आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव,न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER&
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.Nos.72-76/Viz/2015**
(निर्धारण वर्ष**/Assessment Year:2007-08 to 2011-12 respectively)**

N.V.Vasantha Rao D.No.30-6-19/A Opp: 2 Town P.S. Dabagardens Visakhapatnam **[PAN :AAHPV0349Q]**	Vs.	Income Tax Officer Ward-3(1) Visakhapatnam
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओरसे/ Appellant by	:	Shri, I Kama Sastry, AR
प्रत्यार्थी की ओर से/ Respondent by	:	Shri, T.Satyanandham, DR
सुनवाई की तारीख / Date of Hearing	:	29.05.2018
घोषणा की तारीख/Date of Pronouncement	:	06.06.2018

आदेश /O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

1. These appeals are filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam vide ITA No.56/2013-14/ITO W-3(1), VSP/2014-15, ITA No.1006/2013-14/ITO W-3(1), VSP 2014-15 and ITA No.1014-1016/2013-14/ITO W-3(1), VSP/2014-15 dated18.12.2014 for the assessment year 2007-08 to

2011-12. Since the issues involved in these appeals are common, all the appeals are clubbed, heard together and disposed off in a common order for the sake of convenience as under:

ITA No.72/Viz/2015: A.Y.2007-08

2. The assessee filed 8 grounds of appeal along with appeal memo as under :

1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.
2. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs2,10)000 made by the assessing officer u/s 69 of the Income Tax Act,1961 towards alleged unexplained amount of loans received by the appellant.
3. The learned Commissioner of Income Tax (Appeals) is not justified in confirming partly to the extent of Rs.79,137 addition of Rs9,01,407 made by the assessing officer u/s 69A of the Income Tax Act,1961 towards alleged unexplained amount of income tax challans paid on behalf of the clients of the appellant.
4. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs13,400 made by the assessing officer under the head income from House Property'.
5. The learned Commissioner of Income fax (Appeals) is not justified in confirming the disallowance of Municipal Tax of Rs.1433 claimed by the appellant against income from house property at Dabagardens,
6. The 'earned Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs8,012 made by the assessing officer towards dividend on chits.
7. The learned Commissioner of Income Tax (Appeals) is not justified in upholding the disallowance of depreciation amounting to Rs.33,975 made by the assessing officer.
8. For any other ground that may be urged at the time of appeal hearing.

3. Subsequently the assessee filed following additional grounds of appeal :

1. The Notice issued under section 148 is vague as the irrelevant portions of the notice are not struck off, hence the entire assessment is void ab-initio .(Additional Ground)
2. The AO has not exercised his discretion/satisfaction independently but has obtained the sanction of the Addl. CIT for issue of notice under section 148 which makes the assumption of jurisdiction by AO bad in law as per the provisions of sub-section (2) of section 151 as then existing. (Additional Ground)

4. The additional grounds are taken up first for disposal since they are technical grounds and goes to the root of the assessment.

5. Additional Ground No.2 is not pressed by the Ld.AR during the appeal hearing, therefore, additional ground No.2 is dismissed as not pressed.

6. Additional Ground No.1 is related to the issue of notice u/s 148 of I.T.Act. The Ld.AR submitted that the Assessing Officer(AO) has issued the notice u/s 148 without striking the irrelevant columns, hence argued that the notice issued u/s 148 is vague, hence the entire assessment is void ab initio and required to be quashed.

6.1 On the other hand, Ld.DR argued that notice u/s 148 was issued after recording the reasons and the same is valid. The assessee also furnished reply in response to the notice issued u/s 148, thereby participated in the

assessment proceedings in respect of filing the return of income in response to the notice issued u/s 148. Since the assessee has replied to the notice issued u/s 148, the intent and purpose of issue of notice is served and hence the notice issued u/s 148 cannot be made invalid.

6.2 We have heard both the parties and perused the materials placed on record. The AO issued the notice u/s 148 in printed format after recording the reasons. Of course, certain columns which were required to be struck off were not struck off by the AO. The notice issued u/s 148 was served on the assessee on 29.3.2012 with a direction to furnish the return of income in the prescribed format. In response to the notice issued u/s 148, the assessee has filed the return of income on 30.04.2012, thereby complied with the terms and conditions of the issue of notice. The assessee has complied with the notice and intent and purpose of issue of notice was served. The assessee has not raised any objection before the AO on receipt of the notice. The assessee did not make any protest for the minor defects in the said notice, such as non-striking off irrelevant columns in the said notice. No injustice or confusion was caused to the assessee by non striking of irrelevant columns. Therefore, we are of the opinion that having filed the return of income non- striking of irrelevant columns cannot render the notice as invalid. The Ld.AR relied on the decision of Hon'ble High Court of

Allahabad in the case of Madan Lal Agarwal Vs. Commissioner of Income Tax (1983) 13 Taxman 0120. In the case relied up on by the assessee, on receipt of the notice u/s 148, the assessee filed the return of income in his individual capacity under protest. The Income Tax Officer informed the assessee that the notice u/s 148 dated 29.09.62 was related to HUF, hence he should file the return in the capacity of HUF. Subsequently, the AO completed the assessment in the capacity of HUF, hence the Hon'ble High Court held that reassessment made in HUF status on the basis of the notice issued in the status of individual is held to be invalid. The notice was issued to individual instead of HUF. Hence, the facts of the assessee's case are distinguishable and completely different from that of the case law relied upon by the assessee, therefore, the decision of the Hon'ble High Court of Allahabad is not applicable in the assessee's case.

Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Rajvir Singh reported 20 Taxman.com 604 (2012) considered the issue with regard to the technical defects in the notice/assessment and held that minor defects or irregularities would not negate the validity of proceedings. For ready reference we extract relevant part of the order of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Rajvir Singh cited supra

*"**9.** Sec. 292B was incorporated by Taxation Laws (Amendment) Act, 1975, w.e.f. 1st Oct., 1975 which reads as under :*

"292B. No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons, or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

***10.** The section was inserted whereby no return of income, assessment, notice, summons or other proceeding shall be rendered invalid merely on account of any mistake, defect or omission where the return, assessment, notice, summons or other proceeding in substance and effect are in conformity with or according to the intention and purpose of the Act. By incorporating this provision, it has been made clear that purely technical objections carrying no substance shall not come in the way of validity of assessment proceedings, etc. In other words, minor defects or irregularities in the circumstances aforesaid, would not negate the validity of the proceedings initiated by the AO and the assessee would not be able to raise technical or venial defects in this regard."*

6.3 Hon'ble Karnataka High Court in the case of CIT Vs. Sri Durga Enterprises reported in (2014) 44 Taxman 442 held that even if period for furnishing return of income was not specified in notice u/s 148, but assessee has participated in reassessment proceedings, such assessment is valid. Similarly Hon'ble Allahabad High Court in the case of CIT, Aligarh Vs. Shyam Cold Storage (31 taxmann.com 358) held that having participated in the reassessment proceedings without raising any objection, the assessment held to be valid. For the sake of clarity and convenience we extract the relevant part of the order of the Hon'ble High court hereunder:

"***8.*** *Section 292B has been enacted with a view to overcome purely technical objection coming in the way of validity of assessment proceedings etc. It deals with curable defects in the proceedings. The idea is that when substantial justice is pitted*

against technicality cause of justice should prevail. No party can claim to have vested right in injustice being done because of some slip of pen, or omission causing no prejudice to anyone. The section is intended to ensure that an inconsequential technicality does not defeat justice. Nature of mistake will determine whether a return, order or proceeding is vitiated or not.

9. *The existence of a valid notice under Section 148 of the Act is a condition precedent, which has been complied with herein. The I.T.A.T. has set aside the reassessment order as in the reasons there is omission of the assessment year.*

10. *In our considered view, the aforesaid section is fully attracted on the facts of the case. The argument of the learned counsel for the respondent-assessee that merely participation of the assessee will not validate the reassessment proceeding if the notice is invalid, is of no help, in view of the fact that the question of validity of notice under Section 147 of the Act is not in issue. The only defect which could be pointed out is that the assessment year was not mentioned in the reasons recorded by the Assessing Officer. Unless it is shown that assessee was misled by not mentioning the assessment year in the reasons recorded, we are of the view that if the reasons recorded relate to a particular year, the reassessment proceeding initiated relate to that particular year and the assessee participated in the reassessment proceeding without raising any objection, such an objection cannot be raised by the assessee at a subsequent stage of the proceeding. In view of the above, the order of the Tribunal cannot be sustained. In the result the substantial questions of law as framed in the memo of appeal are decided in favour of the Department and against the assessee by holding that the reasons recorded by the Assessing Officer are not vitiated by not mentioning the assessment year therein. Since the Tribunal has not examined the case on merit, the matter is restored back to the Tribunal to examine the case on merits and decide the appeal accordingly."*

The Hon'ble Madras High Court in Sundaram Finance Ltd. Vs. CIT (2018) 93 taxmann.com 250 held that if the assessee has understood purport and import of notice no injustice was caused to the assessee.

6.4. In the instant case, the notice u/s 148 was issued by the AO clearly mentioning the name and address of the assessee, current status, PAN No., the relevant assessment year after recording the reasons and there is no dispute. Only certain irrelevant columns which should have been struck off by the AO were not struck off. The assessee has understood the intention

and purpose of issue of notice and not filed the objections before the AO/CIT(A) and filed the return of income complying with the terms and conditions of the notice. Having complied with the notice issued u/s 148, the intent and purpose of the notice issued was served and there is no injustice caused to the assessee. No material was placed to show that the assessee was misled in any manner for not specifically striking the irrelevant columns. Therefore, we hold that the notice issued by the AO is valid and the same is upheld. This ground is raised by the assessee for the A.Ys 2007-08 to 2010-11 on identical facts and the appeals of the assessee on this ground for the A.Ys 2007-08 to 2010-11 are dismissed.

7. Ground No.1 and 8 of original grounds filed along with appeal memo are general in nature which does not require specific adjudication.

8. During the appeal hearing, the Ld.AR did not press Ground Nos.4,5 and 6, hence ground Nos. 4,5 and 6 are dismissed as not pressed.

9. Ground No.2 is related to the addition of Rs.2,10,000/- made by the AO u/s 69 of the Act towards unexplained amounts of loans received by the assessee. The assessee admitted that he has taken the loans of

Rs.2,10,000/- during the F.Y.2006-07 but not filed the proof and evidences. The AO has issued the notice u/s 143(2), but the assessee has not responded to the notices except filing the adjournments letters and submission of part information. Therefore, the AO has completed the assessment u/s 143(3) as per the information available on record and made the addition of Rs.2,10,000/- as unexplained income in the hands of the assessee.

9.1 Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) but before the CIT(A) also, the assessee did not furnish any evidence to controvert the findings of the AO. Therefore, the CIT(A) confirmed the addition made by the AO.

9.2 Aggrieved by the order of the CIT(A), the assessee is in appeal before us. During the appeal hearing, the Ld.AR argued that the above loans are brought forward loans which are appearing in the balance sheet of the earlier year hence, the addition cannot be made in the impugned assessment year. The Ld.AR further argued that the AO should not have made the addition u/s 69 of the I.T.Act as there was no unexplained investment. The DR supported the orders of the lower authorities.

9.3 We have heard both the parties and perused the material placed on record. During the assessment proceedings, the assessee did not furnish

any evidence to prove the genuineness of loans received from friends and relative inspite of giving repeated opportunities. However the Ld.AR argued that the addition cannot be made u/s 69, and further, submitted that the entire sum of Rs.2,10,000/- was opening balance but not the sums received in the year under consideration. Since the assessee has not furnished the information and the relevant material was not placed before the AO to examine the issue, we are of the considered opinion that the issue should be remitted back to the file of the AO to examine the issue whether the same represents the loans taken during the year or not and to decide the issue afresh on merits. Accordingly we remit the entire issue to the file of the AO to decide the same afresh according to law. In the result appeal of the assessee on this ground is allowed for statistical purpose.

10. Ground No.3 is related to the addition of Rs.9,01,407/- by AO and out of which a sum of Rs.79,137/- was confirmed by the Ld.CIT(A) for the impugned assessment year u/s 69A of I.T.Act. It has come to the notice of the IT Department that certain copies of challans, claims of taxes, filed in the return of income on various dates relating to the various assesses are ingenuine and not matching with the information in OLTAS. The department observed that such returns were filed by the assessee who

happens to be income tax practitioner. The department has conducted enquiries with the Syndicate Bank and the counter foils furnished in the returns and the challans found to be fake challans. Therefore, a survey u/s 133A of the Act was conducted in the office premises of N.V.Vasantha Rao, the assessee. During the course of survey, rubber stamps of Syndicate Bank and the counterfoils of fake challans were found in the assessee's premises. The assessee in the statement dated 22.02.2012 has accepted the fact of collecting the money from the clients but not depositing the same in the Government account. Instead he used the money and issued the fake challan counter foils and has taken the sole responsibility for indulging in the fraudulent activity, in response to question No.7 of the statement. The AO quantified such amount at Rs.9,01,407/- and requested the assessee to furnish year wise details but the assessee failed to furnish the details, hence, the AO made the addition of Rs.9,01,407/- to the returned income u/s 69A of I.T.Act in all the years i.e 2007-08 to 2011-12 on protective basis.

10.1 Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) has called for the remand report from the AO and quantified the year wise addition as under:

Assessment Year	Addition u/s 69A

2007-08	79,137/-
2008-09	4,27,424/-
2009-10	1,73,792/-
2010-11	18,514/-
2011-12	7,000/-

For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) which reads as under :

4.2. During the course of appellate proceedings, the assessing officer was asked to examine the impounded material particularly the copy of challans and ascertain the date of deposit of these amounts which could roughly form basis for year wise segregation. The AO on verification of challans reported (vide letter dated 13.11.2014 forwarded by the AddICT, Rancie-3, vide letter in FNo.AddlCIT/R-3/remand/2014-15, dated 17.11.2014) that certain challans pertain to Asst. Yrs. 2004-05 to 2006-07. The AO further gave the breakup of such amounts for the various years as under

Assessment Year	*As per Annexure-4*		*As per Annuxure-5*		*Total Amount*
	No. of Challans	*Amount*	*No. of Challans*	*Amount*	
2004-05	*2*	*6,823/-*	*0*	*0/-*	*6,823/-*
2005-06	*40*	*3,58,872/-*	*0*	*0/-*	*3,58,872/-*
2006-07	*32*	*1,42,987/-*	*6*	*32,300/-*	*1,75,287/-*
2007-08	*7*	*23,300*	*21*	*51,837/-*	*79,137/-*
2008-09	*20*	*3,04,341/-*	*44*	*1,23,083/-*	*4,27,424/-*
2009-10	*66*	*1,73,792/-*	*0*	*0/-*	*1,73,792/-*
2010-11	*4*	*4,214/-*	*4*	*14,300/-*	*18,514/-*
2011-12	*0*	*0/-*	*1*	*7,000/-*	*7,000/-*

4.4. During the appeal hearing, the assessee did not raise any specific plea against the above addition, except arguing that additions were made in all the years. The report of the assessing officer gives a rough indication of such amounts collected year wise, Accordingly, the assessing officer is directed to / make the following additions for the assessment year 2007-08 to assessment year 2011-12 in the place of the addition of Rs.9,01,403/- in all years

Assessment Year	Addition u/s 69A

2007-08	79,137/-
2008-09	4,27,424/-
2009-10	1,73,792/-
2010-11	18,514/-
2011-12	7,000/-

10.2 During the appeal hearing, the Ld.AR argued that the department has filed criminal case against the assessee before the Hon'ble Court stating that the said sums belonged to Government and if the department wins the case, the assessee is required to deposit the entire amount in the Govt. account in which case, the assessee would be in double jeopardy because he will have to remit the whole amount which is treated as his income. Therefore, argued that the department cannot be allowed to have both i.e. refund of the amount if it wins the case in the court of law and also tax the same as income. Alternatively, the Ld.AR submitted that the AO made the addition of Rs.9,01,407/- out of which on reconciliation, a sum of Rs.1,48,666/- was tallied with OLTAS. Therefore requested to reduce the amount of Rs.1,48,666/- from various assessment years.

10.3 On the other hand, the Ld.DR supported the orders of the Ld.CIT(A).

10.4 We have heard both the parties and perused the material placed on record. In the instant case, the assessee has collected the sums from the

clients in the name of tax and has not deposited the same to the Government account. This fact has been admitted by the assessee in the statement recorded by him by the AO. However, at the time of assessment, he denied having collected the amounts from the clients and refused to furnish the information. As per the statement recorded from the assessee during the course of survey in response to Question No.7, the assessee has admitted that he was indulged in the fraudulent practice by creating challans for filing Income Tax returns before the Income Tax department and also admitted that he had resorted to this practice from 2007-08 onwards. He has taken sole responsibility and also admitted that no bank officials are involved in this practice. Therefore, from the statement recorded from the assessee and evidences found during the course of survey and the enquiries conducted with the bank officials and the mismatch of OLTAS establish beyond doubt that the assessee had collected the amount from the clients for tax purpose, but not remitted into the Government account. Therefore, the assessee's subsequent denial is nothing but an after thought and not supported by any evidence. Since the assessee has collected amount but not remitted into the Govt. Account or refunded to the respective clients, it constitutes the liability against the assessee but does not form part of income. This amount should have been

deposited in the respective accounts of the clients towards the income tax. Non depositing the said sum makes the assessee liable for payment of the said sum back to the clients. Income tax department has not produced any evidence to show that the said sums were allowed credit in the respective accounts. The AO made the addition u/s 69A and the CIT(A)also confirmed the same. Section 69A reads as under :

> *69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

Plain reading of section 69A shows that if the assessee found to be the owner of the money for which the assessee fails explain the source the same required to be taxed u/s 69A of I.T. act. In this case it is undisputed fact that money was belonged to the clients of the assessee and the assessee required to deposit in the Government account or to return the same to the clients. The money was received by the assessee in the fiduciary capacity on behalf of clients towards the payment of taxes, There is no evidence brought on record by the AO to establish that the right of recovery by the clients or by the Government has been waived. Therefore,

we are of the considered opinion that the monies received by the assessee on behalf of the clients for payment of taxes to be treated as money belonged to the clients or belonged to the Income Tax Department and the same cannot be brought to tax as income in the hands of the assessee. Accordingly, we set aside the order of the CIT(A) and delete the addition made by the AO u/s 69A of I.T.Act. The appeals of the assessee for the A.Ys 2007-08 to 2011-12 are allowed on this ground.

11. Ground No.7 of the assessee is related to the addition of Rs.33,975/- relating to the disallowance of depreciation. During the assessment proceedings, the AO found that the assessee has claimed the depreciation of Rs.33,975/- on Xerox machine and air conditioner. The assessee replied that the claim was made as per Finance Act 2006- 07. Since the assessee did not produce any evidence for purchase of assets and put to use for the purpose of business, the AO made the disallowance of depreciation. On appeal, the Ld.CIT(A) confirmed the addition since the assessee failed to furnish the evidence. During the appeal hearing, before us, the Ld.AR could not controvert the finding given by the AO with evidence. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

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12. Additional Ground No.1 is related to the defective notice relating to non striking of irrelevant columns in the notice issued u/s 148 which was discussed in detail in appeal for the assessment year 2007-08 and answered this ground in favour of the revenue and against the assessee. This ground is involved for the A.Ys 2008-09 to 2010-11. As discussed in appeal No.72/viz/2015 for the A.Y.2007-08, the assessee's appeals for the A.Y. 2008-09 to 2010-11 are dismissed on this ground.

13. Additional Ground No.2 reads as under :

> 2. The entire assessment is bad in law as the same is said to have been passed under section 143(3) r.w.s. 147, whereas the assessment ought to have been passed under section 144 r.w.s. 147.

This ground is involved for the assessment year 2008-09, 2009-10 and 2010-11.

13.1 The assessee submitted that the AO had issued the notice u/s 143(2) but the assessee has not responded to the notice issued u/s 143(2) and not complied with the notice issued u/s 143(2), hence the assessing officer should have passed the assessment order u/s 144 instead of 143(3). The ld.AR argued that having not complied with the notice u/s 143(2) passing the assessment order u/s 143(3) r.w.s. 147 is bad in law. Therefore,

renders the entire assessment invalid. The assessee relied on the decision of ITAT, Amritsar Tribunal in Des Raj Nagpal Vs. Additional Commissioner of Income Tax (2015) 170 TTJ 0037 (Asr) and also the manual of Office Procedure Volume II.

13.2 On the other hand, the Ld.DR supported the orders of the lower authorities and argued that, the assessee has responded to the notices, filed part information and filed letters seeking adjournments, hence the AO completed the assessment u/s 143(3) r.w.s.147 in the manner laid down u/s 144 of I.T.Act. Therefore, argued that the AO has rightly passed the assessment order u/s 143(3) r.w.s. 147 of the Act. Even otherwise, it is mere technical defect which cannot make the assessment invalid as per section 292B of the IT Act.

13.3 We have heard both the parties and perused the material placed on record. In this case, the AO had issued notice u/s 147 and in response to the notice issued, the assessee filed revised return of income. Subsequently, the AO issued notice u/s 143(2) calling for the information and the assessee responded to the notices issued u/s 143(2) seeking adjournments. The AO granted the adjournments as required by the assessee and the assessee continuously sought adjournments without furnishing the complete information. The AO has issued show cause notice

proposing to make various additions and the assessee responded to the show cause notice and sought adjournment. In this case as observed from the assessment order the assessee filed partial information. Since, the required information is available with the AO and the assessee had responded to the issued notice u/s 143(2), the AO passed the order u/s 143(3) r.w.s. 147 in the manner laid down u/s 144. For ready reference we extract Section 143(3) of income tax which reads as under:

> "(*3) On the day specified in the notice,—*
> *(i)……..*
> *(ii) issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:]"*

13.4 Plain reading of section shows that on issue of notice u/s 143(2) the assessee required to furnish the details and evidences for claims made in the return of income. After examining the evidences and hearing the assessee the assessing officer required to pass the orders determining the total income and determine the tax payable or the amount refundable. In the instant case the AO has issued the notice u/s 143(2) and the assessee responded by seeking adjournments or furnished the partial information. The assessing officer confronted the information available with him with

the assessee by issue of show cause notice and then passed the assessment order. The assessing officer has given sufficient opportunities and followed the principles of natural justice. Therefore, we hold that the order passed u/s 143(3) r.w.s. 147 is in order and in accordance with law.

13.5 The assessee relied on the decision of ITAT, Amritsar in the case of Des Raj Nagpal Vs. Additional Commissioner of Income Tax (supra). In the said case, the assessee has not maintained the books of accounts and not produced any books of accounts. The return of income was also filed on estimation and there was no survey conducted in the said case and there was no information except the estimation of income. Hence the coordinate bench held that the assessment order required to be passed u/s 144. In the instant case the AO has conducted the survey and collected the information which has been confronted with the assessee. The assessee has filed the return of income as per books and the AO has given sufficient opportunity and no injustice was caused to the assessee. In the case law the AO has not issued any show cause notice, and in the assessee's case the AO has issued show cause notice with proposed additions. Therefore, the facts of the case law relied upon by the Ld.AR are distinguishable and not applicable in the assessee's case. Further framing the assessment u/s 143(3) instead of 144 is mere technical error and curable mistake u/s

292B. Therefore, we uphold the assessment order u/s 143(3) r.w.s. 147 and dismiss the appeal of the assessee on this ground.

14.0. The next issue is addition on account of cash credit. For the assessment year 2008-09 to 2011-12, the assessee has introduced cash credits as per the details given below :

2008-09	Rs.2,23,760/-
2009-10	Rs.2,15,009/-
2010-11	Rs.4,49,600/-
2011-12	Rs.9,27,250/-

During the assessment proceedings the assessee did not explain the sources in spite of giving repeated opportunities, , hence, the AO made the addition.

14.1. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and argued that the source of credit was the sale of agricultural land for the assessment year 2010-11. But the assessee failed to substantiate the claims before the CIT(A) also, thus the Ld.CIT(A) confirmed the addition.

14.2. Aggrieved by the order of CIT(A), the assessee carried the matter to the ITAT. During the appeal hearing, the Ld.AR argued that the source for

the credit for the assessment year 2010-11 was advance received for sale of agricultural land and further argued that the addition cannot be made u/s 68, since the said amounts were deposited in the bank account.

14.3. We have considered the submissions made by the both the parties. The assessing officer made the addition after issuing the show cause notice and giving number of opportunities to the assessee. It is the obligation on the part of the assessee to comply with the notices issued and present his case by furnishing the required information. Having failed to avail the opportunities given to the assessee both before the AO and the CIT(A) the assessee cannot take 'U' turn and make a new argument at this stage. No evidence has been produced before us to establish that the said sums were not credited in the books of accounts. The law cannot help a person who is sleeping over his rights. The next issue is with regard to sale agreement and the advance received for sale of agricultural land for the A.Y.2010-11. The assessee furnished unregistered sale agreement but not produced the registered sale deed in respect of the sale agreement. Therefore, we are unable to accept the covenants of the unregistered sale agreement as genuine unless it is supported by Registered Sale deed. In the absence of sale deed, evidencing the actual amount passed on to the assessee, the sale agreement cannot be considered as a valid evidence and the Ld.AR did not

produce any evidence to establish the source of credits. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeals of the assessee for the assessment year 2008-09 to 2011-12 are dismissed on this ground.

15.0. Ground No.3 as per appeal memo is related to the addition of Rs.9,01,407/- u/s 69A of I.T.Act in respect of the amounts collected from the clients towards income tax, but not deposited the same in the Government account. This issue has been discussed in detail for the assessment year 2007-08 and the order of the Ld.CIT(A) is set aside holding that the said amount cannot be treated as income, since the said sum belonged to the clients. Accordingly the appeals of the assessee are allowed on this ground for the A.Ys 2008-09 to 2011-12.

16.0. Ground No.4 is related to the adhoc disallowance of expenditure. This issue is involved for the assessment year 2008-09 to 2011-12 as per the details given hereunder:

Assessment Year	Addition made
2008-09	34,316/-
2009-10	48,929/-
2010-11	55,200/-
2011-12	48,262/-

17.0. The AO disallowed 15% of expenditure on adhoc basis for want of details and on appeal the Ld.CIT(A) upheld the disallowance for assessee's failure to submit the explanation.

17.1. During the appeal hearing, the Ld.AR submitted that for the assessment year 2010-11, expenditure included chit loss of 84,424/- and argued that no estimated disallowance is called for on chit loss. Similarly he also argued that adhoc disallowance is made on depreciation also. Therefore, argued that relief may be granted on the depreciation and chit loss.On the other hand, the Ld.DR supported the orders of the lower authorities.

17.2 We have heard both the parties and perused the material placed on record. During the assessment proceedings, the assesee has not cooperated with the department and did not furnish the details of expenses incurred in connection with the expenditure debited to the Profit and loss account. In the absence of the details, the AO has disallowed 15% of the expenses on estimation basis. During the appeal hearing before the CIT(A) also, the assessee failed to produced any evidence in support of the expenditure. Since the AO has disallowed only 15% of the expenses and the assessee failed to produce any evidence with respect to the genuineness of expenses and we find the disallowance made by AO is

justified and not inclined to disturb the order of the Ld.CIT(A). Accordingly, we uphold the order of the CIT(A) and dismiss the appeal of the assessee for the assessment year 2008-09 to 2011-12.

18.0. Ground No.5 is related to agricultural income. For the assessment year 2008-09 to 2011-12, the AO treated the agricultural income claimed by the assessee as non agricultural income and brought to tax as under :

2008-09	Rs.2,23,760/-
2009-10	Rs.2,15,009/-
2010-11	Rs.4,49,600/-
2011-12	Rs.9,27,250/-

18.1. During the assessment proceedings, it is observed that the assessee has not produced any evidence with regard to the land holdings and the generation of agricultural income. During the appeal hearing before the CIT(A) also, the assessee did not produce any evidence to support the agricultural income. Before us also the assessee failed to furnish any evidence with regard to the land holdings with pattadar passbooks and land revenue records. The assessee also failed to produce the details of crops grown, yield, expenditure etc. Therefore, we hold that the Ld.CIT(A) is justified in confirming the addition. Accordingly, we confirm the order of

the Ld.CIT(A) and dismiss the appeals of the assessee for the assessment years 2008-09 to 2011-12.

19.0. Ground No.6 for the **A.Y 2008-09** is related to the investment made by the assessee in Nellimerla land. During the assessment proceedings, the AO found that the assessee has purchased a site in Nellimerla, Vizianagaram on 31.03.2008 and declared the value of the land at Rs.54,800/- in the Balance Sheet. However, in the statement recorded on 22.02.2012, the assessee admitted the value of site at Rs.1,60,000/-. The assessee has not offered the difference as income in the assessment year under consideration and did not explain the source of the difference amount. Therefore, the AO made the addition of Rs.1,05,200/- representing the difference amount of the actual value and the value declared in the balance sheet as income. Before the Ld.CIT(A) also, the assessee did not submit any explanation, therefore, the addition was confirmed by the Ld.CIT(A).

19.1 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us. During the appeal hearing, the assessee did not submit any explanation except stating that the actual value was of Rs.50,535/-. In the instant case, the assessee has stated that the value of land was

Rs.1,60,000/- but admitted only Rs.54,800/- in the Balance Sheet. The assessee filed sale deed dated 04.12.2007 which is registered before the Sub Registrar Office, Nellimarla and as per the sale deed, the actual consideration paid was Rs.50,000/-. The AO has not brought on record any evidence to show that excess consideration was passed on in purchase of the land. When there is a registered document, the oral evidence cannot be taken into cognizance. It is settled law that the sale consideration in the registered sale deed is final and cannot be disturbed unless there is a tangible evidence to establish that the excess consideration has been passed on. The Coordinate Bench of ITAT, Hyderabad in the case of Chilukuri SRK Raju Vs. ITO, Ward 12(1) in ITA No. 415 dated 13.07.2017, placing reliance on the decision of Hon'ble High Court of Punjab & Haryana in the case of Paramjit Singh Vs. ITO reported 195 taxman 273 held that once the immovable property is registered sale consideration in the registered sale deed is considered to be final consideration. For ready reference we extract para No.8 of the order of the Tribunal in the case cited supra which reads as under :

> *"8. In the instant case, the agreement produced by the assessee was not registered and hence, we are unable to accept the same as valid evidence. In this case, the assessee has received Rs. 2.04 lakhs towards sale of land as discussed above. Once the immovable property is registered, the sale consideration in the registered sale document is considered to be the final consideration, since the stamp*

duty and other taxes for transfer of property was paid as per the consideration recorded in the registered sale deed. The contention of the assessee that he has received Rs.12 lakhs, but registered the document only for Rs. 2.04 lakhs is not acceptable argument and such double standards are not acceptable as held by Hon'ble Supreme Court in the case of Coimbatore Spinning & Weaving Co. Ltd (supra) relied upon by the Ld. DR. Further, the Ld. AR did not place any evidence to show that the buyer has paid the amount of Rs. 12 lakhs and admitted the said amount in his (buyer) return of income Further Hon'ble Punjab and Haryana High court in [2010] 195 TAXMAN 273 (PUNJ. & HAR.) Paramjit Singh .v.Income-tax Officer on similar facts held that

> *"It is a well-known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 incorporate the aforesaid principle. According to section 91, when terms of a contract, grants or other dispositions of property have been reduced to the form of documents, then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to section 92, once the document is tendered in evidence and proved as per the requirements of section 91, then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. Therefore, it follows that no oral agreement contradicting/varying the terms of a document can be offered. Once the aforesaid principal is clear, then in the instant case, ostensible sale consideration disclosed in the sale deed had to be accepted and it could not be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal did not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserved to be added to the gross income of the assessee.* [Para 4]."

In the instant case the sale deed was registered for Rs.50000/- and no other evidence was brought on record by the AO to establish that the excess consideration was passed on to the vendor over and above the sale

consideration recorded in the sale dee. Therefore, respectfully following the view taken by ITAT, Hyderabad, we hold that the consideration recorded in the sale deed is to be treated as final and accordingly, the addition made by the AO is unsustainable and the same is deleted. The appeal of the assessee on this ground is allowed.

20.0 Ground No.7 is related to the disallowance of depreciation for the assessment year 2008-09 to 2011-12.The Ld.AR did not make any argument on this issue and we find that there was no such addition made by the AO. Therefore, the ground No.76 is dismissed as infructuous.

ITA No.76/Viz/2015, A.Y.2011-12

21. The assessee raised Additional Ground No.1 in A.Y.2011-12 which reads as under :

1. The entire assessment is bad in law as the same is said to have been passed under section 143(3) r.w.s. 147 and there is no notice issued under section 148 for this year.

The Ld.AR during the appeal hearing argued that the AO has not issued notice u/s 148, but framed the assessment u/s 143(3) r.w.s. 147 which is bad in law and required to be quashed.

22. On the other hand, the Ld.DR argued that there is typographical error in the assessment order which should have been typed as 143(3) r.w.s. 147 and the same is curable mistake as per section 292B of I.T.Act.

23. We have heard both the parties and perused the material placed on record. In this case, the AO has issued notice u/s 143(2) on 24.09.2012 within the time limit allowed u/s 143(2) of I.T.Act. The case was posted for hearing on various occasions. And the assessee has also responded to the notices. Verification of the assessment order shows that there was no notice issued u/s 148 by the AO and the order should have passed order u/s 143(3) instead of 143(3) r.w.s. 147 of the Act. The order clearly shows that the assessment was made u/s 143(3) and mention of section 147 is a typographical error. Since the notice was issued u/s 143(2) in time, and sufficient opportunity was given to the assessee before passing the order u/s 143(3), we are of the considered opinion that section and sub section mentioned in the assessment order 143(3) r.w.s. 147 is purely technical mistake and curable u/s 292B of I.T.Act. Accordingly, we uphold the assessment order and dismiss the appeal of the assessee.

24. In the result appeals of the assessee for the A.Y 2007-08 to 2011-12 are allowed partly.

The above order was pronounced in the open court on 6th Jun, 2018.

Sd/-	Sd/-
(वी.दुर्गाराव)	**(डि.एस. सुन्दरसिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 06.06.2018

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- N.V.Vasantha Rao, D.No.30-6-19/A, Opp: 2 Town P.S.Dabagardens, Visakhapatnam
2. राजस्व/ The Revenue – Income Tax Officer, Ward-3(1), Visakhapatnam
3. The Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income-Tax(Appeals)-1,2 (i/c) Visakhapatnam & Rajahmundry(i/c)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM