

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.608/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Purushotham Naidu Lekkala Hyderabad PAN:ABGPL4958H (Appellant)	Vs.	A.C.I.T Central Circle 3(2) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by:	Shri H Srinivasulu, Advocate	
राजस्व द्वारा / Revenue by:	Shri Rahul Singhanian, DR	
सुनवाई की तारीख / Date of hearing:	30/05/2024	
घोषणा की तारीख / Pronouncement:	11/06/2024	

आदेश / ORDER

Per Madhusudan Sawdia, A.M

This appeal is filed by Shri Purushotham Naidu Lekkala (“the assessee”), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad, (“Ld. CIT(A)”), dated 31/10/2023 for the A.Y. 2013-14.

2. Facts of the case, in brief, are that the assessee is an individual and M.D. of M/s. Leckon Infrastructures Pvt. Ltd., filed his return of income on 14.03.2014 u/s 139(4) of the Income Tax Act, 1961 (“ the Act”) declaring total income of Rs.59,00,000/-.

search & seizure operation u/s 132 of the Act was conducted in the case of the assessee and M/s. Leckon Infrastructures Pvt. Ltd on 18.09.2018. Consequently, the learned Assessing Officer (“Ld. AO”) started proceedings u/s 153A of the Act in the case of the assessee and completed the assessment u/s 153A of the Act on 21/04/2021 at assessed income of Rs.7,57,19,600/-, making an addition of Rs. 6,98,19,600/-.

3. At the outset, the present appeal is only for an addition of Rs. 60,26,040/-, which have been made by the Ld. AO” and also sustained by the Ld. CIT(A). During the search in the premises of M/s. Leckon Infrastructures Pvt. Ltd, one seized document was obtained in the form of printout from WhatsApp messages in the mobile (“electronic data”) of Shri Gunam Archan Kumar one of the employees of M/s. Leckon Infrastructures Pvt. Ltd. In the said electronic data some working regarding payment of interest to the assessee on the advances given by the assessee with regard to one dealing of the land is there. On the basis of the said electronic data, the said addition of Rs. 60,26,040/- have been made by the Ld. AO contending that interest of Rs. 60,26,040/- was to be payable to the assessee for the year under consideration .

4. The learned AR submitted that the Ld. AO and Ld. CIT (A) on the basis of only electronic data , sustained the addition of Rs.60,26,040/-. Relying on various decisions of the Hon'ble Supreme Court/High Court/ITAT, he further submitted that the said electronic data cannot be used in isolation for making any

addition. He also submitted that no certificate as mandated u/s 65B(4) of the Indian Evidence Act (“E-certificate”) was obtained by the Ld. AO in accordance with the manual on Digital Evidence Investigation issued by the CBDT (“CBDT manual”) in the year 2014. Further, no corroborative material have also been brought into the record by the Revenue authorities that the said interest amount of Rs.60,26,040/- have been actually received by the assessee. Hence, he submitted that the action taken by the Revenue Authorities are on the basis of suspicion and without any concrete evidence. Hence the addition made by the Revenue authorities are required to be deleted.

5. Per contra, the learned DR submitted that the CBDT manuals is not issued u/s 119 of the Act and is only recommendatory in nature. He further argued that the provisions of the Indian Evidence Act are not applicable on the revenue authorities being quasi-judicial authority. Hence the requirement of obtaining E-certificate is not required under the facts of the present case. For this, he relied on the following decisions:

- i) Hon'ble Supreme Court in the case of Tata Consultancy Services Ltd (S) vs. Cyrus Investments Pvt Ltd and Others (S.C), in Civil Appeal No.440-441 of 2020, judgment dated 26.03.2021
- ii) Hon'ble Supreme Court in the case of Moni Shankar vs. Union of India and Anr (2010) (3 SCC 484) 11 SCC 233.

iii) Hon'ble Telangana High Court in the case of The State of Telangana vs. P Govind Reddy and 10 Others in W.A No.1105 of 2018 .

5.1 Further, relying on the decision of Hon'ble Madras High Court in the case of Saravana Selvarathnam Retails (P) Ltd vs. CIT (A) reported in (2024) 160 Taxmann.com 287 (Mad.) dated 23.02.2024, the Ld. DR submitted that, even if the instruction of the CBDT manual are not followed, if the electronic data obtained are supported by corroborative evidence, addition can be made on the basis of such electronic data. He also submitted that, in this case, the addition has been made on account of interest payable on the amount advanced by the assessee with regard to one dealing of the land and the corresponding sale deed is on the record (Page No 1 to 7 of the Paper Book filed by the assessee). Hence the electronic data corroborated with this sale deed satisfy the ingredients required as per the decision of the Hon'ble Madras High Court (Supra). Hence, he prayed that the orders of the Revenue authorities are to be upheld.

6. We have heard the rival contentions made by both the parties and gone through the orders of the authorities below. There is no dispute on the fact that the Revenue authorities have not filed the certificate u/s 65B of the Indian Evidence Act. However as per the decision of the Hon'ble Madras High Court (Supra) as cited by the Ld. DR, the Hon'ble High Court held under Para No.77 (iii) of the order that, the Digital Evidence Investigation Manual has been issued by the CBDT by virtue of

powers available u/s 119 of the I.T. Act and hence, the Income Tax Authorities and all the other persons employed in the execution of this Act are bound to observe and follow such orders, Instructions and directions issued by CBDT” . The Hon'ble High Court also held that if the procedure as specified under the CBDT Manual have not been followed while relying on the electronic record, the said record must be supported by corroborative evidence. The relevant portions of the decision of the Hon'ble High Court are reproduced as under:

“iii) The Digital Evidence Investigation Manual has been issued by the CBDT by virtue of powers available under Section 119 of the IT Act and hence, the Income Tax Authorities and all the other persons employed in the execution of this Act are bound to observe and follow such orders, instructions and directions issued by CBDT. In the case of Commissioner of Customs (referred supra), the Hon'ble Apex Court had culled out the principles, which has to be followed while conducting search and seizure of evidences and the same has been extracted at paragraph No.50 of this order. Hence, it is mandatory for the <https://www.mhc.tn.gov.in/judis> W.P.Nos.9753, 9757, 9761 & 11176 of 2023 respondents to follow the Digital Evidence Investigation Manual issued by CBDT while conducting search and seizure and it is not optional.

iv) The electronic data have been collected in .txt files in violation of the provisions of Digital Evidence Investigation Manual.

v) Though the procedures have not been followed while collecting the electronic data in .txt files, the data collected by the respondents can be relied upon only if the said data are supported by the corroborative evidences.”

7. It is abundantly clear from the decision of the Hon'ble Madras High Court (Supra) that in the absence of such E-certificate,(65 B Certificate) the electronic data must be supported by corroborative evidences. The sale deed on which the Ld. DR is relying as corroborative evidence does not confirm that whether any interest was to be payable or paid to the assessee. Further, there is no reference of paying of on money or cash amount or

interest by the assessee in the said sale deed. Hence, under such circumstances, the sale deed cannot be taken as corroborative evidence. Hence, in our considered opinion, the Revenue Authorities has made the addition without obtaining any E-certificate and without any corroborative evidence with regard to the electronic data. Hence, we delete the addition made by the Revenue authorities, thereby allowing the appeal of the assessee.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 11th June, 2024.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad, dated 11th June, 2024

Vinodan/sps

Copy to:

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2	ACIT Central Circle 3(2) Aayakar Bhavan, Basheerbagh Hyderabad
3	Pr. CIT -Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order