

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

**Before Shri Laliet Kumar, Judicial Member**  
**AND**  
**Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA No. 279/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2020-21)

Venkata Praneeth Developers (P) Ltd, Hyderabad PAN:AACCV4975A	Vs.	ACIT Central Circle 3(3) Hyderabad
(Appellant)		(Respondent)

आ.अपी.सं / **ITA No. 339/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2020-21)

ACIT Central Circle 3(3) Hyderabad	Vs.	Venkata Praneeth Developers (P) Ltd, Hyderabad PAN:AACCV4975A
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by: Shri Ravi Bharadwaj, CA		
राजस्व द्वारा/Revenue by: Shri Kumar Pranav, DR		
सुनवाई की तारीख/Date of hearing: 06/05/2024		
घोषणा की तारीख/Pronouncement: 27/05/2024		

**आदेश/ORDER**

**Per Laliet Kumar, J.M**

These are the cross appeals filed by the assessee as well as the Revenue and are directed against the order dated 05.05.2022 of the learned CIT (A)-11, Hyderabad relating to A.Y.2020-21.

2. First, we take assessee's appeal in ITA No.279/Hyd/2022. The grounds raised by the assessee is as follows:

*"1. On the Facts and Circumstances of the Case, the order passed by the Ld Commissioner Appeals - 11 (Ld CIT(A)) was erroneous and bad in Law.*

*2. The Ld CIT(A) grossly erred in upholding the adjustment made by the Ld AO to the extent of Rs.95,41,800;*

*3. The Ld CIT(A) ought to have considered the affidavit filed before the Additional Director of Income tax retracting the income declaration given during the course of search proceedings;*

*4. The Ld CIT(A) ought to have appreciated the fact that the income declaration given by the Director of the Assessee Company in relation to the transaction with M/s Ramanand Developers was subject to certain services to be provided by the Assessee company in relation to the project.*

*5. The Ld CIT(A) ought to have appreciated the fact that only real income should be subjected to tax and not future income;*

*6. The Ld CIT(A) grossly erred in concluding that the ASsessee Company has given a cash loan to Ms. Padmavathi of Rs 1,00,00,000 disregarding the submissions made by the Assessee during the course of assessment proceedings.*

*7. The Assessee craves leave to add, to alter, amend, modify, substitute, delete and/or rescind all or any one of the grounds of appeal on or before the final hearing"*

3. Facts of the case, in brief, are that the assessee is a private limited company and engaged in the business of builder and development activities. It filed its original return of income u/s 139(1) of the I.T. Act on 31.12.2020 declaring current year total income of Rs.17,80,17,010/-. A search & seizure operation

u/s 132 of the Act was conducted in the case of the assessee and warrant of authorization was executed on the assessee on 20.11.2019. Notice u/s 143(2) was issued and served on the assessee to which the AR of the assessee appeared before the Assessing Officer and furnished the requisite details. The Assessing Officer noted from the perusal of the records that the assessee entered into agreement with M/s. Ramanand Developers P Ltd on 21.09.2018 for purchase of land admeasuring 120454 sq. yards for a consideration of Rs.199,10,00,000/-. The said property was sold to various parties by entering sale deeds except 7456 sq. ft.

4. Further, during the course of search, an agreement of sale entered into with M/s. Aalaya Constructions to sell the part of land purchased from M/s. Ramanand Developers P Ltd with extent of 1.06 acres located at Survey No.36 (part) situated at Bachupally Village and Mandal for a consideration of Rs.8,74,50,000/- was also found and seized. The said document also indicated that the vendee M/s. Aalaya Constructions shall also give one flat per acre to the vendor i.e. assessee.

5. When confronted, Shri K Narendra Kumar, MD of the assessee company in his sworn statement stated that the company has renegotiated the consideration with the party to increase the sale value of the land by an additional amount of Rs.95,41,800/- in lieu of the foregoing the additional consideration of flat and which further includes the expenses of commission, brokerage and facilitation. He also deposed that the assessee company has entered into similar agreements with other

buyers, also. The additional consideration accruable in this deal was at Rs.14,86,86,559/- and the same will be disclosed as additional income in the hands of the company for the A.Y 2019-20. Shri K Narendra Kumar also accepted the fact that the additional consideration of Rs.14,86,86,559/- was not brought into the books of account of the assessee company. Thus, the Assessing Officer completed the assessment u/s 143(3) r.w.s. 153A of the I.T. Act. Interest u/s 234A, 234B and 234C was also charged as per the provisions of law as well as penalty proceedings u/s 271AAB of the I.T. Act. Thus, the Assessing Officer made a demand of Rs.4,85,11,270/-.

6. In appeal, the learned CIT (A) partly allowed the appeal of the assessee by confirming the addition only to the extent of Rs.95,41,800/- and the addition made with regard to the other 15 parties of Rs.13,91,44,759/- was deleted.

7. Aggrieved with such order of the learned CIT (A) the assessee as well as the Revenue are in appeal before the Tribunal.

8. The learned Counsel for the assessee submitted that during the course of search proceedings, the Director of the Company Mr. Narendra Kumar Kamaraju has confirmed that an additional income of Rs.14.86 shall be offered for the land purchased from M/s. Ramanand Developers. Initially the assessee has purchased the land from M/s. Ramanand Developers with an intention to resell the same to various parties and the entire land of 79,939.01 sq. yards was purchased by the assessee for a consideration of

Rs.199.10 crores. As a goodwill gesture M/s. Aalaya Constructions have agreed to compensate the assessee with a BHK flat or equivalent compensation in money for facilitation the post-sale activities like liaisoning, facilitation in obtaining all permissions/approvals and clearances for starting the project on time. However, the assessee failed to get the approvals for about 2 years and also due to the impact of the pandemic. Therefore, M/s. Aalaya Constructions informed that they are not in a position to oblige the earlier agreement to provide a 3BHK flat due to the delay from the side of the assessee. It is the submission of the assessee that an amount of Rs.5.83 crores was already offered to tax for A.Y 2018-19 as income being margin (profit) between purchase and sale value.

9. The learned Counsel for the assessee further stated that it is settled legal proposition that the confession needs to be corroborated with evidences. Though admission is an important piece of evidence, but it is not conclusive and it is open to the assessee to show that it is incorrect. Therefore, the assessee retracted admission, in absence of any incriminating material and any affidavit was filed to that effect in the investigation of the Revenue. In this regard, the learned Counsel for the assessee relied on the decisions of the Hon'ble Delhi High Court in the case of CIT vs. Harjeev Aggarwal (70 Taxmann.com 95, dated 10.03.2016) and CIT vs. Sunil Aggarwal reported in (2016) (379 ITR 367). The assessee also relied on the decision of the Hon'ble A.P High Court in the case of CIT vs. Shri Ramdas Motor Transport (238 ITR 177) wherein the Hon'ble Court refused to give any evidentiary value to the statement made by the assessee u/s

132(4) as the Department could not find any unaccounted money, article or thing or incriminating document either at the premises of the company or at the residence of the M.D. Finally, the learned Counsel for the assessee submitted that the learned CIT (A) while appreciating the fact that there was no evidence found in relation to the other parties other than M/s. Aalaya Constructions categorically held that the extrapolation of the agreement of sale entered into with all other parties are not in accordance with settled principles of income tax and thereby deleted the addition in relation to all the parties other than M/s. Aalaya Constructions to the extent of Rs.95 lakhs.

10. With regard to the receipt of Rs.1,00 crore from Ms. M Padmavathi is concerned, it is the submission of the learned Counsel for the assessee that the assessee company has received an amount of Rs.1.00 crore through cheque only and the same has been repaid to Ms. M Padmavathi being refundable advance against the purchase of land. Thus, the learned Counsel for the requested the Tribunal to delete the adjustment made by the Assessing Officer which was upheld by the learned CIT (A).

11. The learned DR, on the other hand, heavily relied on the order of the authorities below. Our attention was drawn to Para 6.10 of the assessment order which is to the following effect:

*“6.10 Th above submission of the assessee has been considered but the same is not acceptable for the following reasons:*

- (i) The agreement for sale with M/s. Aalaya Constructions, assessee clearly indicated that the vendee M/s. Aalaya Constructions, shall also give one flat per acre to the vendor i.e. M/s. VPDPL. However,*

*the registered agreement with the said concern did not mentions about the said clause. Therefore, it is clear that the assessee company before final registration of the document has re-negotiated the receipt of the amount in lieu of one flat per acre with M/s. Aalaya Constructions.*

- (ii) The land in question which were sold to various parties, is part and parcel of land purchased from M/s. Ramanand Developers (P) Ltd. Therefore, any wise prudent business concern, will not loose any amount, which his due to it, and sell at lower cost, when it has already received and recovered from M/s. Aalaya Constructions.*
- (iii) Assessee company failed to show the entries of renegotiated amount on account of M/s. Aalaya Constructions or the committed proceeds of value of flat in its books of account. Therefore, the said amounts are duly unaccounted, which during the course of search, assessee admitted as unaccounted in the books of account and admitted to pay taxes.*
- (iv) Further, the Managing Director of the assessee clearly admitted during the course of search in his sworn statement that he has renegotiated with the various other fifteen parties and worked out additional business income of the company being received as additional consideration earned in all these sixteen cases totaling to Rs.14,86,86,559/-.”*

12. It was the contention of the learned DR that the first appellate authority has wrongly deleted the addition of Rs.14,86,86,559/- despite the fact that the assessee during the search proceedings had agreed the said amount as undisclosed income in the statement dated 23.11.2019. It was submitted that the reliance of the learned CIT (A) on the affidavit filed before the Investigation Wing on 11.5.2020 is not permissible.

13. We have heard both the parties and perused the material available on record. Firstly, we will deal with the appeal of the Revenue which is pertaining to the deletion of the amount of Rs.14,86,86,559/-.

14. The Assessing Officer in para 6.10 has summarized the reasons for making the addition of Rs.14,86,86,559/- towards undisclosed income in the hands of the assessee. The basis reason is the answer of the M.D given response to Question No.2 which read as under:

*"Q.29 During the course of search operation conducted in the office premises on 20.11.2019, certain loose sheets numbered 01 to 81 were found and seized as Annexure-A/VPDPL/OFE/01. I am showing you page numbers 54 to 57 containing the copy of agreement of sale made and executed on 05.12.18 by M/s Venkata Praneeth Developers Pt Ld in favour of M/s Aalaya Constructions for a consideration of Rs.8,74,50,000. Please explain the transaction in detail?"*

*Ans. I state that M/s Venkata Praneeth Developers Pvt Ltd sold the property purchased from M/s Ramanand Developers Pvt Ltd in small chunks to various parties after entering into an agreement of sale with the respective parties. The above-mentioned document pertains to the agreement of sale entered into with M/s. Aalaya Constructions to sell the land with extent of 1.06 acres located at Survey No. 36 (Part) situated at Bachupally Village and Mandal for consideration of Rs.8,74,50,000. In addition to the above consideration, it was also agreed that the vendee M/s. Aalaya Constructions shall also give one flat per 1 Acre to the vendor i.e., M/s Venkata Praneeth Developers Pt Ltd. However, we renegotiated the consideration with the Party to increase the sale value of the land by an additional amount of Rs. 95,41,800 in lieu of foregoing the additional consideration of flat and which further includes the expenses of commission, brokerage and facilitation. It is further stated that the additional amount of RS. 95,41,800 which has not been brought into the books of account. Therefore, I am hereby voluntarily offering the same as additional business income of the company for AY 2019-20. However, in respect of other fifteen parties, additional business income of the company has been worked out and enclosed in a sheet enclosed to this statement as Annexure-1. The total additional consideration earned in all these sixteen cases amounting to Rs. 14,86,86,559/- and the same has not been brought into the books of account of the group companies. Therefore, I am hereby admitting the above amount of Rs. 14.86 crores as additional income in the case of M/s VIDPL for the A.Y 2019-20."*

15. From a perusal of the answer to question No.5, it is abundantly clear that the assessee had sold part of the land admeasuring 1.06 acres from M/s. Ramanand Developers (P) Ltd to M/s. Aalaya Constructions for a consideration of Rs.87,45,00,000/-. The above said fact is further corroborated by the agreement which was found during the search from the premises of the assessee and in the said agreement besides, the reference to the above said consideration at S.No.3 it was also mentioned as under:

*“(3) it is hereby agreed by the vendor that they will form the land road with their own expenses for the vendee to use. Further, it is agreed by the vendee that they shall give one flat per acre to the vendor for laying of 60ft road for access and the same is accepted by the vendor”*

16. It is the case of the Assessing Officer that the assessee has accepted the value of the flat after renegotiating/re-working in the agreement for an amount of Rs.95,41,800/-. Further, as this amount of Rs.95,41,800/- was not forming part of the registered sale deed and therefore, the assessee had agreed to disclose the amount as an additional income in response to question No.29 (Supra). Besides the above, it is the case of the Assessing Officer that there were total 16 developers including M/s. Aalaya Constructions and the assessee had paid the additional consideration which was not disclosed for an amount of Rs.14,86,86,559/-. Thus, on the basis of the agreement found between the assessee and M/s. Aalaya Constructions, the Assessing Officer juxtapose the agreement between the assessee and M/s. Aalaya Constructions with respect to the remaining 15 parties and made addition in the hands of the assessee.

17. In our view, the learned CIT (A) has deleted the addition made in the hands of the assessee for the reason that there was no evidence found by the Assessing Officer or brought on record showing that the assessee had earned an amount of Rs.14,86,86,559/- on account of the sale of property to other 15 parties. The learned CIT (A) at page 26 of the order had noted down that the Assessing Officer has failed to brought on record any documents with respect to other 15 parties showing the receipt of the flats and receiving additional consideration from them. In fact, the learned CIT (A) had mentioned about the affidavit filed by the assessee before the Investigation Wing at Page 27 of the order. It was mentioned by the learned CIT (A) that the assessee had admitted the total income of Rs.34,79,86,559/- during the course of search as against the above said amount, the assessee had admitted the amount of Rs.47,77,97,400/- during the post search filing return of income. It was concluded by the learned CIT (A) that the assessee had declared more income which was admitted by it during the course of search.

18. In our view, for the purpose of making the addition in the hands of the assessee, it is essential that the Assessing Officer should brought on record some incriminating material to show the escapement of income or non-disclosure of the income by the assessee. The addition cannot be made by the Assessing Officer merely on the basis of suspicion, conjecture or imagination. That each transaction by the assessee with 16 parties were independent and it is not the case that all the parties have negotiated as the same date or that the lands were situated in the same location or they had negotiated the deal as the same terms

& conditions. Therefore, it is incorrect to presume that every party to whom the land was sold by the assessee after purchasing from M/s. Ramanand Developers (P) Ltd would give one flat to the assessee is preposterous and cannot be accepted. In our view, it was essential for the Assessing Officer to bring on record some evidence either in the form of an agreement or otherwise to show that the terms & conditions for which the assessee had agreed to sell the said land were similar to that of the Aalaya Constructions. Nothing has been brought on record and we are therefore, in agreement with the finding recorded by the learned CIT (A) whereby the learned CIT (A) categorically held that the contention of the above documents cannot be extrapolated with respect to the other vendees. We do not find any error in the findings given by the learned CIT (A). In view of the above, the appeal of the Revenue is dismissed. Therefore, appeal No.339/Hyd/2022 is dismissed.

**ITA No.277/Hyd/2022**

19. With respect to the assessee's appeal, it is clear that the agreement for the receipt of one flat was found during the course of search by virtue of which the sale consideration of the land sold was agreed for an amount of Rs.8,74,50,000/- other than the said addition agreed the sale consideration, the assessee was also entitled to one flat from the buyer namely M/s. Aalaya Constructions. Though the assessee has filed affidavit retracting the statement, the assessee cannot deny the contents of the agreement found during the search and for the above said purposes, we may fruitfully rely upon the section 292C which

clearly laid down the presumption of the correctness of the document found during the course of search from the possession of the assessee. It is not the case that the said document was not found from the possession of the assessee and it is also not the case of the assessee that such document was not entered into between the assessee and Aalaya Constructions. In view of the above, we do not find any merit in the contention of the assessee that the amount of Rs.95,41,800/- is required to be upheld. In view of the above, we find that the ground raised by the assessee for deletion of Rs.95,41,800/- is required to be dismissed. Accordingly, we dismiss the same.

20. The 2<sup>nd</sup> ground raised by the assessee with respect to cash loan to Ms. M. Padmavathi for an amount of Rs.1.00 crore. In this regard, the submission of the assessee reads as under:

*“In this regard, we would like to submit that your honor can observe from the Seized material at page no 6 of A/MSS/RES/PO/1 (submitted as part of the paper book) which has receipt from Ms. M. Padmavathi for Rs 1,00,00,000. In this regard, we would like to submit that the Assessee Company has received the amount of Rs 1,00,00,000 through cheque only. The second part of the Receipt is for office purpose only where the accountant did not update the details of cheque and inadvertently mentioned as cash received.*

*Further, the amount was paid to Ms. M. Padmavathi in relation to a land purchase as she is a landlord. The amount was paid as a refundable advance against the purchase of the land. Accordingly, the same was recorded as advance to landlords in the books of account. Hence, we request your honour to consider the same and delete the addition.*

*Accordingly, request your honour to consider the above submission and delete the adjustment made by the Ld AO which was upheld by the Ld Commissioner(Appeals) to the total income of the Appellant in this regard. We will be glad to provide any further information your honour may require in this regard.”*

21. We have gone through the submission of the assessee as well as the decision of the lower authorities. The learned DR relied upon the decision of the lower authorities. We have gone through para 6 of the findings of the learned CIT (A). In this regard the Assessing Officer in Para 7.3 have discussed the statement of the assessee and thereafter has recorded that the amount of Rs.1.00 crore is required to be treated as unexplained investment as cash loan to Ms. M. Padmavathi. The contention of the assessee before us is that the Accountant of the assessee has not updated the totals of the cheque and inadvertently mentioned as cash. In our view the findings of the Assessing Officer and the learned CIT (A) is on the basis of documents found during the course of search (Whatsapp Chat) which clearly indicate that the cash loan as well as cheque loan was given by the assessee to Ms. M. Padmavathi. The learned Assessing Officer has only added the cash loan in the hands of the assessee. In our view, once the finding of the Assessing Officer/learned CIT (A) is based on document which is further corroborated by the statement of the assessee, we do not find any reason to take a contrary view. In the light of the above, this ground of the assessee is also dismissed and thus, the appeal of the assessee is dismissed.

22. To sum up, both the appeals filed by the Revenue as well as the assessee are dismissed.

Order pronounced in the Open Court on 27<sup>th</sup> May, 2024.

**Sd/-**

**Sd/-**

<b>(MANJUNATHA, G) ACCOUNTANT MEMBER</b>	<b>(LALIET KUMAR) JUDICIAL MEMBER</b>
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Hyderabad, dated 27<sup>th</sup> May, 2024

**Vinodan/SPS**

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4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*