IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before

Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

Sl. No	ITA No	Assessment Year	Appellant / Assessee	Respon-dent
1	1342/Hyd/2018	2008-09	Majeti Madhavi, Vijayawada. PAN No.ACEPM0659D	DCIT, Central Circle – 6, Hyderabad.
2	1490/Hyd/2018	2008-09		
3	675/Hyd/2017	2009-10		
4	897/Hyd/2017	2009-10		
5	898/Hyd/2017	2011-12		

Appellant by : Shri S. Ramarao.

Respondent by : Shri Rajendra Kumar, CIT-DR

Date of Hearing : 27.06.2022

Date of Pronouncement : 28.06.2022

O R D E R

Per Laliet Kumar, J.M.

These are the set of five appeals arose against the separate assessment orders passed by the Deputy Commissioner of Income Tax, Central Circle – 6, Hyderabad under section 143(3) r.w.s. 153C r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred as "the Act for the assessment years 2008-09, 2009-10 and 2011-12.

O R D E R

1. **First we will deal with ITA Nos.1490/Hyd/2018 and 897/Hyd/2017 for A.Ys 2008-09 and 2009-10 :**

These are the two connected appeals filed by the assessee with delay of 1140 days and 735 days, respectively, feeling aggrieved by the separate orders of ld. Principal Commissioner of Income Tax (Central), Hyderabad, (hereinafter referred as "ld.PCIT") passed on 24.03.2015 for A.Y. 2008-09 and dt.10.03.2015 for A.Y. 2009-10.

2. It was submitted by the ld.AR that the issue raised in both the appeals are common and therefore, both can be heard together for which the ld.DR has raised no objection.

2.1. The grounds raised by the assessee in ITA No.1490/Hyd/2018 reads as under :

> *"1. The learned Pr. CIT, Central Hyderabad erred in fact and law in initiating the proceeding U/s 263 of Income Tax Act and directing the officer to reexamine the issues in the Proceedings U/s 263 of the Income tax act which are not based on the seized material found during the course of search proceedings.*
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> *2. The proceedings U/s 263 of Income Tax Act are bad at law as they findings of the CIT in the proceedings are only a change on opinion with respect to already completed assessments U/s 143(3) of Income Tax Act and also U.s 143(3)rws 153C of the Income Tax Act."*

3. The grounds raised in ITA No.897/Hyd/2017 are also on similar lines.

4. The ld.AR had submitted that there is substantial delay in filing the appeals for a period of more than 1000 days and 735 days, respectively, and the same may kindly be condoned. The relevant

portion of petition requesting for condonation of delay filed by the assessee is reproduced hereinbelow for ready reference.

> *"The petitioner humbly submits that she is a Doctor by profession. She is running a hospital at Vijayawada. The order of CIT Central, Hyderabad passed U/s 263 of the Income Tax Act was received on 29-03-2015. Whereas, the appeal was filed in the office of the Asst. Registrar, ITAT Hyderabad on 06-07-2018 with a delay of 1140 days.*
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> *The petitioner states that her consultant was of the opinion that the order U/s 263 of the Income Tax Act was not appealable as it did not contain any demand as such. There was no demand raised in the Proceedings/ order passed by the Pr. CIT ,Central of the Income tax Act in his order U/s 263 of the Income tax Act for AY 2008-09 as it contained only directions to the AO to reconsider the issues mentioned in the said Order U/s 263 of the Income Tax Act after giving adequate opportunity.*
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> *Later upon filing of the appeal with the Hon'ble ITAT, Hyderabad against the Order passed by Depty. Commissioner of Income Tax ,Central Circle - 1(3) ,Hyderabad U/s 143(3) rws 263 rws 153C of the Income Tax Act for AY 2008-09, it was opined by senior consultant of the petitioner that the proceedings/order U/s263 of the Income Tax act was also appealable even without demand in the said order .*
>
> *Hence the petitioner preferred an appeal before the Hon'ble Tribunal contesting the order U/s 263 of the Income Tax Act passed by Prin.CIT (Central),Hyderabad. As the delay in filing the appeal is for the reasons beyond the control of the petitioner, the petitioner prays the Hon'ble ITAT to kindly condone the said delay."*

4.1 Per contra, the ld.DR has objected to the condonation of delay in filing the appeals and submitted that assessee had willingly filed the appeals with inordinate delay and therefore, the appeals are liable to be dismissed.

5. We have heard the rival contentions and perused the material on record. Admittedly, there is delay of 1140 days and 735 days in filing the appeals, respectively, before this Tribunal against the order passed by ld.PCIT u/s 263 of the Act. From the perusal of the reasons given by the assessee which are reproduced hereinabove, it is clear that the petitioner was allegedly advised by the consultant "that the order u/s 263 was not appealable and did not contain any demand

as such". Later upon, when the appeals were filed before this Tribunal by the assessee against the orders passed by the Assessing Officer and confirmed by ld.CIT(A) u/s 143(3) r.w.s 263 of the Act, another consultant of the assessee opined that proceedings u/s 263 of the Act were appealable even without demand in the said orders. Hence, the present appeals were filed by the assessee before us. In our opinion, the reasons given by the assessee in filing the appeals with inordinate delay are not at all tenable. In fact, the assessee before us happens to be an educated person and is well conversant about the consequences of legal proceedings and hence, the reason of the assessee in filing the appeals before us with delay on the pretext that she had been advised not to contest the appeals, is not at all acceptable. In view of the above, we do not find any valid reasons to condone the delay caused in preferring the appeals before us and accordingly, both these appeals are dismissed.

6. **In the result,** both the appeals of assessee in ITA Nos.1490/Hyd/2018 and ITA 897/Hyd/2017 are dismissed.

7. **Now we will take up ITA No.1342/Hyd/2018 for A.Y. 2008-09.**

7.1. This appeal is filed by the assessee aggrieved with the order of ld.CIT(A)-11, Hyderabad order dt.23.04.2018 for A.Y. 2008-09 u/s 143(3) r.w.s 263 of the Income Tax Act, 1961, on the following grounds :

> *"1. The Learned CIT(A)-11, Hyderabad erred in fact and law by making/confirm all the additions not considering the fact that all additions made in the assessment order U/s 143(3) rws 153C rws 263 of the Income tax act are not based on any seized material found during the course of search and also not considering various judicial pronouncements and decisions in favor of the 'a' submitted to him in this regard.*

2. The learned CIT(A)-11, Hyderabad had erred in fact and law in making/ confirming the additions ignoring the law that once assessment U/s 143(3) of the Income Tax is completed , the same cannot be reassessed U/s 153C of the Income Tax Act as change of opinion on already examined issues and facts unless change in facts or some additional evidence is unearthed.

3. The Learned CIT(A)-11, Hyderabad erred in fact and law by not considering / misinterpreting the orders passed by his predecessor CIT(A)-11,Hyderabd dated 10-08-2016 ITA no.0148 to 0150/DCIT-CC1(3) Hyd/CIT(A)-11/2013-14 for the same assessment year 2008-09 where in the hon, ble CIT had given completed relief by deleting the entire additions made by the AO in the Order made U/s 143(3)rws153C of the Income tax act dated 27-03-2013.

4. The Learned CIT(A)-11, Hyderabad had erred in fact and law as CIT(A) in his order by not addressed the grievance of the 'a'/not considered the grounds of appeal of the 'a'/not considered the submission of the 'a' on merits and instead narrowed down the scope of appeal as to whether the AO had acted as per the directions of the Pr.CIT or not (stated in Para 5 Appeal Order) and as such the Order is bad at law.

5. The learned CIT(A)-11, Hyderabad had erred in fact and law in stating that the 'a' had adopted Subregistrar value of land as cost of acquisition of land in calculation of Short term capital gains inspite of the fact that the 'a' had adopted cost of Rs.50,29,395/ - as per the payments made by him for the land recorded in the books of accounts of the 'a' which are audited, produced before the AO which was not disputed by the AO."

8. The facts of the case in brief are that the assessee filed her return of income u/s 139 of the Act on 30/09/2008 before the ITO, Ward-1(4), Vijayawada declaring total income at Rs. 18,50,800/ -. The Statement of Income reflects 'Income from House Property' at Rs.1,57,324/ -, 'Profits and gains of Business or Profession' at Rs.1,42,241, 'Income from Capital Gains' [LTCG at Rs.20,92,720 and STCG at Rs.(4,36,295/-)] at Rs. 16,56,425/- and 'Income from Other Sources' at Rs. 10,042/- and after reducing deductions under Chapter VI-A at Rs.1,15,230/ -, the total income was arrived at Rs.18,50,800/ -. This case was converted into scrutiny with the prior approval of CCIT-II, Hyderabad and income was determined u/s 143(3) of the Act vide order dated 29/12/2010 by the DCIT, Circle-1(1), Vijayawada at Rs. 19,72,003/- by making disallowance of 'Excess Depreciation' of Rs.

1,21,203/ -. The assessee, is the wife of Sri Majety Surendranath, who is the Director in Maheswari Finstock Private Limited and a close business associate of Maheswari Brothers group where search and seizure operations were conducted and at the residence of the assessee at house No. 11-25-15, K.T. Road, Vijayawada on 08/09/2010. During the search, cash of Rs.17,64,320/and gold jewellery of 1429 grams valued at Rs.25,29,330/- belonging to the assessee were seized. Consequently, notice u/s 153C dated 18/08/2011 was issued. In response, the assessee filed her return of income on 07/09/2011 admitting income of Rs.18,50,800/- (as was returned originally). The assessment u/s 143(3) r.w.s. 153C was completed on 27/03/2013 determining the total income at Rs.26,08,298/ -.

Subsequently, the Principal Commissioner of Income Tax(Central), Hyderabad having found the order u/s 143(3) r.w.s. 153C of the Act dated 27/03/2013 passed by the Assessing Officer to be erroneous and prejudicial to the interest of the revenue in his order u/s 263 of the Act dated 10/03/2015. Accordingly, he directed the Assessing Officer to re-do the assessment after examining the issues with regard to Capital Gains, Interest Income on FDRs and Other Interest and Depreciation. Accordingly, the Assessing Officer completed the assessment u/s 143(3) r.w.s. 263 of the Act on 31/03/2016 determining the total income at Rs.57,65,866/ -.

9. Aggrieved with the order of AO, assessee carried the matter before ld.CIT(A), who granted partial relief to the assessee.

9.1. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

10. Before us, with respect to the addition of capital gains u/s 50C of the Act, ld.AR has drawn our attention to Para 6 to 6.3 of assessment order which is to the following effect :

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> *"6. It is observed that the assessee purchased a house site on 30.08.2007 for a consideration of Rs. 15,00,000/- and sold for Rs. 17,00,000/- on 22.10.2007. As seen from the records, the market value of the flat was Rs.45,93,000/- as per the provisions of Section 50C of the IT Act, the STCG shall be Rs.30,93,000/- (Rs.45,93,000 -Rs.15,00,000). In this connection during the course of present assessment proceedings, the assessee was asked to explain as to why the above difference of STGC of Rs.30,93,000/- should not be added to the total income.*
>
> *6.1. The assessee submitted that she sold the land at Kondapalli for consideration of Rs.45,93,000/- on 26-10-2007, the same was purchased for Rs.50,29,395/- and the short term loss reported in return was Rs.4,36,295/ -. She further stated that the amount of Rs.45,93,000/- for the purchase of the property and stamp duty Rs.4,36,395 was paid the same was recorded in the books of accounts.*
>
> *6.2. The assessee's contention is not acceptable. As seen from the sale document No.6277/2007 the market value is Rs.45,93,000/ - Hence, the provisions of section 50C(1) attracts. The same is reproduced hereunder.*
>
> > *50C (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed (or assessable) by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed (or assessable) shall, for the purposes of section 48, be deemed to the full value of the consideration received or accruing as a result of such transfer.*
>
> *6.3. As per the above provisions where the consideration received is less than the market value, the market value is to be adopted. Further, the consideration assessee shown in ledger is*

> *Rs.45,93,000 for this transaction. The assessee shown purchase value as Rs.15 lakhs in document No.5311/2007. Hence the difference is added to the total income."*

10.1. Thereafter, Ld.AR has drawn our attention to 5.1 at Page 11 of the order of ld.CIT(A) which is to the following effect :

> *"5.1 The ground number 3 is against assessing Short Term Capital STCG at Rs.30,93,000/- by applying provisions of Section 50C.has purchased a plot of land for consideration of Rs. 15,00,000/for consideration of Rs.17,00,000/ -. The assessee has adopted as per SRO rate at Rs.45,93,000/- plus stamp duty paid of cost and Rs.45,93,000/- as sale price and calculated the STCG of Rs.4,36,395/ -. The assessee can not adopt market value as on date as cost but only has to take actual cost i.e ., Rs.15,00,000/- as cost of STCG. Section 50C is applicable for transaction of sale and value is to be adopted as consideration. The Assessing Officer taken correct value as per Section 50C for calculating the STCG. Of the assessee that they have paid Rs.45,93,000/- for purchase incorrect and the claim of assessee is not as per the document executed by them. But the stamp duty borne by the assessee at the time of purchase of Rs.4,36,395/- is to be taken into account as cost to the assessee. The STCG brought to tax by the Assessing Officer to that extent (of Rs.4,36,395/-) is to be reduced. The assessee gets partial relief on this account.*

11. The ld.AR for the assessee had submitted that infact the assessee had purchased the alleged land at Kondapalli for an amount of Rs.50,29,395/- which was duly been accounted for, in the books of accounts and subsequently, the assessee had sold the said property for an amount of Rs.45,93,000/- and the said amount has also been shown in the books of accounts. Assessee had also filed the letter from the seller to show the purchase value of the property at Rs.50,29,395/- as against the registered value of the same at Rs.15 lakhs. It was submitted that once the assessee shown both the values i.e., purchase value and sale value in the books of accounts, than the loss suffered by the assessee had been rightly claimed and

therefore, the Assessing Officer and ld.CIT(A) were not correct in law to invoke the provisions of section 50C of the Act.

12. On the other hand, ld.DR has relied upon the orders of lower authorities.

13. We have heard the rival submissions and perused the material on record. Admittedly, the value at which the property was purchased by the assessee on 30.08.2007 as per record was Rs.15 lakhs whereas though it was alleged by the assessee that the assessee has paid a sum of Rs.50,29,395/-, there is no evidence placed before us to that effect. The ld.AR for the assessee had fairly conceded that no such document was filed before lower authorities. Further, the said letter is not a part of Paper Book filed before us. Therefore, there is no force in the submission of ld.AR to accept the that she has purchased the property at Rs.50,29,395/-. Hence, the logical conclusion is that the assessee had purchased the property at Rs.15 lakhs on 30.08.2007.

13.1 Admittedly, the assessee had sold the property at Rs.17 lakhs on 22.10.2007. However, the market value of the property was Rs.45,93,000/- as per S.R.O. Value. Thus, in our view, Assessing Officer was right in making the addition of Rs.30,93,000/- (Rs.45,93,000/- - Rs.15,00,000/-) to the income of the assessee as per the provisions of section 50C of the Act. We do not find any error in the order passed by the ld.CIT(A) as the ld.CIT(A) had taken care of the difference in the SRO value and the sale value is mentioned in the sale deed. However, the ld.CIT(A) has rightly given the deduction of amount spent on registration of property at Rs.4,36,395/-. In light

of the above, we do not find any merit in the appeal of the assessee. Accordingly, the appeal of the assessee is dismissed.

14. **In the result**, the appeal of assessee in ITA No.1342/Hyd/2018 for A.Y. 2008-09 is dismissed.

15. **Now we take up ITA No.675/Hyd/2017 for A.Y. 2009-10.**

15.1. With respect this appeal, ld.AR for the assessee submitted that due to smallness of the amount, assessee is not pressing the grounds of appeal. He has also endorsed the same on the appeal memo as "ground not pressed".

In view of the above, the grounds of appeal in ITA No.675/Hyd/2017 are not pressed and accordingly, the appeal filed by the assessee is dismissed as not pressed.

16. **In the result**, the appeal of assessee in ITA No.675/Hyd/2017 for A.Y. 2009-10 is dismissed.

17. **Lastly, we will deal with the Appeal No.ITA 898/Hyd/2017 for A.Y. 2011-12.**

17.1. This appeal is filed by the assessee aggrieved with the common order of ld.CIT(A)-11, Hyderabad order dt.10.08.2016 for A.Y. 2008-09 u/s 143(3) of the Income Tax Act, 1961, on the following grounds :

"1. The learned CIT -Appeals erred in fact and law by confirming an addition of Rs.5,00,000/- of cash seized attributing the cash of Rs.5,00,000/- of the total cash seized amounting to Rs.17,00,000/- to the 'a' by not considering the evidence of cash withdrawal from 'a's bank Bank of Maharastra amounting to Rs.25,00,000/- withdrawn from her Bank of Maharastra Account just week days before the search and seizure operations.

2. The addition is erroneous and bad in fact and law as bifurcation of cash seized is only on estimation and not proper.

3. The learned CIT -appeals erred in law by making the addition of Rs.5,00,000/- merely basing on the statement recorded U/s132(4) of the Income Tax Act on the day of search and not basing on any other evidence."

17.2. The appeal filed by the assessee is barred by limitation of 153 days. Assessee has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

18. The brief facts of the case are that assessee is an individual who electronically filed her return of income for A.Y 2011-12 on 30.09.2011 declaring income of Rs.16,01,940/-. The same is processed u/s 143(1) of the Act on 22.12.2011. Notice u/s 143(2) dt.06.08.2012 along with questionnaire was issued to the assessee calling for various details. In response to these notices, assessee submitted the details called for. During the course of search operation conducted at the residence of assessee cash of Rs.17,64,320 and gold jewellery of 1429 grams valued at Rs.25,29,330/- etc were found and out of them cash was seized as assessee failed to explain the sources of the same. On enquiry, assessee replied in her statement u/s 132 of the Act that the cash was the accumulated savings of the family and not entered through the cash book and hence, the same was assessed

as "unexplained cash" in the hands of the assessee and accordingly completed the assessment by making addition of Rs.17,64,320/-.

19. Aggrieved with the order of AO, assessee carried the matter before ld.CIT(A) who confirmed the addition to an extent of Rs.5 lakhs in a substantive capacity by giving relief of Rs.12,64,320/-.

20. Feeling aggrieved with the order of ld.CIT(A), assessee preferred appeal before us.

21. Before us, ld.AR for the assessee has brought our attention to Para 3 of the order passed by Assessing Officer wherein it was held as under :

> *"3. During the search'at the residential premises of the assessee an amount of Rs.17,64,320/- was found and out of that Rs. 17 lakhs was seized as assessee failed to explain the sources for the same. When she was asked to explain the sources for the same, the assessee vide her reply to question no.8 of her statement u/s.132(4) on 8.9.2010, has stated that this cash is the accumulated savings of the family and not entered through the cash book. In other words, the assessee has admitted the cash as unaccounted. This amount is assessed substantively in the hands of assessee's husband, Sri Majeti Surednranath. However, since the assessee has told that the cash is accumulated savings of the family, the same is assessed as unexplained cash in the hands of the assessee protectively for the AY 2011-12."*

22. On appeal before ld.CIT(A) ld.AR submitted that assessee has furnished the document showing the withdrawal of amount explaining the transfer of the amount of Rs.25 lakhs to her bank account from the account of her son namely, Mr. Sriharsha. In this regard, ld.AR has drawn our attention to para 5.2 and 5.3 of the order of ld.CIT(A) which reads as under :

"*5.2. In A.Y. 2011-12, a sum of Rs.17,64,320/- found in the residence of the assessee was assessed as unexplained cash found. The assessee explained the cash as accumulated savings of the family not entered in the cash book. It is explained in the written submissions made on 05.07.2016 that cash amounting to Rs.25 lakhs was withdrawn from her bank account (No.20065206156) with Bank of Maharashtra, K.T.Road Branch, Vijayawada on 31.08.2010 which represented money received by cheque no. 947810 for the same amount from the bank account of her son Sri M.Sriharsha in the same branch on 31.08.2010 itself. She explained that her son received an amount of Rs.23,64,598/- from HDFC Standard Life Insurance Co. Ltd. on 27.08.2010 by cheque. Since premium for this policy was being paid by the assessee the cheque for Rs.23,64,598/- received by the son was deposited into his account on 31.08.2010 and later Rs.25 lakhs was transferred to her account on the same day. It is claimed that no opportunity was provided during the search proceedings to update the books of accounts. However, later in the post-search proceedings the cash book was updated and produced before the "Investigating Officer". Since the Assessing Officer did not notice this aspect the Ld. A.R. submits that the addition is based merely on a statement recorded u/s.132(4) with no corroborative evidence and therefore, bad in law. Ld. A.R. placed reliance on the case of*

(i) Kailashben Mangarlal Chokshi Vs. CIT (2008) 174 TAxmann 466 (Guj).

(ii) Arun Kumar Bhansilal Vs. DCIT (2006) 10 SOT 46(Bang) (URO)

(iii) Shree Chand Soni v. DCIT (2006) 101 TTJ (JD) 1028

5.2.1. It is the case of the assessee therefore, that the cash found at the residence cannot be seen as unexplained cash merely because it was not entered in the cash book as on the date of search in view of the availability of cash that is explained. While this may be acceptable as a general proposition, in a situation where the cash book is not updated the proposition that the cash found is the same cash that was sought to be now explained in hindsight cannot be taken as axiomatic. The acceptability of the explanation will have to be assessed with reference to the probabilities of the case. It is the assessee's explanation that a sum of Rs.23.65 lakhs was received into the son's account on 27.08.2010 which was rounded off to Rs.25 lakhs and transferred to his mother's account by cheque on 31.08.2010. This was in turn withdrawn as cash by the assessee and kept at the residence. There is no explanation as to why an amount of Rs.25 lakhs was sought to be kept on hand. It is not clear as to why cash drawn on 31.08.2010 remained un-entered in the cash book even as on 08.09.2010 when the assessee maintains regular books of account and has the assistance of accountant / staff / tax professional. What remains unsatisfactorily answered is the explanation that Rs.23.65 lakhs is transferred to the account of the assessee before it is withdrawn in cash to be kept at home when Sri M.Sriharsha (son) could have just as well withdrawn the cash to be kept at home. The routing through the bank

account of the assessee before it is converted into cash is not a normal family transaction.

5.2.2 The case law relied upon by the assessee referred to additions resting merely on an admission in the statement recorded u/s.132(4). However, in the present case the cash book is admittedly updated after the search as a result of which the claim of the assessee had to be considered in the light of the probabilities of the explanation offered. As noticed at para 5.2.1 above the correlation between the cash received at an earlier point of time with the cash found on the date of search cannot be definitively established in the manner urged by the Ld. A.R. At the same time the possibility of residual amounts from the cash withdrawn from the bank in the week prior to the search cannot be ruled out. Under the circumstances it would be reasonable to estimate a sum of Rs.7,64,320/- as that part of the cash found on the date of search which can be attributed to the accumulations or earlier bank withdrawals remaining on the date of search. It would therefore, leave a sum of Rs.10,00,000/- liable to be assessed as unexplained cash on a date of search.

5.2.3 It is the Assessing Officer's case that the cash found at the residence was substantively assessed in the hands of the assessee's husband Sri M. Surendranath. This would not be entirely correct because the assessee is an independent professional in her own right with her own sources of income. It would, therefore, not be correct to attribute the entire cash liable to be treated as unexplained as assessable in the hands of Sri M. Surendranath. Under the circumstances, having due regard to the probabilities of the case, it would be reasonable to retain an addition of Rs.5 lakhs in the hands of the assessee. To conclude the addition is confirmed to an extent of Rs.5 lakhs in a substantive capacity and the assessee gets a relief of Rs,12,64,320/ -."

23. It was submitted by the ld.AR that out of Rs.25 lakhs, the ld.CIT(A) has granted partial relief of Rs.12,64,320/- and had wrongly confirmed Rs.5 lakhs to the assessee and Rs.5 lakhs to her husband in appeal No.896/Hyd/2017.

23.1. It was submitted by the ld.AR that assessee has furnished the proof in the form of bank pass books of herself as well as her son to the satisfaction of ld.CIT(A) and the ld.CIT(A) instead of granting the other relief to the assessee had only restricted it to Rs.5 lakhs and granted a substantial relief of Rs.12,64,320/-. Ld.AR submitted that assessee was able to explain

Rs.25 lakhs as savings from her son and therefore, the assessee is entitled to further relief of Rs. 5 lakhs.

24. On the other hand, the ld.DR has submitted that though the Revenue is not in appeal but the ld.CIT(A) while deciding the matter has not called for any remand report from the Assessing Officer and has decided the issue based on the documents furnished by the assessee. Further, it was submitted that the case of the assessee was contrary to the facts, as canvassed by the assessee in the assessment proceedings and ld.CIT(A) .

25. We have heard the rival submissions and perused the material on record. From the perusal of Paras 5.2 to 5.2.3. of ld.CIT(A)'s order, it is clear that the assessee changed her stand before the ld.CIT(A) vis a vis her stand during the course of assessment proceedings. During the course of assessment proceedings, the version of assessee was that the cash found during the course of survey, was out of accumulated savings of the family and assessee. However, in the appellate proceedings, the version of the assessee was changed and instead of accumulated cash saving, the assessee took a stand that "the cash was withdrawn by her on 31.08.2010 after she received a cheque from her son on 31.08.2010".

26. So far as the contention of learned counsel for the assessee that the cash found during the course of search was partly out of the cash withdrawn on 31.08.2010 is concerned, the same cannot be accepted in the absence of any corroborative evidence especially when the assessee had stated before the Assessing Officer that the cash so found was out of accumulated savings of self and family and not out of the cash withdrawn from the bank account. It is within the exclusive knowledge of the assessee regarding state of affairs. In the instant case, the assessee failed to demonstrate with any cogent evidence regarding the availability of cash found during the course of search. We find that ld.CIT(A) while deciding the issue has elaborately discussed the issue and has given substantial relief

which under the facts and circumstances of the case is justified and does not call for any interference. Accordingly, we uphold the order of ld.CIT(A) and the ground raised by the assessee is dismissed. Accordingly, the appeal of the assessee is dismissed.

27. **In the result,** the appeal of assessee in ITA No.898/Hyd/2017 for A.Y. 2011-12 is dismissed.

28. To sum up, all the appeals of assessee are dismissed. A copy of this common order be placed in respective case files.

Order pronounced in the Open Court on 28th June, 2022.

Sd/-	**Sd/-**
(RAMA KANTA PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 28th June, 2022.
TYNM/sps

Copy to:

S.No	Addresses
1	Majeti Madhavi, 11-25-15, K.T. Road, Kothapet, Vijayawada – 520001.
2	The Deputy Commissioner of Income Tax, Central Circle – 6, Hyderabad.
3	The CIT(Appeals) – 11, Hyderabad.
4	The Principal Commissioner of Income Tax (Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order