

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

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

आ.अपी.सं / **ITA No. 397/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Savera Construction Private Limited Hyderabad PAN:AAJCS2500B	Vs.	Asstt. C. I. T. Central Circle 3(2) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by:	Shri Ashish Kumar Shukla,DR	
सुनवाई की तारीख/Date of hearing:	15/10/2024	
घोषणा की तारीख/Pronouncement:	15/10/2024	

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

This appeal filed by the assessee is directed against the order dated 26/07/2022 of the learned CIT (A)-11, Hyderabad, relating to A.Y.2011-12.

2. The brief facts of the case are that the assessee company is engaged in the business of real estate and investment activities. The assessee has not filed its return of income for the

A.Y 2011-12. A search and seizure operation u/s 132 of the I.T. Act, 1961 was conducted in the case of M/s. Goldstone Infratech Ltd and its other associated companies on 09/11/2017. During the course of search proceedings, some incriminating material pertaining to the assessee was found. On verification of the record, it was observed that the assessee company has involved into some land transactions. Therefore, notice u/s 153C of the I.T. Act, 1961 dated 31/05/2019 was issued and served on the assessee. In response to the notice u/s 153C of the Act,, the assessee filed return of income on 08/11/2019 declaring 'nil' income. During the course of assesment proceedings, the Assessing Officer noticed that the assessee company has sold land admeasuring 4840 sq. yards to Smt. Chennamchetty vide document No.10360/2010 dated 21/10/2010 for a consideration of Rs.60.00 lakhs, whereas the stamp duty value of the property was at Rs.5,32,40,000/-. The Assessing Officer called upon the assessee to explain as to why capital gain should not be computed for transfer of property. In response, the assessee vide letter dated 12/12/2019 submitted that the property in question, is under civil suite before the Hon'ble A.P High Court and the properties are prohibited properties. Therefore, submitted that the question of capital gain does not arise. The Assessing Officer after considering the relevant facts and also taken note of stamp value of the property made addition of Rs.5,32,40,000/- as undisclosed income of the assessee towards sale of property.

3. On appeal, the learned CIT (A) sustained the addition made by the Assessing Officer.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Bench in the case of Miryala Exports and Imports (P) Ltd vs. Income Tax Officer in ITA No.413/Hyd/2024 dated 27/05/2024 where under identical set of facts, set aside the issue to the file of the Assessing Officer for further examination. Therefore, he submitted that the present appeal also may be set aside to the file of the Assessing Officer.

6. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that although the appellant claims that the sale deed has been annulled by the Hon'ble Supreme Court in C.S 14/1958 but fact remains that the appellant has failed to file relevant evidences to prove that the consideration received for sale of property has been returned to the buyer. Therefore, he submitted that the Assessing Officer has rightly assessed the fair market value of the property as undisclosed income of the assessee and therefore, their orders should be upheld.

7. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that an identical issue has been considered by the Coordinate Bench of the ITAT Hyderabad Bench in the case of Miryala Exports and Imports (P) Ltd vs. Income Tax Officer in ITA No.413/Hyd/2024 dated 27/05/2024 where the Tribunal by following its earlier order in the case of M/s. Suvishal Power Gen Ltd in ITA No.389/Hyd/2021 has set aside the issue to the file of the Assessing Officer. The relevant findings of the Tribunal are as follows:

*“7. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. I find that identical issue of computation of capital gain on transfer of property u/s 50C of the Act has been considered by the ITAT, Hyderabad Bench in the case of M/s. Suvishal Power Gen Ltd in ITA No.389/Hyd/2021. The Tribunal after considering the relevant facts and also by noticing the decision of the Hon'ble jurisdictional High Court in the case referred to in W.P Nos. 11032, 11034 and 11037 of 2018 dated 16.8.2018, has set aside the issue to the file of the Assessing Officer to redo the assessment by taking note of the order passed by the Hon'ble High Court. The relevant findings of the Tribunal are as under:*

*“9. We have heard the rival submissions and perused the material on record. In the present case, the sole grievance of the assessee is that both the lower authorities passed an erroneous order by making addition of Rs.18,46,153/- u/s 50C of the Act. Ld.AR for the assessee argued that the title of the alleged property vide document no.3867/2016 dt.24.04.2016 was in dispute before the Hon'ble High Court of Telangana and in various other courts and as such the question of applicability of provisions u/s 45 and 50C of the Act will not arise and hence, the impugned addition has no legs to stand. Whereas, Id. DR before us contended that the assessee has raised the foregoing argument for the first time ITA Nos.388 to 392/Hyd/2021 before the Tribunal which requires afresh factual verification. In view of the rival*

*submissions of the parties and on perusal of the case record, we feel that the matter requires fresh adjudication for determination of capital gain arising out of the transfer of capital asset, which as per the case of the assessee is covered by the decision of jurisdiction High Court in the case referred W.P. Nos.11032, 11034 and 11037 of 2018 dt.16.08.2018 hereinabove. The Assessing Officer is directed to record categorical finding with respect to owning of capital asset, if any, by the assessee or not and the effect of decision of jurisdictional High Court on the ownership of the capital asset by the assessee. After deciding the factual issues referred hereinabove, the Assessing Officer shall conduct afresh assessment. In the light of the above, we restore the instant issue back to the learned assessing authority for its fresh adjudication. Ordered accordingly.*

*8. I further note that in consequential assesment proceedings in the case of M/s. Suvishal Power Gen Ltd, the Assessing Officer Central Circle 3(2) Hyderabad has passed an order dated 22.02.2024 u/s 153C r.w.s. 254 and assessed 'Nil' income in respect of capital gain computed by the Assessing Officer on transfer of property. We further note that the learned Assessing Officer in his assessment order at para 6 has categorically observed that in view of the judgment of the Hon'ble Supreme Court in C.S No.14/1958 the transfer of capital asset itself has been annulled and thus, charging capital gain in the hands of the assessee has become non-est in the eyes of law. Since the appellant claims that the facts of the present case are parimateria with the facts considered by the Tribunal and the Assessing Officer, in my considered opinion, the issue needs to go back to the file of the Assessing Officer for verification of facts. Thus, we set aside the order passed by the learned CIT (A) and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of the findings given by the Tribunal in the case of Suvishal Power Gen Ltd in ITA No.389/Hyd/2021 for the ay2017-18 dated 10.10.2022 and also taking note of the observation of the Assessing Officer in consequential assessment order passed u/s 153C r.w.s. 254 of the Act in the case of M/s. Suvishal Power Gen Ltd and decide the issue of capital gain in the hands of the assessee.”*

8. In this view of the matter and by respectfully following the order of the Coordinate Bench in the above case, we set aside the order of the learned CIT (A) and restore the issue back to the file of the Assessing Officer and also direct the Assessing Officer to reconsider the issue in light of the decision of the Hon'ble Supreme Court in the case of C.S. No.14/1958 and also the decision of the ITAT Hyderabad Benches in the case of M/s. Suvishal Power Gen in ITA 389/Hyd/2021.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 15<sup>th</sup> October, 2024.

Sd/-

Sd/-

<b>(LALIET KUMAR) JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 15<sup>th</sup> October, 2024

*Vinodan/sps*

Copy to:

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2	ACIT Central Circle 3(2) Hyderabad
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*