

आयकरअपीलीयअधिकरण, हैदराबाद न्यायपीठ
**INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्रीअनिल चतुर्वेदी, लेखा सदस्य के समक्ष
**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT AND
MR. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

[THROUGH VIDEO CONFERENCING]

आयकरअपील सं. / ITA No.883/H/2019
निर्धारण वर्ष/Assessment Year : 2010-11

Shri C. M. Gopal,
C/o. P. Murali & Company,
Chartered Accountants,
6-3-655/2/3, Somajiguda,
Hyderabad – 500 082
PAN: ABVPC 2460 L

..... अपीलार्थी/Appellant

Vs.

DCIT, Central Circle-2,
Hyderabad

..... प्रत्यर्थी/Respondent

अपीलार्थी की ओर से / Applicant by	:	Shri P. Murali Mohana Rao, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Y. U. S. T. Sai, CIT

सुनवाई की तारीख / Date of Hearing	:	18-06-2020
घोषणा की तारीख / Date of Pronouncement	:	29-06-2020

आदेश/ORDER

PER ANIL CHATURVEDI, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order dated 29.03.2019 of the Commissioner of Income Tax (A)-11, Hyderabad relating to Assessment Year 2010-11.

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2. The relevant facts as culled from the material on records are as under:

3. The assessee is an individual. A Search and Seizure operation u/s 132 of the Act was carried out at the residential premises of the assessee on 25.11.2010. Consequent to search, notice u/s 153A dated 07.02.2012 was issued and served on the assessee. In response to the notice u/s 153A, assessee filed return of income on 16.03.2012 declaring total income of Rs.17,67,650/- and agricultural income of Rs.1,00,000/-. Thereafter, case was selected for scrutiny and consequently assessment was framed u/s 143(3) r.w.s 153A vide order dated 25.03.2013 and the total income was determined at Rs.31,46,846/-. Aggrieved by the order, assessee carried the matter before the CIT(A) who vide order dated 29.03.2019 in appeal No. 0216/2013-14/DCIT CC-2/CIT(A)-11/2018-19/Hyd granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds.

S.No.	Grounds of Appeal	Tax effect
1.	<i>Ld.CIT(A) erred in sustaining the addition of Rs.1,73,500/-.</i>	<i>Rs.65,546/-</i>
2.	<i>Ld CIT(A) erred in not appreciating the grounds in nos. 6&7 taken before him.</i>	<i>Merits</i>
3.	<i>Ld CIT(A) erred in holding that the appellant, even during the course of appeal proceedings, had not produced any satisfactory evidence suggesting that it was shown in the HUF returns, dehors the availability of the HUF</i>	<i>Merits</i>

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	<i>returns with the Assessing Officer.</i>	
4.	<i>Ld CIT(A) ought to have appreciated that in spite of the fact that the return of income has been filed after the date of search There exists a valid return filed return filed by the HUF where in the impugned investment of Rs. 1,73,500,- has been shown.</i>	<i>Merits</i>
5.	<i>Ld CIT(A) erred in sustaining the addition of Rs.18,480/-.</i>	<i>Rs.65,545/-</i>
6.	<i>Ld CIT(A) ought to have appreciated that interest amount of Rs.18,480/- has already been admitted in the return of income filed by the HUF.</i>	<i>Rs.65,545/-</i>
7.	<i>Ld CIT(A) ought to have appreciated that the return of income filed by the HUF on 28.02.2011 is a valid return and that the addition of Rs.18,480/- made in the hands of the assessee - individual is not warranted.</i>	<i>Rs.65,545/-</i>
8.	<i>The Ld CIT(A) erred in sustaining the disallowance of Rs.26,505/-.</i>	<i>Rs.65,545/-</i>
9.	<i>Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal</i>	<i>General Ground</i>

4. Before us, at the outset, Learned AR submitted that he is not pressing ground no.8 and that only two issue needs to be adjudicated. 1st issue is with respect to addition of Rs.1,73,500/- and the other issue is with respect to addition of Rs.18,480/- and both the issues are interconnected.

5. During the course of assessment proceedings, AO noticed that during the search and seizure operations, certain promissory notes aggregating to Rs.1,73,500/-

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(which are listed in Para 5 of the Assessment Order) were found and seized from the residential premises of the assessee. The assessee was asked to furnish the details of the source of amount lent, the documentary proof and the details of interest received on such amounts that were lent. Assessee *inter alia* submitted that the amounts were lent out of the HUF funds and the transactions are reflected in the return of income filed by the HUF. The submission of the assessee was not found acceptable to AO for the reasons that the return of income of HUF for A.Y. 2010-11 was filed on 28.02.2011 i.e. after the date of search. He was of the view that the claim of the assessee that the transactions are reflected in the return of income of HUF to be an afterthought. He, therefore concluded that the assessee has failed to explain the source of the amount lent aggregating to Rs.1,73,500/- and accordingly, treated it as unexplained investment in the hands of the assessee. AO, thereafter, noted that amounts were lent @ 24% per annum. He, thereafter on the amounts that were supposed to have been lent worked out the interest at Rs.18,480/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

6. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted

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that the return of income filed by the HUF for A.Y 2010-11 on 28.02.2011 is a valid return u/s 139(4) of the Act. He further submitted that the HUF is already in the lending business which is evident from the returns of income filed by it for A.Y. 2007-08 & 2009-10 and which are placed in the paper book. From those returns of income he pointed to the fact about the receipts of interest on the amounts advanced by HUF which were also offered to tax. He, therefore, submitted that authorities were not justified in discarding the submissions of the assessee that the amount lent belonged to HUF without any evidence to the contrary and they were not justified in making the addition on account of unexplained investments and interest thereon.

7. Learned DR on the other hand supported the order of lower authorities and submitted that on the date of search at the premises of the Assessee, the due date for filing the return of income u/s 139(1) in the case of HUF had expired. He submitted that the filing of return of income by HUF subsequent to the date of search was an afterthought. He further submitted that no evidence was placed by the assessee to demonstrate about the availability of the funds from which the amounts were lent out by the HUF. He, thus, supported the order of lower authorities.

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8. We have heard the rival submissions and perused the material available on record. The issue in the present case is with respect to addition of account of unexplained investment and addition of interest thereon. We find that before the lower authorities assessee has been consistently stating that the amount lent belongs to HUF and the transactions are already reflected in the return of income of the HUF and in support of which assessee has also placed on record copy of the balance sheet and the computation of income for A.Y. 2008-09 & 2009-10. Those computation reflect interest receipts shown by the HUF. It is also a fact that the return filed by the HUF for A.Y. 2010-11 subsequent to the date of search in case of the assessee, was a valid return u/s 139(4). In such a situation, without there being on material to be contrary, the return of income filed by HUF for A.Y. 2010-11 cannot be simply brushed aside. Before us, no material has been placed by Revenue to demonstrate that the submissions made by the assessee of the investment being of HUF is false or is not correct. Considering the totality of the aforesaid fact, we are of the view that no addition on account of unexplained investment is called for in the case of the assessee. We, therefore, delete the addition made on account of unexplained investments. Since the addition on unexplained investment has been deleted, consequently, the addition of interest on such investments also does not

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survive and the addition on account of interest is also deleted. **Thus the grounds of assessee are allowed.**

9. **In the result, appeal of the assessee is allowed.**

Order pronounced in the open Court on day of 29th June, 2020.

Sd/-

**(SUSHMA CHOWLA)
VICE PRESIDENT**

New Delhi/Dated: 29 June, 2020

*Priti Yadav, Sr. PS**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Copy of the Order forwarded to :

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A)*
4. *The Pr. CIT*
5. *DR, ITAT – Hyderabad*
6. *Guard File*

BY ORDER,

(Dy./Asst. Registrar)
ITAT, Hyderabad