

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
(Through Virtual Hearing)

ITA No.878, 879 and 880/Hyd/2016	
Assessment Year:2009-10, 2010-11 and 2012-13	
D. Sathyadas, Prop. Madhava Cloth Merchants, Station Road, Shadnagar, Mahabubnagar. PAN: AGYPD 0005 A  (Appellant)	Vs. Income Tax Officer, Ward-2, Near DEO Office, Mahabubnagar.  (Respondent)
Assessee by:	Shri S. Rama Rao
Revenue by:	Shri Subrahmanyam Tota, DR
Date of hearing:	19/10/2020
Date of pronouncement:	19/10/2020

ORDER

PER A. MOHAN ALANKAMONY, AM.:

All the captioned three appeals are filed by the assessee against the orders of the Ld. CIT (A)-4, Hyderabad in appeal Nos. 0119, 0120 and 0121/14-15/ITO, Wd-2,MBNR/CIT(A)-4/Hyd/15-16, dated 28/03/2016 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the AYs 2009-10, 2010-11 and 2012-13 respectively.

2. The assessee has raised the following grounds in his appeals which are extracted herein below for reference:-

**“Grounds of appeal for the AY 2009-10:**

- (1) *The order of the Ld. CIT (A) is erroneous both on facts and in law.*
- (2) *The Ld. CIT (A) erred in finalizing the appeal without providing opportunity to the appellant.*
- (3) *The Ld. CIT (A) erred in confirming the action of the AO in initiating proceedings U/s. 148 of the IT Act. The Ld. CIT (A) ought to have seen that issue of notice U/s. 143(2) and completion of assessment U/s. 143(3) are not valid.*
- (4) *The Ld. CIT (A) erred in confirming the action of the AO in making an addition of Rs. 11,41,441/- on the ground that there is difference in the cost of construction.*
- (5) *The Ld. CIT (A) erred in confirming the addition of Rs. 59,72,000/- made on the ground that the investment in purchase of agricultural land, purchase of plot; and in construction of the building was not properly explained.*
- (6) *Any other ground or grounds that may be urged at the time of hearing.*

**Grounds of appeal for the AY 2010-11:**

- (1) *The order of the Ld. CIT (A) is erroneous both on facts and in law.*
- (2) *The Ld. CIT (A) erred in finalizing the appeal without providing opportunity to the appellant.*
- (3) *The Ld. CIT (A) erred in confirming the action of the AO in initiating proceedings U/s. 147 by issue of notice U/s. 148 of the IT Act particularly when there is no escapement of income.*
- (4) *The Ld. CIT (A) erred in confirming the addition of Rs. 15,50,000/- made by the Assessing Officer disbelieving the unsecured loans.*
- (5) *The Ld. CIT (A) erred in confirming the addition of Rs. 7,19,395/- on the ground that there is difference in the cost of construction and the cost of construction as adopted.*
- (6) *The Ld. CIT (A) erred in confirming the disallowance of expenditure of Rs. 12,728/-.*
- (7) *Any other ground or grounds that may be urged at the time of hearing.*

**Grounds of appeal for the AY 2012-13:**

- (1) *The order of the Ld. CIT (A) is erroneous both on facts and in law.*
- (2) *The Ld. CIT (A) erred in finalizing the appeal without providing opportunity to the appellant.*
- (3) *The Ld. CIT (A) erred in confirming the disallowance made of Rs. 2,24,792/- from the expenditure debited to the profit and loss account.*
- (4) *The Ld. CIT (A) erred in confirming the addition of Rs. 29,29,927/- made towards unexplained credits from Madhava Garments.*

*(5) The Ld. CIT (A) erred in confirming the addition of Rs. 35,54,000/- on the ground that there is any difference in the withdrawals made by the appellant.*

*(6) Any other ground or grounds that may be urged at the time of hearing.”*

3. The Ld. AR at the beginning of the hearing submitted that the Ld. CIT (A) has passed ex-parte order without providing proper opportunity to the assessee of being heard for the relevant Assessment Years. It was therefore pleaded that the matter may be remitted back to the file of the Ld. CIT (A) in order to provide one more opportunity to the assessee of being heard. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that proper opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative appeared before the Ld. CIT (A) and further no written submissions were made before the Ld. CIT (A). The Ld.DR further argued by stating that under these circumstances the Ld. CIT (A) had no other option but to pass ex-parte orders for the relevant AYs based on the materials available on record. Hence, it was pleaded that the orders passed by the Ld. CIT(A) do not call for any interference.

4. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the cases, We find merit in the submissions of the Ld. DR. The Ld. CIT (A) had posted the cases on several occasions. However, none appeared on behalf of the assessee

before the CIT(A) on the dates of hearing and had also not furnished any written submissions for the relevant AYs. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeals ex-parte based on the material available on record. In this situation, We do not find much strength in the arguments advanced by the ld. AR. However, considering the issues involved in the appeals and the prayer of the Ld. AR, in the interest of justice, We hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeals afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee and his Representative to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

5. In the result, all the three appeals filed by the assessee are allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 19<sup>th</sup> October, 2020.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 19<sup>th</sup> October, 2020.

OKK

Copy to:-

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2.	Income Tax Officer, Ward-2, Near DEO Office, Mahabubnagar.
3.	The CIT (A)-4, Hyderabad.
4.	The Pr. Commissioner of Income Tax-4, Hyderabad. (ii) Addl. Commissioner of Income Tax, Range-5, Hyderabad.
5.	The Departmental Representative, ITAT, Hyderabad.
6.	Guard File