

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

**FRIDAY, THE SIXTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO

INCOME TAX TRIBUNAL APPEAL NO: 464 OF 2012

Income Tax Tribunal Appeal under Section 260-A of the Income Tax Act 1961 against order dated 11-04-2012 in ITA.No. 813/Hyd/2009, on the file of Income Tax Appellate Tribunal Hyderabad "A" Bench Hyderabad, for the assessment year 2006-07.

Between:

M/s. G.H.REDDY And Associates, (Construction) Pvt. Ltd., PMR Plaza, Plot No.3, Thakur Mansion Lane, Somajiguda, Hyderabad-500 082

...APPELLANT/ Respondent

AND

The Income Tax Officer, Ward 2 (2), Hyderabad.

...RESPONDENT

**Counsel for the Appellant: SRI. R. SIVA RAMAN, Advocate representing
SRI B. VIJAY KUMAR**

Counsel for the Respondent: Ms. J. SUNITHA (Senior SC FOR INCOME TAX)

The Court made the following ORDER:

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

ITTA.No. 464 OF 2012

Dt.06.02.2026

Between:

M/s G.H.Reddy & Associates (Construction) Pvt. Ltd.

.....Appellant

and

The Income Tax Officer

.....Respondent

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

1. The present appeal has been filed challenging the order passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'A' in ITA.No.813/Hyd/2009(AY-2006-07), dt.11.04.2012.
2. The brief facts of the case are that the appellant/assessee was allotted a work contract by M/s Krishna Bhagya Jala Nigam Limited (KEJNL) *vide* agreement, dt.13.12.1999, for construction of a canal and during the course of execution of the said work, disputes arose between the parties, pursuant to which the

appellant/assessee raised an arbitration claim against KBJNL and the matter was referred to an arbitrator, who allowed the said claim *vide* order dt.24.01.2003. Assailing the said orders, KBJNL preferred an appeal before the District Court, which was partly confirmed. There-against, KBJNL filed appeal before the Hon'ble High Court of Karnataka at Bangalore, and the High Court *vide* interim order dt.21.12.2005 stayed the operation of the District Court's order and directed KBJNL to deposit a sum of Rs.3 crores to the appellant/assessee as an interim measure, pending disposal of the appeal.

3. Pursuant thereto, KBJNL deposited the said amount of Rs.3 crores (excluding the TDS amount) in the account of the appellant/assessee. Further, the Assessing Officer treated the said amount as revenue receipt and brought it to tax as income in the year of receipt *vide* order, dt.31.12.2008.

4. Aggrieved by the said assessment order, the appellant/assessee preferred an appeal before the CIT(A) and the CIT(A), by order dt.29.04.2009, allowed the appeal directing the Assessing Officer to delete the addition of said amount as revenue receipt for the relevant assessment year, holding that the amount

is liable to be taxed in the year in which the dispute with KBJNL attains finality in favour of the assessee.

5. Assailing the order of the CIT(A), the respondent/Revenue has filed the underlying appeal in ITA.No.813/Hyd/2009, before the learned ITAT and the ITAT, by the impugned order, dt.11.04.2012, set aside the order of the CIT(A), dt.29.04.2009 and affirmed the orders of the Assessing Authority. The said order of the learned ITAT is under challenge before this Court and the appeal is admitted on the following substantial questions of law:

“Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the amount received by way of an interim order from the Honourable High Court of Karnataka is taxable in the year of receipt when the matter has not attained any finality and the dispute is still pending before the Hon’ble Supreme Court of India for final decision?”

6. Heard the learned counsel Sri R.Siva Raman, learned counsel representing Sri B.Vijay Kumar, for the appellant/assessee and Ms. J. Sunitha, learned Senior Standing Counsel for Income Tax for respondent/Revenue.

7. Learned counsel for the appellant/assessee contended that the amount of Rs.3 crores (excluding the TDS amount) was deposited by KBJNL as an interim measure arising out of arbitral proceedings and that the said deposit cannot be treated as income in the year of receipt and it would become taxable only in the year in which the dispute finally resolves between the parties in favour of the assessee and in any event if the dispute ends against to the interest of the assessee they are liable to return the same to KBJNL.

8. The learned counsel for the petitioner placing reliance on the order passed by the Division Bench of this Court in **Commissioner of Income Tax-III & Sri Indira Power Energies Limited¹** contended that the order passed by the ITAT is perverse and against to the law laid down by the Hon'ble Supreme Court in the case of **Commissioner of Income Tax v. Hindustan Housing & Land Development Trust Limited²**, and contended that the learned ITAT has erroneously reversed the well-reasoned order passed by the CIT(A) and is in violation of the settled principles of law.

¹ ITTA.No.327 of 2012, dt.02.08.2013

² 1986 161 ITR 524

9. *Per contra*, the learned Senior Standing Counsel for Revenue would contend that the Tribunal is justified in passing the impugned order and that as the amount had already been deposited in the account of the appellant/assessee, it is nothing but income of the assessee/company and liable to be taxed in the year of receipt and contended that the orders passed by the ITAT are justified and valid, thus, prayed to dismiss the instant appeal.

10. We have given earnest consideration to the submissions made the learned counsel on either side and perused the material on record.

11. The short point that arises for consideration before this Court is, whether the sum of Rs. 3 crores (*excluding the TDS amount*) deposited in the account of the assessee pursuant to an interim order, dt.21.12.2005, on the file of the Hon'ble High Court for the State of Karnataka, is taxable as income of the assessee in the year of receipt or whether the said amount is exigible to tax after the final resolution of the dispute, and upon such final resolution, whether it would then be treated as income of the assessee for the relevant period.

12. Admittedly, the said amount of Rs.3 crores (*excluding the TDS amount*) has been deposited in the account of the assessee in pursuance of an interim arrangement made during the pendency of the appeal, in compliance with the directions issued by the Hon'ble High Court of Karnataka. At this stage, apparently the right of the appellant/assessee over the said amount has not attained finality and the crystallization of said deposit into income is in a fluid state and depends upon the final determination in the High Court of Karnataka.

13. It is well settled that until and unless a competent Court of law decides the said issue conclusively, the said amount cannot be said to have crystallized as income and the assessee shall not derive any right over the said amount.

14. The very same issue came up for consideration before the Division Bench of this Court in the case of ***M/s R.S. Rangadas, Hyderabad, Vs. ACIT, Circle-II(1), Hyderabad***³ wherein by placing reliance on the judgment of the Hon'ble Supreme Court in ***Hindustan Housing and Land Development Trust Limited*** (supra) and also by the judgment of the Hon'ble High Court of

³ ITA.Nos.68, 97 and 168 of 2003, dt.02.09.2014

Bombay in the case of **SGP Ltd. v. Commissioner of Income Tax**⁴, the said issue is no more *res integra*.

15. The Hon'ble Supreme Court in **Hindustan Housing and Land Development Trust Limited's** case(supra) has categorically held that unless and until the amount in question is finally crystallized, the question of the treating the same as income in the year of receipt does not arise. The Hon'ble Supreme Court has affirmed to the legal position as clarified by the Gujarat High Court in **Topandas Kundanmal v. Commissioner of Income-tax, Gujarat**, which reads as under:

".....the legal position which emerges is that there is no liability in praesenti to pay an enhanced compensation till it is judicially determined by the final court since the entire question, namely, whether the offer made by the Land Acquisition Officer is inadequate and the claimant is entitled to an additional compensation and if yes, at what rate is in flux till the question is set at rest finally, we do not think that any enforceable right to a particular amount of compensation arises. The offer made by Land Acquisition Officer, by his award, if not accepted by a claimant would not result automatically in a liability to pay additional compensation as claimed by party aggrieved."

⁴ (2010) 226 ITR 444

16. The principle of law involved in the said judgment would squarely apply in the instant case as the very right of the appellant-assessee to receive the amount is under dispute and is not conclusively determined in favour of the assessee and the same is also not quantified and crystallized.

17. Thus, in view of the law laid down by the Hon'ble Supreme Court in **Hindustan Housing and Land Development Trust** (supra) read with the judgments in **Topandas Kundanmal** (supra) and **SGP Ltd.** (supra), we are of the considered view, that the amount of Rs.3 crores, deposited in pursuance of the direction of the Hon'ble High Court of Karnataka, cannot be treated as revenue receipt or as income taxable of the assessee in the year of receipt. Moreso, it is always open to the Assessment Officer to subject the said amount to tax in the assessment year in which the dispute is finally resolved in favour of the assessee crystallizing the right of the assessee.

18. In that view of the matter, the impugned order passed by the Income Tax Appellate Tribunal is nothing but *ex facie* illegal, arbitrary and perverse and accordingly, the substantial question

of law is answered in favour of the appellant/assessee and against the respondent/Revenue.

19. In view of the above findings, the appeal is allowed and the impugned order in ITA.No.813/Hyd/2009 (AY-2006-07), dt.11.04.2012 is hereby set aside. Consequently, the assessment order, dt.31.12.2008, is hereby quashed, with a direction to the assessing officer to pass appropriate orders after final determination of the dispute under arbitral proceedings, by following due process of law. No order as to costs.

20. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

SD/- K.SHYLESHI
JOINT REGISTRAR

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SECTION OFFICER

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(For His Lordships Kind Perusal)

AND

One Fair Copy to the Hon 'ble Sri Justice SUDDALA CHALAPATHI RAO
(For His Lordships Kind Perusal)

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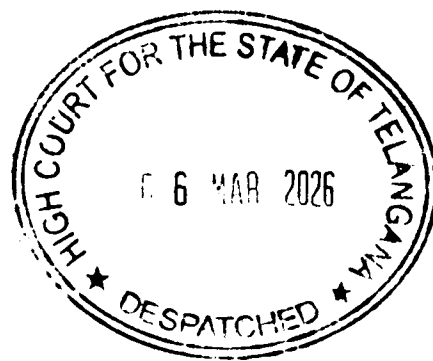
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HIGH COURT

DATED:06/02/2026

Note:

L.R. Copy to be marked



ORDER

ITTA.No.464 of 2012

ALLOWING THE APPEAL
WITHOUT COSTS

(22)

kpoo
24/2/26