

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T. (IT). A. No.231/Viz/2022

(निर्धारण वर्ष/ Assessment Year : 2016-17)

Kodali Suresh Babu,
Labbipet.

PAN: ATWPK 8835 C

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

Vs. Income Tax Officer,
Ward (International Taxation),
Vijayawada.

(प्रत्यार्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of
Pronouncement

: 26/03/2024

: 18/04/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)-10, Hyderabad in DIN & Order No. ITBA/APL/S/250/2022-23/1046188608(1), dated 6/10/2022 arising out of the order passed U/s. 147 of the Income Tax Act, 1961 [the Act] for the AY 2016-17.

2. Briefly stated the facts of the case are that the assessee is an individual and an NRI engaged in Medical Profession in USA and reported that he has no regular income in India. The assessee filed his return of income for the AY 2016-17 on 11/1/2017 admitting a total income of Rs. 8,860/- and claimed a refund of Rs.2,487/-. Later on it was transpired that the assessee has entered into an agreement on 6/1/2016 with M/s. Yugandhar Housing Pvt Ltd., represented by its Managing Director Sri Muppavarapu Maheswara Reddy for purchase of 31,594 sq yds situated at Vempadu Village of Pedapadu Mandal of West Godavari District for a recorded consideration of Rs. 7,89,85,000/-. It was also noticed that the assessee has paid Rs. 7,10,50,000/- by way of cash and balance by conveying a site admeasuring about 690 sq yds situated at Neppali Village of Kankipadu Mandal of Krishna District valued at Rs. 79,35,000/-. The regular conveyance deed was registered on 6/1/2017. A search operation was conducted in the premises of M/s. Yugandhar Housing Pvt ltd., and its associated entities on 25/10/2017 and during the search operation the agreement of sale deed dated 6/1/2016 was seized by the Investigation Wing. Further, Sri Muppavarapu Maheswara Reddy, Managing Director, deposed in his sworn statement that the assessee intended to

purchase plots for which he gave an advance of Rs. 3,30,00,000/- in the month of May, 2015 by way of RTGS. It was further stated that since there is a delay in getting the LP Number for the proposed venture at Kaza Village where the advance was paid, the assessee was given plots in another venture by name 'MR Gardens' at Vempadu Village for the same consideration. The unregistered sale agreement revealed that the proposed purchase of plots for a total sale consideration of Rs. 7,89,85,000/- as per the terms and conditions recorded therein. The assessee filed an explanatory reply dated 22/2/2018 before the DDIT (Inv.), Unit-IV(1), Vijayawada stating that he was engaged in Medical Profession in USA for the last thirty years and has been filing the return of income in USA from time to time. Out of the earnings and savings he made deposits in FCNR operated in Canara Bank, Venkateswara Puram, Vijayawada. He advanced amounts to his friend Mr. Muppavarapu Maheswara Reddy and no interest was charged on the same. It was submitted by the assessee that the assessee in order to help his friend entered into an agreement for purchase of site to the extent of 31,594 sq yds for Rs. 7,89,85,000/- for the safety and security and to have commitment from Sri Maheswara Reddy. However, the Ld. AO has observed in his order that the assessee has not clearly

explained the monetary transactions worth Rs. 7,89,85,000/- and based on the information transmitted by the Investigation Wing and with respect to the material available on record, the Ld. AO initiated proceedings U/s. 147 of the Act with the prior approval of the Ld. Addl CIT (IT), Vijayawada and issued notice U/s. 148 of the Act on 10/10/2019 which was served on the assessee on 12/10/2019. In response, the assessee filed return of income dated 19/01/2021 which was considered as invalid return of income. The petition filed by the assessee for condonation of delay was also rejected by the Ld. CIT (IT & TP), Hyderabad vide order dated 28/09/2021. Subsequently, the case was taken up for scrutiny by issuing notice U/s. 142(1) on various dates. In response, the assessee filed a detailed reply through email explaining the sources for payment of Rs. 6,16,67,850/-, which was accepted by Ld AO and addition made for the balance amount of Rs. 1,73,17,150/- as unexplained investment U/s. 69 of the Act. During the assessment proceedings, the Ld. AO also did not give effect to the extent of Rs. 79,50,000/- with reference to the transfer of site at Neppali Village. The Ld. AO also further made addition towards interest attributable to the amount outstanding against the company for Rs. 26,05,050/-. Aggrieved

by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee has also raised a legal issue regarding the initiation of proceedings U/s. 147 of the Act wherein the assessment made by the Ld. AO is based on seized document and hence it attracts the provisions of section 153C of the Act. Further, the assessee also made various submissions before the Ld. CIT(A). The Ld.CIT(A), considering the explanations of the assessee and after examining the same partly allowed the appeal of the assessee by deleting the addition of Rs. 79,35,000/- and sustained the addition of Rs. 95,00,000/-. However, the Ld. CIT(A) has not adjudicated the legal ground raised by the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT(A) ought to have held that the assessment proceedings ought to have been initiated U/s. 153C of the Act and not U/s. 148 of the Act consequently the Ld. CIT(a) ought to have quashed the notice U/s. 148 as invalid and held the assessment proceedings as void-ab-initio.*
- 3. The Ld. CIT(A) is not justified in partly sustaining Rs. 95,00,000/- out of the total addition of Rs. 1,73,17,150/- made by the Assessing Officer U/s. 69 of the Act towards alleged unexplained investment in purchases of property.*

4. *The Ld. CIT(A) is not justified in not accepting the amount of Rs. 95,00,000/- paid by the father of the appellant as a source for the investment in purchase of property.*

5. *Any other grounds may be urged at the time of hearing.”*

4. Grounds No. 1 & 5 are general in nature and therefore they need no adjudication.

5. Ground No.2 relates to the validity of issuance of notice U/s. 148 of the Act where the assessment proceedings ought to have been initiated U/s. 153C of the Act. On this issue, Ld. AR argued that since the Ld. AO has acted based on the seized documents in the premises of the searched party, M/s. Yugandhar Housing Pvt Ltd., the assessment ought to have been framed U/s. 153C of the Act. The Ld. AR in this connection relied on the following case laws:

- (i) Pr. CIT (Central) &Ors vs. Anand Kumar Jain (HUF) &Ors[2021] 432 ITR 0384 (Delhi)
- (ii) Decision of the ITAT, Visakhapatnam Bench in the case of Smt. Samanthapudi Lavanya vs. ACIT and others in ITA No. 704 to 706/Viz/2019 and others, dated 27/04/2021.
- (iii) Judgment of the Hon'ble Supreme Court in the case of Pr. CIT. vs. Abhisar Buildwell P. Ltd reported in [2023] 454 ITR 0212 (SC)

Further, the Ld. AR also relied on the decision of the Hon'ble Rajasthan High Court in the case of Shyam Sunder Khandelwal vs. ACIT reported in [2024] 161 taxmann.com 255 (Rajasthan). The Ld. AR further submitted that the above cases relied upon by him have held that *when there is incriminating material seized or requisitioned belonging or relatable to person other than on whom search was conducted, section 153C is to be resorted to.* He therefore pleaded that the assessment order passed U/s. 147 of the Act is void-ab-initio and deserves to be quashed.

Per contra, the Ld. Departmental Representative [Ld. DR] fully supported the order of the Ld. Revenue Authorities. The Ld. DR also relied on the decision of the Hon'ble High Court of Madras in the case of Saloni Prakash Kumar vs. ITO [2023] 458 ITR 452 (Madras) wherein it was held that *section 153C is only an enabling provision and does not preclude reopening U/s. 148A(b) of the Act.* The Ld. DR therefore pleaded that the orders of the Ld. Revenue Authorities be upheld.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. In the instant case, the Ld. AO has relied upon the agreement of sale (unregistered) dated 6/1/2016 which was

seized by the search party. Relying on such information and the seized material, the Ld.AO initiated the proceedings U/s. 147 of the Act. Even though in the order of the Ld. AO, in para 5, the Ld. AO has mentioned about the material available on record for a belief that was formulated for reopening of proceedings U/s. 147 of the Act. However, no detailed discussion was found in the order of the Ld. AO regarding the material available on record for a belief that was formed enabling the Ld.AO warranting reopening of proceedings U/s. 147 of the Act. The Ld. AO has fully relied on the seized agreement of sale dated 6/1/2016. We find merit in the argument of the Ld. AR that section 153C of the Act overrides section 139, 147, 148 and 151 of the Act. The reliance placed by the Ld. AR in the case of Pr. CIT (Central) &Ors vs. Anand Kumar Jain (HUF) &Ors (supra) is of no assistance to the Ld. AR as the facts of that case are different from that of the instant case. However, the decision of the jurisdictional Coordinate Bench of the Tribunal at Visakhapatnam in the case of Smt. Samanthapudi Lavanya vs. ACIT and others (supra), wherein the Tribunal by relying on various High Court decisions has held that *in the absence of any fresh information collected by the Ld. AO or no information has come to the notice of the Ld. AO in the normal course other than the information collected during*

the course of search from the search person, the Ld. AO ought to have made the assessment U/s. 153C of the Act and not U/s. 147 of the Act. Further, in a recent decision, the Hon'ble High Court of Rajasthan in the case of Shyam Sunder Khandelwal vs. ACIT (supra) has held as under:

“30. The argument that by enactment of Section 153A to 153D has not eclipsed Section 148 does not enhance the case of respondent to initiate the proceedings under Section 148. On fulfillment of two conditions for invoking Section 153C the proceeding in accordance with Section 153A are to be initiated. The operating field of and Section 153A to 153D and Section 148 are different. Applicability of Section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render Section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.

31.

32. The argument that Section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise Section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under Section 153C, the AO has to proceed in accordance with Section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assess or reassess the 'total income'. It is not obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, Section 153C is to be resorted to.”

7. The above decision has also considered the decision of the Hon'ble Madras High Court in the case of Saloni Prakash Kumar vs. ITO (supra) relied on by the Ld. DR. Further, the Ld. AR placed relied on the decision of the Hon'ble Supreme Court in the

case of Pr. CIT. vs. Abhisar Buildwell P. Ltd (supra) wherein the Hon'ble Supreme Court has held as under:

“35. The Supreme Court in the case of Abhisar Buildwell P. Ltd. (supra) while dealing with the provisions of Section 153A held that in case of absence of incriminating material seized during the search, the department is not remediless for reassessing the unabated assessment on the basis of material received from the other sources and can proceed under section 148. The decision does not support the contentions raised that Section 148 is rendered redundant if Section 153C is to be resorted to in the facts of the present case.”

8. Following the above judicial pronouncements, we are of the considered view that the Ld. AO in the instant case ought to have resorted to make the assessment U/s. 153C of the Act whereby heavy reliance placed by the Ld. AO on the seized material. Further, the Ld. AO has not recorded about any information that has come to the notice of the Ld. AO and has solely relied on the seized documents from the premises of the searched person. We are therefore inclined to quash the assessment order as void-ab-initio and thereby allow the Ground No.2 raised by the assessee.

9. Grounds No. 3 and 4 raised by the assessee are on merits. Since the assessment order itself was quashed while adjudicating the Ground No.2 raised by the assessee in the foregoing paragraphs of this order, the adjudication of these grounds

becomes mere academic exercise. Therefore, these grounds are disposed of as infructuous.

10. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 18th April, 2024.

Sd/-

(दुव्वूरु आर. एल. रेड्डी)
(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस. बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :18.04.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Kodali Suresh Babu, D.No. 40-15/2-8, Brindavan Colony, Labbipet, Krishna District, Andhra Pradesh – 520010.
2. राजस्व/The Revenue –Income Tax Officer, Ward (International Taxation), O/o. ITO, CR Building, 1st Floor, Annex, MG Road, Vijayawada, Andhra Pradesh – 520002.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam