

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 609/Bang/2024
Assessment Year : 2013-14

M/s. Navya Infrastructure Pvt. Ltd., #9/1, Classic Court, 1 st Floor, Richmond Road, Bengaluru – 560 025. PAN: AAECN2470L	Vs.	The Deputy Commissioner of Income Tax, Circle -3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	11-07-2024
Date of Pronouncement	:	09-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 19.03.2024 passed by NFAC, Delhi for A.Y. 2013-14 on following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence. probabilities. facts and circumstances of the case.

2. The learned CIT[A]/NFAC is not justified in upholding the impugned order passed u/s.147 rws 144B of the Act dated 11/03/2022, which is bad in law and void-ab-initio in as much as. the said assessment u/s.147 of the Act. has been made after the substitution of section 147 of the Act, by the Finance Act, 2021 w e.f. 01/04/2021 and consequently, the impugned order passed under the erstwhile provisions of section 147 of the Act, is a nullity since, the said provisions do not exist in the statute after substitution and consequently. the order passed deserves to be annulled.

2.1 The learned CIT[A]/NFAC ought to have appreciated that the erstwhile provisions of section 147 of the Act, have been substituted by the Finance Act, 2021 without any saving clause to enable continuation of the proceedings pending on the date of substitution of the provisions of section 147 of the Act and consequently, no assessment could be framed u/s.147 of the Act, since the substituted provisions of section 147 of the Act, empower the A.O. to frame an assessment only subject to the provisions of section 148 and 148A of the Act and consequently, the impugned order passed without a statutory provision in the statute on the date of passing the assessment order is a nullity.

3. Without prejudice to the above, the order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the order passed requires to be cancelled.

4. The learned CIT[AJ]/NFAC is not justified in upholding the completion of the assessment u/s 144 of the Act by the Assessing Officer in a hurried manner without giving further sufficient opportunities of hearing which is against the principles of natural justice and therefore. the order passed deserves to be cancelled.

5. The Appellant denies itself liable to be assessed on a total income of Rs.3,78,85,000/- as determined in the impugned order as against the income reported of Rs. NIL by the appellant under the facts and in the circumstances of the appellant's case.

6. Without prejudice to the above. the learned CIT[A]/NFAC is not justified in upholding the addition of Rs.

3,78,75,000/- by holding that the purchase of immovable property during the year has to be treated as undisclosed investment u/s 69 of the Act without appreciating that the appellant had clearly explained that it had not made any payments as mentioned in the sale deed under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest U/s. 234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. Brief facts of the case are as under:

2.1 The assessee company is into the business of real estate development. The assessee did not file any return of income for the Assessment Year (AY) 2013-14. The department was in possession of information that the assessee during the relevant year purchased immovable property for consideration of Rs.3,78,75,000/-. It is also an admitted fact that the assessee did not file any return of income for year under consideration u/s. 139 of the Act. Hence the Ld.AO recorded reason of escapement of income and issued notice u/s 148 of the IT Act on 31.03.2021. This notice was served on the assessee company. However, the assessee did not again file any return of income in response to such notices issued.

2.2 Later, notice u/s 142(1) of the income tax Act on 16.11.2021. 14.12.2021 and 29.12.2021 the issued. The assessee filed reply

on 05.01.2022 wherein a request was made for 10 days time to respond to the notice. However, as the assessee failed to explain the sources of investment. Hence, the Ld.AO treated Rs.3,78,75,000/- as unexplained investment u/s 69 of the IT Act and concluded the assessment on 27.03.2022.

2.3 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.4 Before the Ld.CIT(A), assessee furnished additional evidences under Rule 46A which was sent to the Ld.AO for remand report. In the remand report, the Ld.AO held that the investments in the property by assessee remained unexplained even during remand proceedings.

2.5 In the rejoinder to the remand report, the assessee submitted that the consideration as per the sale deed is not paid by the assessee and that the sale deed was taken over by one Mr. Reddy Veeranna. It is submitted that a confirmation letter from Mr. Reddy Veeranna was filed stating that the consideration is still due from the assessee. The assessee also produced bank statement to establish that the cheques has not been encashed by the seller / confirming party.

2.6 The Ld.CIT(A) after considering the submissions of the assessee in the rejoinder, was of the opinion that, the assessee has not proved beyond doubts that the cheques given to the seller towards the purchase of property remained unencashed

and since the assessee has not proved the source of such investment, the addition made by the Ld.AO was upheld.

2.7 Aggrieved by the order of the Ld.AO, assessee is in appeal before this *Tribunal*.

3.1 The Ld.AR on merits submitted that the property was acquired in terms of the sale deed dated 21.01.2013 from M/s. Presidency & Others. The consideration though was payable under the said sale deed was a liability of the assessee and the same was taken over by one Mr. Reddy Veeranna. He submitted that, the assessee filed the financials for the year under consideration and the subsequent assessment year wherein the immovable property acquired has been recorded. It is submitted that the consideration was payable by Mr. Reddy Veeranna, and therefore the view taken by the authorities below that the assessee made unexplained investments and is taxable u/s. 69 is without any basis.

3.2 The Ld.AR submitted that Mr. Reddy Veeranna was the confirming party to the absolute sale deed dated 21.01.2013 executed between the assessee and M/s. Presidency & Others towards the purchase of property being land bearing survey no. 7, 9, 10 and 12 admeasuring total 5 acres 2 guntas situated at Basavenapura village, Krishnarajapuram Hobli, Bangalore East Taluk for a consideration of Rs.3,78,75,000/-.

3.3 He submitted that in the sale deed itself it is categorically mentioned that, the cheques issued by assessee has been drawn in favour of the confirming party (Mr. Reddy Veeranna) at the consideration of the vendor being M/s. Presidency referring to page 71 of the paper book, he submitted that, the assessee being the purchaser has purchased the property through banking channels absolute sale deed has been registered with the Registrar of Stamp Department, Government of Karnataka. He submitted that, there is no doubt that the purchase of the property by the assessee is reflected in the balance sheet of the assessee. Referring to the remand report, he submitted that, the Ld.AO is on certain assumption that, the sale proceeds was not received by the seller and therefore the agreement should have been cancelled without considering the averments in the absolute sale deed which is a registered document. The Ld.AR submitted that all these observations in the remand report are on assumptions. He submitted that assessee cannot be blamed if the seller has not presented the cheques for honouring against the sale deed.

3.4 On the contrary, the Ld.DR submitted that if the seller has not received the consideration as per the registered sale deed, then it is not clear why the deed was not cancelled or why any recovery proceedings were not initiated by the seller on assessee.

We have perused the submissions advanced by both sides in the light of records placed before us.

4.1 We refer to page 24 of the paper book which is the confirmation issued by Mr. Reddy Veeranna wherein he confirms that the cheques given by the assessee has not been presented by him due to lack of funds in the bank accounts of assessee. It is noted that in the confirmation, Mr. Reddy Veeranna confirms that the liability of assessee being a purchaser stands reflected in his books of accounts as a debtor.

4.2 However, the land is reflecting as an investment in the hands of the assessee. The submissions by assessee read along with the confirmation by Mr. Reddy Veeranna does not reveal the clear picture as to who is the actual owner of the land as per the sale deed dated 21.01.2013.

4.3 The doubts raised by the authorities regarding the validity of the sale deed as the transactions is submitted to be incomplete due to non-payment of sale consideration which is still under question. On perusal of the sale deed placed at pages 61-76, we note that at page 71, the details of the cheques drawn by the assessee in favour of confirming party being Mr. Reddy Veeranna at the instruction of the vendor being M/s. Presidency has been recorded. As per the sale deed, the vendors and the confirming party had acknowledged the receipt of the said total sale consideration.

4.4 It is surprising to note that Mr. Reddy Veeranna being the confirming party is still not presented the cheques to be honoured and that assessee is still shown as a debtor in his

books of accounts. The ledger extract of the assessee showing the amount payable to Mr. Reddy Veeranna has been placed at pages 58-59 of paper book. Without having sufficient balance in the accounts of the assessee, issuance of cheque would lead initiation of proceedings under Negotiable Instruments Act which also has not been carried out by either Mr. Reddy Veeranna or the vendor. The bank statement of assessee for the period from 01.04.2012 to 31.03.2014 has been placed at page 23 of the paper book. It is apparent from the bank statement that, assessee is an entity of meagre balance and money have been transferred by Mr. Reddy Veeranna to assessee's account and has also withdrawn the same immediately. Admittedly, there is no transaction between 12.03.2013 to 26.09.2013 when Mr. Reddy Veeranna has deposited Rs. 45,40,000/- to the account of the assessee. Thereafter by way of 7 demand drafts, entire amount has been withdrawn keeping the balance at Rs. 27,431/-. Thereafter on 01.10.2013, Mr. Reddy Veeranna again constructions deposits a sum of Rs.4,75,000/- which has been withdrawn on 01.10.2013 and 07.10.2013 keeping the outstanding balance to be Rs.27,681/-. The confirmation given by Shri Reddy Veeranna showing assessee to be an outstanding debtor in his books of accounts is dated 02.08.2022, meaning thereby till 2022 the amount has not been encashed towards the purchase of property. However, the land purchased still stands in the name of assessee.

4.5 To our mind, the entire transaction of purchase of the immovable property by the assessee does not stand properly

explained as the onus has not been discharged. However, in the interest of justice, we remand this issue to the Ld.AO to carry out a *denovo* verification on this aspect. The Ld.AO is at liberty to verify the actual transaction that the vendor, the confirming party and the assessee as per the sale deed dated 21.01.2013 and then to ascertain the applicable provisions under act if in case the assessee is not able to establish the transaction to be genuine.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 09th August, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 09th August, 2024.
/MS /

Copy to:

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore