

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD**

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

ITA No. 192/HYD/2020 Assessment Year: 2009-10		
Yellaiah Setty, Hyderabad. PAN - AGQPS 2236Q	Vs.	Asst. Commissioner of Income-tax, Central Circle - 5, Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri P. Murali Mohan Rao
Revenue by:		Shri Sunil Gowtham
Date of hearing:		14/03/2022
Date of pronouncement:		16/03/2022

ORDER

PER L.P. SAHU, A.M.:

This appeal is directed against order of CIT(A) - 7, Hyderabad dated 12/12/2019 for the AY 2009-10 involving proceedings u/s 143(3) rws 153A of the Income Tax Act, 1961 ; in short "the Act".

2. Briefly the facts of the case are that search and seizure operations were conducted in the case of M/s. Sri M. Samabasiva Rao, and others, Hyderabad and its group of

cases on 16.7.2008. The assessee, Sri S. Yellaih, is actively involved in real estate activities along with five other partners. Subsequently, the case has been centralized with this circle. In response to the notice issued u/s 142(1), the assessee filed Return of Income declaring an income of Rs.23,77,400/-. In response to notices u/s 143(2) & 142(1), the assessee, Sri S. YeUaiah, appeared and furnished details. The AO completed the assessment as under:

2.1 During the course of search operation conducted in the case of Sri M.Sambasiva Rao, certain loose papers were found and seized vide Annexure No.A/MSR/Res./06 dated 16/07/2008 from the residential premises of Sri M.Sambasiva Rao. In this folder at page No.54, there was a trial balance of Sri Sai Venkateswara Realtors for the period 1.4.2007 to 30.6.2008 wherein under "loans liability" there was an entry in the name of the assessee (abbreviated as SY) to the tune of Rs.2.26 crores. In this connection, the assessee was asked to explain the entry and Sources thereof. To this effect, the assessee replied that the amounts had been collected from the customers towards the advances for sale of plots and further replied that a copy of the revised trial balance had been already submitted. The AO observed that assessee's contention could not be accepted for the following reasons:

a. The assessee owned up the amount mentioned in the above said annexure and admitted to have given loan of Rs.2.26 crores to M/s. Sri Sai Venkateswara Realtors.

b. However, the assessee could not adduce any evidence whatsoever towards the sources stated by him.

c. The assessee's claim that the source amount is received from customers is not acceptable. In the above said Annexure, it is clearly mentioned that Rs.2.26 crores is "loan from YSR" but not as "advances from customers" on behalf of SY.

D. In the above said annexure, there are details of advances from customers amounting to Rs.1.8 crores, which are separately shown.

2.2 In view of the above facts, the AO observed that it can be logically concluded that the said amount of Rs.2.26 crores mentioned in the above said annexure is only a loan given by the assessee to the firm, M/s. Sri Sai Venkateswara Realtors, the source of which is unexplained. The assessee while filing ROI in response to notice u/s 153A, had shown an amount of Rs.15 lakhs as his capital in the above said firm. Therefore, there is no explanation for the balance of Rs.2,11,00,000/- (Rs.2.26 crores - Rs.15 lakhs). Since the said loan of Rs.2,11,00,000/- was not reflected in the assessee's statements filed along with return of income, the AO treated the same as "Unexplained investment" in the hands of the assessee and added to the returned income.

2.3 During the course of search operation in the residential premises of the assessee, the AO noted that a cash of Rs.16,60,450/- was found out of which an amount of Rs.16 lakhs was seized. When Mr. S. Venugopal, S/o Sri S.Yellaiah was confronted with the cash found, he stated that the cash belonged to Mahalakshmi Rice Industries but he could not explain the same and furnish supportive evidences thereof. Subsequently, Mr.Yellaih was asked to explain the sources for the cash found. He submitted that an amount of Rs.8 lakhs out of the total cash of Rs.16,60,450/ - belongs to others and further stated that he would furnish detailed explanation and evidence in support of the cash found. During the asst. proceedings, the assessee was again required to submit the evidences towards his claim as stated above to which, he could not adduce any evidence in spite of availing sufficient time. Therefore, in the absence of any evidence, the AO observed that the assessee was not having any valid explanation to offer and hence, he treated the same as unexplained cash and added to the returned income.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) with regard to the addition of Rs. 2,11,00,000/- made by the AO on account of unexplained investment, directed the AO to delete the addition and confirmed the addition of Rs.

16,60,450/- made by the AO on account of unexplained cash found.

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

5. Before us, the ld. AR of the assessee submitted that in the preceding AYs, the assessee has declared an amount of Rs. 14,90,000/- in AY 2006-07 and Rs. 18,99,300/- in AY 2007-08 and to this effect, copies of the acknowledgment for filing of the returns of income for the said AYs were placed on record. He, therefore, submitted that the cash found in the course of search proceedings partly included the past income as declared above. Further, he submitted that some amounts also represent cash received from various customers as advance towards sale of plots. He, therefore, submitted that telescoping may be given for the preceding AYs income declared. In all the fairness, he requested the Bench for making addition to the extent of Rs. 3,00,000/- and the rest of the amount should be given telescoping from the previous years income.

6. The ld. DR, on the other hand, besides relying on the orders of revenue authorities, submitted that the assessee is not taking any consistent stand and keep on changing his stand at all the stages and, therefore, the request of the ld. AR of the assessee should not be accepted, hence, the

orders of the authorities may be confirmed on the ground that no plausible evidences could be filed by the assessee at any stage to establish that the cash found during the course of search is his income.

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. It is not disputed that the assessee has declared incomes of Rs. 14,90,000/- and Rs. 18,99,300/- in AYs 2006-07 and 2007-08 respectively and requested for telescoping effect may be given from the said incomes declared. We find that the assessee is changing his stands at every stage. The ld. AR of the assessee could not produce any cash flow statement to demonstrate his source and application of income, except filing a copy of acknowledgment of ITRs filed for AYs 2006-07 & 2007-08. Therefore, on considering the totality of the fact of the case, we restrict the addition to 50% of the total addition of Rs. 16,60,450/- made on account of cash found during the course of search proceedings, which comes to Rs. 8,30,225/- and the remaining 50% is considered as telescoping from the past incomes declared, which is treated as from explained source. The case law relied upon by the ld. AR are not of any help to the case of the assessee as they are distinguishable on facts to the case of the assessee. The grounds raised on this issue are partly

allowed. The decision taken in this appeal, shall not be a precedent to any other case/appeal filed/to be filed.

8. In the result, appeal of the assessee is partly allowed in above terms.

Pronounced in the open court on 16th March, 2022.

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

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

Hyderabad, Dated: 16th March, 2022

Kv

Copy to :

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5	<i>ACIT, Central Circle – 5, Hyderabad.</i>
3	<i>CIT(A) - 7, Hyderabad.</i>
4	<i>Pr. CIT - 7, Hyderabad</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	