

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

Before Shri Mahavir Singh, Hon'ble Vice-President and
Shri Manjunatha, G. Accountant Hon'ble Accountant Member

आ.अपी.सं / **ITA No.470/Hyd/2024 & SA No.12/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Omega Development Ventures (P) Ltd Hyderabad PAN:AABCO5302P	Vs.	Income Tax Officer Ward 16 (1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by: Shri P Murali Mohan Rao, CA		
राजस्व द्वारा / Revenue by: Shri B. Balakrishna, DR		
सुनवाई की तारीख / Date of hearing: 26/09/2024		
घोषणा की तारीख / Pronouncement: 25/10/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal and Stay Application filed by the assessee are directed against the order dated 15/03/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The assessee raised the following grounds:

"1. The order passed by the learned CIT (A) u/s 250 of the Act, is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2. *The learned CIT (A) erred in dismissing the appeal.*
3. *The learned CIT (A) erred in not adjudicating on the grounds of appeal bearing Nos.2, 10,11,19,20 and 21 taken before him.*
4. *The learned CIT (A) ought to have fairly appreciated the position of law on the issue that when notice issued u/s 148 is invalid, the consequential assessment order passed based on the invalid notice, is itself not valid and is liable to be quashed.*
5. *The learned CIT (A) erred in upholding the addition of Rs.16,08,00,000/-u/s 69 towards unexplained investments pertaining to A.Y 2017-18 when the sale of deed was executed on 1/9/2024.*
6. *The learned CIT (A) erred in not considering the fact that the sale deed was executed on 1/9/2024, therefore, making assessment for A.Y 2017-18 is invalid and unjustified.*
7. *The learned CIT (A) ought to have appreciated the fact that the land in question purchased for Rs.10,00,000/- is in dispute in respect of the title of the property before the Hon'ble High Court of Telangana and various other courts and as such the question of applicability of provisions of section 69 does not arise whereby the addition of Rs.16,08,00,000/- made u/s 69 of the Act, deserves to be deleted.*
8. *The learned CIT (A) ought to have appreciated that the value of the property-in-question for the purpose of Stamp Duty was not determined as on date by the Registration Authorities viz., the District Registrar, Registration and Stamps Department, keeping in view of the decision of the Hon'ble Supreme Court of India on the civil appeal filed by the third party in respect of the transactions relating to the Survey Nos.in Civil Suit No.14/1958 on the file of the Hon'ble High Court of Telangana whereby the provisions of section 69 of the Act are not applicable.*
9. *The learned CIT (A) ought to have appreciated that the Assessing Officer had erred in not referring the matter to the Departmental Valuation Officer (DVO), which act is in violation of the provisions of Supreme Court 50C of the Act.*

10. The learned CIT (A) ought to have appreciated the fact that since the property is under litigation, the Stamp Duty value of the property cannot be taken as the Fair Market Value.

11. The assessee may add, alter, or modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the appeal”.

3. Facts of the case, in brief, are that the assessee has filed its return of income declaring total loss of Rs.18,550/-. In this case, information has been uploaded in the insight portal that the assessee has acquired 50 acres of land at Sy. No.613 of Nadurgul Village, Kandukur Mandal (formerly Saroornagar Mandal) of R.R. Dist. Vide sale deed No.636/2016 dated 1-9-2014 for a consideration of Rs.10.00 lakhs, whereas the market value of the property as per Stamp Duty Authority was at Rs.15,00,00,000/-, on which stamp duty of Rs.1,08,00,000/- has been paid. Further, on perusal of the return of income filed for the A.Y 2017-18, it is seen that no such investment has been reflected in the return of income. Therefore, the assessment has been reopened u/s 147 of the I.T. Act, 1961 and accordingly, notice u/s 148 of the Act, dated 30.03.2021 was issued requiring the assessee to deliver within 30 days from the service of the notice a return in the prescribed form. In response to the notice u/s 148 of the Act, the assessee vide letter dated 5/4/2021 requested to treat the original return filed u/s 139(1) as return filed in response to notice u/s 148 of the I.T. Act, 1961. The case was selected for scrutiny and during the course of assesment proceedings, the Assessing Officer called upon the assessee to

show cause as to why unexplained investment in purchase of property cannot be assessed to tax. In response, the assessee submitted copy of sale deed dated 1/9/2014 and argued that the property, in question, was under litigation and the present market value of the property was Rs.10.00 lakhs only. However, for the purpose of registration of the property, stamp duty has been paid as per market value.

4. The Assessing Officer however, was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, when the document clearly shows market value of the property at Rs.15.00 crores, it is for the assessee to substantiate the claim that it has paid Rs.10.00 lakhs only as consideration with documentary evidence. Since the assessee has not discharged its onus by filing relevant evidences to prove consideration paid for purchase of property, the Assessing Officer opined that no prudent person would come forward to purchase a litigated property that too when the ownership of the property is under dispute. Further, it is beyond imagination that how a property worth Rs.15.00 crores can be sold for a miniscule amount of Rs.10.00 lakhs. Therefore, opined that the assessee has failed to prove claim of payment of Rs.10.00 lakhs for purchase of property and thus, made addition towards fair market value of the property as per document and stamp duty and registration charges paid amounting to Rs.16,08,00,000/- as unexplained investments u/s 69 of the I.T. Act, 1961.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee challenged the addition made by the Assessing Officer towards unexplained investment in purchase of property u/s 69 of the Act, for the A.Y 2017-18 on the ground that as per sale deed dated 1/9/2014, if at all any addition need to be made for unexplained investment, then the same needs to be considered for the A.Y 2015-16, but not for the impugned A.Y. The assessee had also challenged the addition in light of dispute on title of the property and argued that the property, in question, was disputed and the title is not clear, therefore, the assessee has purchased the property for a consideration of Rs.10.00 lakhs, however, paid stamp duty as per market value of the property as on the date of registration. Therefore, he submitted that the addition made by the Assessing Officer is unjustified and should be deleted.

6. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of relevant facts observed that, although the consideration stated to be paid at Rs.10.00 lakhs as per the registered sale deed on 1/9/2014, but the fair market value of the property as on the date of registration was at Rs.15.00 crores on which the assessee has incurred stamp duty and registration charges of Rs.1,08,00,000/-. The assessee could not explain how a property valued at Rs.15.00 crores can be

purchased for a miniscule amount of Rs.10.00 lakhs, therefore, rejected the explanation of the assessee and sustained the addition made by the Assessing Officer towards unexplained investment in property u/s 69 of the I.T. Act, 1961.

7. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee referring to ground of appeal No.6 filed by the assessee submitted that the sale deed was executed on 1/9/2014 and which falls under the financial year relevant to A.Y 2015-16. If at all any addition is required to be made towards unexplained investment, then same can be made for the A.Y 2015-16, but not for the A.Y 2017-18. The learned Counsel for the assessee further referring to the document number and year, submitted that even going by the date of registration of the property and payment of stamp duty, the same falls under the financial year relevant to A.Y 2016-17. The Assessing Officer without appreciating relevant facts made addition for the A.Y 2017-18. The learned Counsel for the assessee further submitted that even on merit, addition made by the Assessing Officer cannot be sustained for the simple reason that, there is no evidence with the Assessing Officer to allege that the assessee has paid consideration of Rs.15.00 crores for purchase of the property. Further, as per sale deed itself, the consideration has been fixed at Rs.10.00 lakhs and the same has

been paid to the vendors. Therefore, merely on the basis of market value of the property for the purpose of stamp duty, it cannot be alleged that the assessee had paid Rs.15.00 crores for purchase of property and the same can be assessed u/s 69 of the I.T. Act, 1961. Therefore, he submitted that the addition made by the Assessing Officer should be deleted.

8. The learned CIT (DR), Shri B. Balakrishna, on the other hand, supporting the orders of the learned CIT (A) submitted that going by the document number and year, it falls for the A.Y 2017-18. Although, the date of document was 1/9/2014, but there is no clarity as to why the same has been documented for the financial year 2016. Further, there is a litigation on the property, which is evident from endorsement in page No.4 where there is a reference of writ petition filed before the Hon'ble Telangana High Court at Hyderabad. It was further stated that the document has been returned unregistered to the party concerned with a direction to present the same before the competent Registration Authority, District East. From the above endorsement, it is very clear that there is a dispute about the date of execution of the document and therefore, the Assessing Officer by considering the year of document has assessed the unexplained investment in purchase of property for the A.Y 2017-18. The learned CIT (DR) further submitted that in respect of consideration paid for purchase of property, although, there is no dispute on payment of Rs.10.00 lakhs as per the document, but

the market value of the property has been fixed at Rs.15.00 crores on which the assessee has paid Rs.1,08,00,000/- stamp duty. The assessee could not explain as to how a property valued at Rs.15.00 crores can be purchased for Rs.10.00 lakhs. Although the appellant claims that there is a dispute on title of the property but no evidence has been filed to substantiate the claim. The Assessing Officer and the learned CIT (A) after considering the relevant facts has rightly assessed unexplained investment in purchase of property u/s 69 of the I.T. Act, 1961 and thus, their orders should be upheld.

9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that as per the registered document dated 1/9/2014, the property has been purchased for a consideration of Rs.10.00 lakhs and the stamp duty has been paid on market value of Rs.15.00 crores. In fact, the Assessing Officer and the learned CIT (A) did not dispute the date of execution of sale deed, sale consideration as per sale deed and market value fixed by the authorities for payment of stamp duty. The only dispute is with regard to A.Y in which unexplained investment, if any, can be assessed to tax. The Assessing Officer assessed unexplained investment in purchase of property by considering market value of the property for payment of stamp duty which was fixed at Rs.15.00 crores and also stamp duty amount of Rs.1,08,00,000/- paid by the assessee for registration

of the document. In fact, there is no dispute on this aspect also from the assessee. However, the dispute is only with regard to the year in which such unexplained investment, if any, can be assessed to tax. The learned Counsel for the assessee took us to the impugned sale deed dated 1/9/2014 and if we go by the date of sale deed, the same falls under the financial year 2014-15 relevant to A.Y 2015-16. Although, the learned DR refers to the document number and year and also the date of registration of the property i.e. on 5/2/2016, but the same falls under financial year 2015-16 relevant to A.Y 2016-17 but not for the A.Y 2017-18. Even if we go by the date of payment of stamp duty, the appellant has paid stamp duty on 23/11/20-15 which is evident from the document itself. Therefore, going by the date of execution of document i.e. on 1/9/2014 and also the date of registration of the document i.e. on 5/2/2016, both does not fall under the impugned A.Y 2017-18. Therefore, we are of the considered view that the Assessing Officer is erred in assessing unexplained investment in purchase of property u/s 69 of the I.T. Act, 1961 for the A.Y 2017-18. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer. Therefore, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the addition made towards unexplained investment u/s 69 of the I.T. Act, 1961 for the A.Y 2017-18.

10. As regards the argument of the learned Counsel for the assessee on merit, we find that although the assessee claims that there is a dispute on title of the property and because of that the present market value of the property was only at Rs.10.00 lakhs, in our considered view, since the impugned addition made by the Assessing Officer towards unexplained investment in purchase of property cannot be assessed to tax for the A.Y 2017-18, all other issues raised by the assessee becomes academic in nature and thus, other arguments taken by the assessee has been rejected as infructuous.

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

SA No.12/Hyd/2024 (Arising out of ITA No.470/Hyd/2024)

12. Since the appeal filed by the assessee has been disposed of, the Stay Application filed by the assessee becomes infructuous and the same has been dismissed as not maintainable.

Order pronounced in the Open Court on 25th October, 2024.

Sd/- (MAHAVIR SINGH) VICE-PRESIDENT	Sd/- (MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 25th October, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 16(1) Hyderabad
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order