

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY FOURTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO

INCOME TAX TRIBUNAL APPEAL NO: 465 OF 2010

Income Tax Tribunal Appeal Under Section 260A of the Income Tax Act, 1961
against the Order dated 18.12.2009 passed in ITA No.1364/Hyd/2008 for the
Assessment Year 2004-05 on the file of the Income Tax Appellate Tribunal,
Hyderabad Bench 'A', Hyderabad.

Between:

Gulf Oil Corporation Ltd, Hyderabad.

...Appellant

AND

The Assistant Commissioner of Income Tax, Circle 2(3), Hyderabad

...Respondent

Counsel for the Appellant : Sri. Y Ratnakar

**Counsel for the Respondent : Sri Swaroop Oorilla Special Government
Pleader for State Tax**

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

ITTA.No.465 of 2010

JUDGMENT: *(Per the Hon'ble Sri Justice Suddala Chalapathi Rao)*

This appeal is filed aggrieved by the order of the Income Tax Appellate Tribunal, Hyderabad Bench-A, Hyderabad (for short 'the STAT') in ITA.No.1364/Hyd/08, for the assessment year 2004-05.

2. Heard Sri Y.Ratnakar, learned counsel for the appellant/assessee, Sri Swaroop Oorilla, learned Special Government Pleader for State Tax appearing for respondent/Revenue, and perused the record.

3. The appellant/assessee is a Company engaged in the manufacture of detonators, industrial explosives & its accessories, and also engaged in the activity of floriculture, padding and manufacture of gypsum walls, panels and sealing boards and also engaged in the execution of contracts for drilling, blasting and excavation; that for the assessment year 2004-05, the appellant/assessee filed returns on the turnover of

Rs.13,72,47,281/-; and that the assessing authority accepted the returns of the appellant/assessee, however, disallowed certain expenditure under Section 143(1) of Income Tax Act, 1961 (for short 'the IT Act').

4. Aggrieved by the said order of the Assessing Authority, the appellant/assessee has filed an appeal before the Commissioner of Income Tax(Appeals)-III, Hyderabad, (for short 'the CIT(A)'); that after elaborate hearing and appreciation of facts, the CIT(A) *vide* order, dt.09.06.2008, has partly allowed the said claim of the appellant/assessee, while disallowing the expenditure of Rs.61,00,000/- towards commission alleged to have been paid to M/s Aasia Management & Consultancy (P) Ltd(for short 'AMC'); that the CIT(A) has also disallowed an amount of Rs.69,00,000/- alleged to have been paid to M/s Udhayaman Investments (P) Ltd., for termination of agreement under Section 48(i) of the Act

5. The order passed by the CIT(A) in disallowing the said amounts under Section 48 of the Act, was challenged before the learned STAT *vide* ITA.No.1364/Hyd/08; that the learned STAT, after appreciation of facts on record has confirmed the orders

passed by the CIT(A), dt.09.06.2008 *vide* its order dt.18.12.2009; and assailing the said orders, the present appeal is filed by the appellant/assessee.

6. A perusal of the docket proceedings shows that, initially, by order, dt.16.08.2010, the appeal was admitted to consider all the four substantial questions of law raised in the grounds of Appeal, and by order dt.29.01.2024, the appeal was admitted on question No.1 alone. The substantial questions of law are as under:

- “1. Whether on the facts and in the circumstances of the case, the sum of Rs.69 lakhs paid by the appellant to Udhayaman Investments (P) Ltd., for giving up all its rights and for canceling the agreement dt.14.03.2002 entered into by the appellant with it, is an allowable deduction treating the same to be expenditure in connection with the transfer or cost of improvement falling either u/s.48(i) or (ii) of the I.T.Act, while computing the capital gains on the sale of property at Bangalore in the hands of the appellant?
2. Whether on the facts and in the circumstances of the case, the finding of the Tribunal that the payment of Rs.69 lakhs is not connected with the transfer of property at Bangalore can be said to be erroneous, unreasonable, arbitrary, not based on facts on record or perverse?
3. Whether on the facts and in the circumstances of the case, the sum of Rs.61 lakhs paid by the appellant to Aasia Management & Consultancy (P) Ltd., towards commission for sale of property to Abhishek Developers, can be considered as expenditure incurred in connection with the transfer of property at Bangalore and can be deducted

u/s.48(i) of the I.T. Act while computing the capital gains on the sale of property at Bangalore?

4. Whether on the facts and in the circumstances of the case, the Tribunal is justified in rejecting the claim of the appellant for deduction of the sum of Rs.61 lakhs paid by it as commission without considering the petition filed before it under Rule 29 of the Appellate Tribunal Rules for admission of additional evidence containing letters, dt.22.07.2009 and dt.21.08.2009, issued by Aasia Management & Consultancy (P) Ltd., relating to the services rendered by it and payment of commission to it for the sale of property at Bangalore belonging to the appellant?
7. The sum and substance of the substantial questions of law to be answered would be ground No.1 & 4 and we deal with the same as hereunder.
8. As regards 1st issue, it is contended by the learned counsel for the appellant/assessee that the appellant/assessee had entered into a Memorandum of Understanding with M/s Udhayaman Investments (P) Ltd., for execution of development of land and due to changed circumstances, as the said Memorandum of Understanding was not viable, an amount of Rs.69,00,000/- was paid to M/s Udhayaman Investments (P) Ltd., as an improvement by way of account payee cheque, for termination of Memorandum of Understanding executed in

August, 2003, which facilitated for the execution of sale deed in favour of M/s Abhishek Developers.

9. It is further contended by the learned counsel for the appellant/assessee that though the said amount was paid by account payee cheque in favour of M/s Udhayaman Investments (P) Ltd., so as to facilitate the execution of sale deed in favour of M/s Abhishek Developers, both the learned STAT and the CIT(A) have grossly erred in holding that the appellant/assessee is not under legal obligation to pay the said amount to M/s Udhayaman Investments (P) Ltd, and that the cancellation agreement does not bear the signature of the appellant/assessed; and that as the said amount was paid towards improvement, the same is liable to be allowed under Section 48(i) of the Act and as such both said orders passed by the learned STAT and the CIT(A) are contrary to law and liable to set aside.

10. As regards the 2nd issue of payment of Rs.61,00,000/- to AMC, it is contended by the appellant/assessee that as the amount of Rs.61,00,000/- was paid as commission @ 2% on the sale consideration to AMC, the assessing Authority as well as both

the Appellate Authorities erred in holding that as there is no substantial proof or evidence placed by the appellant/assessee, to show that Mr.Gurunani, who is the Managing Director of the AMC, has rendered services, and thus, erroneously disallowed the said amount holding that it has been included as an afterthought to escape the tax liability and the said finding is perverse and liable to be set aside.

11. In support of the above contentions, reliance was placed by the learned counsel for the appellant/assessee on the decision of the High Court of Delhi in the case of ***Kousalya Devi(deceased) through L.Rs., vs Commissioner of Income Tax***¹, wherein the settlement amount paid towards compromise decree was directed to be allowed under Section 48(i) of the Act.

12. *Per contra*, the learned Special Government Pleader, appearing for respondents would submit that the STAT along with CIT(A) have rightly held that the amount of Rs.69,00,000/- alleged to have been paid to M/s Udhayaman Investments (P) Ltd., *vide* cancellation agreement, was executed in the month of August,

¹ (2018) 404 ITR 136 or 2018 SCC Online Del. 8515

2003, which is subsequent to the execution of the sale deed in favour of third party in the month of June, 2003, more so, the appellant/assessee was not under legal obligation to pay the amount as per original Memorandum of Understanding, and so also the amount of Rs.61,00,000/- alleged to have been paid to AMC towards commission for sale of property to M/s Abhishek Developers, are only an afterthought and there is no evidence placed by the appellant/assessee that the said company has rendered services in facilitating the sale of property to M/s Abhishek Developers, as such both the Appellate Authorities have rightly disallowed the amount under Section 48 of the Act.

13. Learned Special Government Pleader further contended that both the appellate authorities, being the fact finding authorities, have concurrently held the said issue against the appellant/assessee and the appeal is liable to be dismissed.

14. **We have given earnest consideration to the submissions of the counsel appearing on either side and perused the record.**

15. As seen from the record, the amount of Rs.69,00,000/- was paid to M/s Abhishek Developers *vide* Cancellation Agreement in

the month of August, 2003, i.e., after the execution of the sale in the month of June, 2003, as such, the finding of the STAT that payment of said amount is an afterthought, appears to be germane and valid. Also, in the original Memorandum of Understanding, no condition was stipulated that the appellant/assessee has to pay any amount, if the contract is rescinded. In the absence of such a contractual obligation, the finding of the STAT that the appellant/assessee was not under legal obligation to pay the said amount, is well founded. Thus, the finding of the STAT that the assessing authority has rightly disallowed the said amount as expenditure under Section 48(i) of the Act, is tenable.

16. Insofar as the payment of Rs.61,00,000/- to AMC, as rightly held by the learned STAT, the appellant/assessee has not placed any evidence to show that said company had rendered any services in facilitating the execution of sale deed in favour of M/s Abhishek Developers, and as such we hold that the learned STAT has have rightly held that it was an afterthought to avoid tax and

no concrete evidence was placed to believe the version of the appellant/assessee.

17. The judgment in **Kousalya Devi(deceased)**'s case(supra) relied on by the learned counsel for the appellant/assessee, it was held that facts should not be interpreted to mean that wherever an assessee has paid an amount under an earlier agreement-to-sell in terms of the settlement or even a court decree, the said amount would be treated as expenditure wholly or exclusively in connection with the transfer, the subject matter of capital gains. In such instances, the nature and character of the agreement, timing of the earlier agreement and payment claimed as expenditure and the date of transfer resulting in capital gains, are relevant aspects, which should be taken into consideration.

18. In the aforesaid judgment, the assessee therein had paid an amount to other party as per the terms of the settlement in a compromise decree entered before the Civil Court. The Division Bench of the High Court of Delhi has observed that the fact of payment of amount towards settlement or even in pursuance of a Court decree, shall be treated as expenditure and directed the

authorities to allow the said expenditure under Section 48 (i) of the IT Act and in the instant case, the amounts alleged to be paid are doubtful and more so, no concrete evidence is placed to substantiate the said version, and as such the facts of the instant case are distinguishable with **Kousalya Devi(deceased)**'s case(supra).

19. In the view of the foregoing facts and circumstances, the learned STAT as well as the CIT(A), being the fact finding appellate authorities, have concurrently held against the appellant/assessee holding that the amounts claimed by them do not qualify as expenditure under Section 48(i) of the Act, and we are of the considered view that the appellant/assessee has miserably failed to substantiate their claim and we are not inclined to interfere with the well-considered findings of the learned STAT, and the appeal is liable to be rejected.

20. Accordingly, the substantial questions of law are answered against the appellant/assessee and in favour of the respondent/Revenue.

21. As a result, the appeal is dismissed confirming the order passed by the learned STAT in ITA.No.1364/Hyd/08, dt.18.12.2009. No order as to costs.

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

SD/- A.PRATHIMA
DEPUTY REGISTRAR

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SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice P. Sam Koshy
(For His Lordship kind Perusal)

One Fair Copy to the Hon'ble Sri Justice Suddala Chalapathi Rao
(For His Lordship kind Perusal)

To,

1. The Assistant Commissioner of Income Tax, Circle 2(3), Hyderabad.
2. 11 LR Copies
3. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs, New Delhi
4. The Secretary, Telangana Advocates Association Library, High Court for the State of Telangana, High Court Buildings at Hyderabad
5. One CC to Sri. Y Ratnakar, Advocate [OPUC]
6. One CC to Sri Swaroop Oorilla Special Government Pleader for State Tax [OPUC]
7. Two CD Copies

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HIGH COURT

DATED:24/10/2025

ORDER

ITTA.No.465 of 2010



DISMISSING THE APPEAL

(19)

PA
30/10/25