TaxGuru
Complete tax solution

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

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.339/Hyd/2022		
Assessment Year: 2017-18		
Income Tax Officer, (International Taxation) – 1, Hyderabad.	Vs.	Aruna Gullapalli, Hyderabad. PAN No.BFHPG9489L.
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan Rao	
Revenue by:	Shri Kumar Adithya	
Date of hearing:	23.01.2023	
Date of pronouncement:	31.01.2023	

O R D E R

Per Laliet Kumar, J.M.

The appeal of the Revenue for A.Y. 2017-18 arises from the order of Commissioner of Income Tax, Hyderabad – 10 dated 30.03.2021 invoking proceedings under section 144 of the Income Tax Act, 1961 (in short, "the Act").

2. Though the Revenue has raised as many as ten grounds but all the grounds are inter-related and the only effective ground out of them reads as under :

> *"Whether on the facts and in the circumstances of the case, the ld.CIT(A) is justified in law in allowing relief towards exemption u/s 54F of the Income Tax Act, 1961 and cost of acquisition u/s 48 of the Income Tax Act, 1961 on the basis of additional evidence without calling for remand report under Rule 46A of the Income Tax Rules, 1962 and conducting enquiry under section 250(4) of the Income Tax Act, 1961."*

2.1. The appeal filed by the Revenue is barred by limitation by 74 days. The appellant / Revenue has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. In this connection, the appellant has filed an affidavit for condonation of the said delay wherein, it was, inter-alia, affirmed that Covid-19 Pandemic situation made adverse effect on them in obtaining copies and arranging logistics for filing the appeal within the stipulated time of 60 days i.e., by 05.06.2021 and relied on the orders of Hon'ble Supreme Court vide order dt.27.04.2021 wherein it was held "*we therefore, restore the order dt.23.03.2020 and in continuation of the order dt.08.03.2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings, whether condonable or not, shall stand extended till further orders*.". In view of the above, we hold that any delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that appellant/ Revenue's impugned delay in filing this appeal is neither intentional nor deliberate but due to the circumstances beyond their control. Hence, the same stands condoned. Case is now taken up for adjudication on merits.

3. The brief facts of the case are that assessee who is an individual filed her return of income for A.Y. 2017-18 admitting a total income of Rs.4,28,400/- and subsequently, the case was selected for limited scrutiny under CASS. As there was no response from the assessee for the notices sent by the Assessing Officer, he issued show cause notice regarding proposed completion of assessment ex-parte u/s 144. As there was no reply from the assessee even to the said show cause notice, Assessing Officer completed the assessment ex-parte interalia by making addition of Rs.3,00,00,000/- as long term capital gain disallowing cost of acquisition as well as deduction towards 54F and Rs.1,85,00,000/- towards unexplained investment u/s 69 of the Act and thus assessed the total income at Rs.4,89,28,400/-.

4. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before ld.CIT(A) who passed order in favour of the assessee by holding as under :

> *"8. The details furnished by the appellant are taken on record. The documentary evidence submitted by the appellant are actually "Public documents" in as much as they are sale of one property and purchase of another property where the transactions have taken place through a visible trial i.e, through bank. In-fact the sale of property and reinvestment in the property are visible transactions as per the assessment order itself. The assessment order speaks of non-cooperation and noncompliance from the appellant and hence additions were made on the following counts:*
>
> | | | |
> |---|---|---|
> | *(a)* | *Deduction towards cost of acquisition* | *Rs. 8,15,710/-* |
> | *(b)* | *Deduction u/s 54F* | *Rs. 2,91,84,290/-* |
> | *(c)* | *Unexplained investment u/s 69* | *Rs..1,85,00,000/-* |

9. Documentary evidence is submitted by the appellant during the course of appellate proceedings and the' same is' admitted by me as there is no complexity involved which would require the verification of the same by the AO again.

10. After admitting the documentary evidence submitted on. 08-03-2021, the grounds of appeal raised by the appellant are adjudicated. as under:

11. The Ground of appeal No.1 relates to denial or cost of acquisition of the property sold by the AO amounting to Rs. 8,15,710/- as claimed by the appellant.

11.1 With respect to the above claim, the appellant submitted the sale deed copy executed by M/s M.M.Financiers Pvt. Ltd., and others with the appellant on 23rd day of October, 1997 and the cost of the land sold was mentioned @ Rs. 2,40,000/- in page 5 of the sale deed which reads as under:

"Whereas the vendors agree to sell layout plot No.16, admeasuring 480.00 square yards of "Jayabheri Enclave" situated in survey Nos. 103/1, 105 and 106 of Gachibowli village, Seri Lingampally Mandal and municipality, Ranga Reddy District, hereinafter referred to as the "schedule property" for a total sale consideration of Rs. 2,40,000/- (Rupees two lakhs forty thousand only)".

11.2 The same is considered and the AO is directed to give full benefit of indexed cost of acquisition to the appellant. Thus, this ground of appeal No.1 stands allowed.

12. The Ground of appeal No.2 relates to claim of re-investment benefit u/s 54F, and the denial of the same by the AO during the course of assessment proceedings. The same is adjudicated as under on the basis of documentary evidence available on records.

(A) A sale deed was entered by Smt. Aruna Gullapalli with Bayshore Constructions Pvt. Ltd., on 07-04-2016, for sale of plot No.16, admeasuring 480 sq. yards of Jayabheri Enclave, in Sy.No.103/1, 105 and 106 situated at Gachibowli village, Serilingampally Mandel, R.R.Dist., and vendee has agreed to purchase said property for a consideration of Rs. 3,00,00,000/-(Rupees three crores only).

(B) The said amount was received by the appellant on different dates via different cheques as evidenced by the sale deed.

(C) The bank account statement of the appellant shows a flow of Rs. 24,75,000/-on 28-03-2016, a flow of Rs. 99,00,000/- on 15-04-2016 and also flow of Rs. 1,96,41,750/- on 29-04-2016 amounting to Rs. 3,20,16,750/- to M/s Jayabheri Properties Pvt. Ltd.

(D) The appellant has entered into an agreement of sale with M/s Jayabheri Properties Pvt.Ltd., & Others on 29-04-2016, for purchase of a plot for Rs. 1,34,000/- (Schedule A Property) along with Residential villa / house (Schedule B property) for total cost of Rs. 5,68,48,500/-. In lieu of the above, as per the agreement of sale, the purchaser has paid an amount of Rs3,05,00,000/- (Rupees Three crores and five lakhs only) towards earnest /advance sale consideration in favour of the vendor/developer of the second part as under :

(i) Rs. 20,000/- vide cheque No.869022 dt.17.03.2016 drawn on ICICI Bank.
(ii) Rs.18,93,000/- vide cheque No.896020 dated 12.04.2016, drawn ICICI Bank (received cheque for Rs.19,80,000/- which includes Rs.87,000/- towards service tax).
(iii) Rs.99,00,000/- vide cheque No.896023 dated 12-04-2016, drawn ICICI Bank.
(iv) Rs. 1,00,000/- received towards TDS.
(v) Rs. 1,84,02,000/- vide cheque No.896026 dt. 28-04-2016, drawn ICICI Bank(received cheque for Rs. 1,96,41,750/- which includes Rs. 12,39,750/- towards service tax).
(vi) Rs. 1,85,000/- received towards TDS.

and the receipt of the same is hereby admitted and acknowledged by the vendor/developer of the second part.

(E) However, the appellant due to financial stringency could not purchase the above mentioned property but instead purchased a residential flat admeasuring 4905 sq. ft., Flat No.B0101 from M/s Jayabheri Properties Pvt. Ltd., through an . Agreement cum sale cum General Power of Attorney on 23-02-2021 for an amount of Rs. 3,00,83,250/- and the payment schedule is as mentioned below:

(a) Rs. 18,93,000/- vide cheque No.896020 dated 17-03-2016 drawn ICICI Bank (received cheque for Rs.19,80,000/- which includes Rs. 87,000/- towards service tax).

(b) Rs. 1,00,00,000/- vide cheque No.896023 dated 12-04-2016 drawn ICICI Bank which is including of TDS u/s 194IA.

(c) Rs. 1,81,90,250/- vide cheque No.896026 dated 28-04-2016, drawn ICICI bank which is including of TDS u/s 194IA.

12.1 Thus, the appellant has factually demonstrated, that the entire sale consideration received on sale of plot was reinvested in a residential property, though the legal formalities of getting the property in the appellant's name did not take place within the time stipulated u/s 54F. Here arises a legal complication.

12.2 The heading of section 54F is as under :

Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house" ……… Section 54F is intended to encourage an investment in a residential house, by an individual or Hindu Undivided Family out of the sale proceeds earned by disposing of any long term capital asset.

12.3 Legal precedents u/s 54F which is an analogous section, hold that the fact of utilization of sale proceeds in property, though not registered during the specified period would qualify for the benefit of reinvestment.--

12.4 For availing exemption u/s 54F, the net consideration should be invested in specified asset before the date of filing return u/s 139. It was held in Nipun Mehrotra vs. ACIT(2008) 297 ITR (AT) 110 (Bang) that exemption u/s 54F will be available if there is compliance before filing return u/s 139(4).

12.5 In the context of 54(1), the Supreme Court while affirming the decision of the API-IC in the case of CIT vs. Aravindha Reddy T.N. (1979) 120 ITR 46 SC held as under:

"Undoubtedly, in the instant case, each release, in the circumstances, is a transfer of the releaser's share for consideration to the releasee. In plain English, transferee purchased the share of each of his brothers. It was for a price of Rs. 30,000/- each. Had this been taken from Non-fraternal owners of shares or from one stranger-owner, plain spoken people would have called it a purchase. Why, then, should legalities be allowed to play this linguistic distortion? There is no reason to divorce the ordinary meaning of the word "purchase" as buying for a price or equivalent to price for payment in kind or adjustment towards an old debt or for other monetary consideration from the legal meaning of that word in section 5411) of the Income Tax Act, 1961. if you sell your house and make a profit, pay to revenue, what is due to it. But if you buy or build another, subject to the conditions of section 54(1), you are exempt".

12.6 Further, in Mukesh G. Desai(HUF) vs. ITO(2009) 312 ITR(AT) (302)(MUM) it was held:

"Where the assessee enters into an agreement for investment in purchase of a flat, but later the agreement gets cancelled and the assessee gets refund and utilizes the same for purchase of another property within specified date, relief u/s 54F cannot be denied, merely because of the abortive intervening investment, which was not concluded. It was also decided in this case that the consideration of the property paid by way of shares in construction company constituted investment in residential house in the light of the fact that such shares entitled the assessee to a house property as a member".

12.7 Thus, in the instant cape, it is factually demonstrated that the appellant has reinvested the whole sale consideration in pursuance of a house property well before the filing of return of income The intent was to clearly acquire a title in a residential property and it was acquired, beyond the stipulated time limit, but the sale consideration was utilized only for the purpose of the acquisition of the house property.

12.8 The supposed doctrine that in revenue cases, the " substance of the matter" may be regarded as distinguished from the form or the strict legal position, was given its quietus by the House of lords in duke of Westminister vs. IR 19 TC 490, 520, 524,. by the privy council in Bank of Chettinad Ltd vs. CIT, 8 ITR 522, 526 and by the Supreme Court in C1T vs. Keshavlal Patel, 66, ITR 692, 699-700.

12.9 Thus, in view of the above factual footing and principle of law, the ground of appeal No.2 raised by the appellant is allowed and the AO is directed to allow the claim of deduction u/s 54F of the I.T.Act, 1961. There is a minor mismatch in the amounts and cheque numbers mentioned in the agreement of sale which took place on 29-04-2016 and the agreement cum sale cum General Power of Attorney on 23¬02-2021. In largesse the amounts match. Hence, the minor discrepancies are ignored.

13. The Ground of appeal No. 3 relates to treatment of Rs. 1,85,00,000/- paid to the builder for purchase of residential property as unexplained investment u/s 69A.

13.1 With respect to the above. addition made to the returned income, the AO has made the following observations which is reproduced below:

Further, as per assessee's 360 profile available with this office, it is seen that the assessee has-made-investment in immovable property during the F.Y. 2016-17 amounting to Rs. 1,85,00,000/-. The immovable property is worth Rs. 5,68,48,500/- and the assessee has purchased the same

from M/s Jayabheri Properties Pvt Ltd. The assessee has neither given any information about this investment nor established the sources for the same. M/s Jayabheri Properties Pvt. Ltd., has also not submitted the information requisitioned from them u/s 133(6). Thus the sources of funds for this investment remain unexplained. Accordingly, the amount of Rs. 1,85,00,000/- is treated as unexplained investment u/s 69 of the I.T.Act, 1961 and as per this provisions Rs.1,85,00,000/- is deemed to be the income of the assessee for the A.Y. 2017-18".

13.2 The AR's of the appellant has submitted as under during the course of appellate proceedings evidenced by documents as reproduced below:

5. Source for INR. 1.85 Crores-

5.1 The appellant has received the sale proceeds of INR 3.00 crores in the month of April 2016 as explained above out of which a sum of INR 1.85 crores has been paid to JPPL towards investment in new residential property to avail deduction u/ss 54F on 29.04.2016.

5.2 The relevant bank statement is attached herewith. A sum of INR 1,96,41,750/- has been paid on that date which is inclusive of Service Tax. The break-up of the payment is INR 1,85,00,000/- and INR 11,41,750/- towards the Service Tax.

6. Further the appellant is enclosing the following relevant documents.

6.1 Form 26AS for AY 2016-17 and AY 2017-18.

6.2 Statement of Account from the developer "Jayabheri Properties (P) Ltd."

6.3 Income Tax Return for A. Y. 2017-18.

13.3 After due verification of the above mentioned information and after consideration of totality of circumstances, it is felt that the appellant has an explained source for investment in residential property and hence, the addition of Rs. 1,85,00,000/- u/s 69A is uncalled for and consequently the application of section 115 BBE fails. The facts and the evidence stand solidly in support of the appellant.

14. Thus, the ground of appeal no.3 also stands allowed."

5. Feeling aggrieved with the order of ld.CIT(A), Revenue is now in appeal before us.

6. Before us, with regard to exemption u/s 54F of the Act, ld. DR submitted that while filing the return of income, the assessee disclosed sale of property to M/s. Bayshore Constructions Pvt Ltd., wherein full value of consideration is admitted at Rs.3 crores. Further, the assessee claimed deduction u/s.48 of the Act towards cost of acquisition with indexation at Rs.8,15,710/- and thus, the total amount of LTCG is arrived at Rs.2,91,84,290/-. Further, the assessee claimed exemption u/s.54F of the Act to the extent of Rs.2,96,70,695/-and restricted the same to Rs.2,91,84,290/- and that during the course of assessment proceedings, the AO issued several notices calling for the requisite details of investment made in new asset along with documentary evidence in order to consider the assessee's claim of exemption u/s.54F of the Act, but in vain. Subsequently, the AO issued a show cause notice dated 21.11.2019 proposing to deny exemption claimed by the assessee u/s.54F of the Act to the extent of Rs.2,91,84,290/- and cost of acquisition u/s.48 of the Act of Rs.8,17,710/-, aggregating to Rs.3,00,00,000/-. However, the assessee did not bother to respond to the show-cause notice and, therefore, the AO denied the assessee's claim of exemption u/s.54F of the Act. Similarly, the AO denied cost of acquisition claimed by the assessee u/s.48 of the Act due to lack of evidence.

7. The Ld. DR further submitted that ld.CIT(A) allowed the relief towards exemption u/s 54F of the Act and cost of acquisition u/s 48 of the Act on the basis of additional evidence without calling for remand report under Rule 46A and conducting enquiry u/s 250(4) of the Income Tax Act, 1961 and that not providing any opportunity in rebuttal to the Assessing Officer is in violation of principles of natures justice. Ld.CIT(A) is not justified in allowing exemption u/s 54F ignoring the fact that assessee had transferred the original asset on 19.04.2016 and purchased the new asset from M/s. Jayabheri Properties Pvt. Ltd., only after a period of four years and ten months vide Agreement of Sale cum GPA dt.23.02.2021.

8. On the other hand, ld. AR for the assessee had relied on the order of ld.CIT(A). It was the contention of the ld.AR that the ground raised by the Revenue are not emanating from the order passed by the Assessing Officer. It is not the case of the Assessing Officer in the assessment proceedings that the assessee has two residential properties in the year under consideration. Therefore, it was submitted that the grounds of the Revenue are required to be rejected which are not arising out of the order passed by the Assessing Officer / ld.CIT(A).

9. At this stage, we have enquired from the ld.DR whether the grounds pertaining to two residential houses were the subject matter of the assessment order or not. To this, he was not able to point out from the assessment order that the Assessing Officer had denied the benefit of section 54F on account of the assessee having two residential properties. In view of the above, we are of the opinion that ground no.2 which deals with two residential properties does not borne from the record and therefore, the Revenue is not permitted to urge the said

ground before us being not arising out of the assessment order / appellate order.

10. The ld.AR further submitted that based on the sale deed, the Assessing Officer has made the addition of Rs.3 crores in the hands of the assessee. However, in the very same sale deed, which was relied upon by the Assessing Officer, there is a reference of document through which the assessee had acquired the property along with the description and value. In the light of the above, it was submitted that once the same document is relied upon by the ld.CIT(A) for the purpose of concluding the cost of acquisition then it cannot be urged by the Revenue that the assessee had filed additional document or the ld.CIT(A) has considered the additional document for the purpose of granting the relief.

11. It is also the contention of the ld.AR that the Assessing Officer, in Para 13 of his order, had mentioned that the 360 degree of the profile was available with the Department which show that the assessee had purchased the property from M/s. Jayabheri Properties by investing a sum of Rs.5,68,48,500/-. It was submitted that once both the information of sale and investment were available with the Assessing Officer, therefore, the Assessing Officer cannot deny the benefit of investment for the capital gain made on account of sale of the first property. Para 13 of the assessment order provides as under for ready reference.

> *"13. Further, as per assessee's 360 profile available with this office, it is seen that the assessee has made investment in immovable property during the FY 2016-17 amounting to Rs. 1,85,00,000/ -. The immovable property is worth 5,68,48,500/- and the assessee has purchased the same from M/s Jayabheri Properties Private Limited. The assessee has*

neither given any information about this investment nor established the sources for the same. M/s Jayabheri Properties Private Limited has also not submitted the information requisitioned from them under section 133(6). Thus the sources of funds for this investment remain unexplained. Accordingly, the amount of Rs. 1,85,00,000/- is treated as unexplained investment under section 69 of the I. T. Act, 1961 and as per this provisions Rs.1,85,00,000/- is deemed to be the income of the assessee for the A.Y. 2017-18."

12. We have heard the rival submissions and perused the material on record. In the present case, it is an admitted fact that assessee did not furnish the information and additional evidence before the Assessing Officer during the course of assessment proceedings in spite of issuance of several notices u/s 143(2) and 142(1) of the Act and as there is no other option, Assessing Officer had completed the assessment u/s 144 of the Act. However, from the perusal of the order, it is abundantly clear that the assessee had computed the long term capital gain on the sale of land / building. Further, the Assessing Officer had mentioned that the assessee had received total consideration of Rs.3,00,00,000/- and had claimed the indexation. However, the Assessing Officer had denied the indexation to the assessee as the assessee has not furnished the documents showing the acquisition of the property. As pointed by the ld.AR, in the sale deed itself, the cost of acquisition was duly mentioned before the Sub-Registrar. The said sale deed was available or can be made available by the Registrar of Property, if the Assessing Officer have exercised his power. However, even without exercising such power, it is clear that the property was acquired by the assessee on 14.12.2009 for a total consideration of Rs.8,15,710/-. Admittedly, the assessee had not claimed any cost of improvement in the computation for capital gain, therefore, we do not find any error in calculation of the long term capital gain by the assessee. Further, the Assessing Officer in his order had

categorically mentioned in paragraph 13 that the assessee had made the investment for the purpose of buying the property in the assessment year 2016-17 and had claimed section 54F for an amount of Rs.2,91,84,290/-. In our view, the law is fairly settled, if a person made investment within two years of sale of any property, then the assessee is entitled to the benefit of section 54F in accordance with law. The only reason given by the Assessing Officer is that the assessee has not provided the details. Admittedly, the said details were readily available with the Assessing Officer, as he was having 360 degree profile of the assessee which clearly mention the details of investment made by the assessee. In view of the above, we do not find any reason to interfere with the order passed by the ld.CIT(A).

13 Before us, ld. DR has pointed out that Section 250(4) of the Act does not override the duty cast on the part of ld.CIT(A) to afford opportunity to the Assessing Officer to say his/her view on the additional evidence produced by the assessee for the first time before the ld.CIT(A) as per Rule 46A of Income Tax rules. Before we deal with the requirement of law to grant opportunity to the Assessing Officer, it is essential to reproduce section 250(4) of the Act and Rule 46A of Income Tax Rules, 1963. Section 250(4) of the Act provides as under :

> *(4) The [81][***] [82][Commissioner (Appeals)] [84]may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the [83][Assessing] Officer to make further inquiry and report the result of the same to the [81][***] [82][Commissioner (Appeals)].*

14. Similarly, Rule 46A of Income Tax Rules provides as under :

> *Production of additional evidence before the 8[Deputy Commissioner (Appeals)] 9[and Commissioner (Appeals)].*

46A. (1) The appellant shall not be entitled to produce before the 8[Deputy Commissioner (Appeals)] 9[or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the 10[Assessing Officer], except in the following circumstances, namely :—

(a)		*where the 10[Assessing Officer] has refused to admit evidence which ought to have been admitted ; or*
(b)		*where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the 10[Assessing Officer] ; or*
(c)		*where the appellant was prevented by sufficient cause from producing before the 10[Assessing Officer] any evidence which is relevant to any ground of appeal ; or*
(d)		*where the 10[Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

(2) No evidence shall be admitted under sub-rule (1) unless the 11[Deputy Commissioner (Appeals)] 12[or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.
13(3) The 14[Deputy Commissioner (Appeals)] 15[or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the 16[Assessing Officer] has been allowed a reasonable opportunity—

(a)		*to examine the evidence or document or to cross-examine the witness produced by the appellant, or*
(b)		*to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.*

(4) Nothing contained in this rule shall affect the power of the 17[Deputy Commissioner (Appeals)] 18[or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the 19[Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]

15. The Rules were framed by the Board in accordance with the power conferred on it by section 295 of the Act and the Rules after being framed were laid before the Parliament. As the rules were duly framed by the Board and are statutory in nature, in our view, the power given to ld.CIT(A) is required to be exercised in accordance with the rules framed under the Act. From the bare perusal of Rules, it is abundantly clear that the ld.CIT(A) in case chooses to admit any additional evidence in that eventuality, she is under mandatory obligation to provide a reasonable opportunity to the Assessing Officer with a view to examine the evidence or document or permit to cross-examine the evidence produced by the assessee. Further, the law contemplates the Assessing Officer to produce any witness or document or evidence in rebuttal to the evidence produced by the assessee in the appellate proceedings.

16. Undoubtedly, the legal argument raised by the Revenue on the face of which is attractive and is required to be accepted. However, the rules framed by the Board are handmade tools in the hands of the Department to achieve the ends of justice. In the present case, the documents based on which the indexation was granted to the assessee were available with the Assessing Officer and on the basis of very same document, he had made the addition of Rs.3 crore in the hands of assessee. Further, the details of the investment made by the assessee in purchasing the immovable property were also available with the Department as mentioned by the Assessing Officer in Para 13 of his order, therefore, saying that the ld.CIT(A) had relied upon the additional evidence would not be correct as the said information / documents were available in the assessment record / folder. In view of the above, we are of the opinion that no additional document / evidence was relied

upon by the ld.CIT(A) to grant the relief to the assessee. Hence, there is no violation of Rule 46A of the Act in the light of the above said facts. Hence, the grounds raised by the Revenue for violation of Rule 46A are specifically deleted.

17. In the result, the appeal of the Revenue is treated as dismissed.

Order pronounced in the Open Court on 31st January, 2023.

Sd/-	**Sd**
(RAMA KANTA PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 31st January, 2023.
TYNM/sps

Copy to:

S.No	Addresses
1	Aruna Gullapalli, Flat No.C-214, Jayabheri Orange County, Nanakramguda, Hyderabad.
2	Income Tax Officer (International Taxation)-1, Hyderabad.
3	Commissioner of Income Tax (Appeal), Hyderabad – 10.
4	CIT (IT & TP), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order