

□□□□ □□□□□□ □□□□□□, □□□□□□□□ □□□

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI MANJUNATHA G, ACCOUNTNAT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

आ.अपी.सं / **ITA No.140/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2008-09)

M/s. Savi Realty Holding Pvt. Ltd., Hyderabad. PAN: AABCJ0018K	Vs.	Dy. Commissioner of Income Tax, Circle 3(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri S. Rama Rao, Advocate	
राजस्व द्वारा / Revenue by::	Shri Srinath Sadanala, SR-DR	
सुनवाई की तारीख / Date of hearing:	12/09/2024	
घोषणा की तारीख / Pronouncement:	20/09/2024	

आदेश/ORDER

PER PRAKASH CHAND YADAV, J.M:

The present appeal of the assessee is arising from the order of Learned Commissioner of Income Tax (Appeals), dated 27.12.2022 having DIN No. ITBA / NFAC / S / 250 / 2022-23 / 1048270018(1) relates to the Assessment Year 2008-09.

2. There is a delay of 10 days in filing the appeal before the ITAT for which the learned counsel for the assessee has relied upon the condonation application duly supported by Affidavit. The Learned D.R. has also left the the decision on condonation of delay to the discretion of bench. Therefore,

considering the totality of the facts, we hereby condone the delay of 10 days and proceed to adjudicate the appeal.

3. The facts leading to the present appeal are that the assessee is a company in which the public are not substantially interested and is engaged in the business of real estate. For the Assessment Year 2008-09, the assessee filed the return of income on 31-03-2009 admitting an income of Rs.7,45,216/-. The Assessing Officer issued notices u/s. 147 and 148 in response to which the assessee stated that the return of income originally filed may be treated as the return in response to notice u/s. 148. The Assessing Officer mentioned that there were search and seizure operations u/s 132 of the I.T. Act at the business premises of Dhatri Constructions Pvt. Ltd., on 10-10-2007; during which proceedings, an Agreement to Sell dated 12-02-2007 was found the AO observed that the said Agreement to Sell was entered by 10 owners of certain chunks of land in favour of Dhatri Constructions Pvt. Ltd., represented by its Managing Director Sri M. Manjunatha Reddy. The AO observed that according to the said agreement, and that a sale price of Rs.41,25,00,000/- was paid to the vendors by the vendee. The AO observed that the name of the assessee was also there in the list of seller and hence he took a view that the assessee sold a part of its property for a consideration of Rs.3,11,17,199/- instead of Rs Rs.33,70,000

as reflected in the sale deed. Accordingly the AO added Rs.2,77,47,199/- to the income of assessee.

5. Aggrieved with the order of Assessing Officer, the assessee filed appeal before the Ld. CIT(A) and contended as under:

(a) the agreement on which the Assessing Officer has placed reliance was never entered into by the assessee.

(b) that the assessee has only received an amount of Rs.33,70,000 as consideration in lieu of the sale of the impugned property.

(c) that photocopy of a document is secondary evidence and cannot be given credence over the primary evidence i.e. the original sale deed.

(d) merely because the buyer has stated some adverse facts against the assessee, the statement of the buyer cannot be relied without providing an opportunity to cross examine.

The Ld. CIT(A) could not find any force in the argument of the assessee and affirmed the order of Assessing Officer.

6. Aggrieved with the order of Ld. CIT(A), the assessee filed the present appeal and reiterated the submissions made before the lower authorities.

6.1 The assessee has also filed a petition dated 6.6.2023 raising certain additional grounds. Perusal of these additional grounds would show that contents of these grounds are more or less similar to the main grounds of appeal.

7. After considering the rival submissions and perusing the records, we observe that in this case the Assessing Officer has made an addition of Rs.2,27,47,199 in the hands of the assessee on the basis of one agreement without bringing any material on record such as comparable sale instance, or enquiries from the locality or any report from DVO etc. This agreement has been referred to by one Sri Manjunath Reddy in his statement recorded u/s.132(4) of the Income Tax Act, 1961 ("the Act") who has purchased consolidated chunk of land from so many vendors as mentioned in the alleged agreement. When we examine the agreement which is referred to by the Assessing Officer and the sale deed filed by the assessee we note in agreement the details of property as shown is property No.10-5-385/53/4/1 measuring 283.32 sq. m. in S.No.129/77, Block A, Ward 12 situated at Syed Nagar, 1st Lancer, Shaikpet, Hyderabad. And in the sale deed the details of the property is No.105385/1/15 measuring 468.06 yards equal to 391.32 sq. m. situated S.No.129/77, Syed Nagar, 1st Lancer, Shaikpet village, Hyderabad. Which means both properties are materially different. It is further worthy to note that surrounding areas of both the properties as mentioned in the Annexures to sale deed & agreement to sale marked as schedule of the property are completely different. Therefore, we agreed with the contention of the learned counsel for the assessee that the property which is considered by the Assessing Officer is different and the property

which is actually sold by the assessee is different. Therefore, we are of the view that the Assessing Officer has erred in adding an amount of Rs.2,27,47,199 as on money in the hands of the assessee. It is settled position of law that to tax on money, burden is on revenue to establish with cogent material that there is some under statement of the sale consideration. Reference can be made to the following judgments:

- a) K.P.Varghese Vs ITO 131 ITR 597(SC)
- b) CIT Vs P.V.Kalyan Sundram 164 Taxman 78(SC)
- c) CIT Vs Discovery Estate reported in 356 ITR 159(Del)

7.1 It is also settled position of law that a photocopy document cannot be made basis for making an addition in tax proceedings. Examining this issue by Hon'ble Delhi High Court recently in the case of PCIT Vs. Rashmi Raji Mehta 984 of 2019 vide its order dated 4.3.2024 in paras 17 & 18 the Hon'ble Court has observed as under :

“ 17. Admittedly, the entire foundation is laid on the basis of the photocopy of the alleged agreement to sell dated 5 March 2010. The original copy of the said document has not seen the light of the day. Further, there is no other evidence to support the veracity of the recitals made in the aforesaid alleged agreement. Therefore, under the facts of the present case, the same cannot be construed to be a sustainable ground for making addition to the income of the assessee.

18. We, thus, find that these appeals do not raise any substantial question of law. The ITAT has rightly opined that under the facts of

the present cases, sustaining an addition on the basis of photocopy of alleged agreement to sell would be completely unwarranted and unjustifiable. The appeals are, therefore, dismissed. Pending application(s), if any, are also disposed of, accordingly.”

8. We next observe that it is trite law that no addition can be made on the basis of a third-party statement unless the third party has been put for cross examination by the assessee. Further we observe that all the people who are signatory to the alleged agreement to sale, as relied upon by the Assessing Officer has given their Affidavits denying the execution of that agreement. The lower authorities have simply discarded the affidavits in a summary manner which is not permissible in law. A reference can be made to the judgment of Hon'ble Allahabad High Court in the case of Shiv Narain Duli Chand reported in 72 ITR 766(All) wherein it has been held that there is no presumption that a witness appearing for an assessee come forward to give false evidence to oblige an assessee. Therefore, considering the peculiar facts of the case and the law applicable we are of the firm view that the authorities below have erred in making addition to the income of the assessee on the basis of a document which is merely a photocopy and that too without verifying as to whether details mentioned in the said document are same as mentioned in the registered sale deed. Therefore, we allow the appeal of the assessee.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 20th Sept., 2024.

Sd/-

(MANJUNATHA G)
ACCOUNTANT MEMBER

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Hyderabad.

Dated: 20.09.2024.

* *Reddy gp*

Copy of the Order forwarded to :

1. M/s. Savi Realty Holding Pvt. Ltd., 1A,
Parameshwara Apartments, No.6-3-626/1/7,
Anand Nagar Colony, Khairatabad, Hyderabad-
500 004
2. DCIT, Circle 3(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,