

[3417]

**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION NO: 15833 OF 2023

Between:

1. M/s Coastal Ceramics and Clay Works Private Ltd., 11-58, Morampudi, Rajahmundry Rural, Rajahmundry-533103 rep. by Managing Director. Barlapudi Raveendra Kumar S/o Hanumaiah

...PETITIONER(S)

AND

1. Union of India, Ministry of Finance Department of Revenue, 3rd Floor, Jeevan Deep Building, Sansad Marg, New Delhi- 110001 Rep. by the Finance Secretary
2. Interim Board For Settlement -II, New Delhi, 9th Floor, Loknayak Bhavan, Khan market, New Delhi-110003, Rep. by its Registrar
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.

...RESPONDENTS

The Court made the following order: *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

Heard learned counsel for petitioner Sri N.Vijay and Smt. M.Kiranmayee,
Standing Counsel for Income Tax.

2. The bone of contention appears to be is Rs.50.00 lakhs, which according to the petitioner, was received as refundable security deposit from M/s. Royal Mindz Infra Pvt. Ltd. (Developer) vide Development Agreement-cum-GPA No.7592/2011 dated 16.11.2011 for construction of commercial complex at Rajahmundry and as the said amount is an interest free refundable security deposit for due completion of the project by the developer, said amount in the hands of petitioner cannot be treated as revenue for levying tax under the head “Income from other sources” for the Assessment Year 2019-20. On the other hand, the argument of the Standing Counsel is that the said amount of Rs.50.00 lakhs was received by the Managing Director on behalf of the petitioner and retained by him though it was stated to be the sum held as security deposit against the construction of commercial complex and which work has not yet started. Therefore, the sum of Rs.50.00 lakhs received by the petitioner was held to be revenue receipt and brought to tax as income for AY 2019-20 under the head “Income from other sources”. The said amount is to be treated as income of the petitioner having been received and consumed as undisclosed receipt. The petitioner did not disclose the same in the books of accounts as a liability and it was on account of search that the said deposit was unearthed by the Department. Hence, the said receipt is an undisclosed receipt in the hands of the petitioner and liable for tax.

3. The point for consideration is whether there are merits in the writ petition to allow?

4. **Point:** In the light of the above respective contentions, a perusal of the Development Agreement-cum-GPA bearing No.7592/2011, a copy of which is filed along with material papers discloses that the petitioner being owner entered into a Development Agreement with the builder viz., M/s. Royal Mindz Infra Pvt. Ltd. The document *inter alia* showed at clause 38 that the second party (builder) has agreed to pay sum of Rs.50.00 lakhs towards interest free refundable security deposit to first party (owner) and accordingly, paid the said amount. Then clause 40 reads that it was agreed between the parties that the aforesaid interest free refundable security deposit of Rs.50.00 lakhs paid by the developer shall be repayable to him by the owner within two months after handing over of commercial units completed in all respects.

5. Thus, it is discernable from the aforesaid Development Agreement that the disputed amount of Rs.50.00 lakhs is only an interest free security deposit lying in the hands of the petitioner. The Department, it appears, proposes to treat it as a revenue receipt on the main ground that the said amount was not shown by the petitioner in its accounts as a liability. However, the Department does not appear to challenge the genuinity of the Development Agreement. Considering all these aspects, we are of the view that it is not apposite on the part of the Department to

treat the aforesaid amount of Rs.50.00 lakhs as receipt for the AY 2019-20 to impose tax.

6. Accordingly, this Writ Petition is allowed with a direction that the petitioner shall hereafter show the amount of Rs.50.00 lakhs as interest free security deposit in its books of accounts till the same is refunded to the builder viz., M/s. Royal Mindz Infra Pvt. Ltd. and respondent Department is directed to drop the proceedings against the petitioner to collect tax in respect of the said amount. No costs.

As a sequel, interlocutory applications pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

VENKATA JYOTHIRMAI PRATAPA, J

28.12.2023

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