

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE FIFTH DAY OF DECEMBER
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: 397 OF 2012

Income Tax Tribunal Appeal under Section 260-A of the Income Tax Act, 1961 against the Order dated 04.05.2012 passed in ITA No.1317/Hyd/2010 for the Assessment Year 2005-2006 on the file of the Income Tax Appellate Tribunal, Hyderabad 'A' Bench, Hyderabad.

Between:

Smt.Swapna, ^CR/o.Hyderabad.

...Appellant

AND

Dy.Commissiонер of Income Tax, Central Circle-6, Hyderabad.

...Respondent

**Counsel for the Appellant : Mr. Duvva Pavan Kumar representing
Mr. Y. Ratnakar**

**Counsel for the Respondent : Mr. Srinarayan Toshnival representing
Mr. N. Praveen Reddy Standing counsel for the
Income Tax Department/Revenue**

The Court made the following:

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

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

INCOME TAX TRIBUNAL APPEAL No.397 OF 2012

Date :: 05.12.2025

Between :

Smt. Swapna,
Hyderabad.

...Appellant

AND

Dy. Commissioner of Income-tax,
Central Circle-6, Hyderabad.

...Respondent

JUDGMENT: *(per Hon'ble Sri Justice P. Sam Koshy)*

Heard Mr. Duvva Pavan Kumar, learned counsel representing Mr. Y.Ratnakar, learned counsel for the appellant / assessee; and Mr. Srinarayan Toshnival, learned counsel representing Mr. N. Praveen Reddy, learned Standing Counsel for the Income Tax Department / Revenue.

2. The instant appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') has been filed by the appellant challenging the order passed by the Income Tax Appellate Tribunal,

Hyderabad Bench 'A', Hyderabad (for short the 'ITAT') in ITA No.1317/Hyd/2010, decided on 04.05.2012.

3. *Vide* the impugned order; the ITAT affirmed the order passed by the Commissioner of Income Tax (Appeals), dated 28.01.2010, who in turn held the disallowance of Rs.20 lakhs and deleted the balance addition of Rs. 48,85,000/-.

4. The facts of the case in brief are that the inception of the case is from a search and seizure conducted under Section 132 of the Act at the residential premises of the appellant on 19.02.2008. Following this, a notice under Section 153A of the Act, dated 19.02.2008, was issued for assessment year 2002-2003 to 2007-2008. The appellant filed her return of income for the assessment year 2005-2006 on 29.10.2008 declaring a total income of Rs.7,88,796/-. The assessment proceedings, which were completed on 31.12.2009, the Assessing Officer made several additions to the declared income, viz.,

- a) Rs.9,42,050/- as unexplained cash credits under Section 68 of the Act consisting of cash loans of Rs.4,07,050/- and cheque loans of Rs.5,35,000/- from Lahiri Green Park, for

which the appellant failed to provide confirmations or establish the identity, capacity, and genuineness of the transaction;

- b) Rs.1,12,500/- as disallowance under Section 40A(3) of the Act representing 20% of land cost of Rs.5,62,500/- debited to P&L account for cash payments made for land purchases;
- c) Rs.68,85,000/- as unexplained investment under Section 69 for purchase of agricultural land in Bianur measuring 4 acres 2 guntas (with Rs.20 lakhs paid in cash as per seized material); and
- d) Rs.6,49,024/- as unexplained investment for purchase of gold and diamonds.

5. The total assessed income was computed at Rs.85,75,170/-, resulting in a tax liability of Rs. 28,51,620/- with interest of Rs.17,00,280/-, leading to a final tax demand of Rs.43,24,900/- after adjusting prepaid taxes of Rs.2,27,000/-.

6. Aggrieved by the said assessment order, the appellant filed an appeal before the Commissioner of Income Tax (Appeals), who passed an order on 28.10.2010. During the appellate proceedings,

the appellant did not press the ground relating to disallowance under Section 40A(3) of the Act which was consequently dismissed. The Commissioner of Income Tax (Appeals) directed deletion of the entire addition of Rs.9,42,050/- relating to loans from Lahiri Green Park, following the identical issue decided in favor of the appellant in assessment year 2003-04. Regarding the agricultural land addition of Rs.68,85,000/-, the Commissioner of Income Tax (Appeals) examined the seized material which was an agreement for sale dated 01.01.2005. The Commissioner held that while the vendors had acknowledged receipt of Rs.20 lakhs in cash, the balance amount of Rs.48,85,000/- could not be added as there was no evidence that the sale was actually completed or that the balance payment was made after registration. Therefore, only Rs.20,00,000/- addition was confirmed and Rs.48,85,000/- was deleted. For the gold jewelry addition, the Commissioner found that Rs.4,73,890/- was properly accounted for through a bill from Keerthilal Kalidas & Co. with payment by cheque No.935330, reflected in the capital account of Shri G. Hari Babu, and the buyer was identified as Smt. G.V. Lakshmi (the appellant's mother). This portion was deleted, while the balance of Rs.1,75,134/- remained

unexplained and was confirmed. The appeal was thus partly allowed with substantial relief granted to the appellant. However, both the appellant and the Revenue filed cross appeals before the ITAT against the order dated 06.08.2010 passed by the Commissioner of Income Tax (Appeals).

7. The appellant challenged the confirmed addition of Rs.20,00,000/- for the agricultural land purchase, arguing that the agreement was not signed by the appellant and the purchase was not completed. The Revenue challenged the deletion of Rs.48,85,000/-. The ITAT, after considering rival submissions, upheld the Commissioner of Income Tax (Appeals) decision on both counts. The ITAT confirmed the addition of Rs 20,00,000/- by observing that although the appellant had not signed the agreement, the vendors had acknowledged receipt of this amount in the presence of witnesses and had made a handwritten statement about forfeiture if registration was not completed within 1 month from 01.01.2006, thereby establishing that the payment was made and remained unexplained. Regarding the Revenue's appeal for Rs.48,85,000/-, the ITAT agreed with the Commissioner of Income Tax (Appeals) that since the agreement stipulated the

balance amount would be paid only after registration of the sale deed, and there was no concrete evidence that the actual sale was completed or that the balance amount was paid, therefore, this portion of the addition could not be sustained. Consequently, both appeals were dismissed, with the ITAT confirming that only Rs.20,00,000/- out of the original Rs.68,85,000/- addition was justified as unexplained investment under Section 69 of the Act.

8. The present appeal challenges the legal sustainability of the ITAT's finding which upheld the addition solely on the basis of an unsigned photocopy of an agreement for sale that was admittedly never acted upon, without any independent corroborative evidence establishing actual payment of the alleged advance amount of Rs.20 lakhs, and without examination of the vendors who purportedly received such payment.

9. The learned counsel for the appellant contended that the entire addition of Rs.20 lakhs sustained by the ITAT is based on a photocopied, unsigned agreement which has no evidentiary value in law. The agreement was never executed by the appellant, nor acted upon and was rejected at the initial stage itself. Moreover, the appellant never signed the agreement as she decided not to

proceed with the purchase of the agricultural land at Bhanur after learning about disputes concerning the property. The vendors themselves took back the original unsigned agreement as no payment was made and no transaction materialized. Therefore, an unsigned photocopy of an agreement without any supporting evidence of actual payment or transfer of funds cannot form the basis for making an addition under Section 69 of the Act.

10. Furthermore, the learned counsel for the appellant argued that there is a complete absence of any independent or corroborating evidence to establish that Rs.20 lakhs was actually paid by the appellant to the vendors. Neither the Assessing Officer nor the appellate authority conducted any independent inquiry or verification with the vendors to ascertain whether they received any such payment. Moreover, he submitted that the appellant had specifically requested the Assessing Officer during the assessment proceedings to summon the vendors and examine them regarding the alleged payment, but this request was ignored and no such inquiry was conducted. No bank statements, cash flow analysis, or any other documentary evidence has been brought on record by the revenue authorities to prove that the appellant made any

payment of Rs.20 lakhs. Therefore, he contended that mere existence of an unsigned agreement mentioning an advance amount cannot, by itself, lead to a presumption that such payment was actually made especially when the appellant has consistently denied making any payment and the property was admittedly never purchased.

11. The learned counsel for the appellant contended that the Commissioner of Income Tax (Appeals) while accepting that the property was never purchased and the agreement was not acted upon, still proceeded to uphold the addition of Rs.20 lakhs on the presumption that the advance must have been paid as per the agreement. This conclusion is contradictory and illogical if the property was never purchased and the agreement was never executed and on what basis can it be presumed that an advance payment was made. Thus, the learned counsel for the appellant submitted that the ITAT compounded this error by mechanically confirming the order without appreciating the factual matrix and the absence of evidence. Therefore, according to the learned counsel, both the authorities i.e. the Commissioner of Income Tax (Appeals) and the ITAT failed to apply the wellsettled principle of

law that additions under Section 69 of the Act which can only be made when there is positive evidence of unexplained investment or expenditure, and mere suspicion or assumption cannot substitute concrete evidence.

12. The learned counsel for the Department contended that the addition of Rs.20 lakhs sustained by the ITAT is fully justified and based on cogent material found during the search and seizure operation conducted under Section 132 of the Act on 19.02.2008. The seized document is an agreement of sale dated 01.01.2005 concerning purchase of agricultural land admeasuring 4 acres 2 guants at Bhanur for total consideration of f Rs.63,85,000/-which clearly stipulates that Rs.20,00,000/- was paid in cash as advance and the agreement has been duly signed by all the vendors in the presence of witnesses acknowledging receipt of Rs.20 lakhs in cash from the appellant. However, the fact that the appellant chose not to sign the agreement does not vitiate the evidentiary value of the document, particularly when the vendors have categorically acknowledged receipt of the advance amount. Moreover, he submitted that the appellant failed to provide any explanation for the source of this cash payment during assessment proceedings

and did not dispute that the document was found from her premises during the search operation.

13. Further, the learned counsel for the Department contended that the acknowledgment by the vendors is corroborated by the handwritten statement appearing on the last page of the agreement wherein the vendors have categorically stated that "if the registration is not made within one month from this date i.e. 01.01.2006, the total amount will be forfeited". Therefore, this handwritten clause is of crucial evidentiary significance as it unequivocally demonstrates that the vendors had in fact received the advance payment mentioned in the agreement. The forfeiture clause would be meaningless and unnecessary if no money had actually changed hands and the vendors would not have agreed to forfeit an amount that was never received by them. Therefore, the very existence of this stipulation written in the vendors' own hand conclusively establishes that Rs.20 lakhs was paid to them by the appellant. Thus, he submitted that the appellant's contention that no payment was made and that the vendors took back the unsigned agreement is a self-serving afterthought unsupported by any evidence and contradicted the seized document itself.

14. Furthermore, the learned counsel for the Department contended that the appellant's request for examination of vendors is misconceived and is an attempt to shift the burden of proof, as once the seized document establishing payment of Rs.20 lakhs was found from the appellant's possession and the appellant failed to explain the source of this investment, the onus was upon the appellant to prove that no such payment was made. Moreover, the appellant could have easily produced the vendors before the authorities or obtained affidavits from them stating that no payment was received, but chose not to do so. Therefore, the appellant cannot now take the advantage of her own failure to discharge the burden of proof by alleging that the Assessing Officer should have examined the vendors. Moreover, the appellant has not been able to explain why such an agreement with detailed terms, signed by all vendors and witnesses, would be created and found in her possession if no transaction was ever contemplated or initiated. He further submitted that the document found during the search is not a mere draft or proposal, but a detailed agreement reflecting a completed transaction of advance payment, and the appellant has

not provided any credible explanation to rebut the presumption arising from such document found in her exclusive possession.

15. Lastly, the learned counsel for the Department contended that the appellant's contentions regarding absence of independent evidence, non-examination of vendors, and unsigned nature of the agreement have been duly considered and rightly rejected by the ITAT. The substantial questions of law proposed by the appellant in the instant case therefore do not arise from the order of the ITAT as the findings are purely factual, based on adequate material on record, and do not give rise to any question of law. Accordingly, the appeal may be dismissed and the order of the ITAT confirming the addition of Rs.20,00,000/- may be upheld.

16. Having, heard the contentions put forth on either side and on perusal of records, the substantial question that arise for consideration in this appeal is "whether the findings of the ITAT in upholding the addition based on an unsigned, unacted upon agreement, that too, of which photocopies alone were available and without any proof of having received the payment is justified or not or whether it is a perverse finding contrary to the established principles of evidence in a tax related proceedings?"

17. It would be relevant at this juncture to refer to a few judicial precedents on the subject matter. Firstly, in the case of **CIT vs. P.K. Noorjahan**¹, the Hon'ble Supreme Court held at paragraph Nos.3 and 4, as under:

"3. Shri Ranbir Chandra, the learned counsel appearing for the Revenue, has urged that the Tribunal as well as the High Court were in error in their interpretation of Section 69 of the Act. The submission is that once the explanation offered by the assessee for the sources of the investments are found to be unacceptable the only course open to the Income Tax Officer was to treat the value of the investments to be the income of the assessee. The submission is that the word "may" in Section 69 should be read as "shall". We are unable to agree. As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word "shall" had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word "may". This clearly indicates that the intention of Parliament in enacting Section 69 was to confer a discretion on the Income Tax Officer in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the Income Tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not

¹ (1997) 11 SCC 198

satisfactory. The question whether the source of the investment should be treated as income or not under Section 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the Income Tax Officer under Section 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.

4. In the instant case, the Tribunal has held that the discretion had not been properly exercised by the Income Tax Officer and the Appellate Assistant Commissioner in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. We also do not find any error in the said finding recorded by the Tribunal. There is thus no merit in these appeals and the same are accordingly dismissed. No order as to costs.

18. Secondly, in the case of **The Commissioner of Income Tax – IV vs. Smt. R. Nalini Devi**², the unified High Court of Andhra Pradesh at Hyderabad, held as under:

² Income Tax Tribunal Appeal No.232 of 2013 decided on 10.07.2013.

It appears, the Assessing Officer had relied on a photocopy of an unsigned sale agreement in order to find that consideration amount has been paid at Rs.1,58,00,000/-. Therefore, this amount was not disclosed. The learned Tribunal has correctly concluded that unsigned photocopy of the agreement for purchase of the property cannot be a material to rely on, when the registered sale deed has been produced and the same shows that the property was purchased at a price of Rs.23,50,000/-. This registered sale deed was disclosed at the time of original assessment. According to us, the agreement of sale loses its force, the moment registered sale deed is executed. If the property has been purchased at a higher price than that of mentioned in the purchase deed, then the onus is on the Assessing Officer to establish that, as has been rightly concluded by the Tribunal on this issue. Moreover, photocopy of the unsigned agreement has got no evidentiary value. The Assessing Officer has done a guess work while coming to the conclusion that the price of the property is more than mentioned in the sale deed. There must be some material and basis to conclude that the purchase has been made at an under valuation.

19. Lastly, the Chandigarh Bench of the Income Tax Appellate Tribunal in the case of **The Income Tax Officer, Ward-6 (4) and Ors. vs. Bimal Suri and Ors.**³, in paragraph Nos.29 it was held as under:

³ ITA Nos. 664 and 680/Chd/2011

"29. We have considered the rival submissions. It is not in dispute that survey was conducted at the premises of Chandigarh Overseas Private Limited and its sister concerns and during the course of survey, certain loose papers including copies of agreement to sell in question were impounded. Thus, no agreement to sell or any incriminating documents were found from the possession of the assessee. There is no recovery of any incriminating document from the power and possession of the assessee. The Assessing Officer has not brought any material on record to prove any connection of the assessee with these documents/agreement to sell. The Assessing Officer wanted to rely upon the photocopies of the agreement to sell in question. Therefore, the onus would be upon the Assessing Officer to prove that the documents found during the course of survey from third party, belonged to the assessee. The original of the photocopies were never recovered in survey proceedings or in post survey proceedings, The documents found are only photocopies and no original documents were found. Therefore, photocopies of the documents would have little evidentiary value. It is also admitted fact that the survey party as well as Assessing Officer has not made any enquiry from any seller or buyer, M/s. Parsav Colonisers and Consultants Private Limited and M/s. Gee City Builders Private Limited with respect to sale/purchase of any land from the assessee or from any original sellers directly or indirectly. No material have been brought on record if the assessee was connected with any deal as alleged in the

photocopies of the agreement to sell. No details of any sale consideration or actual amount received or paid by the assessee have been brought on record. No evidence have been brought on record if agreements to sell in question were acted upon by the parties. The agreement to sell dated 29.1.2005 is not on any stamp paper. The Hon'ble Delhi High Court in the case of CIT Vs. Murti Devi (supra) while dismissing departmental appeal referred to the findings of the Tribunal in which it was held that the photocopies of the documents have very little evidentiary value and in the absence of original documents, photocopies of the documents are not admissible and cannot be the basis for making addition. It is, therefore, a fact that no original agreements to sell were found from any person and original documents were never confronted to the assessee. Therefore, there is no question of preparing copies from the original agreement to sell. Therefore, photocopies of the agreement to sell cannot be compared with original documents. Reliance of the learned D.R. thus on sections 63, 64 and 65 of the Evidence Act is clearly misplaced. There was thus no basis to make any addition against the assessee on account of investment or earning any profits out of any sale transaction alleged to have been recorded in the agreement to sell. Since the documents were impounded from third party and no enquiry have been made from them or from any party related to the agreement to sell, therefore, there was no justification to make any addition against the assessee on the basis of such agreement to sell. Even in the case of M/s. Gee City Builders Private Limited, the Assessing

Officer passed regular assessment order under section 153A r.w.s. 143(3) of the Act but no addition have been made in this case. The learned CIT (Appeals) on proper appreciation of facts and material on record correctly deleted the additions."

20. We are of the considered opinion that the addition of Rs.20,00,000/- as unexplained investment under Section 69 of the Act cannot be sustained on the facts and circumstance of the case. The foundational flaw in the Revenue's case lies in treating a photocopy of an unsigned, unexecuted agreement as conclusive proof of an actual cash payment. While it is true that the vendors have signed the document and acknowledge receipts of Rs.20 lakhs. The appellant herself has not signed this agreement, which basically undermines any inference that she entered into a binding commitment or made any payment pursuant to it. An Agreement that lacks the signature of the alleged purchaser cannot ordinarily be treated as a completed transaction, particularly when the transaction itself was admittedly never carried through to fruition. The entire edifice of the Revenue's case rests upon vendor signatures on a document that was found in the appellant's possession but never acted upon by either party and no registration

was completed, no balance payment was made and the land was never transferred. To add such a large amount based on such weak evidence would mean treating suspicion as if it were actual proof.

21. Further, there is no independent proof that this payment actually happened. The vendors who are supposed to have received Rs.20 lakhs in cash were never called in or questioned by the tax officer. No one checked whether they truly received the money or tried to find out from where such a large cash amount came or went. The handwritten note about forfeiting the amount, which the tax authorities relied on heavily does not actually prove that money changed hands and it seems more like a condition for something that might happen in the future, which ultimately never did. The Revenue's argument that the appellant should have produced the vendors or obtained affidavits from them reflects a misunderstanding of how the burden of proof operates in tax proceedings. However, when suspicious documents are found during a search, the taxpayer has to explain them. But that does not mean the taxpayer must disprove every guess or assumption made from incomplete, unsigned documents. When the key document is unsigned and the deal clearly never went through, the

tax authorities cannot avoid their responsibility to prove the investment actually occurred using solid and verified evidence. The failure to question the vendors leaves a critical missing piece in the evidence. Therefore, we are satisfied that the Commissioner of Income Tax (Appeals) and the ITAT evaluated the evidence and applied the burden of proof which raises serious concerns.

22. Now what needs to be appreciated is how can an agreement that was never signed by the buyer and relates to a deal that never actually happened be used as the sole basis to tax someone for Rs.20 lakhs as unexplained money. Without getting independent confirmation, without even speaking to the people who supposedly received this money, one cannot simply assume that such a large cash payment was made. That would be building a tax demand on assumptions rather than facts. Therefore, we are inclined to set aside the ITAT's order dated 04.05.2012 and hold that the addition of Rs.20 lakhs made by the Assessing Officer which has been affirmed by the Commissioner of Income Tax (Appeals) as also by the ITAT itself is bad in law and is accordingly ordered to be decided in favour of the assessee. The question of law framed

stands decided in favour of the assessee and against the Revenue.

Accordingly, the instant appeal stands allowed.

23. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

Sd.- I. NAGA LAKSHMI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal, Hyderabad 'A' Bench Hyderabad.
2. The Commissioner of Income Tax (Appeals)-I, Hyderabad
3. The Deputy Commissioner of Income Tax, Central Circle - 6, Hyderabad.
4. One CC to Mr. Y. Ratnakar, Advocate [OPUC]
5. One CC to Mr. N. Praveen Reddy Standing counsel for Income Tax Department/Revenue [OPUC]
6. Two CD Copies

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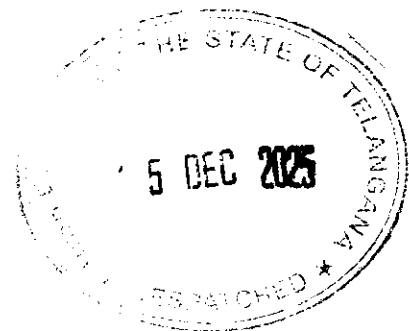
HIGH COURT

PSK, J
&
SCR, J

DATED:05/12/2025

JUDGMENT

ITTA.No.397 of 2012



ALLOWING THE APPEAL WITHOUT COSTS

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15/12/25