

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA Nos.244 & 245/Hyd/2021**
(निर्धारण वर्ष/Assessment Years: 2015-16 & 2016-17)

Vijayalakshmi Enterprises Hyderabad PAN:AANFV2591E (Appellant)	Vs.	Income Tax Officer Ward 15(1) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.A. Sai Prasad, CA	
राजस्व द्वारा/Revenue by:	Smt. TH Vijaya Lakshmi CIT (DR)	
सुनवाई की तारीख/Date of hearing:	03/04/2024	
घोषणा की तारीख/Pronouncement:	12/04/2024	

आदेश/ORDER

Per R.K. Panda, Vice-President.

Both these appeals filed by the assessee are directed against the separate orders dated 30/03/2021 of the learned Pr.CIT-4, Hyderabad, relating to A.Ys. 2015-16 & 2016-17. Since common issues are involved in these two appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. Although a number of grounds have been raised by the assessee in these two appeals, however, the grounds of the assessee are in two folds i.e. one relates to the action of the learned Pr.CIT in assuming the jurisdiction u/s 263 of the Act holding that the assessment order passed by the Assessing Officer u/s 143(3) was erroneous in so far as it is prejudicial to the interest of the Revenue and the other relates to the direction issued by the learned Pr.CIT for adoption of SRO value of the land instead of the value recorded by the assessee in its books of accounts.

ITA No.244/Hyd/2021 – A.Y 2015-16

3. Facts of the case, in brief, are that the assessee firm filed its return of income for the A.Y. 2015-16 on 6.7.2016 declaring total income at Rs.Nil. The case of the assessee was selected for limited scrutiny for examination of “Whether -the share capital is genuine and from disclosed sources “. After considering the submission of the assessee, the Assessing Officer completed the assessment u/s 143(3) of the Act on 29.12.2017 by accepting the income returned.

4. Subsequently the learned Pr.CIT by invoking the powers vested u/s 263 of the Act called for the assessment record, examined the return of income for the A.Y 2015-16 and set aside the order of the Assessing Officer with a direction to redo the assessment. The relevant part of the order of the learned Pr.CIT is reproduced as under :

1. I have carefully considered the facts involved in this case and material available on record.

The assessee in his submissions dated 30.03.2021 vide para 7 had mentioned that :

7. The assessee thus is the legal and beneficial owner of the land since march 2010. The same has been recognised even by the SRO and taken on to the record. The Firm was also registered with the registrar of Firms w.e.f 15.03.2010. Thus there are no consequences prejudicial to the interests of the Revenue in AY 2015-16, due to the inactions of the Assessing Officer, if any . Any further investigation in relation to the ownership can only be carried on in AY 2010-11, during when the Firm was constituted, and land was contributed. Thus, its is prayed that the 263 proceedings fro AY 2015-16 be kindly dropped on this count.

As per the details available with the department it is observed that the assessee firm had filed its return of income for the first time for A. Y. 2015-16 only. As seen from the return of income the partners of the assessee firm had brought their individual land into the firm as capital declaring the value at Rs.26,10,00,000 during the financial year 2014-15 relevant to A. Y. 2015-16 as that is the first year of filing the return of income by the Assessee firm. In the submissions the assessee had stated that the assessee firm was incorporated on march 2010. The assessee had not submitted any evidence to this but for an unregistered partnership deed. No proof of approval with registrar of firms is submitted by the assessee either during the course of scrutiny assessments or during the course of revisionary proceedings. In view of the foregoing observations, the AO failed in his basic duty to examine these aspects while completing scrutiny assessment for A.Y.2015-16 even though the reason for selection for scrutiny was "*Whether the share capital is genuine and from disclosed sources*". The Assessing Officer has not verified the case and failed to obtain the necessary evidences. The partners in their individual capacity had entered into Joint Development Agreement (JDA) with M/s Visakha

Valley Resorts and Estates Pvt Ltd., vide deed (3976/2011) on 23.09.2011. The JDA is a registered deed and the fact that the partners had only signed the original JDA on 23.09.2011 clearly shows that the lands were held by the partners only in their individual capacity as on 23.09.2011. The land was converted into non agricultural land on 23.09.2011 and the market value of the land as per the SRO as on 23.09.2011 was Rs. 2,02,50,000/- only. Further, the assessee firm had not filed any return of income for the A. Ys 2010-11 to 2014-15. It is understood that this JDA(dated 29.03.2011) was modified vide deed No.4126/2016 dated 02.03.2016 as entered into between the assessee partnership firm and the developer, M/s Visakha Valley Resorts and Estates Pvt Ltd. On the same day there was a rectification deed (1245/2016) between the partners of the assessee firm and M/s. Visakha Vally Resorts saying that in the deed(3976/2011) dated 23.09.2011, the name of the assessee firm i.e. M/s. Vijaya Lakshmi Enterprises was not shown along with the partners inadvertently and where ever partners names were mentioned the name of the assessee firm was also to be included. The assessee filed the ROI for the A. Y. 2015-16 belatedly on 06.07.2016 after the rectification deed (02-03-2016)and modification deed(02-03-016) were entered to. It was submitted by the assessee that the partnership firm was formed vide unregistered deed dated 15.03.2010. This clearly shows that the creation of the so called assessee firm and filing of the ROI of the firm for the A. Y. 2015-16 were only afterthoughts or a colorful device invented to evade taxes. The Assessing Officer must have obtained the unregistered partnership deed in original and examined. Further, the Assessing officer must have ascertained the correct value of the land from the SRO for AY 2015-16 and adopted such figures in the balance sheet of the assessee firm while completing the assessment for AY 2015-16.

In view of the above, I am satisfied that the order under sec. 143(3) of the I T Act made by the Assessing Officer on 29.12.2017 was erroneous in so far as it is prejudicial to the interest of revenue. The Assessing Officer is directed to obtain the partnership deed in original and examine the same. Further, the Assessing Officer is directed to ascertain the correct value of the land for the A. Y. 2015-16 from the SRO and adopt such figures in the Balance sheet of the assessee. Accordingly, the assessment order of the Assessing Officer for the A.Y. 2015-16 is set aside with a direction to re-do the assessment, as per the observations stated above, after verifying all the details, as per law, and after providing reasonable opportunity to the assessee.

5. Aggrieved with such order of the learned Pr.CIT the assessee is in appeal before the Tribunal. The ld. AR of the assessee

filed the detailed written submission as under: -

1.1 The Appellant is firm formed by 6 persons of a family for carrying out real estate activities and was formed on 15.03.2010. The partners contributed 45 acres of agrl land purchased by them for Rs 88,99,325 in 2009. The value of the land was adopted in the books at Rs 26,10,00,000 as per the provisions of sec 45(3) of the IT Act and the same was credited to the capital accounts of the partners. The land was recorded as stock in trade. Though the land was given for development to M/s VisakhaV Valleys Resorts Estates Pvt Ltd in the years 2011-12, since there were no sales, the Appellant-firm filed its first return of income for AY 2015-16 declaring Nil income since it did not receive any developed plots. It started receiving possession of the developed plots in phased manner and selling the plots from AY 2016-17.

1.2 The return for the AY 2015-16 was taken up for Limited scrutiny u/s 143(3) to examine **"whether the share capital is genuine and from disclosed sources"** and the Appellant submitted the records called for by the AO, like (i) the partnership deed dt 15.03.2010, (ii) Development Agreement dt 23.09.2011 bearing doc no 3976/2011, (iii) Rectification deed dt 02.03.2016 bearing doc no 1245/2016, (iv) Supplement Agreement dt 02.03.2016 bearing doc no 1246/2016 and (v) Confirmation letter dt 30.03.2017 of the Developer M/s Visakha Valley Resorts & Estates (P) Ltd. The appellant had also explained that,

a) The land was contributed by partners as capital.

b) The fact of transfer and value of land was documented in the partnership deed dt. 15-03.2010.

1.3 Copies of deeds of purchase by partners were filed and tax details of amounts credited to capital account u/s 143(3) were also furnished. Copies of the returns of the partners for A.Ys. 2010-11 to 2013-14 were also filed. **All the details were in the letters filed before Assessing Officer and placed at pages 4 to 10 of the Paper Book. Copies of the notices issued by Assessing Officer calling for details of share capital with returns and compliance to the provisions of sec 45(3) are placed at pages 18 & 19 of Paper Book-2.** The Assessing officer perused the information and accepted the income returned at Nil vide order dt 29.12.2017.

2.1 The Commissioner of Income Tax opined that the Assessing Officer proceeded to complete the assessment without proper examination of the above facts and accordingly, a notice under sec. 263 dated 27.01.2021 was issued to the assessee to show cause as to why the assessment should not be revised / set aside for the following reasons:

2.2 "It is noticed that the agricultural land purchased by the partners in their individual capacity at Rs. 88,99,325/- was transferred to the firm at a value of Rs. 26,10,00,000/-. The assessee firm had filed its return of income for the first time for the A. Y. 2015-16 on 06.07.2016. While completing the assessment u/s 143(3), the Assessing Officer failed to examine the basis for adopting the land value at Rs.26,10,00,000/- while the property was purchased for a consideration Rs. 88,99,325 and the market value of the converted land(Agricultural to non-agricultural) on 23.09.2011 as per the SRO was at Rs. 2,02,50,000/-. Transfer of property at high valuation is detrimental to revenue. The High cost of acquisition in the hands of the partnership firm (26.10 Crores) caused the gain in the hands of the firm upon consequent sale in the course of business to be reduced considerably. As the adoption of higher value in the books of the assessee firm was only aimed at reducing the tax liability, the same ought to have been examined and the balance sheet figures must have been adopted accordingly."

2.3.1 In reply the Appellant made submissions through replies dt 09.03.2021 and 30.03.2021 placed at pages 23 to 25 of Paper Book-2. The main submission is under.

2.3.2 “The land purchased by the owners was contributed by its partners towards their capital. The land was valued at Rs 26,10,00,000 and the value was credited to the capital account of each partner in proportion to the land contributed by the respective partners, as per provisions of Sec 45(3) of the IT Act. The value per acre was taken at Rs 58,00,000 per acre considering the market conditions in March 2010. Since the partners transferred agricultural land to the firm, there was no incidence of capital gains in the hands of the partners”.

2.4.1 The Learned Pr. Commissioner of Income Tax held that the order passed u/s143(3) is erroneous and prejudiced to the interest of the revenue. Some of the observations of the Ld. Pr.CIT are as under.

2.4.2 “As per the details available with the department it is observed that the assessee firm had filed its return of income for the first time for A. Y. 2015-16 only. As seen from the return of income the partners of the assessee firm had brought their individual land into the firm as capital declaring the value at Rs.26,10,00,000 during the financial year 2014-15 relevant to A. Y. 2015-16 as that is the first year of filing the return of income by the Assessee firm. In the submissions the assessee had stated that the assessee firm was incorporated on march 2010. The assessee had not submitted any evidence to this but for an unregistered partnership deed. No proof of approval with registrar of firms is submitted by the assessee either during the course of scrutiny assessments or during the course of revisionary proceedings. In view of the foregoing observations, the AO failed in his basic duty to examine these aspects while completing scrutiny assessment for A.Y.2015-16 even though the reason for selection for scrutiny was “Whether the share capital is genuine and from disclosed sources”. The Assessing Officer has not verified the case and failed to obtain the necessary evidences.”

2.5.1 The Pr CIT, holding the assessment prejudicial to the revenue,passed the following directions vide his order dt 30.03.2021:

2.5.2 “In view of the above, I am satisfied that the order under sec. 143(3) of the I T Act made by the Assessing Officer on 29.12.2017 was erroneous in so far as it is prejudicial

to the interest of revenue. The Assessing Officer is directed to obtain the partnership deed in original and examine the same. Further, the Assessing Officer is directed to ascertain the correct value of the land for the A. Y. 2015-16 from the SRO and adopt such figures in the Balance sheet of the assessee. Accordingly, the assessment order of the Assessing Officer for the A.Y. 2015-16 is set aside with a direction to re-do the assessment, as per the observations stated above, after verifying all the details, as per law, and after providing reasonable opportunity to the assessee.”

In these appeals the appellant agitates on the following issues

a. **Case of Limited Scrutiny-Scope cannot be stretched by order U/s 263.**

3.1 As can be seen from the notice placed at page 13 of the paper book 2, the case was selected for limited scrutiny to examine “**whether the share capital is genuine and from disclosed sources**”.

In the course of assessment proceedings the appellant explained that the amount credited to capital accounts is on account of transfer of land by the partners to the firm and the value was as adopted and recorded in the books as per section 45(3) of the Income Tax Act. The details of land acquired by the partners and copies of the partners returns were also filed as called for by the assessing officer. (Pages 6 to 10 of the Paper Book). Copy of the partnership deed was filed (page 6 of the P B) and registration certificate was also filed page 5 of the Paper Book.

3.2 **Having got satisfied about the amount standing to the credit of the capital accounts as value adopted U/s 45(3) of the IT Act which is the very issue of the examination under the limited scrutiny proceedings the assessing officer completed the assessment accepting the income returned for assessment year 2015-16**

3.3 The Learned Commissioner of Income Tax in his order u/s 263 directed the AO to do something which was not within the scope of limited scrutiny. Calling for the original partnership deed for examination, though a copy of the partnership deed along with the registration certificate was filed before the assessing officer, and directions to adopt SRO rate u/s 50C of the I.T Act, for the land transferred by the partners to the firm are beyond the scope of examination under limited scrutiny. What the learned CIT is directing, the

assessing officer is to do something which the Assessing Officer cannot do even in the initial assessment under section 143(3).

3.4 In this regard reliance is placed on the following decided cases wherein it was held that in the case of limited scrutiny proceedings the assessing officer cannot travel behind the scope, and therefore the Ld Commissioner of Income Tax in the proceedings u/s 263 cannot stretch the scope of jurisdiction vested with the assessing officer.

3.5

1) United Rail Road Consultants Pvt Ltd Vs DCIT ITA No.745/Hyd/2020 Order dated 30.01.2023.

“The assessing officer could not have travelled beyond the reasons for which the case was selected for limited scrutiny. Therefore the order cannot be said to be erroneous (Para 15 Page 117 of case law P.B.2)

2) Epimoney Private Limited Vs ITO/ACIT, ITA No.727/Chny/23 order dated 10.11.2023. Pages 119 to 124 of case law P.B 2 @ page 124.

3) Pr CIT Vs Shark Mines and Minerals Pvt Ltd, 151 Taxmann.com 71 Orissa. Head note page 126 of case law P.B 2

4) Pr CIT Vs Rakesh Kumar, 152 Taxmann.com 398 P&H Page 129 of case law P.B 2

3.6 The scope of limited scrutiny proceedings u/s 143(3) cannot be stretched even in an order passed U/s 263. The procedure for converting limited scrutiny to complete scrutiny shall be as per the CBDT instructions and the decision for such conversation can be taken by the assessing officer only with the prior permission of Pr CIT.

b. Order is not Erroneous-Directions in the order U/s 263 not legally valid.

4.1 Even on merits it is humbly submitted that the directions of the learned CIT under section 263 are not correct. The learned Pr CIT failed to appreciate the fact that the transfer of land by the partners to the firm is specifically governed by the provisions of section 45(3) which contains two limbs, the charging provision and computation provision.

a) It states that the Capital asset transferred by the partner to a firm shall be chargeable to tax as his income in the previous year in which such transfer takes place.

b) It also provides the computation stating that the value as recorded in the books of account shall be treated as the value of consideration.

4.2 Thus Sec 45(3) is a code by itself and section 50C cannot be applied in cases where the provisions of Sec 45(3) are applicable. In the appellant case, since the land was contributed by the partners as capital, the value recorded in the books and credited to the Capital accounts shall be treated as the value of transfer in the hands of the partners. The sole credit to the capital accounts is the value adopted U/s 45(3) and hence cannot be doubted. Therefore the assessing officer was satisfied regarding the credit balance in capital accounts. Since this was sole issue of examination and since the Assessing Officer conducted proper enquires, holding that the order U/s 143(3) as erroneous is not justified.

4.3 The land was transferred as stocking trade and the same was taken as opening stock for the assessment year 15-16. The directions of the learned CIT to adopt SRO rate as per provisions of Sec 50C is not just and proper and legally not correct. Reliance is placed on the following decided cases for the preposition that in the cases covered by Sec 45(3) the provisions of Sec 50C are not applicable.

4.4

1. ACIT Vs Kethireddy Venkata Mohan Reddy, ITA No.259/Hyd/2019 dt 17.07.19. Page 1 to 4 of case law P.B 1 @ page 4.

2. Network Construction Company Vs ACIT, ITA No.2279/Mumabi/2017 dt 11.08.2020 pages 5 to 18 of case law P.B @ page 17.

3. ACIT Vs M/s Amartara Pvt Ltd. ITA No.181 & 5569/Mumabi/2018 dt 02.03.2020, pages 19 to @ page 21.

4. ACIT Vs Moti Ramanad sagar, ITA No.2049/Mumbai/2017 dt.28.02.2019

“ The Assessing Officer was not empowered to take a different figure on full value of consideration other than what take firm had recorded in the books, It was immaterial as to whether the value so recorded by the firm in the books by crediting the capital bringing Partners was less than the fair market value of the capital asset which was contributed to the firm ”

Page 30 of the case law paper book.

5. Manoj Dwarakadas Pritmani Vs ACIT 130 Taxmann.com 284 Gujart Pages 93 to 98 of P.B

“It appears from the record that the assessee had transferred his land to M/s. Swaminarayan Enterprise as part of capital contribution in the partnership firm as per Partnership Deed duly executed on 15-8-2008. Undisputedly, the land in question was not transferred in the name of Firm. It is a settled law that where immovable property is transferred by a partner to the firm as a capital contribution and registration does not take place by paying stamp duty, the case would be covered under section 45(3) of the Act. As per Section 45(3) of the Act, whenever a partner contributes any capital asset in the partnership firm, then the value of capital asset recorded in the books of account of the firm is to be considered as the full value consideration for the purpose of computing capital gain.

Section 45(3) says that the profits or gains arising from the transfer of capital asset by the person to a firm in which he is or becomes a partner by way of a contribution or otherwise,

shall be chargeable to tax as his income of the previous year in which such transfer takes place and for the purposes of Section 48, the amount recorded in the books of account of the firm, as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of transfer of capital asset.”

6. Pr CIT Vs Dr D Ramamurthy, 410 ITR 236 Madras. Pages 99 to 103 of case law P.B

4.5 Hence the order passed U/s 143(3) is not erroneous, and is legally valid and proper.
A.Y. 2016-17

5.1 In this case the Assessing Officer in the order u/s 143(3) considered the closing stock of the A.Y.2015-16 as opening Stock. He made certain adjustments and reworked out the closing stock and gross profit.

5.2 The Ld Pr. Commissioner of Income Tax directed the Assessing Officer to consider the opening stock adopting the closing stock of A.Y. 2015-16 as modified as per his directions in order u/s 263 for A.Y.2015-16.

5.3 Since the directions of Ld Commissioner of Income Tax for A.Y.2015-16 are now submitted as legally not correct, consequential order u/s 263 for A.Y.2016-17 is equally not just and proper.

6. Hence it is prayed that the Hon'ble Income Tax Appellate Tribunal be pleased to cancel the order u/s 263 passed for A.Ys. 2015-16 & 2016-17.

6. The learned DR, on the other hand, heavily relied on the order of the learned Pr.CIT and submitted that learned Pr.CIT was justified in invoking section 263 of the Act.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides.

8. With regards to the ground of the assessee that “the action of the learned Pr.CIT in assuming the jurisdiction u/s 263 of the Act holding that the assessment order passed by the Assessing Officer u/s 143(3) was erroneous in so far as it is prejudicial to the interest of the Revenue”, it is an admitted fact that the case of the assessee was selected for limited scrutiny for examination of “Whether the share capital is genuine and from disclosed sources“. We find the Assessing Officer during the assesement proceedings issued query letters (PB page no.13 to 19) reproduced as under:



भारत सरकार/ GOVERNMENT OF INDIA
वित्त मंत्रालय/ MINISTRY OF FINANCE
आयकर विभाग/ INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 15(1), HYDERABAD

सेवा में/ To, VIJAYALAKSHMI ENTERPRISES H NO 23-174 H NO 23-174 ,R K NAGAR STREET NO 40 MALAKJGIRI 500047 ,Telangana India			
स्थायी लेखा संख्या/ PAN: AANFV2591E	निर्धारण वर्ष/ AY: 2015-16	नोटिस संख्या / Notice No.: ITBA/AST/S/143(2)/2017- 18/1004986410(1)	दिनांक/ Dated: 19/07/2017

आयकर अधिनियम, 1961 की धारा 143(2) के अन्तर्गत नोटिस
Notice under section 143(2) of the Income Tax Act, 1961

सीमित संवीक्षा (कम्प्यूटर आधारित संवीक्षा चयन)

Limited Scrutiny (Computer Aided Scrutiny Selection)

महोदय/महोदया/ मेसर्स,

Sir/ Madam/ M/s,

यह आपको सूचित किया जाता है कि कर निर्धारण वर्ष 2015-16 की आयकर विवरणी जो कि पावती संख्या 237900880060716 दिनांक 06/07/2016 को दाखिल किया गया था, सीमित संवीक्षा हेतु चयनित है।

This is for your kind information that the return of income for Assessment Year 2015-16 filed vide ack. no. 237900880060716 on 06/07/2016 has been selected for Scrutiny.

परीक्षण हेतु निम्नलिखित विषय चिन्हित हैं।

Following issue(s) have been identified for examination:

i. Whether the share capital is genuine and from disclosed sources.

2. उपरोक्त के सम्बन्ध में, मैं आप को उपर्युक्त आयकर विवरणी के समर्थन में दिनांक 28/07/2017 को 11:38 AM या उसके पहले कोई साक्ष्य/सूचना प्रस्तुत करने का अवसर प्रदान करता/करती हूँ।

In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before 28/07/2017 at 11:38 AM.

3. उपरोक्त वर्णित साक्ष्य/ सूचना, आयकर विभाग की ई- फाइलिंग वेबसाइट में उपलब्ध 'ई- प्रोसीडिंग' सुविधा के माध्यम से अपने एकाउन्ट द्वारा प्रेषित करनी है। आगे की कार्यवाहियाँ भी इलेक्ट्रॉनिक (*) तरीके से संचालित की जाएँगी। ई प्रोसीडिंग की मुख्य विशेषताओं पर संक्षिप्त नोट संलग्न है।

The above mentioned evidence/information is to be furnished online electronically in 'E- Proceeding' facility through your account in e-Filing website of Income-tax Department. Further proceedings shall also be conducted electronically (*). A brief note on salient features of 'E- Proceeding' is enclosed.

AANFV2591E- VIJAYALAKSHMI ENTERPRISES
A.Y. 2015-16
ITBA/AST/S/143(2)/2017-18/1004986410

4. यदि आप कोई सूचना/ साक्ष्य, जैसा कि अनुच्छेद 2 में वर्णित है, नहीं देना चाहते हैं तो आपसे निवेदन है कि उपरोक्त दिनांक 28/07/2017 को या उसके पहले इलेक्ट्रॉनिक माध्यम से सूचित करें।

In case you do not wish to produce any evidence/information, as mentioned in para 2, you are requested to intimate the same electronically on or before 28/07/2017.

5. यदि आवश्यक हुआ तो बाद में निश्चित प्रश्नावली/सूचना का मांग पत्र या दस्तावेज भेजे जायेंगे।

Specific questionnaires/requisition of information or documents would be sent subsequently, if required.

6. यदि आयकर विभाग की ई-फाइलिंग वेबसाइट में आप का एकाउन्ट है तो अनुच्छेद (2) से (4) लागू है। जबतक आप के द्वारा इस प्रकार का एकाउन्ट नहीं बनाया जाता है, कर निर्धारण की कार्यवाहियों या तो ई-मेल के द्वारा या लिखित रूप से प्रस्तुत करना होगा (यदि ई-मेल उपलब्ध नहीं है)।

Para(s) (2) to (4) are applicable if you have an account in e-Filing website of Income-tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

(* संलग्न नोट के अपवाद पर आधारित

(* Subject to exceptions as per the enclosed note

मुहर/Seal



भवदीय,

Yours faithfully,

MOHAN LINGABATTULA
WARD 15(1), HYDERABAD

8.1 Similarly, the Assessing Officer vide letter dated 24.11.2017 has issued the following letter to the assessee:

NOTICE U/S 142(1) OF THE INCOME TAX ACT, 1961

कार्यालय आयकर अधिकारी, वार्ड - 15(1)
OFFICE OF THE INCOME TAX OFFICER, WARD-15(1)
पांचवी मंजिल, 'डी', आयकर शिखर, एगार्ड्स सी., हैदराबाद - 500 004
5th FLOOR, 'D' BLOCK, IT TOWERS, AC GUARDS, HYDERABAD - 500 004
+91-040-23426-111; Telefax: +91-040-23425-315
E-mail : hyderabad.ito15.1@incometax.gov.in

F. No. ITO/W-15(1)/AANFV2591E/2015-16

Date : 24-11-2017.

To,

M/s Vijayalakshmi Enterprises,
H No 23-174, R K Nagar, Street No, 40,
Malkajgiri, Hyderabad - 47.

Sir/Madam,

In connection with the Income Tax assessment for the Asst. Year 2015-16, you are required to (a) produce or cause to be produced before me the accounts and/or documents specified below and (b) furnish in writing and verified in the prescribed manner information called for on the points or matters specified below:

- Firm Registration Certificate as issued by the Registrar of Firms.
- Books of account.
- Copies of Returns of Income of the partners from Asst Yr 2010-11 onwards.
- Please explain how the provisions u/s 45(3) of the Income Tax Act, 1961 were complied by the partners with regard to their appreciation of value of the assets transferred to the Firm. If so, please explain in which Asst Year such profits were offered to tax by the partners. Please produce such copies of Return of Income of the partners.

The above information may be produced or cause to be produced before me at my office on 28/11/2017 at 11:30 AM.



Yours faithfully,

(L. MOHAN)
Income Tax Officer
Ward - 15(1), Hyderabad

8.2 We find the assessee duly replied to all the queries of the Assessing Officer along with the information and supporting documents (Paper Book Page No.6 to 10) the details of which are as under:

PAN:AANFV 2591E

Dt.24.07.2017

To
The Income Tax Officer,
Ward -15(1), Hyderabad.

Sir,

Sub: Proceedings u/s 143(2) of the IT Act – in the case of M/s. Vijayalakshmi Enterprises, H.No.23-174, Street No.4, R.K.Nagar, Malkajgiri, Hyderabad – 47- Asst.Year 2015-16 - Reg:

In regard to the said proceedings in the above mentioned case and in reference to your letter dt.19.07.2017, I am herewith submitting the following for your perusal and record:

1. **Income Tax Return:** Please find enclosed the IT Acknowledgement, Balance sheet and Capital Accounts for the A.Y.2015-16 of M/s. Vijayalakshmi Enterprises for your perusal and record.
2. **Form No.26AS:** Please find enclosed a copy of Form No.26AS for AY 2015-16 for your perusal and record.
3. **Bank Accounts:** The assessee is carrying out banking transactions with Bank of India, Malkajgiri Branch, Hyderabad with A/c No.860220110000369. Please find enclosed copy of the bank statement for the period from 10.12.2015 to 28.10.2016 for your perusal and record.
4. **Details of Movable & Immovable:** The assessee owns around 45 acres of land in S.Nos. 2 & 3 situated at Appannadorapalem Village, Kothavalasa, Visakhapatnam District contributed by the partners. The said lands were given on development to M/s. Visakha Valley Resorts Estates Pvt Ltd vide agreement dt.23.09.2011 registered as 3976/2011. The development agreement was rectified vide doc.no.1245/2016 of 02.03.2016 and a Supplementary agreement was also executed vide doc.no.1246/2016, copies of which are enclosed for your perusal & record.
5. **Partnership Deed:** The assessee firm is a partnership and was formed on 15.03.2010. A copy of the Partnership deed is enclosed for your record & perusal.
6. **ITR - 5 Copy:** Please find enclosed the ITR-5 copy for A.Y.2015-16 for perusal and record.

I hereby request your goodselves to kindly take the above details on record.

Thanking you,
Yours truly

C Maruti Nagendram
Chartered Accountant.

True Copy
P

Received
C/o. Joint C.I.T.

PAN:AANFV 2591E



Dt.06.11.2017

To
The Income Tax Officer,
Ward -15(1), Hyderabad.

Sir,

Sub: Proceedings u/s 143(2) of the IT Act – in the case of M/s.
Vijayalakshmi Enterprises, H.No.23-174, Street No.4, R.K.Nagar,
Malkajgiri, Hyderabad – 47- Asst. Year 2015-16 - Reg:

With reference to the above proceedings and your letter dt.19.07.2017. I submit the following for your kind consideration.

Source of capital & its genuineness: The assessee firm was formed vide partnership deed dt.15.03.2010 by the following persons namely.

- 1) Sri B. Jagadiswar Reddy
- 2) Sri B. Jagadiswar Reddy (HUF)
- 3) Smt. B. Vijayalakshmi
- 4) Sri B. Rajneesh
- 5) Smt. B. Harika &
- 6) Smt. O. Radhika

The partners were owning agricultural lands in survey no.2-9 P of Appanna Dorapalem, Relli Village & Panchayat, Kothavalasa mandal, Vizainagaram District, Andhra Pradesh having purchased by them in December 2009. These lands were contributed by them towards capital of the firm. The amounts so credited towards land value is reflected as capital of the partners. The fact of transfer and value of land was documented in the partnership deed dt.15.03.2010. Please find enclosed copies of the sale deeds through which the partners have purchased the agricultural lands. These lands are agricultural lands not falling in any municipality or corporation. They also donot fall within distance of 2-8 Kms of any municipality or corporation.

The following in the table with details of area of land transferred and value of the same credited to each of the partners.

Sl.No.	Name of the partner	Area of land (acres/ cents)	Doc.no.	Value credited in capital A/c.
1	Sri B. Jagadiswar Reddy	4.25	2918/2009	2,47,00,000
2	Sri B. Jagadiswar Reddy(Huf)	6.65	2917/2009	3,85,70,000
3	Smt. B. Vijayalakshmi	19.25	2913/2009	11,16,50,000
4	Smt. B. Rajneesh	5.70	2912/2009	3,31,10,000
5	Smt. B. Harika	4.60	2914/2009	2,66,80,000
6	Smt. O. Radhika	4.55	2919/2009	2,63,90,000
	TOTAL:	45.00		26,11,00,000

Hence it is submitted that the partners capital is as per the understanding as recorded in the partnership deed and is genuine.

2) Nature of business: The partnership has acquired land admn 45 acres which was contributed by the partners as capital. This land was given on development to M/s. Visakha Valley Resorts Estates Private Limited vide doc.no.3976/2011 dt.23.09.2011. The assessee is expected to receive around 1,03,000 Sq.yds, in the form of fully developed residential plots with amenities. On being handed over the developed plots, the assessee would be selling them In the open market. In fact the assessee commenced sales of developed plots from A.Y.2016-17. Copies of relevant development agreement & & supplementary agreements are on record.

Requesting your goodselves to take the above on record.

Thanking You,

True copy
4

Yours Faithfully,

C. Maruti Nagendram,
Chartered Accountant

PAN:AANFV 2591E

Dt.04.12.2017

To
The Income Tax Officer,
Ward -15(1), Hyderabad.

Sir,

Sub: Notice u/s 142(1) in the case of M/s. Vijayalakshmi Enterprises,
H.No.23-174, R.K.Nagar, Street No.40, Malkajgiri, Hyderabad-47 —
Asst.Year 2015-16 – Reg:

In regard to the above mentioned case and in reference to the said notice dt.24.11.2017 for the said Asst.Year, I submit the following information as called for.

- (a) Firm Registration Certificate: The assessee-firm was registered under the Partnership Firm Act vide Regn.No.3704/2015. Please find enclosed copy of acknowledgement of Registration of Firm in the name of M/s. Vijayalakshmi Enterprises issued by the Telangana Government. Though the firm was constituted in FY 2009-10, it got itself registered in FY 2015-16 only as it was not very certain when its business would commence and it would start sale of developed plots it would receive in terms of the Development Agreement.
- (b) Books of Accounts: The assessee acquired agricultural lands as capital contributions from the partners in FY 2009-10. Later the same were given on development. However there were no financial transactions and hence no transactions were recorded in the books of accounts of the assessee during FY 2014-15. Please find enclosed copy of General Ledger of the firm for your record and perusal.
- (c) Partners Returns of Income: As called for, please find enclosed the tax returns of the partners of the firm:

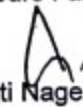
Sl.No.	Name of the Partner	Particulars of IT Returns
1	Smt. B. Haritha	A.Ys.2010-11 to 2013-14
2	Sri B. Jagadishwar Reddy(HUF)	A.Ys.2010-11 & 2012 -13 to 2014-15
3	Sri B. Rajnish	A.Ys.2011-12 to 2013-14
4	Smt. B. Vijayalakshmi	A.Ys.2010-11 to 2013-14
5	Smt. O.Radhika Reddy	A.Ys.2010-11 to 2013-14
6	Sri B. Jagadishwar Reddy(Indl)	Not an assessee

d) Capital Gains in the hands of partners: The partnership has acquired agricultural land admn 45 acres in S.Nos. 2 & 3 situated at Appannadorapalem Village, Kothavalasa, Visakhapatnam District which was contributed by the partners as capital on 15.03.2010 during FY 2009-10. The value of agricultural land was credited to the capital accounts of the partners as per provisions of Sec 45(3) of the IT Act. The land so contributed by the partners is agricultural land and beyond 8 KM from the Municipal Corporation of Visakhapatnam and hence is not a capital asset. The surplus earned by the partners is hence, not exigible to tax. Hence the partners have not offered the surplus on transfer of their agricultural lands to tax.

Requesting your goodselves to take the above information on record.

Thanking You,

Yours Faithfully,


C. Maruti Nagendram,
Chartered Accountant

8.3 We find the Assessing Officer upon being satisfied, completed the assessment u/s 143(3) of the Act on 29.12.2017 by accepting the income returned. The relevant para of the assessment order, wherein the AO has examined each any every document submitted by assessee during scrutiny proceedings, is reproduced below:

"2. In response to the notices issued, Sri Maruti Nagendram, CA and AR of the assessee appeared, discussed the case and produced the details/ information called for. After examination of the details submitted/produced, material available on the record and after discussion with the AR, the assessment is completed by accepting the income returned".

9. Under these circumstances it has to be seen as to whether the order of the Assessing Officer is erroneous so far as it is prejudicial to the interest of the Revenue.

10. It is well settled law that the prerequisites to exercise of jurisdiction by the Ld. Pr.CIT under section 263 of the Act that to establish order of the AO is to be erroneous insofar as it is prejudicial to the interest of the Revenue is concerned, the Ld. Pr.CIT has to satisfy of twin conditions simultaneously, namely (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent, s. 263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. However, every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. We draw strength from case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) and also from the

case of CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC). In the light of judicial precedents, we are of the considered view that the necessary enquiries and examination as reasonably expected have been carried out by the AO in discharge of his quasi-judicial function and he has taken a prudent, judicious and reasonable view in accepting the explanation of the assessee in support of the cash deposits after considering the entire material available on record and the order so passed under s. 143(3) of the Act cannot be held as erroneous insofar as prejudicial to the interest of Revenue. The impugned order passed by the learned Pr.CIT under section 263 is accordingly set aside and the order of the AO is sustained.

11. With regards to the ground of the assessee “that the direction issued by the learned Pr.CIT for adoption of SRO value of the land instead of the value recorded by the assessee in its books of accounts”, we need to reproduce the relevant portion of section 45(3) as under:

Section 45(3): The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

11.1 Hence as per the provisions of Section 45(3) of the Act, profits or gains arising from the transfer of a capital asset by a person who is a partner to the firm by way of capital contributions shall be chargeable to tax in the year in which such transfer takes place and the value recorded in the books of accounts of the firm shall be deemed to be full value of consideration accrued as a result of such transfer for the purpose of Section 48 of the Act. Hence when any capital asset is brought as capital into a partnership firm, capital gain if any will arise in the hands of the partner and not in the hands of the partnership firm. Further the value recorded in the books of accounts of the firm shall be deemed to be full value of consideration accrued as a result of such transfer for the purpose of Section 48 of the Act. Hence the learned AO has not done any mistake by accepting the value recorded in the books of the partnership firm. Therefore, on account of this ground also the impugned order passed by the learned Pr. CIT under section 263 is not sustainable. In view of the above discussion, the grounds raised by the assessee are allowed.

12. In the result, this appeal of the assessee is allowed.

ITA No.245/Hyd/2021 for the A.Y 2016-17

13. Since identical grounds are raised by the assessee in the second appeal i.e. ITA No.245/Hyd/2021 for the A.Y 2016-17, following similar reasonings, the appeal of the assessee for the A.Y 2016-17 is also allowed.

14. To sum up, both the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 12th April, 2024.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 12th April, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Vijayalakshmi Enterprises C/o CH Parthasarathy & Co. 1-1-298/2/B/3, 1 st Floor Ashok Nagar, Hyderabad 500020
2	Income Tax Officer Ward 15(1) IT Towers, AC Guards, Masab Tank, Hyderabad 500004
3	Pr. CIT-4, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order