

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.156/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

Syed Ahmed Zeeshanuddin Vs. ADIT (International Taxation)-2
Hyderabad Hyderabad
[PAN : AAFPZ1046A]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

आ.अपी.सं / ITA No.157/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

Asra Ahmed Vs. ADIT (International Taxation)-2
Hyderabad Hyderabad
[PAN : AENPA6951P]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee Shri P.Murali Mohan Rao,
by: AR
राजस्व द्वारा/Revenue by: Shri B.Bala Krishna, CIT, DR

सुनवाई की तारीख/Date of hearing: 09/10/2024
घोषणा की तारीख/Pronouncement on: /10/2024

आदेश / ORDER

PER. MANJUNATHA G., A.M:

These two appeals filed by two different assessee's are directed against separate, but, identical final assessment orders passed by the learned Assessing Officer under section 153C read with section 144C(13) of the Income Tax Act, 1961 ("the Act"), in pursuant to directions under section 144C(5) of

the Act, dated 26/12/2023 issued by the Dispute Resolution Panel-1, Bengaluru for the assessment year 2017-18. Since, the facts are identical, for the sake of convenience, these appeals are heard together and disposed by a consolidated order.

2. The assessee filed more or less common grounds of appeal and therefore, for the sake of clarity, grounds of appeal filed in I.T.A.No.157/Hyd/2024 in the case of Asra Ahmed are reproduced hereunder:

1. *The final assessment order passed by the ADIT (INT TAXN)-2 (herein after referred to as "AO" is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.*
2. *The Ld.A.O. grossly erred in invoking the provisions of sec.153C of the I.T.Act without there being any incriminating material found belonging to the appellant during the course of search in the premises of third party.*
3. *The Ld.A.O ought to have appreciated the fact that the issuance of notice u/s 153C has to be done before the completion of assessment u/s 153A of the Income Of the Income tax Act, 1961 ("the Act") in the case of searched person.*
4. *The Ld.A.O has erred in issuing notice u/s 153C on 30.03.2022 after lapse of 6 months from the date of completion of assessment u/s 153A i.e.27.09.2021 of the Act which is incorrect and bad in law.*
5. *The Ld.A.O ought to have appreciated the fact the proceedings u/s 153C shall not be initiated on the same issue as the proceedings u/s 148 has not been closed.*
6. *The final assessment order u/s 144C(13) passed on 19.01.2024 is barred by limitation u/s 153B of the Act as the notice u/s 153C was issued on 30.03.2022 and the time limit to finalize the assessment is on or before 31.03.2023.*

7. (a) *The Ld.AO has grossly erred by not appreciating the fact that in the hands of the searched party no addition for this amount was made as unaccounted income while passing assessment order u/s 153A of the year under reference.*
- (b) *The Ld.AO ought to have appreciated the fact that assessment u/s 153A has been completed in the searched party without any addition therefore, he cannot make any addition u/s 153C of the Income Of the Income tax Act, 1961 ("the Act"), 1961, in the hands of the impugned assessee.*
8. (a) *The Ld.AO has erred in disallowing the cost of improvements incurred by the assessee without considering the submission made by the assessee.*
- (b) *The Ld.AO ought to have appreciated the fact that the assessee has purchased the area on 03.12.1996, constructed the building and sold the property of his share to Syed Hameeduddin Ahmed on 19.10.2016 in the year relevant to A.Y.2017-18.*
- (c) *The Ld.AO erred by not considering the fact that the assessee has incurred an amount of Rs.1,83,55,748/- towards the development of the property along with the modifications required and the same were made through proper banking channels.*
- (d) *The Ld.AO ought to have appreciated the fact that the cost incurred by the assessee can be considered as proper cost of improvement and eligible to be deducted from the sale consideration received on transfer of capital asset under section 48 of the Income tax Act, 1961 ("the Act").*
9. (a) *The Ld.AO erred in making an addition of Rs.2,11,94,285/- to the income from other sources without there being any evidence but merely based on the assumptions which is incorrect and bad in law.*
- (b) *The Ld.AO has erred in making addition on the basis of loose sheets seized from the third party in the course of search u/s 132 which are neither relating to assessee nor having relevant documentary evidence for making addition u/s 56(vii) of the Act.*

(c) *The Ld.AO ought to have considered the fact that the appellant has not received any cash over and above the sale consideration which is shown in the actual sale deed from Syed Naveeduddin Quadri.*

10. *The Ld.AO has erred in initiating the penalty proceedings under section 270A and 271D of the Income Tax Act, 1961 ("the Act"), 1961.*

11. *The appellant may add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.*

3. Brief facts of the case are that the assessee is a non-resident and has filed her return of income for the A.Y.2017-18 on 12.08.2017, declaring total income of Rs.17,36,260/-. Subsequently, Ld.AO has received information from ACIT, Central Circle-2(3), Hyderabad vide letter dated 19.01.2022 that certain material pertains / relates to the assessee found during the course of search in the case of Skill Promoters Pvt Ltd. The documents seized refers to agreement of sale entered into by Sri Syed Ahmed Ziauddin and Smt. Asra Ahmed with respect to immovable property i.e. building consisting of basement floor, ground, first and second floor admeasuring 722 sq.yds and 153 sq.yds, situated at Road No.10, Banjara Hills, Hyderabad vide sale deed document No.5377 and 5378/2016 dated 19.10.2016 for a sale consideration of Rs.3,68,00,000/- and Rs.83,00,000/- respectively. On receipt of information, it is found that the assessee along with two others has sold land and building situated at Road No.10 for a consideration of Rs.3,68,00,000/- to Sri Syed Naveeduddin Quadri, Director of M/s Skill Promoters Pvt. Ltd. The details of transactions show that Syed Naveeduddin Quadri has paid Rs.3,75,00,000/- in advance and promised to pay the balance of Rs.5,25,00,000/- on or before 01.08.2016. Considering the above document, statement of Sri Naveeduddin Quadri was taken on oath, which

was recorded during the course of search and seizure, where he has admitted sale deed between Smt. Asra Ahmed and Sri Syed Ahmed Ziauddin and also confirmed consideration paid for purchase of property. Subsequently, during the course of post search proceedings, vendors of the above property i.e. Smt. Asra Ahmed and Sri Syed Ahmed Ziauddin were summoned, in response, authorized representative of the assessee Sri Anwar Iqbal appeared and submitted reply and stated that the assessee has offered capital gains only on sale consideration received in cheque and cash consideration received to the tune of Rs.4.49 crores was not offered. Based on the above document, notice u/s 153C of the Act dated 30.03.2022 was issued and served on the assessee. However, there was no response to the notice. Subsequently, another notice dated 01.02.2023 was issued. In response to notice u/s 142(1), the assessee submitted that return of income filed in response to notice u/s 153C and requested 15 days' time for submitting response. The Ld.AO after considering relevant evidences found during the course of search and also taking note of return of income filed by the assessee, recomputed the long term capital gains derived from sale of property by adopting SRO value and also made additions towards cash consideration over and above the sale consideration as per provisions of section 56(2)(vii) of the Act, and passed draft assessment order u/s 144C(1) on 31.03.2023, determining total income at Rs.4,11,26,293/-.

4. The assessee has filed objections against draft assessment order before DRP on 28.04.2023 and challenged proposed additions made by the Ld.AO towards computation of long-term capital gains and additions towards cash consideration u/s 56(2)(vii) of the Act. The DRP, vide directions issued u/s 144C(5) of the Act on 26/12/2023, rejected the objections filed by the assessee and upheld the additions proposed by the Ld.AO.

Thereafter, the Ld.AO passed final assessment order u/s 153C r.w.s.144C(13) of the Act, on 19/01/2024 and determined the total income at Rs.4,11,26,293/-.

5. Aggrieved by the final assessment order, the assessee is in appeal before us.

6. The Id.Counsel for the assessee submitted that the final assessment order passed by the Ld.AO u/s 153C r.w.s.144C(13) dated 19.01.2024 is barred by limitation, because as per section 153B of the Act, when notice is issued u/s 153C on 30.03.2022, the time limit for passing assessment order is on or before 31.03.2023. In this regard, he relied upon the decision of Hon'ble High Court of Rajasthan in the case of Principal Commissioner of Income Tax Vs. Virendra Choudhary (2022) 139 taxmann.com 90. Ld.Counsel for the assessee further referring to provisions of sections 144C and 153B submitted that, provisions of section 144C and 153B are separate code itself and whatever time limits prescribed therein is nothing to do with time limit prescribed u/s 153C of the Act. As per the provisions of section 153B and second proviso, the time limit for completion of assessment or reassessment in the case of other person referred to in section 153C shall be the period of 18 months from the end of the financial year in which last of the authorizations for search u/s 132 or for requisition u/s 132A was executed or 12 months from the end of the financial year in which the books of accounts or documents or assets seized or requisitioned are handed over u/s 153C to the Ld.AO having jurisdiction over such other person, whichever is later. In the present case, the Ld.AO has received documents found during the course of search on 19.01.2022 and as per provisions of section 153B, the time limit available for completion of assessment is up to 31.03.2023.

Since the Ld.AO passed assessment order on 19.01.2024, it is beyond limitation as per section 153B of the Act and needs to be quashed. He further referred to the provisions of section 144C(15) and submitted that there is no dispute that the assessee is an eligible assessee. But facts remain that, the extended time limit as per section 153B is not available even in case of eligible assessee. Therefore, he submitted that the assessment order passed by the Ld.AO is beyond limitation and needs to be quashed.

7. Ld. DR on the other hand referring to provisions of section 144C and 153B submitted that the assessee is an eligible assessee and thus, the interpretation sought to be achieved by Ld.Counsel for the assessee in light of provisions of section 153B that even in the case of eligible assessee, the extended time limit is not available would defeat the purpose of legislation. Therefore, he submitted that once the assessee is an eligible assessee, the assessment is to be completed in terms of section 144C of the Act and as per the said provisions, the time limit for completion of assessment is extended by 12 months and thus, the order passed by the Ld.AO on 19.01.2024 is well within time, hence needs to be upheld.

8. 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 the appellant is an eligible assessee in terms of section 144C(15) of the Act and in case of an eligible assessee, the assessment shall be framed in terms of provision to section 144C of the Act. But fact remains that, the present assessments have been completed u/s 153C of the Act in consequent to search conducted u/s 132 of the Act. In the case of search assessments u/s 153A or 153C, the time limit for completion of assessment has been provided u/s 153B of the Act. As per

section 153B, notwithstanding anything contained in any other provisions of this Act, the Ld.AO shall make an order of assessment or reassessment in respect of each assessment year falling within six assessment years referred to in Clause (b) sub section (1) of section 153A within a period of 21 months from the end of the financial year in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed. Second proviso to section 153B prescribed time limit for making the assessment or reassessment in the case of the person referred to in section 153C and as per said proviso, the assessment shall be completed within 18 months from the end of the financial year in which the last of the authorizations for search u/s 132 or 12 months from the end of the financial year in which the books of accounts or documents or assets seized are handed over to the Assessing Officer having jurisdiction over such other person whichever is later. Since the provisions of section 153B itself is a separate code and time limit provided thereunder is applicable, notwithstanding anything contained in section 153, in our considered view, the assessment shall be completed on or before time limit prescribed u/s 153B of the Act. If we go by time-limit provided u/s 153B of the Act, in the present case, search was taken place on 22.10.2019 in the case of M/s Skill Promoters Pvt Ltd. and 18 months from the end of the financial year in which last of authorizations was executed is 31.12.2022. Further the Ld.AO received information on 19.01.2022 and 12 months from the end of the financial year in which the information received by the Ld.AO is on 31.03.2023. Therefore, in our considered view, the Ld.AO ought to have completed the assessment on or before 31.03.2023 irrespective of the fact that the assessee is an eligible assessee in terms of section 144C and 153B of the Act. Since, the Ld.AO has passed the final assessment order on 19.01.2024, in our considered view,

the assessment order passed by the Ld.AO is beyond limitation provided u/s 153B and thus, void ab-initio and liable to be quashed.

9. The assessee had relied upon the decision of ITAT Hyderabad in the case of Shri Syed Gulam Mohiuddin Vs.ITO in ITA No.136/Hyd/2023 dated 03.06.2024. We find that the coordinate Bench had considered an identical issue of non-resident in terms of section 148 of the Act and after considering the relevant facts including the status of the assessee as non- resident and also the provisions of section 144C(15) and 153 of the Act, held that the extended time of 12 months in terms of section 153(4) of the Act is available only in case, where reference u/s 92CA is made to Transfer Pricing Officer, but not in a case of an assessment of non-resident u/s 148 r.w.s. 144C of the Act. Relevant findings of the Tribunal are as under:

“8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee is a non-resident individual for the A.Y 2017- 18 and is an eligible assessee as per section 144C(15) of the I.T. Act, 1961. As per section 144C of the Act, the assessment of an eligible assessee shall be dealt with in accordance with the said provision. As per the provision of section 144C, in case of an eligible assessee, the Assessing Officer shall pass a draft assessment order and served on the assessee, if he propose to make any variation in his total income. The assessee, after receipt of draft assessment order shall have two options. As per subsection (2) of section 144C, on receipt of draft assessment order, the eligible assessee shall within 30 days file its acceptance of the variations to the Assessing Officer or file his objection, if any, to such variation with the DRP. If the eligible assessee file his acceptance to the Assessing Officer, then the Assessing Officer shall complete the assessment within one month from the end of the month in which the acceptance is received. In case an eligible assessee files objection before the DRP, then the DRP shall issue its direction within 9 months from the end of the month in which the draft order is forwarded to the assessee. Thereafter, the Assessing Officer shall pass his final assessment order within one month from the end of the month in which such direction is received.

9. In the present case, there is no dispute with regard to the fact that the appellant has filed his objection against the draft assessment order passed by the Assessing Officer before the DRP. Therefore, in ordinary course, the extended time limit for completion of the assessment should be available to the Assessing Officer as per section 144C r.w.s. 153C of the I.T. Act, 1961. But, the argument of the learned Counsel for the assessee is that as per section 153(4) of the Act, the extended period of 12 months for completion of assessment is available only where a reference under sub section (1) of section 92CA is made during the course of the assessment or re-assessment, but not in a case where there is no reference to the TPO. We find force in the argument of the learned Counsel for the assessee for the simple reason that, as per section 153(2), the time limit for completion of assessment or re-assessment shall be 12 months from the end of the financial year in which notice u/s 148 was served. However, sub-section (4) of section 153 extends the said time limit by another 12 months notwithstanding anything contained in sub-section (1), (1A), (2), (3) and (3A) where a reference u/s 92CA(1) is made during the assessment proceedings to the TPO. In other words, except the cases of the reference to the TPO, extended time limit of 12 months for completion of assessment is not available even in a case of Non-Resident assessment, even though the said assessment proceedings is covered u/s 144C of the Act. Since the extended time limit of 12 months is not available in the case of Non-Resident as per section 153(4) of the Act, in our considered view, the Assessing Officer ought to have completed the assessment as per the provisions of section 153(2) of the Act which is one year from the end of the financial year in which notice u/s 148 was served. In the present case, if we go by date of notice issued u/s 148 of the Act i.e. 30.03.2021, the time limit for completing the assessment u/s 147 was available up to 31/03/2022 and thus, the final assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C dated 12.01.2023 is clearly barred by limitation.

10. This proposition is covered by the decision of the Hyderabad Bench of the Tribunal in the case of Shri Farooq Ali vs. Income Tax Officer in ITA No.104/Hyd/2023 order dated 10/04/2024. The relevant findings of the Tribunal are as under:

“23. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.2,55,75,000/- u/s 69 of the I.T. Act on the ground that as

per the sale deed, the assessee had paid total sale consideration of Rs.2,55,75,000/- on 5.10.2016 to the vendors by way of cash, that the vendors have admitted and acknowledged the same and the assessee could not explain the source of such payment made for purchase of the immovable property. While doing so, he further held that the sale deed in itself is conclusive evidence and the contents of the same could not be proved further and a civil suit filed by the 3rd party claiming the title to the said property after the registration of sale deed between the assessee and the vendors will not negate the contents of the sale deed.

23.1 It is the submission of the learned Counsel for the assessee that the assessment order passed by the Assessing Officer is barred by limitation. It is also his submission that the assessee being an NRI and settled in UAE does not have any economic activities in India, therefore, there cannot be any addition of unexplained investment in the hands of the assessee as these falls under article 22 of Indo-UAE DTAA which makes such income taxable in the country of residence i.e. UAE unless these investments are proved to be made out of income generated in India.

24. We find some merit in the above argument of the learned Counsel for the assessee. A perusal of the record shows that the notice u/s 148 was issued on 24.2.2021, a fact not disputed by the Revenue. There is no reference made to the TPO for making any adjustment of arm's length price of the international taxation. We find the provisions of section 153(2) read as under:

"153. Time limit for completion of assessment, reassessment and re-computation.

(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:

Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

[Provided further that in respect of an order of assessment relating to the assessment year commencing on the—

(i) 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(ii) 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.

(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of nine months from the end of the financial year in which such return was furnished.

(2) No order of assessment, reassessment or re-computation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted."

25. Thus, a perusal of the above provision clearly shows that the time limit for completion of the assessment in the present case lapses on 31.3.2022. However, the final assessment order u/s 144 r.w.s. 144C has been passed on 30.01.2023 which is beyond the time limit prescribed u/s 153(2). Since the assessment order has been passed on 30.01.2023 as against 31.03.2022, therefore, the same, in our opinion, is barred by limitation and accordingly, the assessment order is liable to be quashed. We therefore, quash the re-assessment proceedings being barred by limitation. Since the assessee succeeds on this preliminary legal issue, the

other grounds become academic in nature and therefore, are not being adjudicated.

11. In this view of the matter and considering the facts and circumstances and also by following the decision of the Hyderabad Bench of the Tribunal in the case of Farooq Ali vs. Income Tax Officer (Supra), we are of the considered view that the assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C(13) dated 12.01.2023 is barred by limitation and thus we quash the re-assessment order passed by the Assessing Officer.”

10. In view of this matter and by respectfully following the decision of Hon'ble High Court of Rajasthan and also the decision of the coordinate Bench of Hyderabad in the case of Shri Syed Gulam Mohiuddin (supra), we are of the considered view that the final assessment order passed u/s 153C r.w.s.144C(13) dated 19.01.2024 is barred by limitation and liable to be quashed. Thus, we quash the assessment order passed by the Ld.AO dated 19.01.2024.

11. In the result, appeal filed by the assessee in I.T.A.157/Hyd/2024 is allowed.

I.T.A.156/Hyd/2024

12. Facts and issue involved in this appeal are identical to the facts and issue, which we had considered in I.T.A.157/Hyd/2024, in the case of Smt. Asra Ahmed for the A.Y.2017-18. The reasons given by us in preceding paragraph No.7, 8 and 9 shall *mutatis mutandis* apply to this appeal as well. Therefore, for similar reasons, we are of the considered view that the final assessment order passed by the Ld.AO u/s 153C r.w.s.144C(13) dated 19.01.2024 is barred by limitation and thus, we quash the assessment order passed by the Ld.AO dated 19.01.2024.

13. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 29th October, 2024.

Sd/-

(K. NARASIMHA CHARY)

JUDICIAL MEMBER

Hyderabad,

Dated: 29/10/2024

L.Rama, SPS

Sd/-

(MANJUNATHA G.)

ACCOUNTANT MEMBER

Copy forwarded to:

1. (i) Smt.Asra Ahmed and (ii) Shri Syed Ahmed Zeeshanuddin, C/o P.Murali & Co. Chartered Accountants, 6-3-655/3/2, Somajiguda, Hyderabad
2. The ADIT (International Taxation)-2, Hyderabad
3. The Dispute Resolution Panel-1, Kendriya Sadan, 4th Floor, C Wing, Bengaluru
4. The Pr.CIT, Hyderabad
5. The DR, ITAT, Hyderabad6
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