

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 27, 28, 29 & 30/H/2017 Assessment Years: 2009-10, 2010-11, 2011-12 & 2012-13		
Asst. Commissioner of Income-tax, Central Circle - 2(1), Hyderabad.	Vs.	Puppala Ramesh Kumar, Hyderabad. PAN - AVQPP9925L
(Appellant)		(Respondent)
Revenue by:		Shri Rohit Mujumdar
Assessee by:		None
Date of hearing:		27/05/2021
Date of pronouncement:		28/05/2021

ORDER

PER BENCH:

These appeals filed by the Revenue for AYs 2009-10 to 2012-13 are directed against CIT(A) - 12, Hyderabad's separate orders, all dated 26/09/2016, involving proceedings u/s 143(3) rws 147 of the Income Tax Act, 1961 ; in short "the Act".

2. With regard to appeals in ITA Nos. 27 & 28/Hyd/2017 for AYs 2009-10 & 2010-11, at the time of hearing, it has

been brought to our notice that as per the CBDT Circulars No.03/2018 dated 11.07.2018 and Circular No.17 of 2019 dated 9th August, 2019, the tax limit for filing of appeal by the Revenue before the Tribunal has been fixed at Rs.50.00 lakhs. Since the tax effect in these appeals are less than Rs.50.00 lakhs, we are dismissing the same on account of low tax effect with the liberty to the Revenue to seek recall of the order, if any of these cases falls within the exceptions mentioned in the Circulars cited above.

3. In the result, both these Revenue's appeal are dismissed in above terms.

4. In appeal ITA No. 29/Hyd/2017 for AY 2011-12, the revenue's grievance is that the CIT(A) has erred in deleting the addition of undisclosed investment of Rs. 2,50,00,000/-.

5. Briefly, the facts relating to this ground are that while finalizing the assessment order, the AO had observed that an amount of Rs.2,50,00,000/- was paid by the assessee to Mr. Ravi Teja, in connection with making of movie 'Mirapakaya', during the FY 2010-11, relevant for AY 2011-12, without reflecting the same in Form 52A and on enquiry the assessee did not explain the reason for omission. For the said reason, it was proposed to be treated as unexplained investment. Since the assessee did not reply to the show-cause, the amounts of Rs.2.50 crore was treated

as unexplained investments in the hands of the assessee, for the year under reference and was brought to tax by the AO.

6. Aggrieved by the said addition, the assessee preferred an appeal before the CIT(A) and before the CIT(A) it was explained that the assessee produced movie by name 'Mirapakaya' during the year and was released on 12-01-2011, which means the screening period is less than 90 days during the year and as such Rule 9A applicable to this assessee, as per the information brought on record. It was also submitted that token advance was paid to Mr.Ravi Teja during the year, but the main remuneration agreed/ entrusted for him was the collections in Nizam area, as such there was no specific amounts that were paid or payable, as remuneration to Mr.Ravi Teja. Accordingly, no such amounts were reflected in Form 52A, as per the assessee. Accordingly, it was contended that the AO made the addition without appreciating the facts, as explained.

7. After considering the submissions of the assessee, the CIT(A) directed the AO to delete the addition by observing as under:

"6.3 Perused the observations of the AO and submissions of the appellant. As could be made out from the facts of the case, the appellant produced movie by name 'Mirapakaya', with Mr.Ravi Teja as hero, for which the remuneration agreed was the distribution

rights over the movie on Nizam area. For the said reason the amounts as remuneration was not reflected either in expenditure or in realization of revenue/collections, as such mention of the amounts of remuneration to Mr. Ravi Teja in Form 52A, did not arise, in this case, as per the assessee. Whereas, the only reason for the AO for making the addition is the non-reflection of Rs .2.50 crore, being the amounts paid to Mr. Ravi Teja, in Form 52A. In this connection, it is pertinent to mention here that it is not clearly known how the amounts of Rs. 2.50 crore, was arrived by the AO, for quantifying the amounts of remuneration paid to Mr.Ravi Teja, as hero of the film under reference. There is no reproduction of/reference to Form 52A, in assessment order, if such form claimed to have been furnished by the assessee, as could be further made out from the assessment order, where in the written submissions of the assessee were reproduced. On top of it, the AO's version was that no Form 52A was furnished by the assessee. This reference alone has been the reason for making the addition of amounts under reference. As could be further made out from the assessment order, the assessee/AR did not furnish any information, for which reason a show-cause notice dated 27-01-2015 was issued to the assessee by the AO, whose contents were also reproduced in assessment order, but do not indicate any specific information being asked on the subject of the Form 52A or the amounts of Rs. 2.50 crore, alleged to have been paid to Mr.Ravi Teja. Thus, on facts, it becomes clear that the additions made on the account of the issue under reference, were based on surmises and lack of clear information and understanding of the issue. Further, where the amounts of remuneration was established to have been met by assigning the distribution rights of an area to Mr.Ravi Teja, it may be out of place and context to expect such realization, which are not known at the time of film production, being reflected in Form 52A. Further, mere non-reflection of the amounts in Form 52A, do not give basis to the AO to assume that the

amounts represent unexplained investment. The required enquiry and examination of accounts maintained by the assessee, was the appropriate action on the part of the AO, to arrive at such conclusion, more so in case of quantifying the unexplained investment/income. In absence of any specific or irrefutable information on the part of the AO, the addition of Rs.2,50,00,000/- being made in assessment order and based merely on presumptions, held to be unsustainable and accordingly, ordered for deletion. Thus, on this issue, the grounds of appeal treated as allowed."

8. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT.

9. None appeared on behalf of the respondent-assessee at the time of hearing of these appeals. However, we proceed to dispose of these appeals after hearing the ld. DR and facts available on record.

10. Before us, the ld. DR submitted that the amount of Rs. 2.50 crores paid by the assessee to Mr. Ravi Teja was not reflected in form 52A and the assessee failed to explain the reason for omission. He therefore, submitted that the AO has rightly made the addition.

11. We have considered the submissions of Ld. DR and perused the material on record as well as gone through the orders of revenue authorities. Before deleting the addition the CIT(A)'s categorical findings are that "*mere non-*

reflection of the amounts in Form 52A, do not give basis to the AO to assume that the amounts represent unexplained investment. The required enquiry and examination of accounts maintained by the assessee, was the appropriate action on the part of the AO, to arrive at such conclusion, more so in case of quantifying the unexplained investment/income. In absence of any specific or irrefutable information on the part of the AO, the addition of Rs.2,50,00,000/- being made in assessment order and based merely on presumptions, held to be unsustainable and accordingly, ordered for deletion". Therefore, we do not find any infirmity in the order of CIT(A) in deleting the addition of Rs. 2,50,00,000/- made by the AO and accordingly, the ground raised by the revenue on this issue is dismissed.

12. With regard to the appeal ITA No. 30/Hyd/2017 for AY 2012-13, the revenue raised a ground that the CIT(A) has erred in deleting the addition of Rs. 3,78,00,000/- made by the AO on account of treating the sundry/trade credits as unexplained.

13. The facts relating to this ground are that the Assessing Officer made an addition of Rs.3,78,00,000/- on account of treating the sundry/trade credits, as unexplained. As per the information brought on record, amounts of Rs.2,80,00,000/- and Rs.98,00,000/- were payable by the assessee to M/s. Navabharat Agro and M/s.

Navabharat Enterprises, respectively, as on 31-03-2012, towards the film production expenses and other expenses. The AO treated the same as A.Y.2012-13 unexplained, in absence of any further information or confirmation forthcoming from the assessee, before finalization of assessment order, though it is a fact that the assessee had mentioned that such information is being collected, and requested for some more time. The further fact was that the assessee failed to furnish the same during the stage of appellate proceedings as well, inspite of sufficient time provided, which proves that the assessee's claim on such liability is not substantiated, thereby liable to treat the same as unexplained.

14. Aggrieved by the addition, the assessee preferred an appeal before the CIT(A), who deleted the addition by observing as under:

"5.4.1 However, the further fact remains that the sundry credits under reference to the extent of Rs.3,78,00,000/- were the amounts payable to M/s. Navabharat Agro (Rs.2,80,00,000/-) and M/s. Navabharat Enterprises (Rs. 98,00,000/-), and was representing business expenses. If the presumption of the AO was to be correct that the said expenses/amounts was incurred during the year, but payable as on the last day of the said Financial Year i.e. FY 2011-12, being the year under reference. In this regard, it is relevant to observe that the claims of the expenses relatable to the credits under reference were not denied by the AO, and there was no disallowance to the extent, as could be seen from the assessment order.

It was not the case of the AO to show that such amounts are not allowable as business expenses. Where the expenses, which were not denied to be allowed as business expenses, if the liability related to such expenses may not be treated as unexplained liability or credit and catena of judicial decisions supports this view. Thus, having accepted the claim of expenses for business, the said amounts could not have been treated as unexplained credits for the year. Thus, it is reasonable to hold that AO is not justified in making an addition of Rs.3,78,00,000/- treating the sundry creditors to the extent of Rs.3,78,00,000/-, as unexplained without rejecting the claim of the assessee for the expenses. Thus, the grounds related to this issue is treated as Allowed."

15. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT.

16. Before us, the ld. DR relied on the order of AO.

17. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The observations of the CIT(A) are worth to mention here that "*it is relevant to observe that the claims of the expenses relatable to the credits under reference were not denied by the AO, and there was no disallowance to the extent, as could be seen from the assessment order. It was not the case of the AO to show that such amounts are not allowable as business expenses. Where the expenses, which were not denied to be allowed as*

business expenses, if the liability related to such expenses may not be treated as unexplained liability or credit and catena of judicial decisions supports this view.” We, therefore, do not find any reason to interfere with the order of CIT(A) in deleting the addition and upholding the same, we dismiss the ground raised by the revenue on this issue.

18. In the result, all the appeals of the revenue are dismissed in above terms. A copy of the order shall be kept in the respective files.

Pronounced in the open court on 28th May, 2021.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 28th May, 2021.

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copy to :

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3	<i>CIT(A) – 12, Hyderabad</i>
4	<i>Pr. CIT (Central), Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad</i>
6	<i>Guard File.</i>