

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

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
743/Hyd/18 & 752/Hyd/18	2013-14 & 2014-15	Assistant Commissioner of Income Tax, Circle-1, Kurnool	M/s.Legend Developers & Constructions, Kurnool [PAN: AADFL3895M]
747/Hyd/18	2014-15		Sri Agnur Janakiram, Kurnool [PAN: AJFPA0218G]
748/Hyd/18	2014-15		Smt.Agnur Nirmala, Kurnool [PAN: AHQPA1941D]
749/Hyd/18	2014-15		Sri Agnur Jayaramudu (Individual), Kurnool [PAN: ADHPA2282N]
750/Hyd/18	2014-15		Sri Agnur Jayaramudu (HUF), Kurnool [PAN: AAJHA8820M]

For Revenue : Shri Narayana Murthy Naik
Shri Rohit Mujumdar, DRs

For Assessee : Shri S.Rama Rao, AR

Date of Hearing : 13-05-2021

Date of Pronouncement : 25-06-2021

ORDER

PER S.S.GODARA, J.M. :

These six Revenue's appeals for AYs. 2013-14 and 2014-15; assessee/seriatim-wise arise against the CIT(A)-Kurnool's separate orders dated 15-02-2018 (first assessee) and 21-02-

2018 in second to fifth taxpayers, passed in file Nos.017, 10410, 10409 10411, 10412 & 10413/CIT(A)/KNL/2016-17; appeal-wise, involving proceedings u/s143(3) of the Income Tax Act, 1961 [in short, 'the Act'] ; respectively.

Heard department as well as the assesseees through their learned representatives. Case files perused.

2. We notice at the outset that all these Revenue's six appeals seeks to revive Assessing Officer's action *inter alia* adding additional income amount(s) of Rs.2 Crores in ITA No.743/Hyd/2018 on "substantive" basis in ITA No.743/Hyd/2018, Rs.1.5 Crores each on protective basis in ITA Nos.747 to 750/Hyd/2018 and Rs.7 Crores in ITA No.752/Hyd/2018 on "substantive basis"; respectively made in the corresponding assessment orders and deleted in the CIT(A)'s detailed discussion in lead case ITA No.743/Hyd/2018, reading as under:

"2. The appellant has filed the return of income on 16.03.2015 by disclosing an income of Rs. Nil for the Asst. Year 2013-14. The assessment was completed by determining the total income of Rs.2,00,00,000/- under the following heads of income:

i)	<i>Income returned</i>	<i>Nil</i>
ii)	<i>Add: Income admitted</i>	<i>2,00,00,000</i>

Total: 2,00,00,000

3. Against the above order the appellant has filed an appeal by raising the following grounds:

GROUND OF APPEAL

1.The assessment order passed by the Assessing officer is against the facts of the case.

2.The assessing officer erred in making an addition of Rs.2,00,00,000/- merely on the basis of the statement given by the

Managing partner of the firm during survey proceedings without any evidences.

3.The appellant submits that, the firm has sold only 1 house plot for Rs.1,96,000/- in the F.Y. 2012-2013 relevant to the assessment year 2013-2014. Hence, there was no any basis for addition of Rs.2,00, 00,000/- to the return of the income of the firm for the Asst. Year 2013-2014, hence is to be set aside.

4.The assessing officer erred in not following the instructions of the CBDT circulars No.5 F.No. 286/98/2013-IT [INV-II] dt. 18.12.2014 and F.No.286/2/2003 IT [INV]. The CBDT circulars are very clear in the cases relating to disclosure of undisclosed income by the assesses in reference to survey proceedings and recording of statements. Hence, the addition made is not legally correct.

5.The appellant is submitting the CBDT Circulars in toto relating to the relevant subject, which clearly states that admission of undisclosed income under coercion / undue influence is not binding on the assessee without proper evidences / material gathered during survey proceedings.

C.B.D.T CIRCULARS

Admissions of Undisclosed Income under coercion/pressure during Search/Survey

*F.No. 286/98/2013-IT (Inv.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

Dated- 18th December, 2014

To

- 1. All Principal Chief Commissioners of Income Tax*
- 2. All Chief Commissioners of Income Tax*
- 3. All Directors General of Income Tax (Inv.)*
- 4. Director General of Income Tax (I & CI), New Delhi*

Subject: Admissions of Undisclosed Income under coercion/pressure during search/Survey - reg.

- Ref: 1) CBDT letter F.No. 286/57/2002-IT(Inv.II) dt. 03-07-2002*
2) CBDT letter F.No. 286/2/2003-IT(Inv.11) dt. 10-03-2003
3) CBDT letter F.No. 286/98/2013-IT(Inv.11) dt. 09-01-2014

Sir/Madam,

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesseees were coerced to admit

undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions / Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely.

4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.

5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.

6. This issues with approval of the Chairperson, CBDT

*(K. Ravi Ramchandran)
Director (Inv.)-II, CBDT*

Confession of Additional income during the course of search & seizure and survey operation.

F.No.286/2/2003-IT(Inv)

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE & COMPANY AFFAIRS
DEPARTMENT OF REVENUE**

**CENTRAL BOARD OF DIRECT TAXES
Room No. 254/North Block, New Delhi, the 10th March 2003.**

**To
All Chief Commissioners of Income Tax, (Cadre Contra) &
All Directions General of Income Tax Inv.**

Sir,

Sub: Confession of additional income during the course of search and seizure and survey operation - Reg.

Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the income tax departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidence's I materials gathered during the course of search I survey operations or thereafter while framing the relevant assessment orders.

*Yours faithfully,
Sd/-*

*[S.R. Mahapatra]
Under Secretary (Inv.II)*

10. The appellant is furnishing various case laws in support of the submission that the addition of income made merely on the basis of statement recorded in the course of survey would not automatically bind on the assessee. Even the letter given for admission of income cannot be treated as a statement recorded on oath during survey proceedings. Hence, the addition made on the basis of the statement recorded during survey proceedings cannot be taken as a basis for making addition of income without any corroborative evidence found in survey proceedings.

4. Further, the appellant has 'filed written submissions in paper book and mentioned the following issues raised by the assessing officer in the assessment order and filing the replies to the issues raised by the assessing officer.

BRIEF NOTE ON FACTS OF THE CASE

The appellant firm M/s.Legend Developers & Constructions, Kurnool is a Partnership firm formed on 09.04.2008 to do business in Real Estate.

The appellant is constituted with the following partners namely 1] Sri. A. Jayaramudu 2] Smt. B. Mangala 3] Sri. K.E. Jayachandrudu 4] Sri. K.S. Narayana Gupta and 6] Sri. R. Aravind Kumar Jain. The partners have executed a Partnership deed on 09.04.2008.

The partnership firm has purchased 12.24 Acres of Ariculture land at Tadipatri, Anantapur dist. with an intention to develop the said land and divided into residential house plots and sale of the same. The appellant has got approval of 144 residential house plots from the municipality of Tadipatri.

The appellant firm has sold approved house plots since from the year 2008-2009 and has filed Income tax returns regularly by disclosing the income from the partnership business for the Asst. Year 2009-2010, 2010-2011, 2012-2013 and 2013-2014. The appellant firm has sold the house plots and received sale consideration as mentioned below.

Sl. No.	F.Y.	Asstt. Year	Number of plots sold	Area of plots sold	Sale Amount	Remarks
1.	2008-2009	2009-2010	6	69.550	28,51,390.00	-
2.	2009-2010	2010-2011	30	197.404	23,18,610.00	-
3.	2010-2011	2011-2012	34	216.45	70,02,125.00	-
4.	2011-2012	2012-2013	-		-	-
5.	2012-2013	2013-2014	1	5.37	1,96,000,00	--
		Total:	71			

The appellant firm has disclosed the sales as per the sale deeds executed to the buyers in the relevant financial years.

The income tax department has conducted survey operations on 02.12.2013 at the Registered Office of the firm at Kurnool and also at firms office, Tadipatri.

The income tax officer has recorded preliminary statement on 02.12.2013 from the Managing partner of the firm Sri. A. Jayaramudu.

The income tax officer has issued summons to the Managing partner of the firm Sri. A. Jayaramudu U/s. 131 of the IT Act requiring him to attend the income tax office on 03.12.2013 immediately following the day of survey operations.

The income tax officer has recorded sworn statement on 03.12.2013 and the recording of sworn statement went up to late night and statement was taken in very odd hours.

The Managing Partner Sri. A. Jayaramudu has stated that the partnership firm M/s. legend Developers and Constructions was commenced with effect from 09.04.2008. The partners of the firm have executed a partnership deed on 09.04.2008. [Copy of the

partnership deed is filed] and the nature of the business of the firm is to deal in Real Estate Business.

The appellant firm has purchased 12.24 acres of land in the year 2007-2008 at Tadipatri, Anantapur dist. and developed the land and got approval 144 of residential plots from the Municipality of Tadipatri. The appellant firm has sold 71 plots during the financial years from 2008-2009 to 2012-2013 and the unsold plots as on 31.03.2013 was 73 only. Thus the appellant firm has sold only 50% of the plots till 31.03.2013.

The appellant firm "has sold, only 1 plot for Rs. 1,96,000/-" in the financial year 2012-2013 and earned income of Rs. 9,307/- only in the relevant assessment year 2013-2014. The appellant has also received development charges of Rs. 1,07,400/- from the party. The appellant firm has still closing stock of 73 plots [50% of the plots approved as unsold as on 31.03.2013]. The appellants partner was in confusing state of mind and under stress and the statement was given under pressure and in odd hours.

The appellant firm submits that there was no any evidence or incriminating material found in survey operations at the firms office premises. Even the assessing officer has not mentioned concealment of income or suppression of receipts (or) inflation of expenditure (or) undisclosed investments etc by the firm during the financial year 2012-2013 relevant to the assessment year 2013-2014.

It is a fact that the appellant firm has made sale of only one plot and received sale value of Rs.1,96,000/- in the financial year 2012-2013 and no other income earned in the said assessment year 2013-2014. Hence the addition of Rs.2,00,00,000/- in the hands of the appellant is not justified and not valid in law.

The appellant firm is referring latest CBOT circulars No. F.No. 286/98/2013-IT(INV./I) Dt. 18.12.2014 particularly clarifying

"on the admission of undisclosed income under coercion / pressure during search / survey. The Para No.3 of the circular clearly stated that "In view of the above, while reiterating the aforesaid guidelines of the board, I am directed to convey that any instance of undue influence / coercion in the recording of the statement during search / survey / other proceeding under the IT Act, 1961 and / or recording a disclosure of undisclosed income under undue pressure / coercion shall be viewed by the board adversely".

The appellant firm is also referring another CBDT Circular No. F.No. 286/2/2003-IT(INV) that, dated 10.03.2003.

"Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made

to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also assessing officers should rely upon the evidences / materials gathered during the course of search / survey operations or there after while framing the relevant assessment orders".

The appellant submits that, it has filed the copies of the above CBDT circulars during the scrutiny assessment proceedings. But the assessing officer has ignored the CBDT Circulars and not followed the instructions of the CBDT for assessment of survey cases while passing the assessment order for the Asst. Year 2013-2014.

The appellant firm has also referred various case laws in support of its submission that the confession statement recorded in the course of survey which was subsequently retracted addition cannot be made only on the basis of the statement.

The appellant referred another case law in support of its submission that

"the letter given for offering of additional income cannot be treated as a statement recorded on oath by the authorized officer during the course of survey operations".

Hence the addition made of Rs. 2,00,00,000/- in the hands of the appellant firm is not justified and against the CBDT Circulars and various case laws referred. Hence addition made of Rs. 2,00,00,000/- is to be set aside.

Being aggrieved with heavy addition of Rs. 2,00,00,000/- to the return of income and raised high demand tax of Rs. 95,17,200/- in the Asst. Year 2013-2014, the appellant firm preferred an appeal against the assessment order and prays for justice.

5. The appellant has filed the issues raised by the assessing officer in the assessment order and his replies to the issues raised in Written Submissions and Paper Book.

The following issues are raised by the assessing officer in the assessment order and submission of the appellant to the issues.

ISSUES RAISED BY THE ASSESSING OFFICER AND SUBMISSION OF
THE APPELLANT

ISSUE NO. 1

OFFERING OF ADDITIONAL INCOME AT THE TIME OF SURVEY
OPERATIONS:

The assessing officer has mentioned at Page No.4, Para No.2.1 of the Assessment order that,

"Sri, A. Jayaramudu came up with a decision and filed a letter with a plan to split up the additional income of Rs.10,00,00,000/- which he declared in his statement recorded under section 131 of the IT Act on 03.12.2013". He has agreed to offer the income of two crores in the hands of the appellatant firm for the Asst.Year 2013-2014.

SUBMISSION OF THE APPELLANT

The appellatant firm submit that, the partner Sri. A. Jayaramudu has agreed to disclose Rs. 2,00,00,000/- income for the Asst. Year 2013-2014 in the hands of the appellatant firm under confusing state of mind.

In fact, the appellatant firm has sold 1 plot only for Rs. 1,96,000/- in the F. Y. 2012-2013. The appellatant firm has earned a net profit of Rs. 9,307/- for the financial year 2012-2013 relevant to the asst. year 2013-2014.

The assessing officer "has not found any evidence and incriminating material and undisclosed income and suppression of sales and inflation of expenditure to the extent of Rs. 2,00,00,000/- in the F. Y. 2012-2013 relevant to the Asst. Year 2013-2014 and hence there was no any basis for making high value of Rs. 2,00,00,000/- to the return of income only on the basis of the statement given by the partner of appellatant firm without supporting or substantiating any material or evidence for making such a heavy addition of Rs. 2,00,00,000/-.

Hence the assessing officer is not justified in making an addition of Rs. 2,00,00,000/- merely on the basis of the admission of the income by the appellatants partner without referring any material gathered in the survey operations for making such a heavy addition.

ISSUE NO.2

ADMISSION OF ADDITIONAL INCOME BY THE ASSESSEE IN SURVEY OPERATIONS IS VALID FOR MAKING ADDITION

The assessing officer has referred at Page No.5, Para No. 2.2. that,

"An admission of additional income made by the assessee during the course of survey proceedings is valid. The reliance is based on the following judicial decisions".

SUBMISSION OF THE APPELLANT

The appeal/ant firm submits that it has filed the return of income as per the records of the firm related to the F.Y.2012-2013

relevant to the Asst. Year 2013-2014. The appellant firm has earned net profit of Rs.9,307/- in the financial year 2012-2013 for sale of 1 house plot only of Rs.1,96,000/-.

The cases referred by the assessing officer in the assessment order are different with the facts of the appellant.

The assessing officer has simply made an addition of Rs. 2,00,00,000/- only on the basis of the admission of income during survey proceedings.

Hence, the addition of income of Rs. 2,00,00,000/- not justified and against the CBDT Circular No. F.No. 286/2/2003-IT(INV) that, dated 10.03.2003 and CBOT circulars No. F.No.286/98/2013-IT(INV.II) Dt. 18.12.2014 various case laws filed, hence the addition of income of Rs. 2,00,00,000/- is to be set aside.

ISSUE NO.3

DISCLOSURE OF ADDITIONAL INCOME IS NOT VOLUNTARY

The assessing officer has referred at Page No.6, Para No. 1. Of the assessment order that,

"the assessee has not proved any threat or coercion by the officer before whom the declaration was given. In view of the above judicial decisions, the addition agreed by the assessee is added to the total income of the assessee".

SUBMISSION OF THE APPELLANT

The appellant submits that as per books of accounts of the firm for the F.Y.2012-2013 relevant to the Asst. Year 2013-2014, the firm has earned net profit of Rs. 9,307/- only. The appellant firm has sold only one plot for Rs. 1,96,000/- during the F. Y. 2012-2013 relevant to the Asst. Year 2013-2014.

The appellant firm partner Sri. A.Jayaramudu has offered income of Rs.2,00,00,000/- in the hands of the appellant for the Asst. Year 2013-2014. The appellant firm, as per the books of accounts earned net profit of Rs. 9307/- for the F.Y. 2012-2013 relevant to the Asst. Year 2013-2014. These was no any reason for offering the income of Rs. 2,00,00,000/- in the hands of the appellant in the absence of any material or incriminating materials / records found in the survey operations. The offering of income of Rs. 2,00,00,000/- is not supported with any evidences. Hence the offering of income Rs. 2,00,00,000/- by the appellant firms partner was under pressure and under confusing state of mind during the course of recording of sworn statement. Hence the addition of Rs.2,00,00,000/- is not justified and is against CBDT circulars issued by the department in reference to confessional statement given by the assessee at the time

of survey operations. Hence the addition of income of Rs. 2,00,00,000/- is to be set aside.

The appellant has further filed the following replies to the queries raised by the assessing officer in the Assessment Order.

CONTENTION / ISSUES RAISED BY THE ASSESSING OFFICER
IN THE ASSESSMENT ORDER

Query No.1- Para 2

Sl.No	Date of purchase of plots	Doc.No.	Number of plots	Purchase consideration	Stamp duty	Other expenses
1.	28.06.2008	4148/2008	121	10200000.00	1325760.00	16500.00
2.	28.06.2008	4149/2008	23	4800000.00	456430.00	8250.00
	Total:		144	15000000.00	1782190.00	24750.00

The appellant has stated the value of-121 plots Rs.1,02,00,000.00 at the time of recording sworn statement. By inadvertence he has missed to inform the value of purchase of plots 23 of Rs. 48,00,000/-. The total value of the plots of 144 was Rs. 1,68,06,940/-. He has answered to the query by stating that all the partners of the firm have invested Rs. 2.05 Crores in the F.Y. 2008-2009. All the partners of the firm are income tax assessee's and shown their investments in the firm in their personal income tax returns. These transactions are related to F.Y. 2008-2009 relevant to the A.Y.2009-2010 and not related in the F.Y. 2012-2013 relevant to the current A.Y. 2013-2014. The appellant is enclosing copy of ledger extract of Purchase of plots Ale from the books of the firm relating to the F.Y. 2012-2013.

Query No.2

AJ 23 [not numbered in the Assessment order]

The transactions are related to M/s.Pavan Developers and Constructions, Kurnool regarding the purchase of Agricultural land at Yemmiganur in the F.Y. 2010-2011. These papers are related to M/s. Pavan Developers and Constructions, Kurnool and not to the appellant firm. The transactions in the Paper No. AJ 23 are not related to the appellant firm and not took place in the F.Y. 2012-2013 relevant to the A.Y. 2013-2014.

Query No.3

In fact the assessing officer has not raised I sought any explanation on the material impounded at the time of survey operations from "AJ 01 to AJ 60" either at the time of recording of the sworn statement [Sworn statement taken immediately on the following day of the survey operations i.e., 03.12.2013] or at the time of scrutiny proceedings in the A.Y. 2013-2014. The appellant firm did not get any opportunity to explain the noting in the said impounded material during the assessment proceedings in the A.Y. 2013-2014.

Subsequently, the Asst. Commissioner of Income Tax, Circle-1, Kurnool has issued summons and asked for explanations and clarifications on each file / paper / material / documents etc impounded at the time of survey operations on 20.12.2016 during the scrutiny assessment proceedings for the assessment year 2014-2015.

The appellant's firm Managing Partner Sri. A. Jayaramudu has clearly explained of each paper / file / material / documents etc by item wise and filed a detailed explanation annexure on the impounded material.

The Asst. Commissioner of Income Tax has recorded a sworn statement from the Managing Partner Sri. A. Jayaramudu and asked in Q.10 by showing sum impounded material and asked for the clarification. The Managing Partner of the firm has explained in detail on the impounded material shown from No. AJ 6 AJ 17, AJ 29, AJ 39 and AJ 16 and the Asst. Commissioner of Income Tax has satisfied with the explanation given by the appellant.

Hence, the appellant submits that the noting made in Paper No. AJ 23 [Classmate Note Book - Blue planet] not related to the appellant firm and also not related in F.Y. 2012-2013 relevant to the A.Y. 2013-2014.

Query No.4

Offering of an additional income of Rs. 10 Crores in the hands of the firm towards suppression of receipts, deficiency in the investments made by the family members and deficiency in explanation of noting made in the impounded material.

The appellant submits that,

1] There was no any suppression of receipts / sale consideration of Plots in the F.Y.2012-2013 relevant to the A.Y. 2013-2014.

2] There was no any deficiency in the investments made either by the firm partners / or my family members in the F.Y. 2012-2013 relevant to the A.Y. 2013-2014.

3] There was no any deficiency or doubt or query raised on the noting / records / files in the impounded material in the F.Y. 2012-2013 relevant to the A.Y. 2013-2014.

4] The assessing officer did not point out any concealment of income; excess of expenditure claimed not supported with payment vouchers; not found an suppression of sales I receipts either in the books of accounts of the firm or in the material impounded at the time of survey; not specific instance transaction identified and mentioned in the assessment order for making heavy addition of 2 Crores and the

addition of 2 crores not supported with any evidence / document proof for concealment.

Query No.5

The assessing officer has mentioned at page No.4; para no. 2.1, that, "A. Jayaramudu has a filed a letter dt. 03.01.2014 with a plan to split of the additional income of 10 Crores.

The appellant submits that, the income tax officer has brought pressure to file a letter about the disclosure of 10 Crores. In fact, the appellant firm has not been given proper time to discuss the survey operations with their partners to take a decision. The appellant has filed return of income on the basis of the books of accounts 1 records of the firm related to the F.Y. 2013-2014. In fact, the firm sold only one plot for a sale consideration of Rs. 1,96,000/- and disclosed total income of Rs. 9,3071- for the Asst. Year 2013-2014. There was no any basis 1 evidence for disclosure of heavy additional income of Rs. 2 Crores in the Asst. Year 2013-2014.

Query No.6

The assessing officer has mentioned at Page No.5, Para No. 2.2 that

As seen from the statement given by the A. Jayaramudu, Managing Partner of the firm U/s 131 of IT Act, he has declared to pay the taxes an additional income offered. But he has revised firms income. This clearly shows that he has retracted to his declaration given u/s 131 of the IT Act for additional income he has admitted. Hence the income of Rs. 2 Crores as admitted by the A. Jayaramudu his added back in the hands of the assessee firm.

The appellant is referring the CBDT Circulars issued by the CBDT on the subject of survey proceedings and admission of income during survey proceedings.

The appellant is referring several case laws in support of its submission that, the offering of income at the time of survey operations has no evidentiary value and the addition should be supported with sufficient evidences found in impounded material.

The appellant submits that, it has filed the return of income on the basis of the books of accounts 1 records of the firm. The appellant firm has sold only One plot for Rs. 1,96,000/- and earned net profit of Rs. 9,3071- only in the F.Y. 20122013 relevant to the Asst. Year 2013-2014. There was no any evidence 1 no basis / no incriminating material found / no deficiencies in the books of accounts / records of the firm found, no deficiency found on the noting 1 material/records impounded at the time of survey; no suppression of sale receipts / other receipts identified or found in the books of the accounts of the firm in the F.Y. 2012-2013 [2013-2014] for making an addition of Rs.

2 Crores for the A.Y. 2013-2014. Hence, the addition of 2 Crores is to be deleted.

Hence, the addition of Rs. 2 Crores is to be set aside.

The assessing officer has not doubted the genuineness of the partnership business and not rejected the books of accounts regularly maintained by the firm for the F.Y. 2012-2013.

No suppression of Sales / Receipts found in the material impounded related to the F.Y. 2012-2013; No new loans / Credits found in the F.Y. 2012-2013; No undisclosed / Concealment of income found in the impounded material related to the F.Y. 2012-2013; No excess expenditure debited in Profit and Loss account was found. Hence, the management of the firm has filed the income on the basis of the books of accounts and records maintained in the F.Y. 2012-2013 relevant to the Asst. Year 2013-2014.

The Assessing Officer has not found any incriminating material nor found any suppression of receipts in the impounded material related to the F.Y. 2012-2013 relevant to the Asst. Year 2013-2014. The assessing officer has not identified and not mentioned any specific document / record / noting etc for making addition income of Rs. 2 Crores to the return of income.

MARITS OF THE APPELLANTS CASE

The appellant firm has filed the return of income on the basis of the regular books of accounts maintained during the F.Y. 2012-2013 relevant to the Asst. Year 2013-2014.

It is a fact that the appellant firm has sold 1 Plot only for Rs. 1,96,000/- during the F.Y. 2012-2013 and earned Net Profit of Rs. 9 307/- only. This fact is supported and evidenced by the Stamps and Revenue Department Government of Andhra Pradesh at S. No. 1/33 statement No. 13550934 Dated 19.08.2015.

The Assessing officer has not found the following during the F.Y. 2012-2013 relevant to the Asst. Year 2013-2014 in the impounded material -

- a. Any concealment of income;
- b. Any suppression of Sale / Receipts;
- c. Any undisclosed income;
- d. Any new Credits / loans found;
- e. No incriminating material found;
- f. No un explained expenditure found;
- g. No new investments made / found;
- h. Not specified / identified any reason for determination of income of Rs. 2 Crores;

- i. The Assessment order was passed against the CBDT Circular;*
- j. The Assessment Order passed against the Supreme Court Judgment and other High Courts*

5. The appellant has filed various case laws in support of its submissions. [The case laws are filed in paper book and placed on record].

*I. CIT v. S. Khadar Khan Son (2013) 352 ITR 480 / [2012] 210 Taxman 248/ 79 DTR 184/254 CTR 228 (SC)
By Asmeet Shah on 19.01.2015*

II. Madras High Court

The Commissioner Of Income Tax vs M/S.S.Khader Khan Son on 4 July, 2007

*IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:
4.7.2007*

*THE HON'BLE MR.JUSTICE P.O.OINAKARAN AND THE HON'BLE
MR.JUSTICE P.P.S.JANARTHANA RAJA*

T.C.(A).No.867 of 2007

*The Commissioner of Income Tax Salem 1. .. Appellant Vs.
M/s.S.Khader Khan Son, 90 Syed Madar Street Shevapet Salem ...
Respondent*

III. HIGH COURT OF GUJARAT

*KAILASHBEN MANHARLAL CHOKSHI vs. COMMISSIONER OF
INCOME TAX*

IV. IN THE HIGH COURT OF KARNATAKA

Chief Commissioner Of Income-tax, Hubli. Vs. Pampapathi.

*V. IN THE INCOME TAX APPELLATE TRIBUNAL PUNE BENCH "A",
PUNE Jyotichand Bhaichand Saraf & Sons Pvt. Ltd. Vs. DCIT
ITA NO. 08/PN/2011 (Block Period: 1996-97 to 2002-2003)*

*VI. Andhra High Court - Commissioner Of Income Tax, vs Sri Naresh
Kumar Agarwal, Prop. 9 September, 2014 I.T.T.A No.112 OF 2003*

VII. HIGH COURT OF MADRAS

COMMISSIONER OF INCOME TAX vs. SIVABALA DEVI

*Tax Case (Appeal) No. 316 of 2004
24th June, 2010*

(2011) 237 CTR (Mad) 337 : (2011) 330 ITR 510 : (2011) 49 DTR 272

VIII. Delhi High Court

*Commissioner Of Income Tax vs M/S. Dhingra Metal Works on 4
October, 2010; ITA 1111/2010*

IX. Asst. CIT Vs. Krishna Developers 2017 Tax Pub 1247 [Ahd-Trib]

X. Gajjam Chinna Yellappa Vs. ITO, High Court of Telangana and Andhra Pradesh [2015] 59 Taxmann.com 69

XI. CIT Vs. Mp. Scrap Traders 372 ITR 507

XII. ACIT Vs. Ravi Agricultural Industries [ITAT] Agra ITA No. 145/AGR2006 XIII. Asst. CIT Vs. Layer Exports Pvt. Ltd. 2017 155 TR [A]

XIV. DCIT Vs. Vijaya Mehta & Vice-Versa 2017 156 ITR TR (A)

XVII. Chief Commissioner of Income Tax, Hubli Vs. Pampathi [2009] 310 ITR 64; Karnataka; Dated 31.01.2008;

6. The appellant has also referred Supreme Court case laws on levy of tax on real income only and not on hypothetical income.

**CASE LAWS ON LEVY OF TAX ON REAL INCOME ONLY AND NOT ON
HYPOTHETICAL INCOME**

1. Supreme Court of India

Commissioner Of Income-Tax, vs Shoorji Vallabhdas And Co. on 27 March, 1962 Equivalent citations: 1962 46 ITR 144 SC

2. Supreme Court of India

Commissioner Of Income-Tax ... vs Bokaro Steel Limited, Bokaro on 18 December, 1998

3. Supreme Court of India

The Godhra Electricity Co. Ltd .•• vs The Commissioner Of Income Tax, on 3 April, 1997

7. The only Ground of Appeal arises on account of addition of income of Rs.2,00,00,000/- on the basis of statement given by A. Jayaramudu.

Considering the facts, issues, circumstances of the instant case and keeping in view of the evidences submitted by the appellant and CBDT Circulars and Judicial pronouncement by the Hon'ble High Court of Telangana and Andhra Pradesh in the case of Gajjam Chinna Yellappa Vs. Income Tax Officer, IITA No. 268, 273 & 308 of 2003 and 287, 291 & 294 of 2006 Dt. 06 November 2014, the addition of Rs.2,00,00,000/- is deleted on the following ground.

(i) The Assessing Officer did not find any corroborative evidence or incriminating material in the survey operations / material impounded

for making addition of income of Rs. 2,00,00,000/-. The mere fact that somebody made a statement, by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee had disclosed income is on the revenue and that burden cannot be said have been discharged by merely referring to the statement. Therefore, such statement cannot be made the sole foundation for making the addition of income. We find support from the CBDT circular Dt. 10.03.2003 issued by the Central Board of Direct Taxes, which took exception to the initiation of the proceedings on the basis of the retracted statements.

(ii) There is no any evidence or material found in the impounded records to support the addition of income of Rs. 2,00,00,000/-. Hence, the addition of income of Rs. 2,00,00,000/- is deleted.

8. In the result, the appeal is allowed”.

3. Learned CIT-DR's sole argument as per Revenue's pleading is that the CIT(A) has erred in law and on facts in deleting the impugned "substantive" as well as the "protective" additions on conjunctures and surmises despite the fact that the assessees had duly admitted the foregoing income(s) during the course of survey dt.02-12-2013 based on the documentary evidence. And that although these assessees had retracted from the statement(s) after a long gap of three years, the impugned additional had been rightly made in the Assessing Officer's assessment orders.

4. The assessee has placed strong reliance on the CIT(A)'s foregoing detailed discussion deleting the substantive protective additions, as the case may be.

5. We have given our thoughtful consideration to the foregoing rival contentions. We find no merit in the Revenue's instant arguments since there is no even an *iota* of evidence; except the assessee's survey statement forming basis of the

impugned additions. Mr.Naik vehemently reiterated Revenue's stand once again that the same are very much based on the documentary evidence found during the course of the survey. We, however, notice from a perusal of the survey statement(s) duly extracted in the corresponding assessment order(s) that the assessee(s) had made it clear that their admission was only based on rough estimation in order to avoid litigation and to purchase peace than in view of any material found/seized by the departmental authorities. The CIT(A) has already placed reliance on the CBDT circulars (supra) that such admissions or confessions; as the case may be, made during the course of a search or survey does not carry any evidentiary value since it has to be only to the evidence collected only. We thus find no reason to interfere with the learned CIT(A)'s impugned conclusion deleting "substantive" and "protective" additions in issue after appreciation all the facts considered in law of the CBDT circular(s) as well as various judicial precedents quoted at the assessee's behest. Its identical sole substantive ground in all these six cases fail therefore.

6. These Revenue's six appeals are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 25th June, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER
Hyderabad, Dated: 25-06-2021

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

Copy to :

- 1.Asst.Commissioner of Income Tax, Circle-1, Kurnool.*
- 2.M/s.Legend Developers & Constructions, 42-115/C-14,
N R Peta, Kurnool.*
- 3.Sri Agnur Janakiram, H.No.40/806G, Srinivasa Nagar,
Kurnool.*
- 4.Smt.Agnur Nirmala, H.No.26/114, Chittari Street,
Kurnool.*
- 5.Sri Agnur Jayaramudu (Individual), H.No.40/806G,
Srinivasa Nagar, Kurnool.*
- 6.Sri Agnur Jayaramudu (HUF), H.No.40/806G, Srinivasa
Nagar, Kurnool.*
- 7.CIT(Appeals)-Kurnool.*
- 8.Pr.CIT-Kurnool.*
- 9.D.R. ITAT, Hyderabad.*
- 10.Guard File.*