

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.902/Hyd/2015		
Assessment Year: 2007-08		
The Asst.Commissioner of Income Tax, Central Circle – 1(1), Hyderabad.	Vs.	Sri Alluri Krishna Reddy, Hyderabad. PAN : ACHPA5457C
(Appellant)		(Respondent)

ITA No.927/Hyd/2015		
Assessment Year: 2007-08		
Sri Alluri Krishna Reddy, Hyderabad. PAN : ACHPA5457C	Vs.	DCIT, Central Circle – 1, Hyderabad.
(Appellant)		(Respondent)

ITA No.1002/Hyd/2016 & C.O.No.64/Hyd/2016 (in ITA No.1002/Hyd/2016)		
Assessment Year: 2008-09		
The Asst.Commissioner of Income Tax, Central Circle – 1(1), Hyderabad.		Sri Alluri Krishna Reddy, Hyderabad. PAN : ACHPA5457C
(Appellant)		(Respondent/Cross-objector)
Assessee by:	None	
Revenue by:	Sri Y.V.S.T.Sai, CIT-DR	
Date of hearing:	17/09/2021	
Date of pronouncement:	28/10/2021	

ORDER

PER S. S. GODARA, J.M.

The instant batch of four cases pertains to a single assessee namely Shri Alluri Krishna Reddy. The Revenue and assessee have filed their cross appeals ITA No.902 & 927/Hyd/2015 for A.Y. 2007-08 against the CIT(A)-11, Hyderabad's order dt.30.04.2015 passed in case No.0195/Circle-1(1)/CIT(A)-XI/13-14. The Revenue's latter appeal ITA No.1002/Hyd/2016 and assessee's cross objection C.O.64/Hyd/2016 are directed against the very CIT(A)'s order dt.09.02.2016 passed in case No.0202/CC-1(1)/Hyd/CIT(A)-11/13-14/15-16. Relevant proceedings in both these assessment years are under sec 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short, "the Act").

Cases called twice. None has put in appearance at the assessee's behest.

2. It transpires at the outset that the assessee's C.O.No.64/Hyd/2016 suffers from 82 days delay stated to be attributable to the reason(s) beyond his control as per condonation petition/affidavit. No rebuttal has come from the departmental side. The impugned delay is condoned therefore.

3. We make it clear that the file notings right from 05.10.2015 onwards indicate the assessee's counsel name but nobody has represented him since 09.05.2018. These appeals had been fixed on 03.09.2021 wherein we had directed the department to serve the assessee afresh. The DCIT, Circle – 1(1), Hyderabad has filed his correspondence dated 14.09.2001 along with service report that the assessee stands served at the site of M/s. AKR Constructions Limited. Nobody has come present despite the instant

fresh mode of service. We then proceeded ex-parte against him in all these cases.

4. We advert to former A.Y. 2007-08 involving Revenue's and assessee's cross appeals ITA Nos.902 & 927/Hyd/2015. The assessee's cross appeal ITA No.927/Hyd/2015 has raised the following six substantive grounds at the first instance:-

1. The Commissioner of Income Tax (Appeals) - XI, Hyderabad [CIT(A), hereinafter] and the Deputy Commissioner of Income Tax, Central Circle - I, Hyderabad (A.O hereinafter) have erred on facts and in law.

2. Learned CIT(A) is not justified in sustaining the addition of Rs. 1,80,12,096/-.

3. Out of the above amount Learned CIT(A) & A.O have erred in regard to the addition of Rs. 1,50,00,000/- on presumptions and assumptions Without dealing with the explanation given in the course of assessment proceedings.

4. Learned CIT(A) and A.O have not appreciated whether the amount represented payments made towards advances to land owners or towards development in terms of MOU.

5. Learned CIT(A) has erred in not deleting the disallowance of interest on amounts of Rs. 50,00,000/- and Rs. 54,00,000/- advanced to Rampa Estates and Sri. M. Samba Siva Rao .

6. For these and any other grounds that may be raised at / before the time of hearing, it is prayed that the additions of Rs.1,80,12,096/- and disallowance of interest be deleted."

He has further preferred his petition dated 13.07.2016 seeking to plead the following additional substantive grounds.

1. In the matter of the above appeal, the appellant-assessee (assessee) craves leave of the Hon'ble Tribunal to file Additional Grounds of Appeal.

2. Additional Grounds of Appeal are concerning the disallowance of interest expenditure which is part of the regular accounts on the basis of which the original return has been filed. No incriminating material in respect of the interest expenditure has been discovered during search. Therefore no part of interest can be disallowed in the assessment made u/s. 153 A pursuant to the search. This is a legal ground.

3. The assessment originally made u/s. 143(1) has not abated. As a result there is already an assessment u/s. 143(1) which has not abated. Consequently in the assessment now made the income disclosed cannot be made a part of the total income determined u/s. 153A. As the assessment has been made by including the income u/s. 143(1), there is a duplicate demand in the records and registers of the Department. Additional Ground

is now being taken against the legality of duplicating the assessment and demand covered by assessment u/s. 143(1). This is also a legal ground.

4. The above legal grounds have not been taken at the stage of first appeal by oversight and not by intention. The omission to raise the Additional Grounds was for bona fide reasons. No new facts are involved nor any fresh investigation is required in respect of the relevant additional grounds.

5. The A.O has noticed that the interest expenditure is Rs. 2,55,03,426/- on secured loans of Rs. 36,12,99,333/-. The A.O has erred in computation of disallowable interest at Rs. 86,34,421/- on the loans of Rs.5,75,60,280/- allegedly given out of interest bearing funds. the correct disallowable amount is only Rs. 40,63,248/-. The assessee did not raise the ground on incorrectness of the computation of the disallowable interest. This is by oversight. A ground is being raised by way of an Additional Ground before the Hon'ble Tribunal.

6. Assessee prays the Hon'ble Bench to admit the Additional Grounds of Appeal for adjudication. If they are not admitted, the interests of the assessee will be in great jeopardy. Assessee would be put to loss of the valuable opportunity of their adjudication by the Hon'ble Bench.

1. Learned CIT(A) has erred in sustaining disallowance of any interest No material to disallow interest has been found during the course of search proceedings. Interest is part of the regular accounts on the basis of which return was originally filed.

A.O has erred in not reducing the tax on the total income as per intimation u/s. 143(1), as the assessment u/s. 143(1) has not abated.

Without prejudice to Additional Ground No.1 above,

3. The interest debited being Rs. 2,55,03,426/- on secured loans of Rs. 36,12,99,333/- as found by the A.O, the interest disallowed in assessment of Rs. 86,34,421/- is wrongly calculated. It would only be Rs. 40,63,248/-.

4. Learned CIT(A) has erred in not quantifying the interest disallowable with reference to Rs. 1,14,00,000/-.

5. Learned CIT-DR vehemently contended during the course of hearing that the assessee's petition seeking admission of the foregoing additional grounds deserves to be rejected as the same tends altogether a new texture to the already raised pleadings. We find no merit in the instant grievance in the Revenue's technical objections since the assessee's foregoing petition has either raised supportive grounds to the main pleadings or his only other plea is that the impugned proceedings / assessments deserve to be quashed

since no proceedings had been “abated”. We wish to make it clear that the assessee’s averments in his prayer for admission of additional grounds in Sr. Nos.1 to 7 and additional grounds themselves is that no incriminating material has been found or seized during the course of search which could trigger Sec.153A in motion and therefore, these assessment itself are not sustainable in law. This tribunal’s special bench decision in All Cargo Global Logistics Vs. DCIT (2012) 137 ITD 217 (Mum); after considering hon’ble apex court’s landmark decision in NTPC Vs. CIT in 229 ITR 383 (SC), holds that we can very well entertain such an additional ground going to root of the matter so as to determine correctness of tax liability of an assessee provided all the relevant facts are already on record. There is hardly any quarrel that the issue herein pertains to legality of the impugned assessment(s) in light of 143(1) proceedings and lack of incriminating material found or seized during the course of search. We thus admit the assessee’s foregoing pleadings challenging correctness of section 153A assessments before us.

6. Coming to the foregoing legal issue, a perusal of the case file indicates that the assessee had submitted his original return of income on 02.11.2007 admitting income of Rs.5,39,18,400/- which stood summarily processed under sec 143(1) on 25.11.2008. This followed the impugned search carried out at assessee’s residential premises on 06.10.2010. A perusal of the assessment order dt.31.03.2013 indicates that incriminating material in annexure AKR/R/PO/01 having page nos. 119 to 121 was found and seized during the course of search pin-pointing the assessee to have made cash payments of Rs.1,50,000,000/- to one Mr. Sudarshanreddy for land development along with other investments totaling to Rs.6,41,74,901/- (involving difference of Rs.1,80,12,096/-). This made the Assessing Officer to invoke sec 153A proceedings vide

notice(s) dated 20.02.2011. We therefore hold that the impugned proceedings had been rightly taken recourse to by the learned lower authorities in view of the foregoing incriminating material only where no proceedings were “pending” as on the date of search so as to be abated u/s.153A(1) 2nd proviso of the Act. The assessee’s foregoing legal ground to this effect stands declined therefore.

7. We further note that the Assessing Officer also took up the issue(s) of sec.36(i)(iii) interest disallowance of Rs.86,34,421/- and labour charges payments of Rs.285,00,000/-; respectively. The question as to whether he could have adopted such a course of action i.e., taking other issues as well whilst framing sec.143(3) r.w.s 153A assessment, contested by the assessee, is no more res integra in view of hon’ble jurisdictional high court’s decision in Gopal Lal Badruka Vs. DCIT and others (2012) 346 ITR 106(AP). We therefore decline the assessee’s corresponding legal ground(s) in his cross appeal ITA No.927/Hyd/2015 to this affect.

8. We now come to various issues on merits in both these cross appeals. The Revenue’s first substantive grievance in its appeal ITA No.902/Hyd/2015 seeks to revive section 36(i)(iii) interest disallowance of Rs.86,34,421/- in the course of assessment herein dt.31.03.2013 and partly revised in the CIT(A)’s order as follows :

“08.0 Disallowance of Interest

The Assessing Officer found that the assessee has obtained loans from banks and other persons and debited interest thereon in the profit and loss account. The assessee had claimed deduction of interest expenditure of Rs.2,55,03,426/-. The Assessing Officer observed that he had diverted the interest bearing funds to the tune of Rs.5,75,62,806/- towards interest free loans/advances to friends and relatives and sister concerns. The break up is as below:

SNo	Name of the debtor	Amount in Rs.
1	Aarkay Projects (assessee invested as Director in the company)	4,61,62,806
2	Rampa Estates	50,00,000
3	M.Sambhisa Rao	54,00,000
4	N.Prasanna Kumar Reddy	10,00,000
	TOTAL	5,75,62,806

He limited the interest debited to the P&L account to the extent of funds diverted by charging interest @15% p.a. Hence, he disallowed proportionate interest of Rs.86,34,421/-.

08.1 During the appellate proceedings, the assessee submitted that an investment of Rs.4,61,62,806/- was made in Aarkey Projects. This firm was created to get some work from that project and in the course of business the amounts were paid to the landlords of Aarkey Project. It was another matter that the project did not go through and the amounts got stuck because of the dispute. He further stated that no specific loans were taken for investment in Aarkey Project but the amounts were given out of his own capital. With regard to other advances made to Rampa Estate, M.Sambhisa Rao, N.Prasanna Kumar Reddy, the submissions before the Assessing Officer were reiterated that the amounts were given in the ordinary course of business as advance to sub contractors and the same should be deleted. It was also submitted by the assessee that, since there was no reference to the seized material, the addition was bad in law.

08.2 Decision:

The assessment order and the submissions made by the appellant were carefully considered. According to the provisions of section 153A of the IT Act, if a search u/s 132 of IT Act is conducted in the case of a person, assessment u/s 153A has to be made. Further, such assessment is made to determine the 'total' income and not only the 'undisclosed' income (as was the case with an assessment made under the now deleted section 158BC of the IT Act). That is a reason that pending assessment proceedings abate. As discussed above, there is a debate about whether proceedings u/s 153A of the IT Act can be initiated if there is no incriminating evidence found during the search. But, there is no confusion about the proposition that, once proceedings u/s 153A of the IT Act has been initiated validly, a complete assessment has to be made, including additions on the basis of seized material as well as otherwise. The legal objection to the addition, therefore, fails.

08.3 Coming to the merits of the addition, the assessee's case is that the loans/advances had been made wholly for purposes of his business and hence, deduction for interest on borrowed capital should be allowed. The submission has been considered. The assessee is a civil contractor. He also diversified into real estate development during the previous year under consideration. If the interest bearing fund had been utilised for the purposes

of his business, the interest expenditure should be allowed as deduction even if the business or any part thereof had actually not yielded profit to him. The fact of his investment in Aarkay Project had been discussed above. Considering that the amount of Rs.4.62 crores had been invested for purposes of such business by the assessee, interest on the borrowed fund should be allowed as deduction against his profit of business. As regards the balance loans /advances of Rs.1.14 crore (i.e. those relating to Rampa Estates, Mr. M.Sambhisa Rao and Mr. N Prasanna Kr. Reedy) there is nothing on record to show that the same represented business investment for the purpose of earning profit. It is also noticed that the Assessing Officer considered a number of other such loans/advances but refrained from disallowing commensurate interest as he was prima facie satisfied with the assessee's explanation. His decision that interest bearing borrowed fund to the extent of Rs.1.14 crore had been diverted for non business purposes is, therefore, upheld. He is directed to re-compute the proportionate disallowance accordingly”.

9. We next note that the assessee's cross appeal ITA No.927/Hyd/2015 also raises corresponding substantive ground no.5 and additional ground nos. 3 and 4; respectively to this effect. It thus emerges from a perusal of the case records that so far as the impugned interest disallowance on diversion of interest bearing funds is concerned, even the CIT(A) has find force in the Assessing Officer's reasoning in principle. We further wish to reiterate that the assessee had obtained impugned interest bearing loans and made advances thereof in lieu of charging interest @ 18%. The fact also remains that apart from legal issues which we have already decided in Revenue's favour, this is essentially the reconciliation aspect of diversion of interest bearing funds which has been set by the learned CIT(A) to the Assessing Officer in his lower appellate discussion. We therefore uphold the same in these facts and circumstances. It is made clear that the Assessing Officer shall compute the impugned disallowance *inter alia* after taking into consideration the assessee's non-interest and interest bearing funds and more particularly his fund position on the date of advances made as per his cash flow statement, if any, filed and proved way of evidence. We further direct the Assessing Officer to disallow interest on those items which the assessee had advanced to

various parties in lieu of himself charging interest as well. All these corresponding grounds in these cross-appeals before us are allowed for statistical purposes therefore.

10. The Revenue's later specific grievance seeks to revive labour charges disallowance of Rs.2.85 crore which has been deleted in CIT(A)'s order as under :

"09.0 Labour charges

The Assessing Officer observed that the assessee had debited expenditure of Rs. 6.45 crores as labour charges out of which amount of Rs. 2.91 crores had been shown as payable as on 31.3.2007. He found it unusual as according to him, labourers are paid on daily or on weekly basis and/ hence, there should be no reason why the wages should remain payable. The assessee explained that he had mobilised labourers from villages, that he was paying them' immediate requirement on regular basis and the balance was paid as and when required by them. The Assessing Officer was not satisfied with the explanation and added that the amount of Rs.2,85,00,000/- as unexplained expenditure.

09.1 During the course of appellate proceedings, the appellant stated that he has created a liability of Rs.2,90,54,406/- towards the labour charges payable as at 31.3.2007. The amount is claimed as an expense and shown as a liability. The liability was subsequently discharged by the appellant by payments from various sites. On being asked for the Proof of payments he had produced all the ledger account copies showing the payment of the liability in the subsequent year. Ignoring all the submissions made and evidences produced by him, the Assessing Officer has made a n addition of Rs.2,85,00,000/- towards unexplained expenditure. The assessee has challenged the addition and reiterated his submission in appeal.

09.2 Decision

Assessment order and " the Written submissions submitted by the appellant Were carefully considered. According to section 69C of the IT Act, an expenditure is held to be unexplained (and deemed to be the income) if the nature and source thereof is not explained satisfactorily. The expenditure in question is claimed to be 'wages'. In so far as it was recorded in the regular books of account, its source is also explained. It is not understood how the Assessing Officer treated it as unexplained and added to the assessee's Income. Based on his reasoning, he Could have tried to hold the amount as inflated/bogus expenditure and disallow deduction on the same, But, considering the facts and circumstances of the case, even that would not be permissible.

09.3 The assessee has been searched u/s 132 of the IT Act. No evidence has been brought up of record to show that the expenditure was non-genuine. In the normal course, wages should not remain payable for a long time. But, the assessee offered an explanation which cannot be rejected out right. He also showed that the liability had actually been discharged after some time. The fact of wages remaining payable may be a good ground of suspicion but suspicion alone cannot be a good ground for disallowance of expenditure. Considering the totality of facts and circumstances of the case, it is held that the addition is not justified and is deleted”.

11. With the able assistance coming from Revenue side, it emanates from a perusal of the CIT(A) further that he has gone by Section 69C of the Act primarily on an assumption that the Assessing Officer had treated the assessee's expenditure claim as “unexplained” whereas we note the corresponding assessment discussion in para 3 page 13 of the assessment order dt.31.03.2013 had treated as not “a genuine expenditure only”. The Assessing Officer appears to have noted from a perusal of the assessee's ledger account copy that he had not even filed the corresponding vouchers containing the page numbers, names and details of payees much less detailed cogent evidence.

Mr.Sai took us to the Assessing Officer's detailed discussion that the assessee had debited the corresponding labour expenses as and when cash was available with him. The fact also remains that payment of cash expenses in such a backdrop of real estate development activity on site cannot be altogether ruled out. Faced with this situation, we deem it appropriate that a lumpsum disallowance of Rs.60 lacs than Rs.2.85 crore in issue would be just and proper with a rider that the same shall not be treated as a precedent. The Revenue's instant latter substantive instant ground as well as main appeal No.902/Hyd/2015 is partly accepted in above terms.

12. We now advert to the assessee's remaining grounds. His sole surviving grievance challenges correctness of both the lower authorities action making addition of Rs.1,80,12,096/- allegedly representing unexplained investment made in the course of assessment reading as under :

"On verification of books of accounts it is found that an amount of Rs.4,61,62,806/- was recorded in the books of accounts whereas as per the above information an amount of Rs.6,41,74,902/- was paid as capital in Arkay projects thus the difference of Rs.1,80,12,096/- was invested outside the books of accounts. Assessee was asked to explain called for.

In response to show cause notice, assessee filed reply on 18.03.2013 stated that, "I have already submitted the details of Arkey projects in my reply dated 09-01-2012. Mr. C. Rama Krishna reddy is the other partner in Arkey projects as evidenced by page No. 31-36 of Ann/ AKR/R/1. It is very clear from page No.40 and 41 of Ann/ AKR/R/1 that Rs.2-00 crores is paid by Mr. CRK Reddy vide various cheques drawn on Federal bank and Lord Krishna Bank as per page 41 and also Rs.50-00 lakhs vide ch. No.009906 dated 06-11-2006 as per page No.40. Thus, a total amount of Rs.250-00 lakhs is paid by Mr. CRK Reddy. This being so, it is not correct to propose to add up the amounts to my account.

As can be seen from the statement, all the petty expenses also are recorded in the statement as per page 119,120 and 121 of annexure AKR/R/01. Land development payments are apid as below. "

Cash to Remesh	1,00,000/-
Ch 779254 to Ramesh	20,00,000/-
Ch 782532 to Ramesh	15,00,000/-
Ch 786886 to Uma Maheswaramma	5,00,000/-
Ch 786887 to Uma Maheswaramma	9,75,000/-

In addition to those payments, an amount of Rs.15000000/- is appearing as cash paid to sudarshanreddy on 10.02.2007 for Land Development. I am surprised to note that such big figure is appearing in the statement. By our practice, we pay all the big amounts by account payee cheques. In that case payment of 150-00 lakhs to Mr. sudarshanreddy does not arise. It is only Rs.1,50,000/- that is paid to Sudarshanreddy at the request of Mr. Ramesh. This is wrongly mentioned as 1,50,00,000/- by the accountant or the person, who prepared the statement. I request you to extend me one week time to produce further evidence in this regard.

Further assessee has filed reply on 25.03.2013 in response to show cause notice stated that, with regard to the statement of expenses recorded in the

statement as page 119,121 and 121 of annexure AKR/R/01., the chronological events of the Aarkey projects are as below.

1. First Advances for security purpose given for the project as

Token Advance vide ch no. 757763 of Rs.1,00,000/-

08.10.2006

(The same is received back on 30.04.2007)

2. First Adv of Rs. 45 lakhs given to land lord 14.10.2006

3. Date of Partnership Deed of AARKAY PROJECTS

page No.31-36

30.10.2006

4. MOU with land lords entered on (37-43)

30.1.0.2006

5. Dvpt Ag Cum GPA registered as per page 80 of Ann/AKR/R/1

23.11.2006

6. Meetings of the landlords and Developers (Page 44-47)

26.12.2007

7. Meeting of Landlords and developers (Page 48-49)

23.01.2008

As per this MOU. dated 30.10.2006, the amounts paid/payable by AKR and CRKR as below:

Paid up to 30.10.2006 by CRK	200 Lakhs
Paid by AKR on 08.10.2006	1.50 Lakhs
Agreed to pay by 07.11.2006	100 Lakhs by PDCs
Agreed to pay by 07.12.2006	100 Lakhs by PDCs
Agreed to pay PDCs before 31.12.2006	150 Lakh. by PDCs
Agreed to pay PDCs before 31.01.2007	150 Lakhs by PDCs
Agreed to pay PDCs before 28.02.2007	150 Lakhs by PDCs
Total Deposit as per Agreement:	1000 Lakhs

Clause 10-10 of the MOU cum Agreement as per page 37 of Annexure AKR/R/1 reads as follows:

"10-10. the first party will allow the second party to start any developmental activities on the schedule property only after the payment of Rs.10,00,00,000/- on or before February 2007"

Page No.44 to 49 of the annexure are the 'minutes of the meeting of Landlords and developers. The contents of the same pages clearly state that the amounts given so far to the landlords up to 26.12.2007 are Rs.8 crores only and after 8 crores shall be given in Jan, Feb and April,2008, subject to the fulfillment of certain conditions.

Thus, the total amounts advanced to the landlords are Rs. 8 crores only. Out of this 450 lakhs is spent by the Assessee, which is fully reflected in the books of accounts of the Assessee. The total amount appearing in the books of the Assessee as investment in Aarkay projects is Rs.489.70 Lakhs. The balance amount is spent for various expenses as evident in the seized material and also in the books of account of the Assessee.

This being so, a statement of expenses spent at the site was prepared by the site accountant, who has made the wrong entries in the statement. The amount of Rs.1,50,000/- was wrongly entered as 150 Lakhs. The only thing happened is while fairing the statement in to computer, he has entered 1,50,000/- as 1,50,00,000/- i.e the paise are also included in the rupees column. As no Commas are followed, this' mistake has happened. The following facts may be considered.

1. This site is taken on development basis and the advances are also not paid fully.
2. This is not a sale transaction, to assume any on payments to have been made to the landlords.
3. The ventures has gone it to dispute and did not materialize till date.
4. The payment is mentioned as paid to Sudarshanreddy for Land Development charges and not to landlords.
5. The payment is entered to have been made on 10.02.2007. But, as per the agreement, the developers are not allowed to enter the site even.

Already some amounts are spent for the stone cutting with the permission of the landlord, which are truly recorded in the books as diesel expenses.

6. The time duration between the date of entering in to the agreement and this entry is only 2.5 months. It is difficult to spend that much amount on the project, apart from the other amounts spent. It cannot be any advances payment also as the Assessee himself is a contractor and wanted to take up the venture on his own as the main partner.

7. When even small amounts are also recorded in the books, it is not possible for the Assessee to spend that much cash for development expenses.

8. There is no tick on the amount, whereas all the other amounts are ticked. That means the entry is doubtful and not verifiable. So, this is not ticked by the office accountant while checking with the cash book entries in his book. It is evident from the material.

9. In the subsequent minutes of the landlords and developers also, there is no mention of the development expenses incurred.

10 In the copy of legal notice dated 10.02.2010, (as per page 140,141 of the Annexure) issued by the developers to the landlords, there is no mention of having spending that much amount for the development expenses. There is the mention. of the total amounts paid as Rs.850 Lakhs, out of which the investment related to the Assessee is recorded in the books of the Assessee.

Like wise, there is duplication in entering of the amounts as per statement.

The total amounts that are wrongly entered are:

1. Landlords Development expenses to Sudarshanreddy: 1,50,00,000/-
 2. Cash paid to S Ramesh to Diesel 1,00,000
 3. Cash paid to S Ramesh to Diesel 4,00,000
 4. Travelling Expenses to C V Rao: 11,511
 5. Misc Expenses to C V Rao 105
 6. Misc Expenses to C V Rao 600
- Different Total: 1,55,10,705

It may be noted that these amounts are wrongly entered in the statement. These amounts are not vouched and do not contain the verification marks and after verification found wrong. The total is appearing in the top of page No.121 of the Annexure. Hence, these were not taken in to the main books of account of the Assessee.

In the light of the above, the statement may be ignored as this is only a rough sheet prepared by some site accountant containing wrong and duplicate entries. The amount of the Rs. 1,50,000/- appearing in the statement as Rs.1,50,00,000/- also is a duplicate entry as well as wrong entry.

The assessee's explanation is not acceptable. As per clause 10-10, 10 crore should be paid to the landlord on or before Feb,07 to start development activity. On examination of the seized material above it is clear that, the assessee and his partner started the development activities and spent huge amounts on different dates till March, 08. As per agreement it is construed that, it is not possible to start development activity without paying Rs.10 crore. Since the assessee has started the development activity it can taken that the total advance of Rs.10 crore was already paid to land lords. Further the assessee stated that, the total advance was only Rs. 8 crore out of which assessee share should be Rs.4 crore. As the developmental activity is going

on the contention of the assessee is totally false and violation of the clause 10-10 of the agreement.

Assessee further stated that, the amount was wrongly entered as Rs.1,50,00,000 instead of Rs.1,50,000. If it is so, the total amount comes to 4,93,74,601 instead of 6,41,74,901. But the investment as per balance sheet as 31.03.2008 is Rs. 4,85,63,677. So these figures do not tallying with each other. The amount was paid of Rs.1,50,00,000 paid on 10.02.2007 to Sri Sudharshan Reddy for the development of Aarkay' Project Site. Shri sudharshan Reddy is one of the debtors in M/s AKR construction for an amount of Rs.54,90,426. Further his name reflected in AKR construction as share application holder. Therefore its appeared that he is a key person in the assessee's business activity as on 10.02.2007. An amount of Rs. 1.5 crore was paid to him in cash as development expenses for the Aarkay Project Site. As per the clauses 10-10 the assessee paid the advances and started the developmental activity. Hence assessee incurred the expenditure as reported the above account copy. In view of this the difference amount of Rs. 1,80,12,096 can be taken to have incurred by the assessee. Therefore entire different amount of Rs.1,80,12,096/- including the amount of Rs.1,50,00,000 paid to Sri sudharshan Reddy for which there is no proper explanation of the assessee is treated as unexplained investment and the same is added to the income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act are initiated for furnishing inaccurate particular of income and concealment of income in this regard.

(Addition: Rs.1,80,12,096/-)

13. The CIT(A)'s detailed discussion dealing with the instant addition reads as under :

"07.0 Unexplained investment

During the search & seizure operation, certain incriminating material was found and seized consisting of page nos. 119-121 (Annexure AKR/R/PO/01). On verification of books of accounts, it was found that an amount of Rs.4,61,62,806/- was recorded in the books of accounts whereas' as per the seized documents, an amount of Rs.6,41,74,902/- was paid as capital in Aarkav Project, thus the difference of Rs.1,80,12,096/- was considered to be invested outside the books of accounts and the assessee was asked to explain the investment.

07.1 According to the assessee, an amount of Rs.1.50 crores shown to have been paid to Mr. Sudarshan Reddy for land development in cash was not paid as it was a general practice to pay all big amounts by account payee cheques only. Instead, an amount of Rs.1,50,000/- was only paid to Mr. Sudarshan Reddy. According' to the assessee as per the clause 10-10, of the MoU cum agreement, any development activity on the scheduled property was to start only after the payment of Rs.10 crore on or before February, 2007. And as per the minutes of meeting of land lords and developers, Rs.8

crores was given upto 26.12.2007 and out of this Rs.4.50 crores was spent by him which was fully reflected in his books of account. The total amount invested by him in Aarkey project was Rs.489.70 lakhs. That being so, the assessee stated that statement of expenses prepared by the site accountant was wrong and he had wrongly entered Rs.1,50,000/- as Rs.1,50,00,000/-. To reinforce his arguments, the assessee stated that the land was taken on development basis and the advances were also not fully paid. The venture had gone into dispute and has not materialised till date. The said payment of Rs.1,50,00,000/- was shown to have been paid on 10.2.2007, but as per the agreement the developers were not allowed to enter the site. Though, some amount was spent on development work viz; stone cutting which was recorded in the books as diesel expenses. According to the assessee even the legal notice issued by the developer to the landlords on 10.2.2010 made no mention of the amount of Rs.1,50,00,000/- spent on development. There was mention of total amount of Rs.8.50 crores only, out of which the investment relating to him was recorded in the books of account. Thus, the total amount of Rs.1,55,10,705/- was wrongly entered in the statement. Those amounts were not vouched and did not contain verification marks. The statement which was only a rough sheet prepared by the, site accountant containing wrong and duplicate entries should be ignored. '

07.2 The Assessing Officer did not accept the explanation given by the assessee and stated that as per clause 10-10, Rs.10 crores was to be paid to the landlord on or before February, 2007 to start development activity. On examination of the seized material, it was clear that the assessee and his partner started the development activities and spent huge amounts on different dates till March, 2008. And according to the agreement, it was not possible to start development activity without making a payment of Rs.10 crores. Since the assessee had started the development activity, it could be taken that the total advance of Rs.10 crore was already paid to the land lords. The contention of the appellant that the total advance was only Rs.8 crores was rejected as being wrong in view of the fact that the development activity was undertaken and the contention was violative of clause 10-10 of the agreement. The Assessing Officer also rejected the assessee's contention that the amount was wrongly entered as Rs.1,50,00,000/- instead of Rs.1,50,000/-. According to the Assessing Officer, if that was so, the total amount would come to Rs.4,93,74,601/- instead of Rs.6,41,74,901/-. But the investment as per the Balance Sheet as on 31.3.2008 was Rs.4,85,63,677/-. So the figures did not tally with each other. Sri Sudharshan Reddy was one of the debtors in M/s.AKR Construction for an amount of Rs.54,90,426/-. Further, his name was reflected in AKR Construction as share application holder. Therefore, it appeared to the Assessing Officer that he was a key person in the assessee's business activity as on 10.2.2007. The amount of Rs.1.5 crore was paid to him in cash as development expenses for the Aarkay Project Site. As per the clause 10-10 of the Agreement, the assessee had to pay advances and thereafter start the developmental activity. The Assessing Officer concluded that the assessee had incurred the expenditure as reported in the above document. The entire difference of Rs.1,80,12,096/- (including the amount of Rs.1,50,00,000/- paid to Sri Sudharshan Reddy) for

which there was no proper explanation given by the assessee was treated as unexplained investment and was added to the returned income.

07.3 During the course of appellate proceedings, the appellant stated that he created a partnership firm in the name of M/s Aarkay Project and the firm entered into a development agreement for developing 50 acres of land with the landlords as per the MoU dated 30.10.2006. Interest on capital @18% was to be paid to the partners as evident from the deed of partnership dated 30.10.2006' as per page no.36 of seized material A/AKR/R/1. All the payments to the landlords were directly paid from his bank account. The appellant had invested an amount of RS.4,61,62,806/- by 31.3.2007 and Rs.4,85,63,677/- by 31.3.2008 out of which Rs.4,50,00,000/- was interest free deposit to the landlords and the balance being the amount spent for site development works. Those amounts were duly accounted for in his books of accounts. During the course of search, a statement relating to the Aarkay Project was found and in that statement there 6-7 transactions amounting to Rs.1,55,10,705/- were recorded against which a question mark was put and they were not accounted for in the books of the appellant. It was explained that those entries were wrongly entered by the site accountant. The differential amounts were not entered in the regular books of the appellant.as they were wrong entries as observed by the regular accountant.

07.4 The appellant further argued that the Assessing Officer had not applied his mind in understanding the facts and in coming to a rational conclusion. The addition was made without appreciating the facts on record. The amount of Rs.1,55,10,705/- did not belong to the appellant and was therefore not" accounted for in the regular books of account. The Assessing Officer had failed to prove that the amount of Rs.1,50,00,000/- and other amounts were paid by the appellant and formed part of his income. M/s.AKR Construction Ltd. started functioning from 1.4.2008 and there was no Sudarshan Reddy in the debtors list. The appellant further argued that the Assessing Officer had made the addition without considering the fact that some of the transactions related to FY 200708 also. Relying on the submissions made before Assessing Officer, he stated that the Assessing Officer had failed to establish by way of any evidence- that the entries found in the seized documents formed undisclosed income of the appellant.

07.5 Decision:

The assessment order and the submissions of the appellant were carefully considered. As per the seized document (Annexure AKR/R/PO/01 pages 119-121), the assessee had spent Rs. 6,41,74,902/- on Aarkay Project while, as per his books of account, only an amount of Rs. 4,61,62,806/_ had been spent. When confronted with this discrepancy, the assessee submitted that the correct amount of expenditure had been recorded in the books of account and added that the entries in the seized document which did not match with those in the books of account were not reliable. Particularly with reference to the entry of Rs. 1,50,00,000/- shown as amount paid to Sudarshan Reddy, it Was explained that the amount actually paid was only Rs. 1,50,000/-, but the accountant, by mistake, had

added two zeros. The Assessing Officer did not accept the explanation and added the difference of Rs.1,80,12,096/_ as unexplained investment. In appeal the assessee reiterated his submissions. He also challenged the addition on the ground that source of entries in the seized document pertained to the period beyond the previous year under consideration.

07.6 As per the provisions of IT Act (as also of general law), a document /asset seized from a person is presumed to be belonging to him and the contents thereof are presumed to be correct, unless the contrary is proved by that person. The seized document in 'question' was seized from the assessee's premises and contains details of transactions pertaining to his business. Hence, the legal presumption is squarely applicable. His contention that the entries not matching with those in the regular books of accounts should be ignored is not based on any plausible explanation and, hence, is not acceptable. When other entries are matching with regular books of accounts, it has to be assumed that those not matching represent expenditure Which was not recorded in the regular books and, hence, is held to be unexplained expenditure/investment.

07.7 According to the assessee, he had entered into a Development Agreement With owners of a piece of land for its development under the banner of Aarkay Projects. As per the terms of the MoU, the development work could only be started after the agreed sum s of Rs.10 crores had been paid to the land owners. Since that Sum could not be paid to the land owners and some dispute arose, incurring of such huge expenditure on that project, according to the assessee was not feasible. If this explanation were correct, the assessee should indeed not have incurred any development related expenditure on that project. But, as per his own admission, he had incurred development expenditure. Hence, the explanation is not acceptable. If an expenditure has been incurred in fact, it cannot be said not to have been incurred simply because the MoU did not stipulate the expenditure at that stage.

07.8 According to the assessee, some of the entries do not relate to the previous year under consideration. The contention is prima facie correct. The seized document has to be appreciated in its entirety and if, according to it, some expenditure had been incurred in any assessment year, addition of the same should be considered in such other assessment year alone.

07.9 In view of the foregoing discussion, the addition, is confirmed in principle. The Assessing Officer is directed to ascertain the quantum of such expenditure pertaining to the assessment year under consideration and restrict the addition to that quantum. The part which is shown to have been incurred in any other a:ssessment year(s) would be liable to be taxable in such assessment year(s), and he may initiate proceeding u/s 147 rws 150 of the IT Act. According to the assessee, total investment in the Aarkay Project, as per his books of accounts was Rs.489.70 lakhs while the Assessing Officer adopted the figure of Rs.461.63 lakhs while calculating the different vis-a-vis the amount recorded in the seized document. The Assessing Officer will verify

this contention also and adopt the correct figure as per the books of accounts while re-computing the unexplained investment”.

14. Suffice to say, it has already come on record that the impugned addition is very much based on the alleged incriminating material in annexure AKR/R/PO/01 (Pages 119 to 121) found and seized during the course of search sufficiently indicating the unexplained investment which carries presumption of correctness u/s 292C of the Act. Learned CIT-DR has rightly pinpointed before us while referring to the assessee's corresponding explanation before the Assessing Officer extracted in the preceding paras that he sought to shift the onus on the department despite the fact that the major component herein was claimed to be Rs.1,50,000/- only. We thus, uphold both the learned lower authorities impugned action to this effect.

15. Next comes equally important aspect of correctness of the CIT(A)'s directions to the Assessing Officer to initiate Section 147 proceedings (supra). The same are found to be against the law since Section 153A is a specific provision applicable in case of search action initiated u/s.132 of the Act. We accordingly direct the Assessing Officer to frame his consequential computation adding the impugned sum(s) of un-explained investment in the corresponding assessment year as per the entries in the seized material. The assessee fails in its instant grievances therefore. His cross-appeal ITA No.927/Hyd/2015 is partly accepted for statistical purposes.

16. Next comes to A.Y. 2008-09 involving Revenue's appeal in ITA No.1002/Hyd/2016 with assessee's cross objections in C.O.No.64/Hyd/2016. Learned CIT-DR is fair enough in not disputing the clinching fact the tax effect involved in the sole section 36(i)(iii) interest amount of Rs.72,84,552/- disallowance herein as per CBDT Circular No.03 of 2018 dated 11-07-2018 and Circular No.17

of 2019 dated 8th August, 2019; as the case may be the tax limit for filing appeal before the “tribunal”. We found that this appeal is covered by the aforesaid circulars and therefore is not maintainable. Its appeal ITA No.1002/Hyd/2016 fails. The assessee’s cross objection C.O.No.64/Hyd/2016 supportive of the CIT(A)’s order is rendered infructuous.

17. To sum up, Revenue’s former appeal ITA No.902/Hyd/2015 is partly allowed and ITA No.1002/Hyd/2016 is dismissed and assessee’s cross appeal No.927/Hyd/2015 is dismissed and C.O.No.64/Hyd/2016 thereto is dismissed as rendered infructuous in above terms. A copy of this common order be placed in respective case files.

Order pronounced in the Open Court on 28th October, 2021

Sd/-

Sd/-

(LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	(S.S. GODARA) JUDICIAL MEMBER
--	--

Hyderabad, dated 28th October, 2021

TYNN & TNMM

Copy to:

S.No	
1	Sri Alluri Krishna Reddy, H.No.8-2-684/J4, Kanaka Durga Temple Lane, Road No.12, Banjara Hills, Hyderabad
2	DCIT, Central Circle-1, Hyderabad.
3	The Asst.Commissioner of Income Tax, Central Circle – 1(1), Hyderabad
4	CIT(A)-XI, Hyderabad
5	Pr. CIT (Central), Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order