

I.T.T.A. No. 204 of 2015

DATE: 22.09.2015

Between:

Commissioner of Income-Tax-III ..
Appellant

And

V. Ramachandra Rao .. Respondent

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JUDGMENT:- (per Hon'ble Sri Justice G. Chandraiah)

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for brevity "the Act") arises out of the Order dated 22.11.2013 in I.T.A.No. 468/Hyd/2012 passed by the Income-Tax Appellate Tribunal (for short "the Tribunal"), Hyderabad Bench "B", Hyderabad relating to the assessment year 2008-2009. The following substantial question of law is said to be arising from the orders of the Tribunal for adjudication:

"In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in upholding the deletion of addition of Rs.13.81 crores as an unaccounted income of the respondent-assessee based on the seized document when the said document was reflected in the final document of registration supporting the transaction?"

The respondent-assessee is an individual. Consequent upon the search and seizure operations conducted in the residential premises of the assessee, notice under Section 153-A was issued to the assessee, and in response thereto, the assessee filed returns of income for the assessment years from 2002-2003 to 2007-2008. The assessing officer, while assessing the income of the assessee, found suppression of receipts on

sale of land by the assessee and made an addition of unaccounted income based on seized document i.e. Memorandum of Understanding in respect of the land transaction. When the assessee challenged the assessment order dated 31.12.2009, the Commissioner of Income Tax (Appeals), while partly allowing the appeal, directed the Assessing Officer to delete the addition of Rs.1.85 crores as the seized and unsigned Memorandum of Understanding has no evidentiary value. However, on further appeal by the Department, the Tribunal, vide order dated 22.11.2013, dismissed the appeal upholding the findings of the appellate authority on the aspect of deletion of addition of unaccounted income.

Sri B. Narasimha Sarma, learned Standing Counsel for Income-Tax Department has contended that the addition made by the assessing officer is based on the impugned seized document which was ultimately reflected in the final registration document and the Tribunal erred in deleting the addition.

The Tribunal in its order has held to the following effect:

“We heard the parties and perused the material available on record including the impugned orders of the lower authorities. As can be seen from the material on record, the addition of Rs.13.81 crores was made by the Assessing Officer only relying upon the draft MOU which is an unsigned one. There is no other corroborative evidence brought on record either as a result of search or enquiry made by the Assessing Officer, which could establish the fact that the contents of the draft MOU were true and the MOU was in fact acted upon. Therefore, in

the absence of any such evidence, the MOU is merely a dumb document having no evidentiary value and hence cannot be made the basis for making an addition. That apart, as has been elaborately discussed by the CIT(A), even assuming the draft MOU to be correct, there is neither mention of the consideration paid nor mode of such payment. Moreover, when as per the draft MOU, the consideration has to be paid both to the assessee and M/s.Radha Realty Corporation Ltd., the entire payment being the differential amount could not have been assessed in the hands of the assessee alone. It is also a fact to take note of that the final sale deed dated 22.08.2007 in favour of DLF with regard to sale of land in dispute, does not mention about any payment being made to the assessee or his nominees. That being the case, it cannot be said that the assessee has received the amount of Rs.13.81 crores in cash towards the sale of land merely on the basis of the draft MOU. In this view of the matter, we find no infirmity in the reasons discussed by the CIT (A) in the impugned order while deleting the impugned addition made by the Assessing officer. We accordingly uphold the same, rejecting the grounds of the Revenue in this appeal.

In the result, appeal of the Revenue for the assessment year 2008-09, being I.T.A.No. 468/Hyd/2012, is dismissed.”

In view of the categorical findings of fact recorded by the Tribunal and there being no material to disprove those findings, we are of the considered opinion that there is no perversity in the order of the Tribunal and it is purely a question of fact and there is no question of law much less substantial question of law warranting interference by this Court with the order under appeal.

Hence, this appeal is devoid of merits and dismissed. No order as to costs.

As a sequel to dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand

disposed of as infructuous.

G. CHANDRAIAH, J

22.09.2015

CHALLA KODANDA

RAM,J

bcj