

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA Nos. 142 to 146/Hyd/2021		
Assessment Years: 2014-15 to 2018-19		
Sri Shafiuddin Mohd. Hyderabad PAN:DSBPS5865M	Vs.	Dy. CIT, Central Circle-2(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri P. Murali Mohan Rao	
Revenue by:	Sri K.P.R.R.Murty, DR	
Date of hearing:	22/06/2022	
Date of pronouncement:	29/06/2022	

**ORDER**

**Per R.K. Panda, A.M**

The above batch of five appeals filed by the assessee are directed against the separate orders dated 29.01.2021 of the learned CIT (A)-12, Hyderabad relating to the A.Ys 2014-15 to 2018-19 respectively. Since identical grounds have been raised by the assessee in all these appeals, therefore, these were heard together and are being disposed of by this common order.

**ITA No.142/Hyd/2021: A.Y. 2014-15**

2. Facts of the case, in brief, are that the assessee is an individual deriving income from salary and business income and partner in M/s. Hotel Cititel. The assessee filed his return of income for the A.Y 2014-15 on 21.09.2019 declaring total income of Rs.6,58,560/-. A search and seizure operation was conducted

u/s 132 of the I.T. Act on the assessee as part of the search conducted on M/s. Shanawaz and others on 25.10.2017 by the DDIT (Inv.), Unit-1(4) Hyderabad. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain about the bank deposits. In respect of deposits made by cheque or NEFT/RTGS, confirmations were obtained. The Assessing Officer noted that there were many cash deposits and withdrawals in Axis Bank A/c and the assessee could not submit proper explanation in support of deposits and withdrawals. The Assessing Officer therefore, applied the peak credit theory and noted that for the A.Y 2014-15, the peak credit is Rs.4,78,840/-. He accordingly treated the same as unexplained credit and added the same u/s 68 of the I.T. Act. Similar additions have been made by the Assessing Officer for the other A.Ys which are as under:

2015-16	-	Rs.2,50,000
2016-17	-	Rs.3,50,000
2017-18	-	Rs.4,40,000
2018-19	-	Rs.4,47,000

3. In appeal, the learned CIT (A) confirmed the additions made by the Assessing Officer.

3.1 Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

4. The learned Counsel for the assessee at the outset submitted that the group had offered income on account of real estate business at Rs.38.62 crores which includes additional income of Rs.22.15 crores for any possible errors/omissions etc. Referring to the order of the CIT (A) dated 13.07.2021 in the case of Naseemuddin Mohammed copy of which is filed in the paper

book, he drew the attention of the Bench to the following submissions made regarding the disclosure made by the group:

“3.5 Further, the assessee would like to submit that, assessee group in coverage along with group members have admitted the income of Rs.40 crores in good faith to avoid protracted litigation and to avoid penal provisions. The income declared by assessee-wise and A.Y-wise details of income offered are as under from Real Estate activities and Function Hall receipts as follows:

	A.Y 2016-17	A.Y 2017-18	A.Y 2018-19	Total
Income from real estate business				
Shanawaz	60,58,284	6,09,00,371	5,45,24,553	12,14,83,208
Zubairuddin	44,19,558	4,54,13,117	3,97,76,027	8,96,08,702
Majid Khan	87,21,138	8,77,88,625	7,84,90,237	17,50,00,000
Function Hall receipts				
Shanawaz	12,86,000	78,06,020	48,16,070	1,39,08,090
Total	2,04,84,980	20,19,08,133	17,76,06,887	40,00,00,000

3.6 The above income accrued to assessee and Group in the financial years 2015-16, 2016-17 and 2017-18. Though the above ventures were started mostly in 2013 or so, it took lot of time to develop the land. Also there was much litigation on the title of land. We collected advances starting from the year 2013-14. However, they started recognizing revenue from the financial year 2015-16, financial years 2016-17 and 2017-18 based on the stage of completion of the project.

3.7 In view of the above assessee/assessee group persons has made submissions and also explained in Page No.1 to 16 as submitted in course of assessment proceedings that cash credits/peak credits were clearly covered under advances/turnover for the following persons as follows:

1. Shanawaz - PAN:AJRPS3009B
2. Ruksana Begum (Wife)- PAN:ADXPB2256M
3. Mohd.Zubairuddin -elder son- PAN:ALJM4770H
4. Mohd.Shafiuddin -2<sup>nd</sup> son PAN:DSBPS5865M
5. Mohd.Naseeruddin -young son PAN:ALJPM4771G
6. M/s.Kings Convention Centre P Ltd PAN:AAFCK6744H
7. M/s.Kings Colnvention Centre (P) Ltd: PANAAFCK6734K
8. M/s. Kingsradio Exim P Ltd PAN:AAECK9652P

3.8 In view of the above submission/clarifications made and in view of various decisions of courts on the subject cited above, it is humbly requested to delete the addition made u/s 68 of the Act”.

4.1 Referring to the decision of the Coordinate Bench of the Tribunal in the case of DCIT vs. Mohd.Naseeruddin in ITA No.446/Hyd/2021 for the A.Y 2017-18, he submitted that the

Tribunal under identical circumstances has deleted the addition made u/s 68 of Rs.1,00,71,551/- towards unexplained cash deposits. He submitted that the facts of the instant case being similar and belonging to the same group, therefore, in view of the decision of Coordinate Bench of the Tribunal, the addition made by the Assessing Officer and sustained by the learned CIT (A) should be deleted.

5. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT (A).

6. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT (A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs.4,47,840/- by applying the peak credit theory on the ground that the assessee failed to submit proper explanation in support of the deposits and withdrawals in the Axis Bank Account, we find the learned CIT (A) sustained the addition made by the Assessing Officer. It is the submission of the learned Counsel for the assessee that the groups as a whole had already disclosed additional income of Rs.22.15 crores on account of any possible errors/omissions and therefore, the addition of Rs.4,47,840/- again will amount to double addition.

7. We find some force in the above arguments of the learned Counsel for the assessee. We find identical issue had come up before the Coordinate Bench of the Tribunal in the case of Shri Mohd.Naseeruddin (Supra), the brothers of the assessee. We find after considering the submission of the assessee as well

as the Revenue, the Tribunal vide ITA No.446/Hyd/2021 order dated 28.4.2022 has deleted the addition made by the Assessing Officer u/s 68 of the Act towards unexplained cash deposits by observing as under:

*“8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We observe that the AO has made addition in the hands of the assessee u/s 68 of the Act that there were cash deposits in the bank accounts of the assessee for want proper explanation/source of the deposits. From the assessment order, it has been observed that the confirmations from Shri Shanawaj, father of assessee were filed before the AO and the AO did not make any further action, which shows that the confirmations were accepted by the AO. The incomes declared in the return of incomes of the persons cited supra, shows that they had sufficient source of income to advance the money to the assessee. On perusal of the order of CIT(A), we find that the CIT(A) categorically observed that the group has offered income on account of real estate business of Rs.38.60 crores which includes an additional income of Rs.22.15 crores over and above the profit of Rs.16.45 crores estimated during search. This additional income was offered to cover any other discrepancies or shortcomings that may be discovered subsequently. Therefore, considering the prayer of the Id.AR of the assessee regarding telescoping that the disputed amount is sufficient to cover from the additional income offered as noted above. Therefore, we do not find any infirmity in the order of the CIT(A) in directing the AO to delete the additions made u/s 68 of Rs. 1,00,71,551/- towards unexplained cash deposits. Accordingly, the grounds raised by the revenue, on this issue are dismissed”*

8. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in the case of the brother of the assessee, therefore, respectfully following the same, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the addition. The ground raised by the assessee on the issue of addition u/s 68 is accordingly allowed.

8.1 So far as the other grounds challenging the validity of assessment u/s 153A are concerned, the learned Counsel for the assessee did not press those grounds for which the same are dismissed as not pressed.

9. In the result, appeal filed by the assessee is allowed.

**ITA Nos.143 to 146/Hyd/2021**

10. After hearing both the sides, we find the assessee has challenged the order of the learned CIT (A) in sustaining the addition of Rs. Rs.2,50,000 for the A.Y 2015-16, Rs.3,50,000 for the A.Y 2016-17, Rs.4,40,000/- for the A.Y 2017-18 and Rs.4,47,000 for the A.Y 2018-19 respectively made by the Assessing Officer u/s 68 of the Act. We find the facts of in the above cases are identical to the facts of the case decided in ITA No.142/Hyd/2021 for A.Y 2014-15 in the preceding paragraphs. We have already decided the issue and the grounds raised by the assessee have been allowed on the issue of addition u/s 68 of the I.T. Act and the grounds challenging the validity of assessment proceedings u/s 153A have been dismissed. Following similar reasonings, the addition made by the Assessing Officer and sustained by the learned CIT (A) for all the above A.Ys are deleted. The grounds raised by the assessee are partly allowed.

11. In the result, all the appeals filed by the assessee are partly allowed.

Order pronounced in the Open Court on 29<sup>th</sup> June, 2022.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 29<sup>th</sup> June, 2022.

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Sri Shaffiuddin Mohd. C/o P Murali & Co. C.A. 6-3-655/3, Somajiguda, Hyderabad 500082
2	Dy. CIT, Central Circle 2(2) Hyderabad
3	CIT (A)- 12,Hyderabad
4	Pr. CIT- Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*