THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

ITTA.No.364 of 2019

O R D E R: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

This Appeal is fled by the Revenue challenging the order dt.18.04.2019 in ITA.No.489/Hyd/2017 of the Income Tax Appellate Tribunal, Hyderabad Bench-B, Hyderabad and it relates to the assessment year 2008-09.

2. The assessee is a Company engaged in the business of purchase and sale of plots. It filed return of income tax which was initially processed under Section 143(3) of Income Tax Act, 1961(for short 'the Act') on 24.12.2010 and its total income was determined at Rs.65,98,200/-.

3. Subsequently, the Commissioner of Income Tax(Appeals) passed an order under Section 263 of the Act on 13.03.2013 setting aside the assessment order with a direction to the Assessing Officer to verify, (1) whether the extra amounts paid by the assessee-company over and above the consideration recorded in the sale deeds to the land owners in respect of certain properties purchased by it are payments made towards purchase of lands or not, and (2) whether such extra amounts were received by the sellers.

4. This order of the CIT was also confirmed in appeal by the Income Tax Appellate Tribunal on 25.09.2013.

5. Thereafter, proceedings were taken up by the Assessing Officer and the Assessing Officer passed a fresh order of

assessment taking the view that the assessee had only filed copies of receipts said to have been given while making purchases and was unable to prove that they were towards the acquisition of the property only. He also recorded that the land owners were not available at the addresses given in the sale deeds and the assessee did not discharge the *onus* on him to prove the extra payments made to the land owners.

6. This was confirmed by the CIT(Appeals) on 09.12.2016.

7. The matter was carried in Appeal to the ITAT and in the impugned order passed by it, the Tribunal recorded that the assessee had filed 2 paper books, one paper book containing the copies of sale deeds of the land purchased by the assessee from seven parties and the second paper book containing the receipts from sellers for land payments, return and computation of income, profit & loss account, balance sheet, and bank statements showing the payment details; that after going through these documents, the Tribunal was convinced that all payments were made to the land owners by the assessee by cheque and therefore the identity and genuineness of the transactions was proved. It also recorded that the assessee's contention that the assessee had not purchased any other land and it therefore accepted assessee's case that it made payments to the land owners/vendors over and above the sale consideration recorded in the sale deeds and held that addition therefore ought not to have been made.

8. Assailing the same, this Appeal is filed.

9. Though Sri B.Narsimha Sarma, counsel for Revenue sought to contend that the finding of the Tribunal that the transactions made by the assessee were genuine, is perverse and illegal, and a case is made out for interference of this Court in exercise of its jurisdiction under Section 260(A) of the Income Tax Act, 1961, we are unable to accede to the said contentions for the reason that finding of the Tribunal recorded above is based on appreciation of evidence and after perusing the material placed before the Tribunal by the assessee.

10. The finding of the Tribunal that payments were made by cheques by the assessee to the land owners and the identity and the genuineness of the transactions between the land owners and the assessee is proved, is a finding of fact based on appreciation of evidence and does not warrant any interference by this Court in exercise of its jurisdiction under Section 260A of the Act.

11. Accordingly, the Appeal is without merit and it is dismissed. No order as to costs.

12. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

14th October, 2019.

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