

आयकर अपीलिय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, 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.No.380/Viz/2017 & I.T.A.No.487-489/Viz/2017  
(निर्धारण वर्ष/A.Ys: 2012-13, 2008-09, 2009-10 & 2011-12 respectively)**

Golla Narayana Rao  
Flat No.FF-4, D.No.32-15/1-16  
Vijaya Shraddha Towers  
Moghalrajpuram  
Vijayawada  
**[PAN : AHQPG3076R]**  
**(अपीलार्थी/ Appellant)**

Asst.Commissioner of  
Income Tax, Circle-2(1)  
Vijayawada  
Vs. Asst.Commissioner of  
Income Tax, Range-2  
Vijayawada  
**(प्रत्यर्थी/ Respondent)**

**आयकर अपील सं./I.T.A.Nos.433/Viz/2017, 499/Viz/2017 -503/Viz/2017  
(निर्धारण वर्ष/A.Ys : 2012-13, 2008-09, 2011-12, 2011-12, 2012-13 and  
2014-15 respectively)**

Deputy.Commissioner of  
Income Tax  
Circle-2(1)  
Vijayawada  
**(अपीलार्थी/ Appellant)**

Vs. Golla Narayana Rao  
Flat No.FF-4, D.No.32-15/1-16  
Vijaya Shraddha Towers  
Moghalrajpuram  
Vijayawada  
**[PAN : AHQPG3076R]**  
**(प्रत्यर्थी/ Respondent)**

**Cross Objection Nos.80-85/Viz/2017**

**(Arising out of I.T.A Nos.433/Viz/2017,499-503/Viz/2017 respectively)**

Golla Narayana Rao  
Flat No.FF-4, D.No.32-15/1-16  
Vijaya Shraddha Towers  
Moghalrajpuram  
Vijayawada  
**[PAN : AHQPG3076R]**  
**(अपीलार्थी/ Appellant)**

Deputy.Commissioner of  
Income Tax  
Circle-2(1)  
Vijayawada  
**(प्रत्यर्थी/ Respondent)**

निर्धारिती की ओर से/ Assessee by  
राजस्व की ओर से/ Revenue by

: Shri G.V.N.Hari, AR  
: Shri Ch.Sanjeev, DR

सुनवाई की तारीख / Date of Hearing

: 06.09.2018

घोषणा की तारीख/Date of Pronouncement

: 05.10.2018

**आदेश /ORDER**

**Per Bench :**

These appeals are filed by the revenue and the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Vijayawada and the cross objections filed by the assessee against the order of the Ld.CIT(A). Since the issues involved in all the appeals are common, the appeals are clubbed, heard together and disposed off in a common order for the sake of convenience.

**I.T.A.No.433/Viz/2017, CO No.80/Viz/2017 & I.T.A. No.380/Viz/2017**

2. Facts in Brief: The assessee is an individual carrying on business in civil construction. A survey u/s 133A was conducted on 10.10.2013 in the business premises of the assessee and during the course of survey incriminating material was found indicating escapement of income and consequently the assessee admitted the income of Rs. 3.00 crores spread over for three years involving assessment years 2012-13, 2013-14 and 2014-15. Subsequently, on the basis of incriminating material found, the Assessing Officer (AO) had issued the notice u/s 148 calling for the return of income for the A.Y.2012-13 on 12.11.2013. In response to the notice issued, the assessee has filed the return of income on 06.08.2014 and the case was taken for scrutiny and the notices u/s 143(2) and 142(1) were

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issued to the assessee calling for various details. In response to the notices issued by the AO, the assessee filed the copies of unaudited Profit & Loss Account, Balance Sheet and its enclosures, bank statements and registered sale deeds pertaining to the sales made during the financial year 2011-12 which was offered to income. The assessee has not produced the books of accounts, vouchers and the audited financial statements before the AO in the assessment proceedings. Therefore, the AO completed the assessment on the basis of impounded material found during the course of survey and made the following additions to the returned income.

		(Amount in Rupees)
Income admitted in the return filed		1,00,93,430
1) 12.5% of gross sales brought to tax	:	1,70,12,500
2) Difference of sale consideration from		
(a) Smt. Gita Sasidharan	:	26,00,000
(b) Sri V.Chandrasekhar	:	24,10,000
(c) Syed Nazeer	:	13,20,000
(d) Ramanatham Sasikala	:	24,00,000
(e) Boyapati Kishore Kumar	:	36,00,000
3) Unrecorded interest brought to tax	:	<u>2,15,000</u>
Total income assessed		Rs.3,96,50,930

Accordingly computed the total income of Rs.3,96,50,930/- against the returned income of Rs.1,00,93,430/-.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) determined the turnover at Rs.13,84,64,334/- (i.e 12,61,34,334+1,23,30,000) consisting of accounted receipts as well as the unaccounted receipts and directed the AO to estimate the income at 11% on total sales which worked out to Rs.1,52,31,076/- against the assessed income of Rs.3,96,50,930/-. Against the order of the Ld.CIT(A), both the revenue and the assessee have filed the cross appeals and the assessee also filed the cross objections against the order of the Ld.CIT(A) which are decided as under:

4. Ground No.1 and 5 are general in nature which does not require specific adjudication.

5. Ground No.2 is related to the estimation of income @ 11% on total sales against the income estimated by the AO @12.5% on sales of Rs.13,61,00,000/- and a separate addition of unaccounted sales or suppressed receipts of Rs.1,23,30,000/- which was found as per the sale agreements. Against the order of the Ld.CIT(A), the assessee also filed cross appeal requesting for reducing the estimation of income in ITA No.433/Viz/2017. As stated earlier, a survey u/s 133A was conducted in this case on 10.10.2013 and during the course of survey, the assessee had

admitted the income of Rs.3.00 crores spreading over three years. The admitted income for the year under consideration was Rs.1.00 crore. During the survey Registered Sale deeds and a separate sale agreements were found and on verification it was found that the consideration as per the sale agreements was much higher than the sale deeds. The assessee was admitting the sale consideration as recorded in the sale deeds but not the actual sale consideration which was agreed as per the sale agreement. As observed by the AO, the assessee sold the semi-finished flats to the buyers with sale deed and subsequently made the agreements for additional construction(sale agreement) and the differences noticed in sale deeds and the agreements are as follows :

- 1. As per Bundle GNR/BNDL1 of impounded material, at Page No.35, the agreement value was Rs.1,20,00,000/-. However, the sale value was recorded at Rs.94,00,000/-.*
- 2. As per Bundle GNR/BNDL-1 of Impounded material, from Page No.13 to 18 & Page Nos. 19 to 28, the value of sale recorded in the sale-deed and the agreement of sale for same flat are at Rs.4,90,000/- and Rs.29,00,000/- respectively.*
- 3. As per GNR/BNDL-12 read with answer to Q.No.37 in the statement recorded on 10-10-2013, the sale was agreed for three flats at Rs.57 Lakhs. However, the sales offered from these to the Profit & Loss Account is Rs.43.8 Lakhs only.*
- 4. Also, as per the impounded material obtained on 10-10-2013 marked as SS&SIK/A/11, at Page No.28, the sales made to Smt. Ramanadham Sasikala indicted total cost at Rs.45 Lakhs. However, the sale deed reflected the sale value as Rs.21 Lakhs only.*
- 5. At Page No.8 in the impounded material marked as SS & 5K/A/11, the sale made to Sri Boyapati Kishore Kumar indicates that the total sale value is at Rs.56 Lakhs as against which the sale*

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*recorded as per Sale Deed is Rs.20 Lakhs only.”*

5.1 In short as per the AO, the sales were admitted in the books of accounts as per the registered sale deeds and the consideration as per the agreement are as under :

<b>Names</b>	<b>Bundle No.</b>	<b>Agreement Vale</b>	<b>Sale Deed Value</b>	<b>Difference</b>
Gita Sasidharan	GNR/BNDL-1 (Page No.35)	1,20,00,000	94,00,000	26,00,000
Vallamkonda Chandra Sekhar	GNR/BNDL-1 (Page No.13 to 18)	29,00,000	4,90,000	24,10,000
Syed Nazeer	GNR/BNDL- 12	57,00,000	43,80,000	13,20,000
Smt.Ramanadham Sasikala		45,00,000	21,00,000	24,00,000
Boyapati Kishore Kumar		56,00,000	20,00,000	36,00,000
<b>Total</b>		<b>3,07,00,000</b>	<b>1,23,70,000</b>	<b>1,23,30,000</b>

5.2. The total amount of unrecorded sale consideration stated to have been received by the assessee but not admitted in the return of income was at Rs.1,23,30,000/-, apart from the unrecorded interest of Rs.2,15,000/- which was added to the returned income.

5.3. The assessee filed the return of income in response to the notice issued u/s 148 declaring the total turnover of Rs.13,61,00,000/- against the sales of Rs.12,61,34,334/- as per profit and loss account (the additional receipt of Rs.99,65,600/- to cover the deficiencies of the survey was

included in the return of income) and the AO estimated the income at 12.5% on gross sales and made the addition of Rs.1,70,12,500/- to the returned income. Apart from the addition of estimated income, the additional receipts, the AO made the addition of unrecorded interest of Rs.2,15,000/- as above. The AO rejected the books of account and estimated the income since the assessee has not maintained the books of accounts and failed to produce the audited financial statement, bills and vouchers etc. during the assessment proceedings.

6.0 On appeal before the CIT(A), the assessee has argued that the AO wrongly estimated income @12.5% on turnover without accepting the income declared and further submitted that the AO should not have made a separate addition towards the additional receipts as per agreements having accepted the Revised total sales. The Ld.AR submitted that when the AO has resorted for estimation of income he should not have made the addition to the returned income which results in double addition. The assessee further submitted that the AO committed the error in making separate addition of Rs.2,15,000/- on account of unrecorded interest after estimation of income. The Ld.CIT(A) forwarded the submissions of the assessee to the AO for submission of the remand report. At the remand stage also the AO called for the various details with regard to the additional

receipts, but the assessee furnished only the ledger account copies of the flat buyers but failed to furnish the remaining details. As stated earlier the assessee failed to get the books of accounts audited. Therefore the AO disbelieved the submissions of the assessee and submitted the remand report supporting the assessment order. The Ld.CIT(A) considered remand report, the submissions made by the assessee and the rejoinder to the remand report and observed that the assessee has not maintained the books of accounts which was confirmed by the assessee in the statement recorded during the course of survey and the assessee has not filed the return of income till the date of survey and no books of accounts were produced either before the AO or even during the appeal proceedings before the Ld.CIT(A). During the remand stage also, the assessee failed to produce the books of accounts. Therefore, the Ld.CIT(A) held that the AO has rightly rejected the books of accounts and estimated the income.

6.1 With regard to the additional receipts of Rs.1,23,30,000/-, the assessee filed explanation before the AO as well as Ld.CIT(A) stating that after registering the sale deed, due to delay in completion of project and lack of progress in construction, the buyers have refused to honour the agreement unilaterally and constructed the unfinished structure themselves and the assessee had not undertaken the job and did not

receive the consideration as recorded in the sale agreement. The assessee also submitted the confirmation from the flat buyers in couple of cases, where the buyers have accepted that they have entered into agreements for bank loans and after getting the bank loans, they have cancelled the agreements and constructed the semi finished building by themselves. The Ld.CIT(A) did not accept the confirmations of the buyers and viewed that the confirmations produced by the assessee are self-serving documents and are not reliable without the supporting evidence of books of accounts and the relatable expenditure.. Further the Ld CIT(A) held that much reliance cannot be placed on the confirmation letters of the buyers due to the inconsistencies , contradictions and impracticable nature of transactions in the registered sale deeds. The Ld.CIT(A)'s observations in the case of Shri V.Chandrasekhar are reproduced as under:

*(1) Shri V. Chandrasekhar, admitted to have paid a sum of Rs.23,90,000/- to appellant for purchase of an unfinished registered flat for a consideration of Rs.4,90,000/- (page no. 127 of paper book). No buyer would pay such excess amount to any seller (in excess of cost of construction of flat). Further, sum of Rs.17,70,000/- was claimed as due from appellant by the buyer. This confirmation is not credible.*

*As per Doc.No.4008/2011 dated 27.06.2011 (page no.128 to 137 of paper book) carpet area of constructed flat is 1060 sq. ft. and market value of cost of construction is Rs.1350/- per sq. ft. Hence, the cost of construction of apartment worked out to Rs.14,31,000!-. SRO determined the value of property at Rs.14,85,000/- for stamp duty/registration purposes as per the document cited above (back side of page no.129 of paper book). Hence purchase consideration of Rs.4,90,000/- in the confirmation letter (page no.127 of paper book) is in my view is not correct.*

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*From the impounded materials (page no.42 of paper book), it could be noted that appellant received a sum of Rs.5 lakhs as token advance from Shri V. Chandrasekhar and hence the actual sale consideration must be more. Relevant impounded material is reproduced.*

*Scanned copy of receipt on the letterhead of G.Narayana Rao*

*Flat No.FF-5  
SVL Nilaya*

*Date : 18/3/11*

**RECEIPT**

*Received Rs.5,00,001/- (five lakhs one) token advance for Flat No.FF-5, SVL Nilaya from Sri Vallamkonda Chandra Sekhar S/o Sri Satyanarayana.*

*Including car parking & amenities.*

*Sd/-*

Below the receipt, the following notings are made on the letterhead.

29.00	24.00
(-) 5.00	(-) 5.00 on 26.03.2011
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24.00	19.00 before 18.04.2011

Due to inconsistencies, contradictions and the nature of transactions recorded in sale deeds and the sale agreements, the Ld.CIT(A) held that much reliance cannot be placed on the confirmation letters of the buyers. As stated earlier the assessee failed to get his books of accounts audited and also not furnished the report in Form 3CD/3CB even during the appeal proceedings, Therefore, the Ld.CIT(A) upheld the rejection of books of accounts and determined the assessee's total turnover and the sale consideration at Rs.13,84,64,334/- as under :

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Contract work – sale of flats as per P&L A/c	Rs.12,61,34,334
Additional sale consideration as per Impounded materials (additional receipts)	<u>Rs. 1,23,30,000</u>
<b>Total sale consideration</b>	<b>Rs.13,84,64,334</b>

6.2 Against the total turnover determined at Rs.13,84,64,334/-, the Ld.CIT(A) directed the AO to estimate the income @11% and to adopt the income of Rs.1,52,31,076/- in the place of income computed by the AO at Rs.3,96,50,930/-. The Ld.CIT(A) also directed the AO to ignore the admitted income of Rs.1,00,93,430/- since the income is estimated. The Ld.CIT(A) placed reliance on the following decisions of the Tribunals for estimation of income @11%. :

1.	<i>M/s KNR Constructions Ltd., Hyderabad M.A.No.113 &amp; 114/Hyd/2012 order dated 12.10.2012</i>	<i>Tribunal's direction to AO. to adopt 12.5% on the contract receipts</i>
2.	<i>M/s SREC Projects (P) Ltd. Hyderabad – ITA Nos. 974 to 980/Hyd/2009 order dated 27.08.2010</i>	<i>Estimation of profit @10% of contract receipt where the appellant executed the work directly before depreciation.</i>
3.	<i>M/s Teja Constructions, Hyderabad ITA No.308/Hyd/2009 order dated 23.10.2009</i>	<i>To estimate income at 9% of gross receipts</i>
4.	<i>M/s ISNAR constructions, Visakhapatnam – ITA No.488 &amp; 503/V/2004 order dated 04.06.2009</i>	<i>We are of the opinion tha the income of the assessee before allowing depreciation and interest and remuneration paid to the partners estimated at 11% of the net contract receipts would meet the ends of justice and we order accordingly.</i>

7.0 Against the order of the Ld.CIT(A), the revenue has filed appeal before this Tribunal agitating the estimation of income @11% against the estimation of 12.5% made by the AO and deleting the separate addition made on account of unaccounted receipts of Rs.1,23,30,000/- as found in sale agreements. The assessee filed cross appeal for reducing the estimation of income and also cross objection supporting the order of the Ld.CIT(A).

During the appeal hearing, the Ld.DR submitted that the estimation of income @11% adopted by the Ld.CIT(A) is erroneous and the Ld.CIT(A) ought to have upheld the estimation of income @ 12.5% as held by the Hon'ble ITAT, Hyderabad in the case of KNR Constructions due to the deficiencies found during the survey. The Ld.DR further supported the case stating that the assessee has not at all maintained the books of accounts and the books of accounts were not found during the course of survey. The books of accounts were neither produced before the AO at the time of assessment nor produced before the Ld.CIT(A) during the appeal proceedings. The Ld.DR further argued that during the remand proceedings also, the assessee failed to produce the books of accounts and the incriminating material found shows the unaccounted receipts in the business of the assessee. Therefore, the Ld.DR argued that the estimation

of income @12.5% was rightly made by the AO and requested to uphold the addition.

8.0 Supporting ground No.3 related to separate addition of Rs.1,23,30,000/-, the Ld.DR argued that the Ld.CIT(A) should not have deleted the addition relating to the additional receipts which was evidenced by the sale agreement. The agreement of the assessee with regard to the non receipt of the consideration as per the sale agreements is not proved by the assessee with relevant books of accounts, bills, vouchers and by production of the respective parties. No other tangible evidence was placed by the assessee before the lower authorities to show that the buyers have cancelled the sale agreements and constructed the semi-finished structure by themselves. Therefore, argued that the assessee had received the consideration as per the sale agreement and suppressed the income and thus argued that the Ld.CIT(A) ought to have sustained the addition of Rs.1,23,30,000/- over and above the estimation of income @12.5% as computed by the AO.

9.0 Per contra, the Ld.AR submitted that the estimation of income @11% is very high in this line of business and requested to scale down the estimation of income. With regard to separate addition Ld.AR argued that

no separate addition is required to be made, since the assessee had furnished the confirmation letters from the buyers and increased the turnover by Rs.99,65,600/- to compensate the deficiencies found during the Survey.

10. We have heard both the parties and perused the material placed on record and gone through the orders of the authorities below.

11. The Ld.CIT(A) deleted the addition of Rs.1,23,30,000/- made by the AO relating to the additional construction receipts and determined the total turnover at Rs.13,84,64,334/-. The Ld.CIT(A) has taken the original turnover of Rs.12,61,34,334/- declared as per Profit and loss account and increased by the additional sale consideration of Rs.1,23,30,000/- and determined the total turnover at Rs.13,84,64,334/-. Since the issue of separate addition of additional receipts, the gross turnover and the estimation of income are interdependent, we first take up the issue of separate addition of Rs.1,23,30,000/- and answer the same.

12. The issue with respect to separate addition of Rs.1,23,30,000/- is concerned, the AO found the incriminating material evidencing the

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unaccounted receipts of Rs.1,23,30,000/- as worked out by the Ld.CIT(A) as under :

<b>Names</b>	<b>Bundle No.</b>	<b>Agreement Vale</b>	<b>Sale Deed Value</b>	<b>Difference</b>
Gita Sasidharan	GNR/BNDL-1 (Page No.35)	94,00,000	1,20,00,000	26,00,000
Vallamkonda Chandra Sekhar	GNR/BNDL-1 (Page No.13 to 18)	4,90,000	29,00,000	24,10,000
Syed Nazeer	GNR/BNDL- 12	43,80,000	57,00,000	13,20,000
Smt.Ramanadham Sasikala		21,00,000	45,00,000	24,00,000
Boyapati Kishore Kumar		20,00,000	56,00,000	36,00,000
<b>Total</b>		<b>1,83,70,000</b>	<b>3,07,00,000</b>	<b>1,23,30,000</b>

12.1. The Ld.CIT(A) did not accept the contention of the assessee that he did not receive the additional receipts, since the assessee has failed to produce the books of accounts and also did not produce the buyers before the AO for verification of the facts. The fact of non receipt of the additional receipts should be supported by the books of accounts and with the relevant expenditure. The Ld.CIT(A) held that for arriving the total sales the additional receipts also required to be considered but no separate addition required to be made on account of unaccounted receipts and accordingly included the sum of Rs.1,23,30,000/- in the total turnover and estimated the income thereon. In this case, the assessee has not produced the audit report and the books of accounts either before the AO or before

the Ld.CIT(A) and also during the remand proceedings. The sale agreements were found during the course of survey in the premises of the assessee and as per section 292C of the Act, the rebuttal is on assessee to prove that the contents of the documents are untrue. It is presumed as per section 292C of the Act, that the contents of the documents found during the course of survey are true and belonged to the assessee unless it is proved otherwise. Though the assessee had filed the confirmation letters from the buyers stating that the unfinished works were got done by themselves and the buyers have not paid sums recorded in the sale agreements, the assessee has not proved the said fact by producing the buyers before the AO and the cancellation of agreements. No books of accounts were produced either before the AO or before the Ld.CIT(A) and it is unascertainable with regard to the expenditure relatable to unaccounted receipts. During the remand stage also the assessee has neither produced the books of accounts nor produced the buyers before the AO. Similarly, the agreements were entered into by the assessee with buyers are valid agreement and enforceable unless they are cancelled by mutual consent. No cancellation agreements have been furnished before the AO or the Ld.CIT(A) by the assessee. In the absence of any evidence, we hold that the

Ld.CIT(A) has rightly rejected the contention of the assessee and held that Rs.1,23,30,000/- as unaccounted sale receipts of the assessee.

12.2 Having held that the sum of Rs.1,23,30,000/- is unaccounted sale receipts, the question before us is 'whether the Ld.CIT(A) is right in including the total turnover instead of separate addition?.'

The revenue's case is that the said sum should not be included in the total turnover, but to be assessed separately as unaccounted income. The assessee's case is that the Ld.CIT(A) has rightly determined the turnover including the additional receipt. In this case, the assessee has not maintained the books of accounts and did not produce the books of accounts before the AO. Though the assessee had admitted the income of Rs.1.00 during the survey, the revenue did not establish with relevant material that the income admitted by the assessee was additional income over and above the normal profits with evidence. Though the turnover as per Profit and loss account was Rs.12,61,34,334/- , the assessee increased the turnover with a sum of Rs.99,65,600/- to compensate the deficiencies of survey and filed the return of income. Otherwise the return would have resulted in lesser income to that extent. Neither the revenue nor the assessee could place the material relating to the expenditure claimed with regard to the unaccounted receipts. The revenue did not bring

any material to establish that there was no expenditure incurred by the assessee relating to the unaccounted receipts. In the absence of the books of accounts it is unascertainable whether the assessee had booked the entire expenditure relating to accounted and unaccounted receipts. In the absence of any specific material with regard to the expenditure relating to unaccounted receipts, we hold that it is judicious to estimate the income on total receipts inclusive of unaccounted sales instead of making separate addition. The returned income of Rs.1,00,93,430/- was after admission of additional income of Rs.99,65,600/-, but not the original income as per Profit & Loss account found during the course of survey. Therefore, we hold the Ld.CIT(A) has rightly deleted the separate addition of Rs.1,23,30,000/- and arrived at the total turnover of Rs.13,84,64,334/-. Accordingly the revenues appeal in ground No.3 is dismissed and the cross objection of the assessee in Co.No.80 in ground No.4 is allowed.

13. The AO estimated the income @12.5% and the Ld.CIT(A) has scaled down the estimation of income @11%, holding it as reasonable and followed the order of this Tribunal in the case of ISNAR constructions of ITAT, Visakhapatnam in ITA No.488 & 503/Viz/2004 dated 04.06.2009. In this case, the assessee submitted that he has taken the project on development basis and profit in construction of apartments in

development is less compared to the construction on own land. The AO did not bring any comparable cases on similar facts of the assessee's case for estimation of income @12.5%. Though the assessee challenged the order of the Ld.CIT(A), the Ld.AR did not place any evidence to show that the profit is less than that of the income estimated by the Ld.CIT(A). In this case no books of accounts were produced and the evidences were found in the premises of the assessee showing the unaccounted sales. The assessee could not prove the expenditure incurred with relevant books and the vouchers. Therefore, we hold that the estimation of income @11% is reasonable and decline to interfere with the order of the Ld.CIT(A). Accordingly, the appeal of the revenue as well as the cross appeal of the assessee on this ground is **dismissed**.

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14. The assessee filed cross appeal and raised five grounds in this appeal. Ground No.1 and 5 are general in nature which does not require specific adjudication.

15. Ground No.2 is related to the issue of notice u/s 148. The Ld.CIT(A) upheld the notice issued u/s 148. In this case, subsequent to survey, basing on the material found during the course of survey, the AO had issued the notice u/s 148. The Ld.AR did not place any material to show that the

notice issued u/s 148 is bad in law. Therefore, we dismiss the assessee's appeal on this ground and uphold the order of the Ld.CIT(A).

16. Ground No. 3 and 4 are related to the determination of total turnover and estimation of income @11%. This issue has been discussed in revenue's appeal and upheld the determination of total turnover at Rs.13,84,64,334/- and confirmed the estimation of income at 11% as reasonable, therefore, ground Nos. 3 and 4 of the appeal of the assessee are dismissed.

In the result, appeal of the assessee is **dismissed**.

**Cross Objection No.80/Viz/2017**

17. Ground Nos. 1 and 5 are general in nature which does not require specific adjudication.

18. Ground No.2 is related to the estimation of income at Rs.1,52,31,076/- by estimation of income @ 11% on total turnover. This ground is adjudicated by us in revenue's appeal and upheld the order of the Ld.CIT(A), therefore, this ground is dismissed.

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19. Ground No.3 is related to the addition of Rs.2,15,000/- unrecorded interest. This ground is not pressed by the Ld.AR during the appeal hearing, therefore, this ground is dismissed as not pressed.

20. Ground No.4 is related to the separate addition of Rs.1,23,30,000/- This issue was decided against the revenue and in favour of the assessee in revenue's appeal. Hence, no further adjudication considered necessary.

21. In the result, appeal of the revenue, cross appeal filed by the assessee are **dismissed** and the cross objections of the assessee are partly allowed.

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22. A survey u/s 133A was conducted in the business premises of the assessee and simultaneously in the premises of Sri P.Prabhakar Rao on 10.10.2013 who is associated with the assessee. During the course of survey in the premises of Sri P.Prabhakar Rao, loose sheets were found and impounded as Annexure SS&SK/A/1 and the assessee enclosed the impounded material in paper book page No.6 to 19 which shows that the assessee had received the cash from Sri P Prabhakar Rao. As per the loose sheets, the assessee had received a sum of Rs.68,48,000/- in cash which was acknowledged by the assessee as per the details given below :

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S.No.	Date of Receipt	Amount (Rs.)	Impounded Material Number
1	19.07.2007	13,50,000	S S & S K/1/1 Page No.7
2	24.07.2007	4,14,000	S S & S K/1/1 Page No.8
3.	31.07.2007	8,10,000	S S & S K/1/1 Page No.9
4.	05.08.2007	5,50,000	S S & S K/1/1 Page No.10
5.	07.11.2007	2,00,000	S S & S K/1/1 Page No.11
6.	11.11.2007	6,15,000	S S & S K/1/1 Page No.12
7.	19.12.2007	30,000	S S & S K/1/1 Page No.13
8.	28.12.2007	6,50,000	S S & S K/1/1 Page No.14
9.	18.02.2008	15,00,000	S S & S K/1/1 Page No.6
10.	23.02.2008	5,00,000	S S & S K/1/1 Page No.17
11.	15.03.2008	2,29,000	S S & S K/1/1 Page No.7
Total		68,48,000	

23. It is also found that Sri TSVG Naga Prasad has given a sum Rs.15 lakhs i.e. Rs.9.00 lakhs on 05.04.2007 and Rs.6.00 lakhs on 08.06.2017 as per impounded material bundle bearing No.GNR/page No.8 to 12. The Addl.CIT, Vijayawada has issued the notice u/s 271D for a sum of Rs.61,19,000/- in case of P Prabhakar Rao and Rs.6.00 lakhs in case of Sri TSVG Naga Prasad for the financial year 2007-08 relevant to the assessment year 2008-09, for violation of provisions of section 269SS of the Act. In response to the show cause notice issued by the Addl.CIT, the assessee filed explanation stating that the assessee along with Sri Prabhakar Rao and Sri TSVG Naga Prasad have come to an understanding to start a business venture in BRP Road for which Sri Prabhakar Rao and TSVG Naga Prasad have contributed the amounts as their share capital.

Cash receipt issued by the assessee represents the share capital contribution for the joint business venture to be promoted by three of them. The assessee also submitted that on the face of the receipt purpose of the cash received was also noted as share capital but not as a loan. Since the assessee could not contribute his share of capital immediately to start the proposed business venture both Sri P Prabhakar Rao and Sri Naga Prasad have asked the assessee to treat the said amounts as advance for purchase of flats and accordingly the flats were sold to both of them. The assessee argued, that since the amount received was share capital of the firm and the same was transferred to his account by way of journal entries for sale of flat, it should not be treated as loan in cash and accordingly requested to drop the penalty proceedings. The assessee also explained before the Addl.CIT with regard to the ledger account copy titled as 'LIC Colony / CBR Towers Shri Satya Sri Prabhakar Rao from 1.4.2007 to 31.03.2008', found during the survey and supplied to the assessee stating that it was not maintained by him and not aware of the contents. The assessee also further stated that he has not paid any interest and did not claim any expenditure in the profit and loss account to treat the sums received as loans. He has accepted that the receipts were given by him for the amounts received from Sri P.Prabhakar Rao for contribution of share

capital in SK Constructions and the unsigned xerox copies of the ledger accounts found in the premises of Prabhakar Rao does not have any evidentiary value. Therefore, requested the Addl.CIT to drop the penalty proceedings. The Addl.CIT found from the impounded material marked as SS & SK/A/1, page No.6 that the assessee has received the amounts from Sri P.Prabhakar Rao to be repaid with interest @2.50 per month till the repayment. The Addl.CIT verified the receipts issued by the assessee, the ledger account found in the premises of Prabhakar Rao, considered the submissions made by the assessee and found that the assessee had received the cash loans from Sri P Prabhakar Rao and issued the receipts acknowledging the receipt of cash which is nothing but a loan. Therefore, the Ld.CIT(A) held that a sum of Rs.61,19,000/- received from Sri P. Prabhakar Rao is cash loan in violation of provisions of section 269SS of the Act and accordingly levied the penalty u/s 271D of the Act.

24. Similarly, the Addl.CIT also found that the assessee had received a sum of Rs.6 lakhs cash loan from Sri TSVG Naga Prasad as per the receipts issued by the assessee dated 08.06.2007 for Rs.6.00 lakhs to Sri TSVG Naga Prasad on his letter head. Since the amount was taken in violation of provisions of section 269SS of the Act, the Addl.CIT levied penalty of Rs.6 lakhs in respect of Sri TSVG Naga Prasad.

24.1. The gist of the observations of the Addl.CIT in respect of the loans from Shri Prabhakar Rao and Prasad are extracted from page No.10 of the penalty order which reads as under :

*"The assessee's submissions that the amounts received from the above persons (i.e. P.Prabhakar Rao & T.V.S.G.Nagaprasd) are towards capital in the firm M/s SK Constructions cannot be accepted for the following reasons*

1. *As seen from the impounded material(receipt dated 18.02.2008) (scanned copy at page No.6) it clearly mentions the amounts to be returned after the project loan is obtained and the amount bears interest at the rate of Rs.2.50 per month till the repayment.*

*If the amount is received as capital contribution from Shri P.Prabhakar towards capital for BRP projects or as capital contribution in M/s SK Constructions as claimed by the assessee the question of returning the amount after project loan is obtained does not arise. Also it is to be noted that there is clear prescription of interest payment mentioned at Rs.2.50 per month till the repayment. Hence the amount taken is clearly a loan.*

2. *Ledger account as available is in the impounded material SS & SK/A/1 at page no. 19 of P.Prabhakar clearly mentions that the amounts are given In cash and also there is interest payment mentioned there In.*

3. *The submission of the assessee that the amounts taken are capital contribution in M/s SK Constructions are self serving and after thought and make believe submissions because*

*(a) The assessee himself says that M/s SK Constructions has not filed any return of income. The very existence of the firm M/s SK Constructions has not been disclosed in any form of return of Income. This shows that the submissions regarding the firm M/s SK Constructions is an after thought and is self serving and make believe arrangement created by the assessee to explain the loan taken by him in cash from these persons is the capital contribution made by the these persons (i.e. P.Prabhakar Rao & T V S G Nagaprasad) In the said firm Also it cannot be believed these persons keep on contributing*

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*amounts towards capital contribution year after year while assessee does not make any contribution in the so called firm M/s SK Constructions hence this submission made by the assessee is fake and deserves to be rejected and there by it is rejected."*

Accordingly the Addl.CIT levied the penalty of Rs.67,19,000/- representing the loans of Rs.61,19,000/- and Rs.6,00,000/- taken from Sri P.Prabhakar Rao and Sri TSVG Naga Prasad respectively. The aggregate amount of penalty levied was Rs.67,19,000/- .

25. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and made three propositions before the Ld.CIT(A) stating that, the cash received was towards the share capital but not the loan, secondly the loan was accepted due to immediate financial requirements thus there is reasonable cause for accepting the loan and thirdly the penalty was initiated beyond the time limit allowed under the Act. Further the assessee submitted before the Ld.CIT(A) that the cash received from Shri P.Prabhakar Rao was Rs.68,48,000/-but not Rs.61,19,000/- as stated by the Addl.CIT. After verifying the details failed by the Ld.A.R the Ld.CIT(A) found that the amount of cash received from Shri P.Prabhakar Rao was Rs.68,48,000/- as follows:.

S.No.	Date of Receipt	Amount (Rs.)	Impounded Material Number
1	19.07.2007	13,50,000	S S & S K/1/1 Page No.7
2	24.07.2007	4,14,000	S S & S K/1/1 Page No.8

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3.	31.07.2007	8,10,000	S S & S K/1/1 Page No.9
4.	05.08.2007	5,50,000	S S & S K/1/1 Page No.10
5.	07.11.2007	2,00,000	S S & S K/1/1 Page No.11
6.	11.11.2007	6,15,000	S S & S K/1/1 Page No.12
7.	19.12.2007	30,000	S S & S K/1/1 Page No.13
8.	28.12.2007	6,50,000	S S & S K/1/1 Page No.14
9.	18.02.2008	15,00,000	S S & S K/1/1 Page No.6
10.	23.02.2008	5,00,000	S S & S K/1/1 Page No.17
11.	15.03.2008	2,29,000	S S & S K/1/1 Page No.7
Total		68,48,000	

26. The Ld.CIT(A) did not accept the contention of the assessee that the initiation of penalty was barred by limitation. The Ld.CIT(A) held that the Addl.CIT has correctly initiated the penalty proceedings u/s 271D and concluded the proceedings within the time period of six months and accordingly upheld the validity of penalty. The Ld.CIT(A) also relied on the decision of coordinate bench of ITAT, Hyderabad in the case of Shri Rao Subba Rao vs Addl.CIT,Range -6,Hyderabad in ITA No.170 &171/Hyd/2016 dated 17.02.2017.

27. With regard to the second proposition of financial exigency the assessee submitted before the Ld.CIT(A) that there was reasonable cause for non-compliance of provisions u/s 269SS of the Act, since, the assessee had accepted the loan due to financial exigencies. The assessee argued before the Ld.CIT(A) that the factors like genuineness of loan transaction,

emergent financial requirement and ignorance of provisions etc. permits the tax authorities to drop the penalty as per section 273B of the IT Act. However, the Ld.CIT(A) rejected the contention of the assessee since the business expediency was not established.

27.1 The Ld.A.R of the assessee also stated before the Ld.CIT(A) that Sri P Prabhakar Rao has given a site for development to the assessee and the assessee had spent a sum of Rs.22,70,000/- for the development expenses on behalf of him. The assessee further submitted before the CIT(A) that the total amount of cash received from Prabhakara Rao during the F.Y.2007-08 and 2008-09 was Rs.90,48,000/- and out of which an amount of Rs.22,70,000/- was deducted from Rs.90,48,000/- for development expenses and the balance amount due was Rs.67,78,000/- was partly adjusted by sale of one flat at LIC Colony for Rs.23,10,000/- vide document No.4736/2012 and additional works of Rs.30,33,000/- and further sum of Rs.14,35,000/- was adjusted towards the sale of flat to outsider Sk.Abdul Rahim, Hyderabad, since Sri P.Prabhakar Rao has received the amount of Rs.14,35,000/- directly from the purchaser of the flat which was mentioned in the document No.4522/2012 sold to Rahim. Accordingly, stated that the entire debt was discharged.

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27.2 In respect of Sri TSVG Naga Prasad, the assessee submitted that the assessee and Sri Naga Prasad are friends and Sri Naga Prasad and the assessee proposed to do joint venture called Harish Towers, Ring Road Vijayawada. For the said purpose, Sri TSVG Prasad has given an amount of Rs.25 lakhs , out of which an amount of Rs.15 lakhs was received in cash vide impounded material GNR/Bundle 9, page No.8-12. Sri Prasad had lent a sum of Rs.10 lakhs through cheque at ICICI Bank. However, the Addl.CIT while passing the order has mentioned only Rs.6 lakhs. As per the books of accounts of the assessee, the amount of loan was Rs.25 lakhs and the amount of Rs.9.00 lakhs received on 05.04.2007 and Rs.6.00 lakhs on 08.06.2007. The assessee submitted that due to various reasons the assessee could not take up the proposed business venture with Shri Prasad and returned the amounts to Sri TSVG Prasad as per the details given here under :

Date	Amount	Mode of Payment
09.02.2009	2,50,000	Cheque No.209479 Andhra Bank 1538
23.06.2009	50,000	Cheque No.812162 Andhra Bank 052310027000147
13.01.2010	5,00,000	Cheque No.417506 HDFC Bank 7002
08.07.2010	1,00,000	Cheque No.821719 Andhra Bank 052310027000147
30.06.2011	21,94,000	Registration of apartment FOF -2 in Harish Towers as per Document No.3209/2011

27.3. The assessee argued before the Ld.CIT(A) that the assessee is in the field of construction of apartments by taking the lands on development and construction of the flats. The assessee has tried to get the bank loans but he could not get the same. So he had associated with others as partners for acquiring the funds for smooth execution of the project. The assessee had approached Sri P. Prabhakar Rao for capital contribution who has given the amount as capital. The assessee stated that for execution of projects in time frame, the assessee had to receive the amounts from Sri P.Prabhakar Rao in cash and the same was recorded in the books of accounts also. The genuineness of the transaction was proved and the repayment was also proved with documentary evidence. Therefore, argued that there is a reasonable cause for accepting the loans and there is no case for initiating penalty u/s 271D. Accordingly requested to cancel the penalty.

28. With regard to the reasonable cause, the Ld.CIT(A) dismissed the appeal of the assessee stating that the assessee failed to establish the business exigencies with the tangible evidence. The assessee's claim with regard to capital contribution to SK Interiors and development of site in respect of Sri P Prabhakar Rao was also held to be not established by the

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assessee and rejected the claim of the assessee which is discussed in detail in para No.5.4. to 5.4.4 of the CIT(A)'s order which reads as under :

*"5.4. Admittedly, appellant submitted to have received a sum of Rs.83,48,000/- as loan in cash from Shri P.Prabhakar Rao and Shri T.S.V.G.Naga Prasad during relevant Assessment Year as detailed below :*

Sl.No.	Lender Name	Amount (in cash)
1.	Shri P.Prabhakar Rao	68,48,000
2.	Shri TSVG Naga Prasad	15,00,000
	Total	83,48,000

*Impounded material obtained during survey and books of account of appellant confirmed the above.*

*(a) The loan amounts received by appellant from Shri P.Prabhakar Rao in cash are evidenced by the impounded materials detailed below which were found in the premises of Shri P.Prabhakar Rao.*

S.No.	Date of Receipt	Amount (Rs.)	Impounded Material Number
1	19.07.2007	13,50,000	SS & SK/1/1 Page No.7
2	24.07.2007	4,14,000	SS & SK/1/1 Page No.8
3.	31.07.2007	8,10,000	SS & SK/1/1 Page No.9
4.	05.08.2007	5,50,000	SS & SK/1/1 Page No.10
5.	07.11.2007	2,00,000	SS & SK/1/1 Page No.11
6.	11.11.2007	6,15,000	SS & SK/1/1 Page No.12
7.	19.12.2007	30,000	SS & SK/1/1 Page No.13
8.	28.12.2007	6,50,000	SS & SK/1/1 Page No.14
9.	18.02.2008	15,00,000	SS & SK/1/1 Page No.6
10.	23.02.2008	5,00,000	SS & SK/1/1 Page No.17
11.	15.03.2008	2,29,000	SS & SK/1/1 Page No.7
Total		68,48,000	

*(b) Loan amounts received by appellant from Shri T.S.V.G.Naga Prasad in cash during the relevant assessment year are as follows :*

Sl.No.	Date of receipt	Amount (Rs.)	Impounded Material Number
1.	5.4.2007	9,00,000	GNR Bundle No.9 page No.8 to 12
2.	8.6.2007	6,00,000	-do-
	Total	15,00,000	

5.4.2. Appellant and Shri R Piabbakar Rao entered into a partnership deed on 05.09.2009 for construction and sale of residential / commercial complexes in the name and style of M/s SK Interiors Constructions with 50% share each. It was the claim of appellant that Shri P. Prabhakar Rao contributed his share of capital for the above venture and appellant could not contribute on his part towards capital. Further, M/s SK Interiors Constructions had not filed any return of income from its inception. According to appellant the partnership was discontinued as appellant could not obtain the bank loan and Shri P. Prabhakar Rao expressed his inability to continue as a partner and requested the appellant to repay his capital with interest.

5.4.3. As the loan receipt to the tune of Rs.68,48,000/-- in cash from Mr. P. Prabhakar Rao pertained to financial year 2007-08, in my view, the claim of capital contribution by Mr. P. Prabhakar Rao to M/s, SK Interiors Constructions has nothing to do for the relevant Assessment Year 2008-09 i.e. for the period ending on 31.03.2008 as the firm itself came into existence only on 05.09.2009 and corresponding bank account in the name of MIs. SK Interiors was opened only on 19.10.2009 with opening balance of Rs 5,000/- by cash (A/c No.545401010050201 with Union Bank of India, Labbipet).

5.4.4. The claim of appellant that Mr. P. Prathakar Rao gave his site for development to appellant and appellant had spent Rs.22,70,000/- for development expenses on behalf of Shri P. Prabhakar Rao was not established either before Addl. Commissioner of Income Tax or during appeal proceedings i.e., no evidence in respect of this claim was produced either before Addl. Commissioner of Income Tax or during appeal proceedings."

With regard to the sale of flats, the Ld.CIT(A) observed that the evidence is available for sale of flats to Sri P.Prabhakar Rao for sale consideration of Rs.37,45,000/-, for two flats and the same required to be allowed thus, confirmed the penalty of Rs.31,03,000/- out of the loans accepted from Sri P Prabhakar Rao.

28.1. In respect of Sri TSVG Naga Prasad, the Ld.CIT(A) observed that Sri Naga Prasad has purchased the flat from the assessee which is supported

by the corresponding entry in the relevant sale deed. Therefore, held that penalty u/s 271D is not attracted in the case of Sri TSVG Naga Prasad. Accordingly, the Ld.CIT(A) allowed the appeal of the assessee partly.

29. Aggrieved by the order of the Ld.CIT(A) the revenue is in appeal before us for deletion of penalty levied u/s 271D in respect of Sri P.Prabhakar Rao partly and Sri TSVG Naga Prasad in full.

29.1 On the other hand, the assessee filed cross objection in CO No.81/Viz/2017 supporting the order of the Ld.CIT(A) for deletion of penalty and also filed cross appeal in I.T.A. No.487/Viz/2017 for confirming the penalty of Rs.31,03,000/-.

30. During the appeal hearing the Ld.DR supported the orders of the AO and argued that the Ld.CIT(A) in his order agreed that the claims of the assessee with regard to contribution to share capital was unfounded. The Ld.CIT(A) also rejected the submission of the assessee with regard to acceptance of loan due to financial exigencies and given a finding that there was no reasonable cause for acceptance of the loans in cash. During the course of survey in the premises of Sri Prabhakar Rao, the department has impounded the loose sheets evidencing the acceptance of cash loans by the

assessee. As per the receipts issued by the assessee to Sri P. Prabhakar Rao, the assessee had received the sums from Sri P.Prabhakar Rao in cash during the financial year 2007-08. Though the Ld.AR claimed that the amounts were received towards share capital , there is no evidence with regard to promotion of joint venture or business venture along with Sri P Prabhakar Rao and Sri TSVG Prasad. Though on the face of the receipt dated 23.02.2008, it was mentioned as Royal Hotel project, the details of the project, Details of the partners of the project, the share capital pattern, bank account, return of income etc. were not furnished by the assessee either before the Ld.CIT(A) or before the Addl.CIT during the penalty proceedings. There is no evidence having opened the separate bank account for this purpose to handle the transactions. In page No.26 to 35 of the paper book the assessee had furnished the acknowledgments having received the amounts on various dates and given receipts on the letter head mentioning on the face of it stating the amounts were received towards share capital of the syndicate. However in this aspect also the assessee failed to furnish any evidence with regard to the details of the syndicate, members of the syndicate, objects of the syndicate, common bank account and the income tax return etc. The assessee also did not open any bank account to deposit the pooled funds and to make the transactions.

Therefore, argued that mention of syndicate and contribution to capital is nothing but an effort made by the assessee to circumvent the provisions of section 269 SS of the Act, and the Ld.DR argued that the amounts received by the assessee are nothing but the cash loans which attracts the provisions of section 269SS and consequent penalty u/s 271D of the Act. The receipt of Rs.15 lakhs on 18.02.2008 and Rs.5 lakhs on 26.02.2008, though mentioned towards BRP road project, the assessee has not furnished the details of the BRP project, partners, the capital account, pattern of capital and the relevant documentation etc. Further in the receipt it was clearly mentioned that the amount was a project loan which bears the interest @2.50 per month. Therefore, argued that the entire amount of cash receipts accepted by the assessee has nothing to do with the business project or partnership deed and the entire amount is nothing but a loan which required to be repaid along with the interest as per the ledger account copy furnished in paper book page No.22, wherein, the entire amount required to be repaid along with interest. Therefore, argued that the entire amount of loan of Rs.68,48,000/- is nothing but the cash loan which attracts penalty u/s 271D of the Act. In the case of Sri TSVG Naga Prasad also, the assessee had received a sum of Rs.15 lakhs which includes Rs.6 lakhs in cash which also required to be considered as cash loan and

penalty to be upheld. The Ld.DR also argued that the partnership deed in page No.11 to 12 of SK Interiors has nothing to do with the amounts taken by the assessee from Sri P Prabhakar Rao. Accordingly argued that the entire penalty levied by the Addl.CIT of Rs.68,48,000/- and Rs.6 lakhs in respect of Sri TSVG Prasad Rao required to be confirmed.

30.1. On the other hand, the Ld.AR argued that the assessee had received the sums of Rs.68,48,000/- in cash towards capital contribution of various projects as evidenced in the receipts issued by the assessee. The Ld.AR invited our attention to page No.25 to 36 of paper book, wherein, it was mentioned clearly on the face of the receipts that the amounts were received for project or for syndicate or for share capital in the syndicate as under :

Date of Receipt	Amount	Remarks
23.02.2008	Rs. 5 lakhs	Royal Hotel Project
06.08.2008	Rs.7 lakhs	Syndicate
27.05.2018	Rs.10lakhs	Capital for Syndicate
28.12.2007	6,50,000	Capital for Syndicate
19.12.2007	Rs.30,000	Capital for Syndicate
11.11.2007	Rs.6,15,000	Towards capital
07.11.2007	Rs.2 lakhs	Capital of the Syndicate
05.08.2007	Rs.5,50,000	Share capital for syndicate
31.07.2007	Rs.8,10,000	Share capital for syndicate
24.07.2007	Rs.4,14,000	Share capital for syndicate
19.07.2007	Rs.13,50,000	Capital for construction syndicate
18.02.2007	Rs.15 lakhs	Capital for BRP Road Project belonging

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		to Smt. And others interest payable @Rs.2.50 per month.
18.02.2007	Rs.5 lakhs	For the capital in addition to the above mentioned single receipt.

The Ld.AR further argued that the above amounts were received either for the specific project or for the capital for syndicate. Since the impounded material clearly indicates that the amounts were received towards share capital or capital contribution of the various projects, there is no case for holding that they are the loans for contravening the provisions u/s 269SS of the Act. The Ld.AR further stated that subsequently the amounts were adjusted towards the sale of flats as mentioned by the Ld.CIT(A) in his appeal order. The assessee had sold one flat in Sri Satya Towers, Gunadala for a sum of Rs.23,10,000/- on 05.09.2012 and the corresponding entries were made in the sale document. Similarly, one more apartment was sold by the assessee to Sri Sk.Abdul Rahim, Hyderabad for a consideration of Rs.14,35,000/- and the sale consideration was received by Sri P Prabhakar Rao directly. Therefore, the Ld.A.R argued that the assessee has not accepted the loans in cash in violation of the provisions of section 269 SS of the Act., hence the question of attracting the penalty u/s 271D does not arise. He stated that either the amount was adjusted towards the sale of flats or the development works

undertaken by the assessee, hence requested to cancel the penalty order passed by the Ld.CIT(A).

31. We have heard both the parties and perused the material placed on record. In this case, the assessee had received the sum of Rs.68,48,000/- from Sri P Prabhakar Rao as per the details mentioned earlier in this order. The assessee has given receipts on the letter head under his signature which was acknowledged by Sri P Prabhakar Rao.

31.1. The Ld.CIT(A) confirmed the validity of penalty holding that the period of limitation should be reckoned from the date of initiation of penalty by the Addl.CIT and it should be completed within six months from the date of initiation. In the instant case the Addl.CIT has concluded the proceedings within the time period allowed under the Act, hence the Ld.CIT(A) upheld the action of the Addl.CIT for initiating the penalty and dismissed the appeal of the assessee and placed reliance on the decision of coordinate bench of Hyderabad in the case of Shri Rao Subba Rao (supra). No other decision of any higher court was brought by the Ld.A.R. in favour of the assessee. As per the Act the date to be reckoned for initiating the penalty is the date of issue of notice by the Addl.CIT.

Therefore we do not find any infirmity in the order of the Ld.CIT(A) on this issue and the same is upheld.

31.2. The second contention of the assessee is reasonable cause for accepting the loans hence requested the immunity under section 273B. The Ld.CIT(A) did not find merit in this argument and rejected the assessee's appeal on this ground. The assessee did not challenge this ground before us and did not make any argument during the appeal hearing. Therefore the decision of the Ld.CIT(A) became final.

31.3. The Ld.A.R. supported his case very strongly stating that the sums received were for the purpose of share capital of the syndicate but not the loans. Though on the face of the receipts, it was mentioned as Royal Hotel Project for a sum of Rs.5 lakhs on 23.02.2009, the details of the Royal Hotel Project, the names of the partners, the common bank account and any documentary evidence was not made available. Therefore, merely mentioning Royal Hotel Project does not support the case of the assessee that sum was received towards the share capital. The assessee had received the sum of Rs.5 lakhs on 23.02.2009 from Sri P Prabhakar Rao and the same was utilized by him in his own business and the assessee has not opened separate bank account for the purpose of specific project of Royal

Hotel project which establishes that there was no such project and the amount of Rs.5 lakhs was a cash loan advanced by Sri P.Prabhakar Rao to the assessee. Similarly the amounts received vide page No.26 to 35 were mentioned as syndicate capital or share capital of syndicate also not supported by any evidence with the documentation and the bank account. It is obligation on the part of the assessee to furnish the documentary evidences with regard to the nature of syndicate, nature of the project, details of the project and the accounts in writing with regard to the construction of the project or the syndicate with the members etc. No such evidence was placed by the Ld.AR during the appeal hearing either before the Ld.CIT(A) or before the Addl.CIT. During the appeal hearing also, the assessee did not place any evidence to establish that the assessee along with Sri P. Prabhakar Rao had entered into syndicate with common objective for doing the common business. No common bank account was opened, no separate books of accounts were maintained and the funds were not deposited in the common bank account. In the absence of the common bank account, return of Income, the details of the proposed projects the contention of the assessee that he had received the funds from Sri P Prabhakar Rao for the purpose of share capital of the syndicate is baseless and unacceptable. Before taking the sums from the partners, there

should be document with the details of the proposed project, syndicate and their members to prove the common business venture. It is uncommon to advance the amounts in large sums throughout the year without common purpose or the goal without proper documentation and proper utilization of the fund. The assessee had utilized the funds in his own business and ultimately adjusted the sums towards the sale of flats to Sri P Prabhakar Rao and others. There was no dispute that the assessee had received the sums in cash and there is no evidence to prove that the sums were received for common business venture. Had the sums were received for the purpose of syndicate or common business venture the assessee would have opened the common bank account or the separate bank account immediately after the receipt of the money and deposited the entire receipts in the common bank account and maintained the separate books of accounts. No such exercise was done by the assessee in this case. Therefore, the said amount cannot be held towards the share capital and it is a loan.. In respect of receipt dated 18.02.2008 of Rs.15 lakhs and 26.6.2008 of Rs.5 lakhs it was clearly mentioned in the receipt that it was a loan bearing interest of Rs.2.50 per month. Though, it was mentioned as BRP Project, again no details were furnished and it was mentioned in the letter head that the loan bears interest rate of Rs.2.50 per month which clearly

establishes that the said sum was also a loan, but not for any project. The assessee has furnished the copy of partnership deed dated 05.09.2009 relating to SK Interiors. The Ld.CIT(A) held that the partnership deed of S.K. Interiors has nothing to do with the cash loans, since the advances were taken in 2007-08 and there was no partnership deed executed by both of them before accepting the loan. As rightly held by the Ld.CIT(A), we hold that the assessee's claim of capital contribution by Sri P Prabhakar Rao to M/s SK Construction has nothing to do with the relevant assessment year 2008-09 as the firm itself has come into existence on 05.09.2009 and the bank account of SK Interiors was opened on 19.10.2009.

32. Had the assessee received the sums towards share capital or for specific project the assessee would have opened the common bank account in the name of the firm or the shareholders or the partners for the benefit of the syndicate of respective project and operated the same for common business venture. In case of non-commencement of the syndicate or the project the amount would have been returned to members of syndicate from the common bank account directly. In the absence of any such evidence, the contention of the assessee that the amounts were received as capital contribution is unacceptable and we hold that the sums received by the assessee are nothing but the cash loans. Mentioning on the face of

receipt for as share capital is nothing but an effort to circumvent the provisions of section 269SS of the Act and it is a planned scheme of the assessee. The assessee had enclosed copies of letters filed by Sri P Prabhakar Rao in page No.17 and 19 of paper book, wherein, he had stated that he had given advances to Sri G.Narayana Rao. Further in Page No.18 also Sri P Prabhakar Rao confirmed that he has given amounts to Sri G Narayana Rao. The balance sheet of Sri P Prabhakar Rao for the year ending 31.03.2008 in page No.22 also shows that Sri P Prabhakar Rao has given loans to the assessee and also charged the interest. The balance sheet filed by Sri P Prabhakar Rao in page No.23 and 24 in the paper book also establishes that Sri G.Narayana Rao is a debtor to Sri P Prabhakar Rao and he had given advances to the assessee. All the above facts clearly establish that the sums received by the assessee was the loan but not towards common project or syndicate. No tangible evidence has been furnished by the assessee in the form of bank account or the project reports and the promotion of common business venture in respect of the amounts received by the assessee during the year under consideration. Therefore, we hold that the said sums were nothing but the loans accepted by the assessee otherwise than in cash. Even the Ld.CIT(A) also did not accept the theory of share capital in para No.5.4.3. to 5.4.4 which was not controverted by the

assessee. Therefore, we have no hesitation to hold that the sum of Rs.68,48,000/- was nothing but a loan accepted by the assessee in contravention to the provisions of section 269SS of the Act and attracts the penalty u/s 271 of the Act.

33. The Ld.CIT(A) allowed a sum of Rs.37,45,000/- towards sale of flats which were registered on 05.09.2012 and confirmed the penalty of Rs.31,03,000/- from Sri P Prabhakar Rao. The Ld.CIT(A) did not accept the claim of additional works of Gunadala flats in the absence of any evidence. Adjustment of amounts towards sale of flats is repayment of loan for which the provisions of section 269T are applicable and required to be dealt with separately. In the instant case, during the financial year 2007-08, the assessee had received a sum of Rs.68,48,000/- which are held to be loans but not the share capital or the capital contribution. Therefore, we hold that the Ld.CIT(A) erred in deleting the penalty of Rs.37,45,000/- representing the sale of flats to the assessee and we are unable to accept the contention of the Ld.CIT(A) and accordingly we set aside the order of the Ld.CIT(A) and confirm the penalty levied by the Addl.CIT. In this case though the Ld.CIT(A) held that the cash loan was Rs.68,48,000/- he has not given enhancement notice, therefore, we confirm the penalty levied by the Addl.CIT to the extent of Rs.67,19,000/-.

34. In respect of the loan taken from Sri TSVG Naga Prasad for a sum of Rs.6 lakhs it was mentioned on the face of in receipt in page No.51 that the amount was received for construction of the flat or house. The same fact was recorded in the sale deed. Therefore, we do not find any infirmity in the Ld.CIT(A) order and the same is upheld.

In the result the appeal of the revenue is allowed and the cross objection and the cross appeal of the assessee are dismissed.

**I.T.A. No.488/Viz/2017**

35. For the assessment year 2009-10, the assessee had received Rs.22,00,000/- from Sri P.Prabhakar Rao which is part of the total loan of Rs.90,48,000/- discussed in appeal No.499 of 2008-09. Out of which Rs.68,48,000/- was related to the assessment year 2008-09 and the remaining amount of Rs.22,00,000/- was related to the assessment year 2009-10. The Addl.CIT held the said sum as loan as per the facts discussed in Revenue's appeal No.ITA 499/Viz/2017 and levied the penalty of Rs.22,00,000/- u/s 271D of the Act. The details of amounts taken by the assessee as per the receipts are as under :

27.05.2008	Rs.10,00,000/-
26.06.2008	Rs.5,00,000/-
06.08.2008	Rs.7,00,000/-
	<hr/>

Total Rs.22,00,000/-

35.1. Aggrieved by the order the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) in his order dated 23.03.2017 confirmed the penalty. Before the Ld.CIT(A), the assessee argued that the assessee had incurred development expenses of Rs.22,70,000/-for development of site of Sri P Prabhakar Rao, but no evidence was furnished before the Ld.CIT(A), therefore, the Ld.CIT(A) rejected the claim and confirmed the penalty of Rs.22,10,000/- for the assessment year 2009-10.

The Ld.AR reiterated the submissions made in appeal No. 499/Viz/2017 stating that the said sum was received as a share capital. As per the detailed discussion made in revenue's appeal No.499/Viz/2017, in this order we have given a finding that there was no evidence to establish that the sums received from Shri Prabhakar Rao was towards the share capital and held that the said sum was a loan accepted by the assessee in violation of provisions of section 269SS of the Act. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld. The appeal of the assessee is dismissed.

**I.T.A.No.503/Viz/2017**

36. The assessee filed return of income for the assessment year 2014-15 admitting total income of Rs.95,80,310/- and the assessment was

completed on total income of Rs.1,67,84,108/- as per the following computation

Gross total income	1,68,84,108
Less : Deduction u/s 80C	1,00,000
Total income	1,67,84,108


During the course of survey conducted u/s 133A in this case on 10.10.2013 the assessee had admitted the income of Rs.3.00 crores spreading over for three years and accordingly for the year under consideration, the income admitted by the assessee was Rs.1.00 crore. Accordingly the assessee filed the return of income admitting the total income of Rs.95,80,310/-. During the assessment proceedings, the AO held that the admission of income Rs1.00 crore was additional income over and above the normal profits, and accordingly computed the income estimating the net profit at 12.5% on gross receipts of Rs.3,37,80,000/- and separately made the addition of Rs.17,76,000/- relating to the unsecured loan of Ms. V Malleswari and made separate additions representing other receipts of income, income from house property, interest received, professional fee received etc., admitted by the assessee in the return and determined the total income at Rs.1,67,84,108/-.

37. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) held that the admission of Rs.1.00 crore was not over and above the normal profits and it is the total income for the year under consideration. The Ld.CIT(A) held that the income admitted by the assessee was inclusive of all the receipts accordingly directed the AO to accept the income admitted by the assessee at Rs.95,80,310/-. With regard to the other receipts also, the Ld.CIT(A) was not convinced with the order of the AO and deleted the additions. For ready reference, we extract relevant part of the order of the Ld.CIT(A) in para No.5.3.5 to 5.3.7 which reads as under :

*“5.3.5. In my view, the net profit admitted by the appellant (with the income offered of Rs.1 crore under survey) at over 20% for the relevant assessment year is quite reasonable in this line of business. Since there is no evidence in impounded material to hold any unaccounted receipt for the relevant assessment year, in my view, no estimate of income as discussed in para3 of assessment order is necessary*

*5.3.6. The estimated income of Rs.42,22,500/- @ 125% on gross receipts of Rs.3,37,80,000/- is less than appellant's admitted net profit of Rs.89,80,399/- in profit & loss account (which included appellant's offer of Rs.1.00 crore under s.133A of the Act). When the sum of Rs.1.00 crore offered u/s.133A of the Act is excluded, then the net profit is a negative figure. Under such circumstances, I am not convinced with A.O's view that appellant had shown gross profit @ 8.35%. I, therefore, direct AO to accept appellant's admitted total income of Rs.95,80,310/-.*

*5.3.7. Also, no separate addition of Rs.1.00 crore is warranted. Otherwise, it would amount to Unreasonable addition without any justification. Further, an admission or acquiescence during survey cannot be a foundation for an assessment unless there is corroborative evidence. No such evidence was brought on record by A.O. in the assessment order. No addition can be made to the total income or an adverse inference drawn merely on the basis of admission at the time of survey. Under such*

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*circumstances, separate addition of Rs.1 crore in AOs computation of total income is, in my view, unwarranted as the same was already included in profit and loss account while appellant arrived at net profit. For the same reason, other addition of Rs.4,73,608/- (interest of Rs.17,952/-, professional fee receipt Rs.1,500/- + other income of Rs.4,54,156/-) is not required, Hence, Ground of appeal Nos.2, 3 & 5 are allowed.”*

The Ld.CIT(A) also deleted the addition made in respect of the balance outstanding in the name of V.Malleswari for Rs.17,76,000/-. While deleting the addition, the Ld.CIT(A) held that the said sum of Rs.17,76,000/- of V.Malleswari is related to the opening balance, but not the sum received during the year under consideration and relied on the decision of Hon'ble ITAT Bangalore in the case of Glen Williams Vs. ACIT and accordingly deleted the addition.

38. Aggrieved by the order of the Ld.CIT(A), the revenue carried the matter before the Tribunal.

39. We have heard both the parties and perused the material placed on record. In revenue's appeal, ground No.1 and 5 are general in nature which does not require specific adjudication.

40. Ground No. 2 is related to the addition of Rs.17,76,000/- unsecured loan taken from V.Malleswari. The revenue's case is that a sum of Rs.17,76,000/- was accepted during the year but not related to the earlier

year. The case of the assessee is that the loan was related to the earlier year and brought forward balance but not accepted during the year, hence the addition cannot be made in the year under consideration. The assessee filed return of income, computation statement and the ledger account copy of V.Malleswari as at the end of March 2013 in paper book. The account copy in page No.20 filed in the paper book shows that the balance as on 31.03.2013 was Rs.18 lakhs which was brought forward to the assessment year under consideration, therefore, the unsecured loans relating to V.Malleswari is an opening balance, but not the loan accepted during the year. The revenue did not place any evidence to prove that the said sum of Rs.17,76,000/- was accepted during the year. The revenue did not controvert the evidences placed by the assessee during the appeal hearing from the income tax returns filed by the assessee with the IT Department. Therefore, there is no doubt that the loan of Rs.17,76,000/- related to the earlier year, but not related to the year under consideration. The AO made the addition u/s 68 of the Act and as per the provisions of section 68 of the Act, the credits made during the year under consideration for which the source is not explained required to be brought to tax. Since the credit is related to the earlier assessment year, there is no case for making the addition in the year under consideration. Accordingly, we do not find any

infirmity in the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue on this ground is dismissed.

41. Ground No.3 and 4 are related to the additional income offered by the assessee at the time of survey and the income determined by the AO on estimation basis. At the outset, the department did not place any evidence to show that the assessee had admitted the additional income over and above the normal profits. The department even did not produce the statement recorded during the course of survey and the material collected by the department during the survey to establish that the assessee had earned the additional income of Rs.1.00 crore during the year under consideration. Since the assessee has filed the return of income admitting total income of Rs.95,80,310/-, in the absence of any evidence to show that the assessee had earned income over and above the returned income, the AO cannot resort for separate estimation of the profits and to tax the additional income stated to have admitted in the survey. In this case, the AO estimated the income @12.5% on the gross receipts of Rs.337.80 lakhs which worked out to be 42.12 lakhs and the remaining income from all other sources i.e. income from property, professional fee and other income was Rs.7,85,608/- and the aggregate of Rs.42.12 lakhs and the sum of Rs.7,85,608/- worked out to Rs.49,97,608/- which was less than the

returned income. Therefore, we do not see any reason to interfere with the order of the Ld.CIT(A) which is fair and reasonable. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

**Cross Objection No.85/Viz/2017**

42. The Cross Objection filed by the assessee was not pressed during the appeal hearing, therefore the Cross Objection is dismissed.

**I.T.A.No.500/Viz/2017, CO No.82/Viz/2017**

43. The Addl.CIT initiated penalty u/s 271D against the assessee for accepting the loan from Sri S.Ram Prasad for a sum of Rs.1,20,00,000/- in violation of provisions of section 269SS of the Act. During the course of survey conducted u/s 133A, the AO found that the assessee had received loan of Rs.1,20,00,000/- otherwise than by crossed cheque. The Addl.CIT observed that out of the total sum of Rs.1,20,00,000/- an amount of Rs.84,99,000/- was accepted through cheque, hence, the balance amount of Rs.35,01,000/- was treated as a cash loan and levied the penalty of Rs. 35,01,000/- u/s 271D of the Act.

44. Aggrieved by the order of the Addl.CIT, the assessee went on appeal before the CIT(A) and submitted that the loan taken by him was

Rs.95,99,000/-, but not Rs.1,20,00,000/- as stated by the Addl.CIT in his order. The Ld.AR further submitted before the Ld.CIT(A) that the assessee he had inadvertently failed to furnish the details of the loans received through fund transfer from account No.01092100006054 for a sum of Rs.11,00,000/- on 02.08.2010 before the AO. Even if it is presumed that the loan taken was Rs.1,20,00,000/-, the assessee submitted that penalty if at all leviable would be 24.01 lacs but not Rs.35.01 lacs as contended by the Addl.CIT. However, the assessee has maintained that the aggregate loan was Rs.95,99,000/- but not Rs.1,20,00,000/-.

45. The Ld.AR argued before the Ld.CIT(A) that the entire amount of loan was received by cheque but not by cash. The Ld.AR further submitted that the papers found during the course of survey were unsigned and has no evidentiary value. The Ld.CIT(A) observed that though the assessee admitted during the course of survey that the loans were accepted by the assessee from Sri Ram Prasad, in the absence of any corroborative material, much reliance cannot be placed on unsigned loose sheets and affidavit of the assessee found during the survey. The Ld.CIT(A) has accepted the contention of the assessee that the loan taken by the assessee was Rs.95,99,000/- but not Rs.1,20,00,000/- and the entire amount was received through cheques. The Ld.CIT(A) further observed that the

amounts received from Sri Ram Prasad were towards the advance payments for sale of flat belonging to the assessee's son Shri G.Manoj and furnished the copy of registered sale deed executed by Sri S.Ramprasad on 27.06.2012. Since the AO failed to establish that the assessee has availed cash loan of Rs.1,20,00,000/- and the entire amount was received through cheque, the Ld.CIT(A) deleted the penalty.

46. Aggrieved by the order of the Ld.CIT(A), the revenue has filed appeal before this Tribunal.

We have heard both the parties and perused the material placed on record. During the course of survey loose sheets marked as annexure:GNR/Bndl/2 page No.28 to was found and impounded u/s 133A of the act. A statement was recorded during the course of survey from the assessee and the assessee had accepted that he had taken loans of Rs.1,20,00,000/- from Shri Ramprasad. For ready reference, we extract, relevant part of the statement which was reproduced in the penalty order and the same reads as under:

*"36. Please go through the Bundle-2 of impounded material and explain the contents and transactions therein?"*

*Ans. These are the amounts representing loan taken from Sri Surapaneni Ram Prasad of Rs.1,20,00,000/-. The total amount including interest come to Rs.1,92,00,000/- out of which an amount of Rs.20,50,000/- was paid as*

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*interest upto 23.08.2011. Regarding the balance payment the same was settled by giving away 2(Two) Flats in Sri Satya Towers."*

46.1. The material found during the course of survey was unsigned affidavits and unsigned ledger account. The assessee contended before the Addl.CIT during the penalty proceedings that the loan taken from Sri Ramprasad was Rs.95,99,000/- but not Rs.1,20,00,000/-. The analysis of the impounded material (pen text) is as under:

Loose sheet No.28&29 is unsigned affidavit which reads as under:

Receipt (on stamp paper of Rs.100/-

On this 26<sup>th</sup> day of \_\_\_\_\_ 2012

Given to : Golla Narayana Rao, S/o Radhakrishna Murthy, aged 56 years, R/o Krishna Dist., Vijayawada, Mogalrajapuram, Vijayasraddha Towers, Flat No.F.O.F.4.

Given By : Surapaneni Ram Prasad, S/o Late Lakshmi Perumal, Aged, 56 years, R/o Krishna Dist., Vijayawadas, Suryaraopet, Dornakal Road

Nature : Earlier upto 01.10.2010 you have borrowed a sum of Rs.1,20,00,000 (Rupees One Crore Twenty Lakhs Only) on various dates by cash and cheque. Such loan with accrued interest amounted to Rs.1,92,99,000 (Rupees One Crore Ninety Two Lakhs only) as on date. From out of the said amount, you have paid in various installments by cash and cheque a sum of Rs.\_\_\_\_\_ till date.

This Receipt is given with my consent.

Witness :

1.

2.

01.11.2010 – Loan of Rs.1,20,00,000 - Rs.1,20,00,000.00

Interest @Rs.3/- per month

Rs.3,60,000 x 19 months - Rs. 68,40,000.00

Total (Principal + Interest) - Rs.1,88,40,000.00

3683 sft.

1142 sft.

400 sft.

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5225 sft.

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5225 x Rs.2,600/-	-	Rs.1,35,85,000/-
+ So far given	-	Rs.48,80,000
		-----
Total Amount Paid	-	Rs.1,84,65,000.00
		-----
Loose sheet No.30 (scanned copy annexed in the penalty order)		
01.11.2010 - Loan of Rs.1,20,00,000/-	-	Rs.1,20,00,000
Interest @Rs.3/- per month		
Rs.3,60,000 x 19 months	-	Rs.68,40,000
		-----
Total (Principal + Interest)	-	Rs.1,88,40,000

3683 sft.		
1142 sft.		
400 sft.		
-----		
5225 sft.		
-----		
5225 sft. x 2600	=	Rs.1,35,85,000/-
+ so far given	=	Rs.48,80,000/-
		-----
Total amount paid	=	Rs.1,84,65,000.00
		-----
3,60,000 x 20	=	72,00,000.00
Principal Amt.	=	1,20,00,000.00
		-----
		1,92,00,000.00
Irregular payment charges		3,00,000.00
		1,95,00,000.00
		-1,29,09,000.00 (5225-2260 = 4965 x2600)
		-----
		65,91,000.00
So far given	-	48,80,000.00
		-----
		17,11,000.00

46.3. Careful verification of the loose sheet No.30 found and impounded during the survey in the premises of the assessee reveals that the assessee had taken the loan of Rs.1,20,00,000/- from Shri Prasad for interest of Rs. 3.00 per month which worked out Rs.68,40,000/- for 19 months from

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01.11.2011 and the aggregate amount payable worked out to Rs.1,92,00,000/- which was adjusted by sale flats to the extent of Rs.1,35,85,000/- and the amount so far given was Rs.48,80,000/- and the balance payable was Rs.17,11,000/- inclusive interest for 20<sup>th</sup> month. Loose sheet No.28 and 29 unsigned affidavit confirms the above fact. The statement was recorded from the assessee during the course of survey on 10.10.2013 and the assessee has confirmed the above fact and also stated that a sum of Rs.20,50,000/- was paid as interest up to 23.08.2011. Out of the contents recorded on the loose sheet the assessee did not dispute the sale of flats and the adjustment of the loan taken towards the sale of flat and disputing the acceptance of loan Rs.1,20,00,000/-. It is settled principle that contents found during the course of survey on loose sheet is true and correct in entirety but cannot be partially correct and partially false. The assessee had accepted the contents as true and correct in the statement recorded during the course of survey on 10.10.2013 and did not retract till the penalty proceedings are initiated i.e for nearly for three years. The assessee is permitted to retract the statement within reasonable time but not after long time. Since the assessee has not retracted the statement immediately we hold that the statement recorded during the survey is valid and retraction is an afterthought to overcome the provisions of section

269SS of the act. The Ld.AR relied on the decision of Hon'ble apex court in the case of Commissioner of Income-tax, Salem, Vs. Khader Khan Son\*[2012] 25 taxmann.com 413 (SC). The facts of the case are distinguishable with that of the facts of the assessee's case, in the cited case there was no evidence available and the addition was made based on the statement recorded. In the instant case there is an ample evidence which was accepted by the assessee in the statement. Even after retraction the assessee had accepted the contents of the loose sheet with regard to sale of flats as partly correct. Therefore the case law relied on by the assessee has no application in the assessee's case. The material found during the course of survey and supported by the statement recoded on the date of survey proves that the assessee has taken the loan of Rs.1,20,00,000/-which includes the cash loan of Rs.24.01 lacs and 95.99 lacs in cheque as observed by the Ld.CIT(A). The assessee having failed to explain the reason for accepting the loan of Rs.24.01 lacs in cash, the same is in violation of section269SS and attracts the penalty u/s 271D of the act. Accordingly we set a side the order of the Ld.CIT(A) and confirm the penalty of Rs.24.01 lacs. Accordingly the appeal of the revenue is partly allowed.

**Cross Objection No.82/Viz/2017**

47. The assessee filed cross objection against sustaining the penalty of Rs.35,01,000/- in this case. In the revenue's appeal, we have confirmed the penalty of Rs.24.01 lakhs therefore, the cross objection filed by the assessee is dismissed.

**I.T.A. 501/Viz/2017, CO 83/Viz/2017**

48. This appeal at the instance of the Revenue is directed against the impugned order passed by the Ld. Commissioner of Income Tax (Appeals) for the A.Y.2011-12. The issue in this appeal is levy of penalty u/s 271E of the Act. In this appeal, the tax effect pertaining to the amount disputed by the Revenue is less than the monetary limit of Rs. 20 lakh fixed by the CBDT in Circular No. 03/2018, dated 11.07.2018, which is in supersession of its Circular No. 21/2015 dated 10.12.2015, in relation to filing of appeals before the Income Tax Appellate Tribunal. Taking into consideration the above, and also the fact that the CBDT Circular under reference applies retrospectively even to pending appeals, we hold that the appeal filed by the Revenue is not maintainable and liable to be dismissed *in limine*. Accordingly, we dismiss the appeal of the Revenue as well as the cross objection.

**ITA No.489/Viz/2017**

49. The issue in this appeal is related to confirming the penalty of Rs.8,00,000/- for violation of provisions u/s 269T levied under section 271E of the Act. The assessee had made the repayment of Rs.8,00,000/- to Shri P.Prabhakar Rao in violation of the provisions of section 269T of the Act, Therefore, the Ld.Addl.CIT invoked the provisions of Section 271E and levied the penalty of Rs.8,00,000/-. On appeal the Ld.CIT(A) confirmed the penalty.

50. In this order, in revenue's appeal in ITA 499/Viz/2017, as per the detailed reasoning given, we have held that the amounts received from Shri P Prabhakar Rao were the loans, accepted in cash otherwise than by cheque and the same attracts penalty u/s 271D of the Act. The assessee made the repayment of the loan of Rs.8,00,000/- in cash during the year under consideration in violation of section 269T of the Act. Though the Ld.AR argued that it represents the interest payment, the same was not supported by the ledger account copy which was extracted by the Ld.CIT(A) in para No.5.4 of the order. In the letter dated 19.02.2015 addressed to Asst.CIT, Circle-2(1), Visakhapatnam, Shri P.Prabhakar Rao has confirmed that he has received part payment of advance. Having held that the amounts received from Shri P Prabhakar Rao was a cash loan and

the assessee failed to explain the reasons for repayment of loan otherwise than by crossed cheque, we hold that the Ld.CIT(A) is justified in confirming the penalty levied by the Addl.CIT u/s 271E of the Act. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

**ITA 502/Viz/2017**

51. During the year financial year 2011-12 relevant to the assessment year 2012-13, the assessee had repaid a sum of Rs.36,60,000/- to Shri S.Ram Prasad in cash in violation of the Provision of section 269T of the Act. The Addl.CIT levied penalty of Rs.36,60,000/- u/s 271E of the Act. The Ld.CIT(A) deleted the penalty imposed by the Addl.CIT holding that the payment of Rs.36,60,000/- held to be interest payment. The Ld.CIT(A) also did not accept the contention of the AO with regard to contents of the loose sheets since it does not bear the signature.

52. We have heard both the parties, perused the material on record. In this order, in appeal No.499/Viz/2017 we have held that the amount received from Shri S Ram Prasad was Rs.1,20,00,000/- but not Rs.95,99,000/- as loan and we have also held that the total amount outstanding was Rs.1,92,00,000/- as appearing in the loose sheet including

interest and out of which Rs.1,35,85,000/- was adjusted towards the sale of flats and the payment of Rs.48,80,000/- was towards the interest as per the impounded material at page No.29.

52.1. The assessee has adjusted a sum of Rs.1,35,85,000/- towards sale of flats and paid a sum of Rs.48,80,000/- which is stated to be representing the interest payment. The principal amount of loan was Rs.1,20,00,000/-, and the amount of Rs.1,35,85,000/- was adjusted for sale of flats, hence we accept the contention of the Ld.AR that the payment of Rs.48,80,000/- represents the interest and out of which a sum of Rs.36,60,000/- was paid during the impugned assessment year. The Ld.AR during the course of hearing argued that Section 269T is applicable for repayment of loan but not for payment of expenditure which is required to be allowed as deduction. Payment of interest in cash required to be considered u/s 40A(3) of the Act but not u/s 269T of the Act. As per section 269T, the assessee is not permitted to make the payment of principal or principal along with the interest, otherwise than crossed cheque. For ready reference, we extract section 269T of the Act which reads as under :

**Mode of repayment of certain loans or deposits.**

**269T.** No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the

**I.T.A Nos.380,487- 489, 433,499-503/Viz/2017 & CO Nos.80 - 85/Viz/2017****Golla Narayana Rao, Vijayawada** 

person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account if—

(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances, is twenty thousand rupees or more:

**Provided** that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :

**Provided further** that nothing contained in this section shall apply to repayment of any loan or deposit or specified advance taken or accepted from—

- (i) Government;
- (ii) any banking company, post office savings bank or co-operative bank;
- (iii) any corporation established by a Central, State or Provincial Act;
- (iv) any Government company<sup>28</sup> as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

*Explanation.*—For the purposes of this section,—

- (i) "banking company" shall have the meaning assigned to it in clause (i) of the *Explanation* to [section 269SS](#);
- (ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);
- (iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature;
- (iv) "specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

This view is supported by the decision of the coordinate bench of

ITAT in the case of MV Raghavulu Vs. ACIT, Kakinada Range in I.T.A.

No.362/Viz/2011. Since the payment of Rs.36,60,000/- represents the interest, respectfully following the decision of coordinate bench in the case cited supra, we hold that the provisions of section 269T are not applicable and consequently the penalty u/s 271E is not leviable. Therefore we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

**Cross Objection No.84/Viz/2017**

53. Appeal No.502/Viz/2017 is related to the levy of penalty of Rs.38,75,000/-, representing sum of Rs.36,60,000/- for repayment of loan in cash to Shri S.Ramprasad and Rs.2,15,000/- to Shri P.Prabhakar Rao. The Ld.CIT(A) deleted the penalty in the case of Shri S.Ramprasad, therefore, the assessee filed cross objection supporting the order of the Ld.CIT(A).

With regard to the penalty of Rs.36,60,000/- paid to Shri S.Ram Prasad, the order of the Ld.CIT(A) is confirmed in Revenue's appeal No.502/Viz/2017, therefore the cross objection is allowed.. Though the Ld.AR filed cross objection for Rs.2,15,000/- paid to Shri V.Prabhakar Rao, the Ld.AR did not make any argument in respect of Rs.2,15,000/-. Therefore, assessee's cross objection on this ground is dismissed. In the result cross objection of the assessee is partly allowed.

54. In the result,

(i) Appeal of the revenue in I.T.A No. 433/Viz/2017 is dismissed, Cross Objection of the Assessee in C.O.No.80/Viz/2017 and Cross Appeal No.380/Viz/2017 is dismissed.

(ii) Appeal of the revenue in I.T.A.No.499/Viz/2017 is allowed. Cross objection of the assessee in C.O.No.81/Viz/2017 as well as the cross appeals in I.T.A. Nos.487/Viz/2017, 488/Viz/2017 and 489/Viz/2017 are dismissed.

(iii) Appeal of the Revenue in I.T.A.No.503/Viz/2017 is dismissed and Cross Objection of the assessee in C.O.No.85/Viz/2017 is dismissed.

(iv) Appeal of the Revenue in I.T.A.No.500/Viz/2017 is partly allowed and Cross Objection of the assessee in C.O.No.82/Viz/2017 is dismissed.

(v) Appeal of the revenue in I.T.A.No.501/Viz/2017 is dismissed and Cross Objection of the assessee in C.O.No.83/Viz/2017 is dismissed.

(vi) Appeal of the revenue in I.T.A.No.502/Viz/2017 is dismissed and Cross Objection of the assessee in C.O.No.84/Viz/2017 is partly allowed.

**I.T.A Nos.380,487- 489, 433,499-503/Viz/2017 & CO Nos.80 - 85/Viz/2017**  
**Golla Narayana Rao, Vijayawada**

The above order was pronounced in the open court  
on 5<sup>th</sup> October, 2018.

Sd/- (डि.एस. सुन्दर सिंह) <b>(D.S. SUNDER SINGH)</b> लेखा सदस्य/ <b>ACCOUNTANT MEMBER</b> विशाखापटणम / <b>Visakhapatnam</b> दिनांक /Dated : 05.10.2018 L.Rama, SPS	Sd/- (वी.दुर्गा राव) <b>(V. DURGA RAO)</b> न्यायिक सदस्य/ <b>JUDICIAL MEMBER</b>
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आदेश की प्रतिलि पिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती / The Assessee- Golla Narayana Rao, Flat No.FF-4, D.No.32-15/1-16, Vijaya Shraddha Towers, Moghalrajpuram, Vijayawada
2. राजस्व / The Revenue – Asst.Commissioner of Income Tax, Circle-2(1), Vijayawada  
(ii) – Deputy Commissioner of Income Tax, Circle-2(1), Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income Tax (Appeals), Vijayawada
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT,VISAKHAPATNAM