

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'SMC' BENCH, HYDERABAD.**

**BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
(Through Virtual Hearing)**

| <b>ITA No.405/Hyd/2021<br/>(Assessment Year : 2018-19)</b> |            |   |
|--|------------|---|
| Shri Lam Paul Sashikumar,<br>Hyderabad.<br>PAN AAQPL5413N  | <b>Vs.</b> | Asst. Commissioner of Income<br>Tax, Central Circle 3(2),<br>Hyderabad. |
| Appellant  |            | Respondent  |

Appellant By : Shri P. Murali Mohana Rao, C.A.

Respondent By : Shri Swapnil Patil (D.R.)

Date of Hearing : 02.12.2021.

Date of Pronouncement : 02.02.2022.

**ORDER**

This appeal is filed by the assessee against the order of learned Commissioner of Income Tax (Appeals)-11, Hyderabad Dt.21.09.2021 in appeal No.10092/2019-20 for the Assessment Year 2018-19 passed u/s.143(3) r.w.s. 250(6) of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised several grounds in this appeal. However, the cruxes of the issues are as follows :

*“ 1. The learned CIT(A) erred in confirming the addition made by the Assessing Officer for Rs.5 lakhs invoking the provisions of section 69A of the Act as unexplained money.*

*2. The learned CIT (Appeals) has erred in confirming the order of the Assessing Officer by disallowing the claim of deduction u/s.10(10AA) of the Act towards leave encashment of Rs.28,757/-.”*

3. The brief facts of the case are that the assessee is an individual working as Managing Director of Goldstone Infratech Ltd. filed his Return of Income for the Assessment Year 2018-19 on 11.07.2018 declaring an income of Rs.393,85,130/-. Thereafter the case of the assessee was taken up for scrutiny pursuant to search conducted and thereafter assessment was completed u/s.143(3) of the Act vide order dt.13.12.2019 wherein the learned Assessing Officer had made the above mentioned additions which was subsequently confirmed by the learned CIT (Appeals). Aggrieved by the orders of Revenue the assessee is in appeal before us.

**Addition of Rs.5 lakhs towards undisclosed income.**

4. During the course of assessment proceedings pursuant to search, it was observed by the Ld.AO that an amount of Rs.5,40,400 was recovered from the premises of the assessee. On query, it was explained by the assessee that an amount of Rs.1,50,000 was withdrawn from his personal

account and the balance amount of Rs.3,50,000 belonged to M/s. Trinity Infraventures Ltd. and associates. However, the learned Assessing Officer treated the amount of Rs.5 lakhs as unexplained money in the hands of the assessee u/s.69A of the Act by observing as under :

*“ The submission of the assessee is verified with the bank account statement submitted. As seen from the bank account statement it is observed that in most of the cases the assessee is using cheques, debit card or credit card and the cash withdrawn from its bank account is very marginal. Even the cash withdrawn is not sufficient to sum up Rs.5,40,400/-. Even the negligible amount of cash withdrawn is not sufficient for day to day maintenance. To meet most of the expenses incurred, the assessee is using credit card, debit card or cheques. Thus keeping in view the essentiality of maintaining the cash at home Rs.40,400/- is left to the assessee and the rest Rs.5,00,000/- is treated as undisclosed income of the assessee and the same is added back to the total income of the assessee u/s.69A as unexplained money as the assessee has failed to substantiate the source of cash with any proper evidence to the extent of Rs.5,00,000/.”*

Before the learned CIT (Appeals), the assessee furnished the details of the income declared by him for the Assessment Years 2015-16 to 2017-18 as follows :

| Assessment Year | Amount Rs.  | Date of ROI u/s.139(1) |
|-----------------|-------------|------------------------|
| 2017-18         | 30,92,130/- | 25.07.2017             |
| 2016-17         | 25,32,670/- | 27.07.2016             |
| 2015-16         | 24,31,590/- | 26.08.2015             |
| Total :         | 80,56,390/- |                        |

Before the Ld.CIT(A) the assessee further reiterated the submissions made before the Ld.AO. However, the learned CIT (Appeals) confirmed the addition of Rs.5 lakhs made by the Assessing Officer by agreeing with his view.

5. At the outset, I do not find any merit in the view taken by the Ld. Revenue authorities on this issue. From perusing the facts of the case, it is evident that the assessee has declared sufficient amount as his income to justify the cash found in his premises. Moreover, the assessee has explained that the amount of Rs.3,50,000 belong to M/s. Trinity Infraventures Ltd. which was kept with the assessee for safe custody. This submission of the assessee was not verified by the learned revenue authorities to negate the stand of the assessee. From these facts and circumstances of the case, considering the income of the assessee and submission of the assessee, I am of the view that the addition made by the Assessing Officer is not warranted. Therefore, I hereby direct the Ld.AO to delete the addition of Rs.5 lakhs made in the hands of the assessee invoking the provisions of section 69A of the Act.

**Disallowance of claim of deduction u/s.10(10AA) of the Act.**

7. The assessee has claimed Rs.28,757 as deduction u/s. 10(10AA) of the Act towards leave encashment received amounting to Rs.3,00,077 which was disallowed by the Ld.AO. The CIT(A)'s observations towards the same was that the learned Assessing Officer has neither given any justification for the addition made nor given any adverse finding in regard to the submission made by the assessee before the Ld.AO. Accordingly, he remitted the matter back to the file of Assessing Officer for verification and to pass appropriate Order.

8. At the outset, it is apparent that the learned CIT (Appeals) does not have power to remit the matter to the file of Assessing Officer. Further, the learned CIT (Appeals) having made a categorical finding that the learned Assessing Officer has not given any justification for the addition made for Rs.28,757 towards disallowance of deduction claim u/s.10(10AA) of the Act. In such circumstance I am of the view that addition made has no legs to stand and therefore deserves to be deleted. Accordingly, I hereby direct the Ld.AO to delete the addition made in the hands of the assessee for

Rs.28,757 being the disallowance of claim of deduction u/s. 10(10AA) of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 2<sup>nd</sup> Feb., 2022.

Sd/-

**(A.MOHAN ALANKAMONY)**

Accountant Member

Hyderabad, Dt. 02.02.2022.

\* Reddy gp

Copy to :

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| 1. | Shri Lam Paul Sashikumar, C/o P. Murali & Co., C.As., 6-3-655/2/3, Somajiguda, Hyderabad-500 082 |
| 2. | ACIT, Central Circle 3(2), Hyderabad.  |
| 3. | Pr. C I T (Central), Hyderabad.  |
| 4. | CIT(Appeals)-11, Hyderabad.  |
| 5. | DR, ITAT, Hyderabad.   |
| 6. | Guard File.  |

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.