

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

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.2046 and 2050/Hyd/2017		
Assessment Year: 2013-14		
1. Smt. Shantha Natarajan, Hyderabad. PAN : AFBPN0481N.	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2(4), Hyderabad.
2. Harish Bhatt Natarajan, Hyderabad. PAN : ADFPN7488R		
(Appellants)		(Respondent)
Assessee by:		Sri K.C. Devdas, C.A.
Revenue by:		Sri Rajendra Kumar, CIT-DR
Date of hearing:		14.03.2023
Date of pronouncement:		28.04.2023

ORDER

PER LALIET KUMAR, J.M.

The captioned appeals are filed by the assesseees, who are none other than mother and son, feeling aggrieved by the separate orders of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.22.09.2017 invoking proceedings under section 143(3) r.w.s. 153A of the Act for the assessment year 2013-14.

2. The grounds raised by the assessee read as under :

“1. The order of the Ld. Commissioner of Income Tax (Appeals)-12 Hyderabad ('CIT(A)') in confirming the assessment of Long Term Capital Gains at Rs. 1,99,52,042 on sale of the Appellant's 50% share in immovable property being a residential house property admeasuring 7200sq.ft or 64 areas of plot of land at Mooledam, near Nattakam, Govt. Guest House, Kottayam is totally contrary to the fact and evidence on record and is therefore wholly unsustainable both on facts and in law.

2. *The CIT(A) erred in upholding the sale price of 4.5 Crores as against 35 lakhs which was fully recorded in the sale document, and in the process erred in upholding the adoption of sale consideration of Rs.2.25 Crores being 50% of the Appellant's share in the property while computing the Long Term Capital Gains.*

3. *The CIT(A) failed to note that there was no incriminating material found during the search proceeding on 25/09/2014 u/s 132 of the Income Tax Act, 1961 to warrant the adoption of the sale price of Rs.4.5 Crores and consequently the Appellant's share thereon at 50%.*

4. *The entire price of Rs.4.5 Crores has been adopted solely on the basis of statement of the purchaser's husband Mr.Mohammed Basheer who was not the Vendee when there was no incriminating material found during search proceedings.*

5. *The CIT(A) failed to note that neither statement recorded of the vendee —Smt. Remla Basheer nor the statement of the husband of the Vendee Mr.Mohammed Basheer was made available to the Appellant nor was he/she produced for cross examination in spite of specific request of the appellant and therefore the CIT(A) erred in upholding the adoption of sale price of the immovable property at Rs.4.5 Crores as against 35 Lakhs which was the price fully recorded in the registered sale document.*

6. *The CIT(A) failed to note that in the search proceedings, statement of a third party cannot be relied upon unless there is contemporaneous evidence to support the statement, and more so the denial by the Appellant to the contrary and therefore erred in upholding the adoption of sale price at Rs.4.5 Crores as against Rs.35 lakhs fully received in the registered sale document.*

7. *The order of the CIT(A) in confirming the addition of Rs. 19.65 lakhs out of Rs.53.65 lakhs by investment in the firm of Mis BHIMA & BROTHERS is totally contrary to the facts and evidence on record and is therefore unsustainable.*

8. *The CIT(A) erred in confirming the addition of Rs.20,04,000/- which was nothing but transfer of funds from one Bank a/c into another from disclosed sources.*

9. *Entire assessment has been framed based on the statement of Mr. Mohammed Basheer without giving an opportunity to cross examine and thus violating the principles of natural justice and fair play and therefore entire assessment proceedings are without jurisdiction, invalid and bad in law calling for quashing the assessment.*

10. *Entire remand report given by the Assessing officer that copies of the statement of Mohammed Basheer is totally contrary to the facts and evidences on record and therefore reliance placed on the evidences collected behind the back of the appellant is contrary to the principle of natural justice and therefore entire addition made needs to be deleted.*

3. The additional grounds raised by the assessee reads as under :

“1. The order of the CIT (A)-12, Hyderabad [‘CIT(A)’] while ordering the deletion of the addition of Rs. 61.18 lakhs at the concluding paragraphs, of Para no. 7.4 of the order, erred in linking it to the source to the alleged extra consideration on sale of immovable property from Bashir Mohd, while on the contrary the sources were proved as flowing from sale of jewellery belonging to the Appellant.

2. The CIT(A) failed to note that no incrimination material was found during the search as seen from the Panchanama and seized material and therefore erred in making additions under various heads which are totally contrary to the evidence on records and therefore the income returned by the Appellant ought to have been accepted.”

4. Similar grounds and additional grounds were raised by the assessee in other appeal also i.e., ITA 2046/Hyd/2023 for A.Y. 2013-14 except the amounts involved.

5. Before us, both the parties submitted that the issues raised in both the appeals are identical. In view of the aforesaid submission, we, for the sake of convenience proceed to dispose of both the appeals by a consolidated order but however refer to the facts in ITA No.2050/Hyd/2021.

6. The brief facts of the case are that assessee is an individual, who filed his return of income for A.Y. 2013-14 on 31.10.2013, returning a total income of Rs.72,03,990/-. A search and seizure operation u/s 132 of the Act was carried out in the residential premises of the assessee on 25.09.2014. Accordingly, notice u/s 153A of the Act was issued to the assessee on 14.09.2016. In response thereto, assessee filed his return of income for A.Y. 2013-14 on 20.10.2016. Thereafter, the Assessing Officer completed the assessment on 30.12.2016 by making an addition of Rs.1,99,52,042/- towards capital gains and Rs.1,14,82,651/- towards unexplained investment in the form of capital contribution and Rs.20,04,000/- towards unexplained cash deposits in bank accounts. Thus, determined the total taxable income at Rs.4,06,42,683/-.

7. Feeling aggrieved with the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A) who partly allowed the appeal of assessee:

8. Aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

9. Before us, ld. AR has submitted that the addition made by the Assessing Officer and confirmed by the ld.CIT(A) are contrary to the provisions of section 153A of the Act as no incriminating material was found during the course of search. Further, the ld. AR had submitted that even the statement of Mohd. Basheer (husband of the purchaser) dated 10.10.2014 was not provided to the assessee. He further drawn our attention to

Para 6.6 of the order of Id.CIT(A) wherein it was mentioned as under :

“6.6 The Assessing Officer has further enclosed a copy of the letter wherein it has been confirmed that the copies of statements recorded u/s 132(4) on 25-09-2014, 29-09-2014 and 01-10-2014, and the seized documents marked as "A/HNB/RES/01" and "A/HNB/RES/PO/01, were provided to the assessee on 20-10-2014 itself. The relevant portion of letter is placed as under :

*** Image left intentionally.*

Therefore, the contention of the assessee/appellant that copies of statements were not provided to him is baseless, and hence rejected. The Assessing Officer in his held that "keeping in view of the sequence of events narrated by Sri Mohammad Basheer and also the money trail V', the amount of Rs.1.99 Cr was computed as Capital Gains. The assessee's contention about not providing copies of statement has already been rejected, as the copies of recorded statements were provided to the assessee on 20-10-2014. Moreover, the contents of the statement were several times discussed by the Assessing Officer with the assessee and his ARs during the course o assessment proceedings In the specific show cause letter issued by the Assessing Officer, the A.O has called for the explanation of the assessee regarding the receipt of Rs.4.15 Crores. Hence, the contents of the statement were duly communicated to the assessee, and Ground No.9 raised by the appellant is DISMISSED.

Therefore, the appellant's plea that the additions made are unrelated to the facts uncovered during search, does not hold water. The AR has also tried to argue that the statement relied upon, recorded u/s.132(4), does not have evidentiary value. In this regard, it is pertinent to refer to a recent judgement of the Delhi High Court in the case of Smt.Davawanti Vs. CIT(390 ITR 496)Delhi1, wherein similar issue has been decided by the High court, after considering all previous decisions on the matter. The Head-Note of the said judgement is reproduced herewith:

"IT: Statements recorded during search operations could be relied upon to, make addition to assessee's income.

IT: Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son In course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

Section 132, read with section 153,4, of the Income-tax Act, 1961 - Search and seizure - General (Statement made during search) - Search and seizure operations were carried out on assessee firm - Various materials, documents, agreements, Invoices and statements In from of accounts and calculations were seized - Assessee along with her family members surrendered a sum of Rs.3.5 crores as additional income in respect of business carried on outside books of account - Assessing Officer rejected books of

account and mode additions by estimating sales and gross profit rates, interalia on ground that In course of search a statement was recorded by assessee's son on behalf of assessee and other family members - Assessee submitted that statements were not recorded during search but later and that they could not be considered of any value - Whether probative value of statements recorded during search operations was undeniable as occasion for making them arose because of search and seizure that occurred and seizure of various documents, etc. that painted to undeclared income - Held, yes - Whether under these circumstances, assessee's argument that they could not be acted upon or given any weight was Insubstantial and meritless - Held, yes - Whether thus addition to assessee's income could be based on these statements - Held, yes (Paras 18 & 20) (in favour of revenue)"

The evidentiary value of the statements relied upon is, therefore, undeniable. Sri Mohammad Basheer, in his statement, has categorically stated that he had paid the registered value of Rs.35 lakhs through NEFT, and the balance amount of 115.4.15 crores in cash to Sri Harish N.Bhat (the assessee) personally. The onus lies on the assessee to disprove the receipt of the money. The Assessing Officer in his assessment order has clearly discussed about the sequential events of cash flow. The addition has been made by him not only on the basis of statement recorded, but after duly verifying the inflow and outflow of cash, supported by bank statements. Hence, I do not find any infirmity in the order of the Assessing Officer and the addition made of Rs.1,99,52,042/- is upheld. The grounds No.1 and 2 raised by the appellant are DISMISSED.

10. Ld. AR further submitted that in the letter referred by the ld.CIT(A) dt.20.10.2014, it was mentioned that the assessee was provided the copies of the statements dt.25.09.2014, 29.09.2014 and 01.10.2014 recorded u/s 132(4) of the Act. It was submitted that as per the paper book filed by the Revenue, the statement of Mohd. Basheer was recorded on 10.10.2014 and therefore, there is no evidence available with the Revenue that a copy of the said statement was even provided to the assessee. It was further submitted that the Revenue in the reply had filed the following submissions :

"For A.Y. 2013-14

1. "The order of the CIT(A)-12,Hyderabad while ordering the deletion of the addition of Ps. 61.18 lakhs at the concluding paragraphs of para no. 7.4 of the order erred in linking it to the source to the alleged extra consideration on sale of immovable property from Bashir Mohd, while on the

contrary the sources were proved as flowing from sale of jewellery belonging to the Appellant.

2.The CIT(A) failed to note that no incriminated material was found during the search as seen from the panchanama and seized material and therefore erred in making additions under various heads which are totally contrary to the evidence on records and therefore the income returned by the Appellant ought to have been accepted.

Point No.1 & 2:

During the course of assessment proceedings, the Assessing Officer has noticed that the assessee has made investment in M/s Bhirna & Brothers of Rs. 61.18 Lakhs out of receipts from sale of old gold. However, the assessee has not substantiated the same with proper evidence before the AO. Hence, the Assessing Officer has made addition of Rs.61.18 lakhs towards unexplained investment.

The same was deleted by the Ld.CIT(A) stating that "The AO himself stated in the Assessment order that the money trail clearly shows that it is the cash that has been received by the assessee in the sale of property at Kotta Yam which was not disclosed by the assessee" Hence, the Ld. CIT(A) has not erred in linking it to the source to the alleged extra consideration received on sale of immovable property. Hence, the additional ground raised by the Assessee does not hold good.

With regard to the addition made in the AN 2013-14 is based on registered sale deed between Smt Remla Basher and Smt Shantha Natarajan, Sri Harish Natarajan which was seized during the course of search and seizure operation in premises of Mohammed Basheer Group. During the course of search and seizure operation a sworn statement recorded from Sri Mohammed Basheer on 10.10.2014, in his statement at QNo.51 he clearly stated that "I personally visited the property I discussed with Harsh regarding purchase of this property including land and building. Initially Harish asked for Rs. 5.5 Crores for the property, then I negotiated with him. If it is more than Rs. 4.5 Crores I will not purchase, my offer is Rs. 4.5 Crores.' When I purchased that property the price was Rs. 4.5 Lakhs in that locality, for 64 cents it would come upto 2.9 to 3 crores and the balance consideration i.e 1.5 Crore can be considered for the building. Because the house is of 7000 Sq.ft wood work is too much i.e Rose wood and Teak Wood with carving."

When the same was questioned to Sri Harish Natarajan, in his statement recorded u/s 132(4) on 01.10.2014, he simply stated "I do not know anything about that". Further

Sri Mohammed basheer is able to explain everything about the transaction includes cent value in the locality at that time and negotiations with Sri Harish Natarajan Bhat. It can be safely conclude that they constitute adequate proof in terms of human probabilities to hold that Sri Harish Natarajan Bhat's and Smt Shantha Natarajan's non-committal on cash receipt of Rs. 4.15 Crores.

In view of the above, Sri Harish Natarajan Bhat and Smt Shantha Natarajan not accepting the fact that they received Rs. 4.5 Crores to protect from the rigorous of taxation and penal provisions. Hence, the additional ground raised by the Assessee does not hold good.

11. Ld. AR further submitted that once the statement of the assessee was recorded on 01.10.2014, there was no occasion for the assessee to refer and contradict the statement of Mohd. Basheer which was subsequently recorded on 10.10.2014 and the reliance by Revenue on the statement of Mohd. Basheer to make addition in the hands of the assessee is totally in contravention of law laid down by the Hon'ble Delhi Court in the case of PCIT Vs. Anand Kumar Jain (HUF) (ITA No.23 of 2021 dated 12.02.2021) wherein it was held that no addition can be made based on the statement given by the third party. Further, it is the submission of the assessee that the statement of a third party without being provided a copy of which and without giving an opportunity to cross-examine cannot be said to be incriminating document. It was further submitted that an addition based on the statement of third party cannot be made u/s 153A of the Act and it is beyond the scope of said provision and therefore, the entire addition made by the Revenue is without any basis.

12. Per contra, ld. DR relied upon the orders of lower authorities.

13. We have heard the rival submissions and perused the material on record. Admittedly, in the present case, a search and seizure operation were carried out in the residential premises of

the assessee on 25.09.2014 and thereafter, the statements of the assessee were recorded u/s 132(4) of the Act on 25.09.2014, 29.04.2014 and 01.10.2014 and in the said statements, the assessee had denied to have received any 'on money' over and above the registered value mentioned in the sale deed. The additions were made in the hands of the assessee on the basis of the statement of Mohd. Basheer recorded by the DDIT, Investigation, Kottayagudem on 10.10.2014 without providing the copy of the said statement to the assessee. In the statement, the said Mohd. Basheer had mentioned in reply to Q.No.51 that a sum of Rs.4.15 crore was paid in cash over and above the registered value of Rs.35 lakhs which was transferred through NEFT. For the purpose of invoking jurisdiction u/s 153A of the Act, it is essential that the Assessing Officer in case of an abated assessment can make the addition on the basis of material available with him. In the present case, no document was found which shows that 'on money' of Rs.4.15 crore was paid to the assessee over and above the registered value mentioned in the sale deed and there is only statement of Mohd. Basheer, who is not even the purchaser of the property.

14. In our considered opinion, for the purpose of making the addition, it is essential that statement of wife of Mohd. Basheer namely, Smt. Remla Basheer is required to be recorded and along with that some cogent and corroborative evidence should have been relied upon by the Assessing Officer to show that the said amount was paid by the said person to the assessee. However, nothing has been brought on record by the Revenue and therefore, in our view, no addition can be made in the hands of the assessee based on the statement recorded by the Investigating Wing by a third party. The statement of a third party already recorded u/s 132(4) of the Act cannot be considered as an incriminating document for the purpose of making the addition

u/s 153A of the Act. If at all the addition can be made based on the documents found in the premises of a third party pertaining to the assessee, then the addition can only be made u/s 153C of the Act. Admittedly, no documents etc., were found and seized from the premises of Mohd. Basheer, husband of the purchaser, which pertains to the assessee. Further, more recently, the Hon'ble Delhi High Court in the case of PCIT Vs. Anand Kumar Jain (HUF) (supra) on identical facts and circumstances, allowed the appeal of assessee by holding as under :

“10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.

11. Accordingly, the present appeals, along with all pending applications, are dismissed.”

15. Hence, respectfully, following the said decision, we do not find any reason to sustain the addition made by the Assessing Officer and accordingly, the addition made in the hands of the assessee is deleted. Thus, the appeal of the assessee is allowed.

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

17. As far as the other appeal i.e., ITA No.2046/Hyd/2017 is concerned, in view of the submission of both the parties that the issues raised in both the appeals are identical, except the amounts involved, we for the reasons stated hereinabove while deciding the appeal in ITA No.2050/Hyd/2017 and for similar reasons, allow the other appeal.

18. In the result, the appeal of assessee in ITA No.2046/Hyd/2017 is allowed.

19. To sum up, both the appeals of assessees are allowed. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 28th April, 2023.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th April, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Smt. Shantha Natarajan, C/o. Sekhar & Co., Chartered Accountants, 133/4, R.P. Road, Secunderabad – 500 003.Hyderabad.
2	Harish Bhatt Narayan, C/o. Sekhar & Co., Chartered Accountants, 133/4, R.P. Road, Secunderabad – 500 003.
3	The Deputy Commissioner of Income Tax, Central Circle – 2(4), Hyderabad.
4	The PCIT (Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order