by way of agreement of sale. As regards Villa No.6, it was sold to Ms.G.Vidya Reddy, from whom firm has received advances as early as on 06.05.2014 to an extent of Rs.25 lakhs and by this time an amount of Rs.1 crores has been paid by the said person. (copy of agreement of sale with the said person is enclosed).*

*As far as Villa No. 37 is concerned which was renumbered as Villa No. 36., As on the date of search the same was under agreement with Mr. K Chandrapavan Reddy and has received advance amount of Rs.6 lakhs. The ledger copy pertaining to that in till books of Sushee Realty is enclosed for your information. This villa was sold to the same party on 30.06.2017 by way of Regd. Sale deed.*

*The firm intended to construct 42 villas whereas as per revised HMDA approval, there are only 41 villas. By the time search and seizure operations were conducted, Villa No.42 does not exist and therefore agreement of sale for villa No.42 does not arise. Likewise Villa No.39 (renumbered as 38) was sold to Mr. Miryala Ramamohan Rao and got it registered on 09-06-2017 by way of regd. Sale deed. Copy of Regd. sale deed is enclosed for your information.*

*As can be seen from complete list of buyers and advances received from them, there was no sale of villas either to assessee or to her son Sri Sankeerth Reddy. (List enclosed). Since villas are not bought by assessee or any amount paid by her to the said firm, the question of undisclosed income does not arise. In view of that assessee have not filed any return disclosing the so called amount of Rs.16 crores.*

*It can also be verified from the account books of the firm that there are no sales either to assessee or to her son nor there were any amounts recorded as advances by the said firm. The entire statement of Sri M. Laxmikanth Reddy given in the course of search on 22<sup>nd</sup> and 23<sup>rd</sup> July 2016 is hereby denied, as it was not based on the facts. The sequence of events from the start of search to the conclusion will*

*explain why and how a disclosure was obtained which assessee do not intend to further twelve at this point of time, but suffice to say that assessee have not invested any amounts outside the books of accounts either in the firm or in the company, either by way of cash or by cheque. The so called 'agreements of sale' are not genuine and the affidavit obtained is not voluntary. Therefore, the assessee (or her son) do not have any undisclosed income to be admitted in the returns filed under Section 153A."*

6. Learned Assessing Officer, however, did not satisfy himself with the arguments advanced by the assessee, and proposed to make an addition of Rs. 16 crores, by observing that:

*"1. Your contention that you have neither purchased any villa in "Eden Gardens" nor paid any amount either by way of cash or by way of cheque is not acceptable for the following reasons:*

*a) The fact that you have paid cash of ' sixteen crores towards purchase of villas 6,37,39 and 42 was admitted by Shri M. Lakshmikanth Reddy who is the designated partner of M/s Sushee Realty LLP in the course of statement recorded on oath u/s 132(4) on 24.07.2016. (Reference may be made to answers provided in response to questions 47, 48) posed to him.*

*b) You and Shri M. Lakshmikanth Reddy are partners in M/s Sushee Realty LLP and it is beyond human probability to believe that Shri M. Lakshmikanth Reddy's admission about the advances paid by you is based on some assumptions and presumptions.*

*c) Another statement was recorded from Shri M. Lakshmikanth Reddy on 19.09.2016 under section 132(4) of the Income tax Act in which he has reaffirmed the declaration made by him. (Reference is invited to response given to question 5). It was further stated by him that an affidavit has been filed by you to that effect before the Investigation Wing.*

*d) It is clear from above facts that you are in knowledge of the statements made by the designated partner Shri M. Lakshmikanth Reddy. You had given the disclosure in the affidavit duly taking into consideration the statement given by M. Lakshmikanth Reddy.*

*So there is no point in denying the statement of Shri M. Lakshmikanth Reddy now (last para of your reply dated 09.11.2018 for A Y 2015-16).*

e) Your attention is also drawn to the statement given by you u/s 131(1) on 31.08.2016. In the said statement, you have confirmed the said transaction and agreed to offer the additional income for the AY 2016-17 (sic)

f) As per the affidavit filed by you before the office of the Pr. Director of Income tax (Investigation), Hyderabad you have referred to the statement given by Shri M. Lakshmikanth Reddy. It is therefore clear that you are aware of the transaction and not some thing which has been done behind your back Statement u/s 131(1) given by you on 31.08.2016 is on oath and is a valid piece of evidence.

g) A statement u/s 131 was recorded from you on 14.12.2018 where a clarification was sought from you about the asst year for which the declaration was made. As per the copies of agreement of sale the transactions are relevant to AY 2015-16 whereas as per affidavit filed by you, you have made the disclosure for AY 2016-17. On this day ie 14.12.2018, you have refuted the transaction in response to question no. 9. You have also refuted the transaction in response to question nos 10 and 11 posed to you.

h) A careful analysis of the material on hand shows that the asst year in question needs to be treated as asst year 2015-16 as is clear from the dates indicated in the copies of the agreement of sale. On addressing a letter to the Investigation Wing seeking clarification on the asst year, this aspect has also been clarified by the Investigation Wing in December'2018 stating that the asst year should be reckoned as 2015-16. Next your refuting the transaction itself is not acceptable for the following reasons:

2. You were aware of the disclosures made in statements u/s 132(4) by Shri M. Lakshmikanth Reddy the designated partner in M/s Sushee Realty LLP about the advances of ' sixteen crores made by you in cash.

3. Your contention that the villas were sold to other parties or advances were made by other parties in respect of these villas is not acceptable as these are after though actions to conceal the actual transactions.

4. It appears to be a deliberate attempt to conceal the actual transaction by entering into agreements of sale or executing sale deeds with other parties to give a colour that no transaction has happened with you.

5. *Similar is the case of renumbering of villas. Merely by renumbering the villas the nature of the transaction entered into by you cannot change.*

6. *You had taken a plea in the statement recorded on 14.12.2018 that the investigating officers made you to disclose (Reply to question 10). This is not acceptable. You had confirmed the transaction in the statement recorded u/s 131 on 31.08.2016.*

*You had filed an affidavit on 01.09.2016 before the Investigation Wing on 01.09.2016 to that effect. After the search date of 21.07.2016, the statement was made by you after more than one month and affidavit was also filed after one month. A period of more than 27 months has elapsed since the search and you were aware of the pending scrutiny assessments. In this meantime you have never denied the transactions either before the Investigation Wing or before the Assessing Office. As there is no retraction by you within reasonable time, the transaction entered by you has to be considered as taken place and held to be true.*

7. *Accordingly, I propose to make an addition of ' sixteen crores to the income returned by you for the asst year 2015-16."*

7. Accordingly, relying on various decisions, learned Assessing Officer made addition of Rs. 16 crores to the total income of the assessee.

8. In appeal, learned CIT(A) deleted the addition by observing as under:

*"7.3 I have carefully considered the submissions of the appellant, the order of learned Assessing Officer, the evidence filed by the appellant's AR. Briefly the facts are search and seizure operations were conducted in the case of the assessee on 21-07-2016 and notice under section 153A was issued on 27-12-2016. During the course of search proceedings, it was noticed that the assessee had entered into an agreement with M/s.Sushee Realty LLP for purchase of four villas (Numbered 6, 37, 39 and 42) wherein an amount of Rs.4 crores each was paid in cash totaling to Rs.16 crores. The designated partner of M/s.Sushee Realty LLP, Shri Laxmikanth Reddy has confirmed the above transaction between M/s.Sushee Realty LLP and the appellant Smt.Laxmi Komatireddy. Thereafter the assessee has also filed an affidavit dated 17-08-2016 before the DDIT(Inv),*

*Unit-1(4), Hyderabad. Subsequently, in a statement recorded under section 131(1) on 31-08-2016, the appellant has confirmed the said transaction. However, while filing the return of income, the appellant has not offered the said additional income of Rs.16 crores in her return.*

*7.3.1 During the course of assessment proceedings, the assessee filed submissions retracting the above disclosure and has contested that the so called agreement entered between herself and her son with M/s.Sushee Realty LLP are not true and were prepared at the instance of the search party for the purpose of extracting a declaration. It was also stated that permission was granted for only 33 villas by the local authority (HMDA) vide approval dated 16-03-2015. Therefore, there cannot be a sale agreement of villas numbered 37,39 and 42 when the local authority has approved only 33 villas. Further, it was stated that an agreement of sale for villa no.6 was entered into on 12-11-2014 with Ms.G.Vidya Reddy from whom M/s.Sushee Realty LLP has received advances totaling to Rs.50 lakhs which were received on various dates in the year 2014 & 2015, much before the alleged date of agreement with the appellant. Further, it was stated that Villa No.37 which was renumbered as Villa No.36 was sold to Mr.K.Chandrapavan Reddy and an advance amount of Rs.6 lakhs was received from him. This villa was later sold to him vide registered sale deed dated 30-06-2017. It was stated that the HMDA has revised its approval on 05-11-2016 for 41 villas which is after the date of search. Therefore, there is no villa no.42 for the assessee to purchase from M/s.Sushee Realty LLP. Also villa no.39 (renumbered 38) was sold to Mr.Miryala Ramamohan Rao and it was registered on 09-06-2017 by way of registered sale deed. Since all the villas were sold to parties other than the appellant and her son, it was contended that the assessee and her son have not entered into any agreement for sale and have not paid Rs.16 crores in cash. The AO did not consider these arguments and has relied on the statement of Shri M.Laxmikanth Reddy, Managing Partner of M/s.Sushee Realty LLP and subsequent affidavit of the appellant dated 17-08-2016 before the DDIT(Inv) and brought to tax to sum of Rs.16 crores as unexplained investment under section 69 of the Act.*

*7.3.2 The AR strongly contested the said additions and has termed the so called agreements as not real. For ready reference, the points contested by the AR are briefly summarized below:*

- (i) The HMDA has permitted for construction of only 33 villas vide letter No.103711/IO/Plg/HMDA/2013, dated*

*16-03-2015 and there is no possibility of having villas nos.37, 39 and 42 at the time of search. When the villas did not exist at the time of search, there is no reason for entering into an agreement for purchase by the appellant by paying Rs.16 crores in cash to M/s.Sushee Realty LLP. Even after the revised HMDA approval dated 05-11-2016, only 41 villas were approved and villa number 42 never existed.*

*(ii) All the four agreements for purchase of the villas are dated 21-01-2015 and all were shown to have been written on the same stamp paper no.11639 purchased on 21-11-2014 by Shri R.Kishan, son of Shri Redya. The said stamp paper bearing the same number was already used for agreement between Shri Komatireddy Rajgopal Reddy and 17 others and Mrs.Damayanthi Rathakrishnan executed on 18-12-2014 and the property was registered later.*

*(iii) Villa No.6 was already under agreement for sale entered into on 12-11-2014 with M/s.Gummadi Divya Reddy. Out of agreed amount of Rs. 3 crores, Rs.25 lakhs was paid by cheque on 02-05-2014; Rs.15 lakhs was paid on 13-08-2014; Rs.10 lakhs was paid on 14-10-2014. Therefore, there is no possibility of entering into an agreement of sale against Villa no.6.*

*(iv) The agreements of sale does not indicate the payment of advances. The seller M/.Sushee Realty LLP did not record any receipt from the appellant in its books of account. The books of account of M/s.sushee Realty LLP found during search did not find any entry about advance or payment received from the appellant.*

*(v) All the villas were sold to various third parties and none were purchased by the appellant or her son.*

*(vi) The appellant was under pressure during search and has filed an affidavit which was later retracted. The AO ignored all the surrounding circumstances and simply relied on the initial affidavit and subsequent statement under section 131 of the Act. In the affidavit, the appellant admitted additional income for AY 2016-17 but the AO disregarded it and made addition for AY 2015-16. Hence, the AO himself disregarded the appellant's affidavit.*

*(vii) No addition was made by the AO on the alleged Rs.16 crores said to have been paid A by the appellant while making assessment of M/s.Sushee Realty LLP for AY 2015-16. The AO did not initiate proceedings under section 153C for the year under consideration.*

*(viii) The original plan approved on 16-03-2015 was revised on 05-11-2016. After revision the number of villas got renumbered and all of them were sold to various outside persons and none of them were sold by appellant and her son.*

*(ix) No statement under section 132(4) was recorded by the appellant. Only a statement under section 131 (was recorded. Hence the case laws against retraction of statement under section 132(4) does not apply.*

*7.3.3 In view of the above reasons, the AR vehemently contended that the so called agreements for sale are not real and no payments were made by the appellant to M/s.Sushee Realty LLP. It was also contended that the appellant is a non-executive director in M/s.Sushee Realty LLP and a house wife which itself indicates that, she does not have the capacity or resources to pay Rs.16 crores in cash. It was again reiterated that these agreements were all prepared during search for the purpose of seizure and declaration. It was therefore submitted that the assessee or her son have not purchased any villas. The assessee does not have the means to pay cash of Rs.16 crores and also that the villas were sold to different parties through separate registered sale deeds. No villas were purchased by the appellant or her son in the said project. In view of the same, the AR contended that the addition may be deleted.*

*7.3.4 I have carefully considered the submissions of the appellant and the arguments of the AO. I have also perused the agreements of sale said to have been entered into by the appellant and her son for purchase of four villas numbering 6, 37, 39 and 42 by paying at the rate of Rs. 4 crores per villa totaling to Rs.16 crores in a project developed by M/s.Sushee Realty LLP named 'Eden Garden'. On examination, it is seen that all the four agreements are on Rs.100 stamp paper bearing No.11639, dated 21-11-2014 purchased by one Shri R.Kishan, S/o.Shri Redya. There are no witnesses to the agreement and there is no payment schedule. Since the project is still a work in progress and income was offered on percentage completion method, (as per para 1, page 6 of the assessment order)*

*usually there would be a payment schedule indicating the scheme of payments depending on the projects progress. There is no mention of payments/advances already received and the balance if any, payable. There is only one line on the sale consideration that the vendee paid the sale consideration. Mode of payment or receipt of the consideration is not there in the agreement. All the four agreements are having the same date and are written on the same stamp paper. The said stamp paper bearing the same number and date was already used for an agreement of sale between Shri Komatireddy Rajgopal Reddy and 17 others and M/s.Damayanthi Rathakrishnan executed on 18-12-2014 for purchase of Villano.19. As per this agreement, the vendee has agreed to purchase Villa no.19 in the project name 'Eden Garden' and has paid various cheques totaling to Rs.1,21,35,500/-. The cheque payment details are Rs.25,67,750/- on 21-05-2014; Rs.25,67,750/- on 09-07-2014; Rs.41,00,000/- on 28-07-2014; Rs.21,00,000/- on 14-08-2014; Rs.4,00,000/- on 18-08-2014 and Rs.4 lakhs on 22-08-2014. In other words, this stamp paper was already used much before the date of agreements for purchase of the four villas by the appellant and her son. This raises a question on the genuineness of the agreements entered into by the appellant.*

*7.3.5 At the time of the agreement for sale i.e., 20-01-2015, three of the villas numbered 37, 39 and 42 were not in existence as only 33 villas were approved by HMDA. It is also seen that the Villa No.6 was already under an agreement of sale entered into on 12-11-2014 with Mrs. G.Divya Reddy and advances were received much before the date of the appellant's agreement. The appellant has retracted her statement before the AO stating that she was 'under pressure during search and there was no cash amount of Rs.16 crores paid by her for purchase of villas. M/s.Sushee Realty LLP, the seller did not record any receipt from the appellant in its books. The books of Sushee Realty LLP found during search did not find any entry about the advances. Besides, when the average sale consideration to third parties of each villa varies between Rs.3 crores to Rs.4 crores, it does not stand to reason as to why a nonexecutive partner in her own firm would pay Rs.4 era res in cash for each villa and does not even have the villas registered in her name? Besides, all the villas were sold to third parties and none were purchased by the appellant or her son. Therefore, the agreements for sale found by the search party are not real. The AO has ignored all these circumstantial evidence and solely relied on the appellant's affidavit and her statement under section*

*131(1) which were later retracted. One cannot ignore the wealth of circumstantial evidences that question/contradict the agreements for sale and solely rely on the statement of the appellant. The AR's contention that the sale agreements were created during search for disclosure is not tenable as the search was conducted on 21-07-2016 and the dates on the agreement for sale was 20-01-2015. These agreements predate the search.*

*7.3.6 The Hon'ble Supreme Court in the case of M/s.pullangode Rubber Produce Co. ltd. vs. State of Kerala (1973) 91 ITR 18 (SC) held that an admission is an extremely important piece of evidence but it cannot be set to be conclusive. It is open for the person who makes an admission to show that it is incorrect. In this case the statements were recorded under section 131 of the Act and not under section 132(4) of the Act. These statements were later retracted before the AO. The appellant has shown that the stamp paper on which the agreement for sale was entered into was already utilized in some other transactions. Some of the villas numbers did not exist at the time of the agreement and one villa was already under an agreement for sale with a third party. All the villas were ultimately sold to third parties and none to the appellant or her son. All these circumstantial evidences cannot be ignored and sole reliance cannot be made on the statement recorded during search. The wealth of the circumstantial evidence and probabilities of the case goes on to prove that the agreements of sale found during search by the search party were not genuine and cannot be relied upon. No other evidence of cash payment by the appellant or cash receipt by the M/s.Sushee Realty LLP on account of the agreement for sale were found during search. The Hon'ble Supreme Court in the case of Shankaria vs. State of Rajasthan (1978 (3)(SCC, 435) given in the context of confession held as under:*

*'The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstance's, it may be taken to have satisfied the second test. '*

*Applying the above ratio to the facts of the present case, the surrounding circumstantial evidence strongly rebuts the genuineness of the agreements of sale found during search. In the light of the*

*above discussion, the addition of Rs.16 crores made on account of the agreements for sale is directed to be deleted. In view of the same Ground Nos.1 to 6 are ALLOWED.”*

9. Revenue, therefore, preferred this appeal contending that in his statement recorded under oath under section 132(4) of the Act, Shri Lakshmikant Reddy, partner of M/s. Sushee Realty LLP stated that the transactions between M/s. Sushee Realty LLP and the assessee took place and the payment of Rs. 16 crores also happened. Revenue further contended that there was a deliberate attempt to conceal the undisclosed income by entering into agreements of sale or executing sale deeds with other parties in order to show that the seized agreement under consideration is not a genuine document, and the unaccounted transaction is arising out of the incriminating material found during the course of search.

10. Learned DR, while referring to the sworn statement of the assessee recorded on 31/08/2016 under section 131(1) of the Act, submitted that the assessee in her reply to Question No. 12 categorically confirmed the payment made for purchase of four villas and has offered an amount of Rs. 16 crores as additional income. Referring to Page Nos. 4 to 71 of the paper book, learned DR drew the attention of the Bench to the copy of the seized agreements of sale, referring to Page Nos. 72 and 73 of the paper book, learned DR drew the attention of the Bench to the copy of the affidavit dated 17/08/2016 filed on 01/09/2016, filed before the Dy. Director of Income Tax (Inv.)-Unit-I(4), wherein the assessee had categorically offered an additional income of Rs. 16 crores for the AY. 2016-17. Referring to Page Nos. 74 to 77 of the paper book, learned DR drew the attention of the

Bench to the copy of the HMDA's approval dated 03/03/2015. Referring to Page No. 78 of the paper book, learned DR drew the attention of the Bench to the copy of the revised draft layout dated 22/10/2016. Referring to Page Nos. 79 and 80 of the paper book, learned DR drew the attention of the Bench to the copy of the sworn statement of Sri M. Lakshmikanth Reddy under section 132(4) of the Act, during the course of PO operation on 19/09/2016. Referring to Page Nos. 81 to 101 of the paper book, learned DR drew the attention of the Bench to the copy of the sworn statement of Sri M. Lakshmikanth Reddy, recorded under section 132(4) of the Act, during the search operation under section 132 of the Act on 22/07/2016. He submitted that the learned CIT(A) did not consider all these vital aspects and wrongly deleted the addition. He accordingly submitted that the order of learned CIT(A) be set aside and the order of the learned Assessing Officer be restored.

11. Learned DR also relied on the decisions reported in Pullangode Rubber Produce Co. Ltd., vs. State of Kerala [1973] 91 ITR 18 (SC), Surjeet Singh Chhabra vs. Union of India [1996] taxmann.com 71 (SC) and B. Kishore Kumar vs. Deputy Commissioner of Income Tax [2015] 62 taxmann.com 215 (SC).

12. Learned Counsel for the assessee, on the other hand, strongly supported the orders of the learned CIT(A) and submitted that learned Assessing Officer made an addition of Rs.16 crores on the basis of agreements said to have been found during search and the statement recorded from Shri Laxmikanth Reddy. He brought to the notice of the Bench that the assessee during the course of appellate proceedings proved

that the agreements found are not real and cannot be relied upon, stating that the 'issue number' of the document paper was the same for all the four alleged agreements; that the original document was used by Shri. Komati Reddy Rajgopal Reddy and 17 others while executing M/s Damayanthi Radha Krishnan on 18/12/2014. Therefore, the documents are not real. It was also submitted by the learned Counsel for the assessee that the villas proposed to be sold as mentioned in the said agreements i.e, Villa Nos. 37, 39 and 42 were not in the original plan and the revised plan was approved after the date of agreements and the agreements were said to have been dated 20/01/2015 where as the agreements contain the sanction plan of March 2015 which suggests that the agreements are not real. It was further contended that all the flats mentioned in the said four agreements were sold to different persons and agreements were already entered with them. In fact advances were received through cheques and were ultimately sold to the said persons. None of the villas was purchased by the assessee. The recipient M/s Sushee Realty LLP did not show and such receipt nor Assessing Officer made any addition on this ground. Finally, it was the contention of the learned counsel for the assessee that the Income Tax authorities, in the case of Sushee Realty LLP, during the course of search found a paper showing the cash receipts from the villa purchases, the amount of cash received from various others was Rs.11,40,00,000/-. The said paper does not contain the above 4 agreements and the cash receipt from the assessee though the amount of Rs.11,40,00,000/- was added, the amount of Rs.16 crores was not considered. No addition is made in the case of Sushee Realty LLP on this ground and argued that a perusal of the purchases in whose favour villas

were registered would show that none of the villas were acquired or purchased by the assessee.

13. Basing on the above data the learned CIT(A) allowed the appeal filed by the assessee. Hence, he prayed the Bench that since no further data was brought no record and therefore, the order of the learned CIT(A) may kindly be confirmed, by rejecting the grounds raised by the Revenue.

14. We have gone through the record in the light of the submissions made on either side. We perused the orders of learned Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find learned Assessing Officer in the instant case made an addition of Rs. 16 crores to the total income of the assessee on the ground that the assessee paid an amount of Rs. 16 crores for purchase of four villas, as per agreement entered into with M/s. Sushee Realty LLP and that the designated partner of M/s.Sushee Realty LLP, Shri Lakshmi Kant Reddy as confirmed the transaction and that the assessee in her statement recorded under section 131(1) of the Act had confirmed the said transaction and agreed to offer the additional income for the AY. 2016-17. We find that the learned CIT(A) deleted the addition, reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT(A) on this issue. It is an admitted fact that the assessee during the course of assessment proceedings had filed submissions, retracting the disclosure so made, stating that the so called agreements entered into between herself and M/s. Sushee Realty LLP are not true and were prepared at the instance of the search party for

the purpose of retracting the declaration. Further we find that the four agreements were on Rs. 100/- stamp paper, bearing No. 11639, dated 21/11/2014 purchased by one Shri R. Kishan and there are no witnesses to the agreements and there is no payment schedule. Further, there is no mention of any payment/advances already received and the balance, if any, payable. All the four agreements were having the same date and are on the same stamp paper. We find the said stamp paper, bearing the same number and date was already used for an agreement of sale between Shri Komatireddy Rajgopal Reddy and 17 others and M/s. Damayanthi Rathakrishnan executed on 18/12/2014 for purchase of Villa No. 19. As per this agreement, the vendee has agreed to purchase Villa No. 19 in the project name 'Eden Garden' and has paid various cheques totaling to Rs.1,21,35,500/- on various dates.

15. We, therefore, find merit in the arguments of the learned counsel for the assessee that when this paper was already used much before the date of agreement of purchase of four villas by the assessee and her son, therefore, the genuineness of the agreement entered into by the assessee with M/s. Sushee Realty LLP is doubtful and cannot be held as genuine. We further find from various details filed in the paper book that at the time of agreement for sale i.e., 20/01/2015, three of the villas, viz., 37, 39 and 42 were not in existence as only 33 villas were approved by HMDA. Further, Villa No. 6 was already under an agreement of sale entered into on 12/11/2014 with Mrs. G. Divya Reddy and advances were received much before the date of the assessee's agreement. Further, M/s. Sushee Realty LLP have not recorded any receipt from the assessee in its books and no

addition has been made in the hands of M/s. Sushee Realty LLP while completing the assessment.

16. So far as the statement of the assessee, recorded under section 131(1) of the Act is concerned, a perusal of the same shows that the assessee never offered any additional income for the AY. 2015-16 and in fact has declared for AY. 2016-17. Learned Assessing Officer has also reproduced the said statement, which has already been reproduced in the preceding paragraphs. Further, the statement of the assessee was never recorded during the course of search under section 132(4) of the Act.

17. We find that CBDT vide Circulars in F.No. 286/2/2003-IT (Inv) and F.No. 286/98/2013-IT (Inv.II), dated 10<sup>th</sup> March, 2003 and 18<sup>th</sup> December, 2014 respectively, issued the following instructions to the Field Officers for not making any additions on the basis of the confessional statements recorded on the basis of search and survey in the absence of any credible evidence. The relevant instructions of the CBDT are reproduced here under:

F.No. 286/2/2003-IT (Inv)

*“Subject: Confession of additional Income during the course of search & seizure and survey operation -regarding*

*Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and*

*concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.*

*Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.”*

**\*\***

**F.No. 286/98/2013-IT (Inv.II)**

*“Subject: Admissions of Undisclosed Income under coercion/pressure during Search/Survey - reg.*

*Ref: 1) CBDT letter F.No. 286/57/2002-IT(Inv.II) dt. 03-07-2002*

*2) CBDT letter F.No. 286/2/2003-IT(Inv.II) dt. 10-03-2003*

*3) CBDT letter F.No. 286/98/2013-IT(Inv.II) dt. 09-01-2014*

*Sir/Madam,*

*Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesseees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such 'admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.*

*2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.*

*3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T. Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely.*

*4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.*

*5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.*

*6. This issues with approval of the Chairperson, CBDT.”*

18. We find when the assessee has retracted the statement at the time of assessment proceedings and there is no other credible evidence before learned Assessing Officer that the assessee has in fact paid an amount of Rs. 16 crores for purchase of four villas and since no addition has been made in the hands of M/s. Sushee Realty LLP and that all the four villas mentioned in the said agreement were sold to different persons and agreements were already entered with them with advances received through cheques and were ultimately sold to the said parties, therefore, in view of the above discussion, and in view of the detailed reasoning given by the learned CIT(A) on this issue, we do not find any infirmity in the order of learned CIT(A) in deleting the addition. Accordingly, by upholding the order of learned CIT(A), we dismiss the grounds raised by the Revenue.

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

C.O.No. 25/Hyd/2022:

20. After hearing both the sides, we find that the cross objection filed by the assessee is in support of the order of the learned CIT(A). As we have

already upheld the order of the learned CIT(A), dismissing the grounds raised by Revenue, the cross objection filed by the assessee becomes infructuous and the same is also dismissed.

21. To sum-up, the appeal of Revenue as well as the cross objection of the assessee, both are dismissed.

Order pronounced in the open court on this the 21<sup>st</sup> day of March, 2024.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 21/03/2024

TNMM

Copy forwarded to:

1. The Asst. Commissioner of Income Tax, Central Circle-2(2), Hyderabad.
2. Smt. Laxmi Komatireddy, H.No. 8-2-293/82/FII/A, Plot No. 35, FNHC Society, Film Nagar, Jubilee Hills, Hyderabad.
3. The Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

TRUE COPY

ASSISTANT REGISTRAR  
ITAT, HYDERABAD