

**आयकर अपीलीयअधिकरण, हैदराबाद पीठ, हैदराबाद**  
 IN THE INCOME TAX APPELLATE TRIBUNAL,  
 HYDERABAD BENCHES, HYDERABAD

**Before Shri Laliet Kumar, Hon'ble Judicial Member**  
**And**  
**Shri G. Manjunatha, Hon'ble Accountant Member**

आयकर अपील सं./ I.T.A. No.338/Hyd/2022  
 (निर्धारण वर्ष / Assessment Year: 2020-21)

Asst. Commissioner of Income Vs. Tax, Central Circle-3(3), Hyderabad.  (अपीलार्थी/ Appellant) अपीलार्थी की ओर से/ Appellant by : प्रत्यार्थी की ओर से / Respondent by :  सुनवाई की तारीख / Date of Hearing : घोषणा की तारीख/Date of : Pronouncement	Sri Narendra Kumar Kamaraju, 3-83/1/A/5, Nizampet, Kukatpally, Hyderabad. PAN: AIYPK 1035 F (प्रत्यर्थी/ Respondent) CA Ravi Bharadwaj Sri Kumar Pranav, CIT-DR  06/05/2024 20/05/2024
---	---

O R D E R

**PER LALIET KUMAR, Judicial Member :**

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax (Appeals)-11, Hyderabad [CIT(A)] in Appeal No.10437/2019-20, dated 5/5/2022 arising out of the order passed U/s.143(3) r.w.s 153A of the Income Tax Act, 1961 [the Act] for the AY 2020-21.

2. Briefly stated the facts of the case are that the assessee is an individual filed his return of income for the AY 2020-21 on 15/01/2021

admitting a total income of Rs. 9,73,45,910/-. A search and seizure operation were conducted in the case of the assessee U/s. 132 of the Act on 20/11/2019. During the course of search operation conducted in the office premises of M/s. Venkata Praneeth Developers Pvt Ltd., Mallapet, Dundigal on 21/11/2019 and certain sale deeds with respect to the sale of agricultural land at Kazipally, Hyderabad were found and seized. Thereafter, the assessee was put forth with the above sale deeds and his sworn statement was recorded U/s. 132(4) of the Act wherein the assessee has stated that he had entered into a sale-cum-GPA for purchase of Ac 32.27 gts with M/s. Deccan Townships Pvt Ltd for total purchase consideration of Rs. 4.92 Crs and immediately sold the said land to 04 different parties for a total sale consideration of Rs. 14.70 Crs. With regard to the said transaction, the assessee had admitted and offered short term capital gains of Rs. 9,68,00,000/- to tax in his hands for the AY 2020-21. Subsequently, the assessee has filed an affidavit retracting the declaration made during the course of search proceedings. It was the contention of the assessee before the Ld. AO that during the course of search, under the stress and panic, the assessee has inadvertently stated that the extent of land was Ac 32.27 gts against the original land sold admeasuring Ac 22-27 gts. The assessee also explained in his retracted affidavit that the land owners M/s. Deccan Townships Pvt Ltd sold the land to Sri Adala Prabhakar Reddy / Vindhyavali, a third party who is not at all related to the assessee. However, the Ld. AO did not consider the retraction affidavit filed by the assessee and also not considered the submissions made in this regard during the assessment proceedings. Accordingly, the Ld. AO came to the conclusion that the assessee has declared short of capital gains ie., 6,63,22,120/- against Rs. 9,68,00,000/- in the return filed for the AY 2020-21 and claimed cost of acquisition. Thus, the Ld. AO made an addition of Rs. 3,04,77,880/- [Rs. 9,68,00,000 – Rs. 6,63,22,120] under

the head capital gains and determined the assessed income at Rs. 12,78,23,790/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A), after considering the submissions of the assessee and discussing the issues at length, granted relief to the assessee and allowed the appeal in favour of the assessee.

3. The ground raised by the Revenue in this appeal is that the Ld. AO had made the addition in the hands of the assessee on the pretext that the assessee has sold two properties which are subject matter of addition made by the Ld. AO. The Ld. CIT(A), on appeal, has deleted the addition on the ground by registered sale deed M/s. Deccan Townships Pvt Ltd., transferred the land to Smt. Vindhyaavali, similarly the other piece of land was transferred by M/s. Deccan Townships Pvt Ltd in favour of the assessee. For the above said proposition, the Ld. AR had drawn our attention to the sale deed of the transaction entered into between M/s. Deccan Townships Private Limited with Sri Kamaraju Narendra Kumar and Smt. A. Vindhyaavali. The Ld. CIT(A) has given a reasoning which are mentioned in page 18 and 19 of his order as under:

*“From the above, it is clear that the land admeasuring Ac 10-00 gts was sold directly by M/s. Deccan Townships Pvt Ltd to the vendee Smt. A. Vindhyaavali. Therefore, it is clear that the appellant is not a party in the sale deed pertaining to 10-00 gts.*

*In this regard, it is further to be noted that the total land admeasuring Ac 32-27 gts was sold by M/s. Deccan Townships Pvt Ltd on the same date ie., 19/08/2019 to the appellant (Ac 22-27 gts) and Smt. A. Vindhyaavali (Ac 10-00 gts). Therefore, it is clear that the appellant had inadvertently admitted capital gains on the total land admeasuring Ac 32-27 gts instead of Ac 22-27 gts. The appellant has duly admitted capital gains with regard to the sale of land admeasuring Ac 22-27 gts and the same was accepted by the AO to that extent.*

Further, as per section 2(14), the definition of capital asset is as under:

(14) "Capital Asset" means-

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

In the instant case, it is clear that the land admeasuring Ac 10-00 gts was not held by the appellant and further the AO has not brought anything on record indicating otherwise, except for merely relying on the statement of the appellant given during the course of search and at the same time ignoring the affidavit given by the appellant subsequent to the search.

In view of the above discussion and facts on record, it is clear that the land admeasuring Ac 10-00 gts does not belong to the appellant and the appellant is not party to the sale of land and therefore charging of capital gains on sale of land cannot be done in the hands of the appellant when he is not the owner of the said land or the same is not held by him, when it is proved beyond doubt that the said land was sold to somebody else directly by the said owner M/s. Deccan Townships Pvt ltd and therefore the addition of Rs. 3,04,77,880/- is hereby deleted. In view of the same, the ground No.3 and 4 are allowed. The Ground No.2 and 5 need no separate adjudication in view of the adjudication above.

The ground No.1 and 6 are general in nature and need no separate adjudication.

To sum up the appeal is allowed."

4. Aggrieved by the decision of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

"1. The Ld. CIT(A) erred both in law and on facts of the case in granting relief to the assessee.

2. Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in allowing relief to the assessee on the basis of additional evidence produced during the appellate proceedings without calling for a remand report from the AO as required under the Rule 46A(3) of the IT Rules, 1962.

3. *Whether in the facts and circumstances of the case, Ld. CIT(A) is correct in ignoring the admission given by the assessee U/s. 132(4) voluntarily during the course of search proceedings.*

4. *The Ld. CIT(A) ought to have appreciated that it is not open to the assessee to create a situation in his favour by inducing department to believe the admission leading to closure of investigation and then turn around and deny the admission.*

5. *The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”*

5. At the outset, it was submitted by the Ld. DR that the Ld. CIT(A) had relied upon the two registered sale deed which were in the nature of the additional documents and the remand report has not been called for from the Ld. AO. Further, the Ld. DR had also submitted that in the statement recorded during the course of search, the assessee admitted to have declared the amount however the same was retracted by the assessee. The relevant portion of the written submissions of the Revenue is as under:

4. *In the order of the Ld. CIT(A), at page no.10, it is stated that “during the course of appeal proceedings the appellant filed written submissions which is reproduced as under:*

.....

*“Further, I would like to mention that the declaration was made in relation to the income for the AY 2020-21 which was based on pure estimates till March end because the financial year was not concluded as on date of search. Even the estimates were not available with me at the time of declaration and the declaration was based on my recollection of the estimates. Any deviation from the declaration made is a difference between the estimates and the actual numbers which shall be considered positively.*

*I am filing this affidavit to correct my sources of head of income and to clarify that the income is regular income and no part of it represents undisclosed / concealed income.”*

4.2. *But the issue in question is neither related to any estimate nor have any relation to the financial year. And the CIT(A) without following the due process of law, accepted this additional evidence without complete pages of documentary proof [which was never provided to the AO and the same is duly mentioned in the*

*assessment order already available before the Ld. CIT(A) and thereafter without seeking any remand report from the AO on the issue which was being raised by the AO through various notices, decided the matter unilaterally against the revenue.*

*4.3. The order of the CIT(A) is therefore not acceptable. The Ld. CIT(A) erred both in law and on facts of the case in granting relief to the assessee. The Ld. CIT(A) erred in granting relief to the assessee on the basis of additional evidence produced during the appellate proceedings without calling for a remand report from the AO has required under the rule 46A(3) of the Income Tax Rule. The Ld. CIT(A) has placed only first and second page in which no payment details with regard to the stamp duty paid to the Government and to the seller is mentioned. Thus, the Ld. CIT(A) has admitted the additional evidence submitted by the assessee under Rule 46A without providing an opportunity of being heard to the Assessing Officer while finalizing the appeal filed by the assessee.*

*Further the Ld. CIT(A) is not correct in ignoring the admission given by the assessee U/s. 132(4) voluntarily during the course of search proceedings. The Ld. CIT(A) ought to have appreciated that it is not open to the assessee to create a situation in his favour by including the Department to believe the admission leading to closure of investigation and then turn around and deny the admission.”*

6. Per contra, the Ld. AR filed the following written submissions:

*“The issue before your honour is summarized below:*

- The assessee has entered into a sale cum GPA (No. 42367/2019) with M/s. Deccan Township Pvt Ltd for the sale of land to the extent of Ac. 22.27 gts only. The land owners viz., M/s. Deccan Township Private Limited were the owners of land to the extent of Ac 32.27 gts out of which only the land to the extent of Ac 22.27 gts was only given to the appellant under sale cum GPA. Copy of the deed was submitted as part of the paper book filed.*
- However, inadvertently the assessee during the course of search proceedings, under stress and panic has stated that the extet of land is Ac. 32.27 gts. Realising the inadvertent*

mistake, the assessee has submitted an affidavit correcting the facts stated during the course of search proceedings.

- The land to the extent of Ac. 22.27 gts was sold by the assessee vide document Nos. 44752/2019, 44753/2019 and 44274/2019 and the same was offered as short term capital gains in the FY 2019-20 relevant to the AY 2020-21.
- Further, the land owners viz., M/s. Deccan Township Pvt Ltd sold the land to Sri Adala Prabhakar reddy / Vindhyavali, a third party which is not at all related to the assessee.
- We would like to bring to your kind notice that an amount of Rs. 6,63,22,120/- has offered as short term capital gain from the said transaction ie., Rs. 30 lacs on Ac. 22.27 gts in the tax return filed for the AY 2020-21.
- The Ld. CIT(A) in the order has clearly stated that the capital gains on the transfer of above land admeasuring Ac. 10.00 gts shall not arise as the assessee is not the owner of the capital asset. This fact has been clearly brought out from the sale deed enclosed as part of the paper book submitted.
- Further, the Department has raised a ground on not obtaining a remand report from the Ld. AO by the Ld. CIT(A) while disposing of the appeal in favour of the assessee;
- In this regard we would like to bring to you kind notice that the assessee has categorically stated in the affidavit filed and also in the submissions made during the course of assessment proceedings that the assessee has no role in the land transaction of Ac. 10-00 gts. The Ld. AO completely disregarded the same and made addition.
- It is pertinent to note that there was no incriminating material based on which the addition was made by the Ld. AO. In this regard, we would also like to rely upon the ruling by the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central-3, vs. Abhisar Buildwell P. Ltd held as follows:
- ".....
  14. in view of the above and for the reasons stated above, it is concluded as under:
    - (i) that in the case of search u/s. 132 or requisition U/.s 132A, the AO assumes the jurisdiction for block assessment U/s 153A;
    - (ii) All pending assessments / reassessments shall stand abated;
    - (iii) In case any incriminating material is found / unearthed, even, in case of unabated / completed assessments, the AO would assume the jurisdiction to assess or reassess the total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
    - (iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into

*consideration the material in respect of completed assessments / unabated assessments. Meaning thereby, in respect of completed / unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search U/s. 132 or requisitioned U/s. 132A of the Act.....*

*Based on the above, we humbly request your honour to take the above submission on record and dismiss the appeal filed by the Ld. AO.”*

7. We have heard both sides and perused the material available on record as well as the orders of the lower authority. The Ld. Assessing Officer, in Paragraph 5 of his order, has mentioned that during the course of the search, certain sale deeds with respect to the sale of agricultural land were found and seized as Annexure-A. The assessee was asked as to why the capital gains are not attracted in the said transaction. The sworn statement of the assessee was recorded on 23/11/2019, and in the said statement, the assessee has submitted that he entered into a sale cum GPA agreement for Ac 22.27 gts with M/s Deccan Townships Pvt ltd.

7.1. The Ld. Assessing Officer, without referring to the registered agreement of sale cum GPA had made the addition in the hands of the assessee for the entire land admeasuring Ac 32.27 gts. We have perused the registered Agreement of sale cum GPA dated 19/08/2019. The document shows that only the agricultural land admeasuring Acs. 22.27 gts were purchased by the assessee from M/s. Deccan Townships Pvt Ltd., for a consideration of Rs. 3,40,12,500/-. There is no purchase document available with the ld. Assessing Officer for the remaining Ac. 10-00 gts of agricultural land. The sole basis for making the addition in the hands of the assessee during the search proceedings was the statement recorded by the Investigation Wing U/s. 132(4) of the Act. As

the Ld. Assessing Officer has made the addition in the hands of the assessee for the entire land, the assessee preferred the appeal before the Ld. CIT(A). The Ld.CIT(A) has granted relief to the assessee after relying upon the registered document dated 19/8/2019 in respect to agricultural land admeasuring Acs. 22.27 gts and another registered document dated 19/8/2019 with respect to land admeasuring Ac. 10-00 gts which was transferred by M/s. Deccan Townships Pvt Ltd in favour of Smt. A. Vidhyavali. If we look into the Q.No. 34, 35 and 36 of the sworn statement recorded on 23/11/2019, which are to the following effect:

Q. 34. During the course of search operation conducted in the office premises on 20/11/2019, certain loose sheets numbered 47 to 81 were found and seized as Annexure A/VPDPL/OFF/11. I am showing you page numbers 47 to 81 containing the copy of agreement of sale cum General Power of Attorney made and executed on 19/08/2019 vide document No. 42367/2019 by M/s. Deccan Townships Pvt ltd (PAN: AABCD5806F) and Sri Kamaraju Narendra Kumar for a consideration of Rs. 3,40,12,500/-. Please confirm and explain the contents therein?

Ans: I have gone through the above page Nos. 47-81 of Annexure A/VPDPL/OFF/11 and confirm the same were seized during the search and seizure operation at the business premises of M/s. Venkata Praneeth developers Pvt ltd. The same is agreement of sale cum GPA registered in favour of Sri Kamaraju Narendra Kumar (myself) purchased the land to the **extent of Ac. 22.27 gts at Kazipally village from M/s. Deccan TownShips Pvt Ltd.** The same was purchased by me for a consideration of Rs. 3,40,12,500/-.

Q.35. Please produce copy of agreement of sale cum GPA executed by M/s. Deccan townships Pvt ltd for a sale consideration of Rs. 1.52 Cr towards purchase of land to the extent of Ac. 10.00 gts at Kazipally Village.

Ans: **I will submit a copy of the above sale deed within three days' time.**

Q.36. Please refer to the answers given by you to questions bearing Nos. 33 to 35. It is noticed that you have purchased the land at Kazipally village at Rs. 15 lakhs per acre whereas you sold the same land for rs. 45 lakhs per acre. In this connection, you have received an amount of Rs. 30 lakhs per acre as capital gains. Please produce computation in respect of your capital gains income and taxes thereon.

Ans: I have gone through the above replies to earlier questions Nos 33 to 35. In this regard, I have not paid any tax on capital gain income of Rs. 9,68,00,000/- (Approx.) til date. **However, I will submit my capital gains computation and pay the resultant taxes in due course."**

7.2. It is abundantly clear that the assessee has never admitted that the sale cum GPA executed by M/s. Deccan Townships Pvt Ltd with regard to remaining 10 acres was in the name of the assessee. Further it is also not admitted by the assessee that the assessee will submit the capital gain computation and pay the resultant tax in due course. It is abundantly clear there was no admission in the eyes of law to pay the tax dues based on the statement recorded U/s. 132 rather the assessee has only sought time to file the copy of the sale deed for the remaining Ac 10-00 gts of land and paying the taxes after computing the capital gains. In fact, this statement was also retracted by the assessee before filing the return of income. Even otherwise, no addition can be made in the hands of the assessee, u/s 153A in the absence of incriminating material.

7.3. Undoubtedly, the capital asset has been defined in section 2(14) of the Act which provides that "an asset which is held by the assessee and not connected with the business or profession of the assessee is required to be treated as capital asset." Admittedly, the land admeasuring Ac. 10-00 is owned and registered in the name of A. Vindhyavali and not in the name of the assessee. The registered

document clearly shows that the property was owned, registered and held by Smt. A. Vindhyavali who is not connected with the assessee in any manner. Thus, it is clear that the land owned by Smt. A. Vindhyavali was not a capital asset in the hands of the assessee and therefore, no addition can be made in respect of such land for capital gains arising out of the sale of the capital asset.

7.4. Admittedly, the assessee was only the owner of Ac. 22-27 gts, and assessee has offered the STCG in the FY 2019-20 relevant to the AY 2020-21. This has been recorded by the Ld. Assessing Officer in the order itself.

7.5. With respect to the objection of the Revenue that no opportunity of hearing was given to the Ld. Assessing Officer before relying upon the sale deeds. It will be sufficient to mention here that the Ld. Assessing Officer in para 5 had mentioned about the sale deeds with respect to the agricultural land and further in para 5.2, the Ld. Assessing Officer further referred to the sale cum GPA entered by the assessee. In fact, the ld.CIT(A) has granted the relief based on the Agreement of sale cum GPA dated 19/08/2019 wherein it is clearly mentioned that the assessee was only the owner of Ac. 22-27 gts. Though the ld.CIT(A) had also referred to the other registered sale deed in the name of Smt. A. Vidhyavali for the purpose of concluding that the assessee was not the owner of the Ac. 10-00 gts.

7.6. In our view the Ld. CIT(A) has decided the issue solely on the basis of registered documents which are admissible in law as they are "*documents in rem*" and we also draw the strength from Explanation to Section 3 of the Transfer of Property Act, 1882 which provided that "*any document which is registered shall be deemed to have notice of registration*". Furthermore, the ld.CIT(A) had decided the issue on the basis of the documents available with the Ld. Assessing Officer. Thus,

there is no violation of the principle of natural justice and Rule 46A of the IT Rules, 1962.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the learned CIT (A) to delete the addition made by the Assessing Officer towards the capital gain derived from sale of land. Thus, we are inclined to uphold the findings of the learned CIT (A) and dismiss the appeal filed by the Revenue.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 20<sup>th</sup> May, 2024.

Sd/-

**(G. MANJUNATHA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Dated : 20.05.2024

OKK / PVV- SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sri Narendra Kumar Kamaraju, 3-83/1/A/5, Nizampet, Kukatpally, Hyderabad.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Central Circle-3(3), 7<sup>th</sup> Floor, Aayakar Bhavan, Basheerbagh, Hyderabad, Telangana – 500 004.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad.
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER