

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

**BEFORE
SHRI LALIET KUMAR, JUDICIAL MEMBER
(Through virtual mode)
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA No.8/Hyd/2024		
Assessment Year: 2019-20		
Assistant Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.	Vs.	Sri Vishnu Mohan Reddy Chintapally, Villa No.A96, Sy.No.25, Hill Ridge Villas, ISB Road, Gachibowli, Hyderabad - 500032. PAN : AGBPC0373K.
(Appellant)		(Respondent)
Assessee by:	None	
Revenue by:	Shri Shakeer Ahamed, Sr.AR	
Date of hearing:	24.04.2024	
Date of pronouncement:	30.04.2024	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the Revenue for A.Y. 2019-20 arises from the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.26.10.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

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

“1. Whether the CIT(A) is right in deleting the addition made on account of unexplained investment U/s 69 of the Act by placing reliance on the decision of Hon'ble ITAT nos 75 to 83 / Hyd /2023 dtd 28.02.2023 even through the 'On-money' payment towards purchase of villa is corroborated through evidence i.e. seized material ?

2. Whether the CIT(A) is correct in following the decision of Hon'ble ITAT in holding that the seized material is a 'Dumb document' even through the said seized material contains Critical & Corroborate details like villa no., total sale consideration w.r.t. each villa, amounts paid in cheque/cash ?

3. Whether the CIT(A) is correct in following the decision of Hon'ble ITAT in stating that no addition can be made on the basis of statement of third party U/s 153C of the Act, despite the fact that statement of Shri Kolla Abhilash, the director of M/S KMR Estates Pvt. Ltd. factually alluded to income fraud by the buyers of Villas ?

4. Whether the CIT(A) is correct in holding that there is no evidence in the seized document that the developers M/S KMR Estates and Builders Pvt. Ltd. has received any amount from the assessee till the date of search ?

3. The brief facts of the case are that assessee is an individual and derives income from House Property & Income from Other Sources. The assessee had filed his original return of income u/s. 139(1) of the Act on 31.08.2019 declaring total income of Rs.19,43,780/-. Search and seizure operation u/s 132 of I.T. Act was conducted in the case of M/s. KMR Estates and Builders Private Limited on 04.02.2019 wherein certain incriminating evidence with regard to receipt of on money from buyers of villas was found and seized. Subsequently, owing to incriminating evidences/ documents found in the case of assessee, the case was centralized to this office vide order u/s. 127 of the Act, dated 21.01.2021 issued by Pr.CIT-2, Hyderabad. Notice u/s. 143(2) dated 23.02.2021 for the

Asst. Year 2019-20 was issued to the assessee. Notices u/s. 142(1) were issued and served on the assessee, for which Sri K. Abhiram, CA and Authorized Representative of the assessee attended from time to time and submitted the information called for. After verification of the information filed by the assessee, the assessment was finalized.

3.1. A search and seizure operation u/s 132 of the Income Tax Act was conducted at M/S. KMR Estates and Builders Private Limited on 04.02.2019. During this operation, incriminating evidence regarding receipt of money from villa buyers was found. The Managing Director, Sri Kolla Madhava Reddy, admitted in a sworn statement that out of 25 villas sold, totaling Rs.115.87 crores, Rs.78.26 crores were received through banking channels and Rs.37.61 crores in cash. The company admitted a profit of 35% on total receipts, including cash. One villa i.e., Villa No.25 was purchased by the assessee from M/S. KMR Estates and Builders Private Limited, with Rs.4.5 crores paid to the developer, Rs.3 crores through bank, and Rs.1.5 crores in cash. The Settlement Commission accepted the company's admission and passed relevant orders under section 245D(4) of the Act. Thereafter, show cause notices were issued to the assessee regarding the cash payment for Villa No.25, proposing it be treated as unaccounted income under section 69 of the Act and taxed accordingly. Objections by the assessee were rejected based on the satisfaction recorded from a seized document found during the search, which detailed payments received in cash and cheques from villa buyers. The document was supported by a statement from Sri Kolla Madhava Abhilash and a

certificate under section 65B of the Indian Evidence Act. However, the assessee denied making cash payments. Consequently, the cash payment of Rs.1.5 crores (in proportion to payments made through the bank) was treated as unaccounted income under section 69 of the Act and taxed as per section 115BBE and thereafter, initiated penalty proceedings under section 271AAC. Accordingly, the Assessing Officer completed the assessment u/s 143(3) of the Act and passed assessment order on 28.03.2022.

4. Feeling aggrieved with the assessment order, assessee filed an appeal before the ld.CIT(A), who granted part relief to the assessee.

5. Feeling aggrieved with the order of ld.CIT(A), Revenue is now in appeal before us.

6. Before us, ld.DR submitted that the ld.CIT(A) has wrongly deleted the addition made on account of unexplained investment under section 69 of the Act following the decision of the Hon'ble ITAT Nos.75 to 83/Hyd/2023 dated 28.02.2023, as the 'On-money' payment towards the purchase of the villa was corroborated through seized material. Further, the ld.CIT(A) incorrectly categorized the seized material as a 'Dumb document', overlooking its critical and corroborative details such as villa numbers, total sale consideration for each villa, and amounts paid in cheque/cash. Furthermore, the ld.CIT(A) disregarded the significance of the statement of Shri Kolla Abhilash, the director of M/s KMR Estates Pvt. Ltd., and erroneously held that there was no evidence in the seized document indicating

receipt of any amount by the M/s KMR Estates and Builders Pvt. Ltd. until the date of the search. Further, the ld. DR has drawn our attention to the order passed by the Assessing Officer and our attention was drawn to para 3.1 and 3.2 of the order passed by the Assessing Officer. The ld. DR had submitted that the order passed by the ld.CIT(A) is bad in law and the entire finding of the ld.CIT(A) is based on incorrect understanding of the facts and law.

7. When the matter was called upon, none appeared on behalf of the assessee.

8. We have heard the ld. DR, perused the material available on record and also the orders passed by the lower authorities. The issue in the present case is with respect to addition of unexplained investment of Rs.1,50,00,000/- u/s 69 of the Act. On perusal of the record, we find that the case is already covered in favour of the assessee as per the decision of ITA No.75 to 83/Hyd/2023 dt.28.02.2023. We have also gone through sub -para (ix) of Para 6.4 of the order of ld.CIT(A) wherein the ld.CIT(A) after relying on the decision of Tribunal in ITA No.75 to 83/Hyd/2023 dt.28.02.203 has held as under :

ix) In the present case, in both the seized documents, the amount of Rs.100 lakhs in cash is clearly shown as “pending” and as per report of the Assessing Officer, no corroborative evidence has been brought on record to establish that the actual payment of Rs.100 lakhs was made by the appellant in the FY 2018-19. With respect to the addition of Rs.50 lakhs (out of 150 lakhs shown in the seized documents) claimed to be paid till the date of search, also does not hold ground in absence of any documentary evidences showing any relation between the appellant and the developer for purchase of villa no.25 before the date of search. Since, the documents in possession of the Assessing Officer do not show any transaction between the appellant and the developer before the date of search, the amount of on-money mentioned in the seized documents till the date of search cannot be related to the appellant. As the agreement for sale and registered sale deeds submitted by the appellant indicate that the transaction has happened after the search action. Hence, the claim of the appellant that he was no way related with the seized documents and developer as on date of search has merit and hence acceptable. Therefore, in absence of corroborative evidence for actual payment of Rs.150 lakhs as discussed above, no addition can be made.

In view of the above observations and respectfully following the decision of jurisdictional Hon'ble ITAT, Hyderabad in case of other villa owners, the addition of Rs.1,50,00,000/- made by the Assessing Officer in the AY 2019-20 is **hereby deleted**. Accordingly, the related ground no.2 of the appeal filed for the AY 2019-20 is **allowed**.

9. Further, the said decision is not stayed or over-ruled by any of the higher Judicial Forums. In view of the above circumstances, we respectfully following the decision of the coordinate Bench of the Tribunal passed in ITA No.75 to 83/Hyd/2023 dt.28.02.2023 dismiss the appeal of Revenue. Thus, the appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on 30th April, 2024.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
--	---

Hyderabad, dated 30th April, 2024.

TYNN/sps

Copy to:

S.No	Addresses
1	Sri Vishnu Mohan Reddy Chintapally, Villa No.A96, Sy.No.25, Hill Ridge Villas, ISB Road, Gachibowli, Hyderabad - 500032.
2	Assistant Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
3	Pr.CIT(Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File