

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos. 295 & 296/Hyd/2019
(निर्धारण वर्ष / Assessment Year: 2014-15 & 2015-16)

Asst.Commissioner of Income Tax, Circle-1, Anantapur	Vs.	M/s.Saveera Hospital Private Limited, Anantapur [PAN No. AARCS6341L]
(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)

सी.ओ./ C.O. Nos. 12 & 13/HYD/2019
(Arising out of ITA Nos. 295 & 296/Hyd/2019)
निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16

M/s.Saveera Hospital Private Limited, Anantapur [PAN No. AARCS6341L]	Vs	Asst.Commissioner of Income Tax, Circle-1, Anantapur
(क्रॉस ऑब्जेक्टर / Cross-Objector)		(प्रत्यर्थी / Respondent)

निर्धारिती द्वारा/Assessee by: Shri D.V.Anjaneyulu, AR
राजस्व द्वारा/Revenue by: Shri Rohit Mujumdar, DR

सुनवाई की तारीख/Date of hearing: 01/06/2022
घोषणा की तारीख/Pronouncement on: 18/07/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Challenging the order(s) passed by the CIT(Appeals)-Kurnool, (“Ld.CIT(A)”) in the case of M/s. Saveera Hospital Private Limited (“the assessee”) for the AYs.2014-15 & 2015-16, Revenue preferred these appeals and the assessee preferred cross-objections. Facts involved in these assessment years are similar. So also the grounds of appeal. We, therefore, deem it just and convenient to dispose-of these appeals and cross-objections by way of this common order.

2. Brief facts of the case are that the assessee is a private Ltd company incorporated by Dr. Y.Venkata Rami Reddy and his relatives to construct a hospital by raising resources from their own sources and also with the help of financial institutions. Funds were raised to the tune of Rs.2,86,99,000/- by way of share capital at face value and Rs.67 Lacs by way of unsecured loans from kith and kin. For the assessment years 2014-15 and 2015-16 returns of income were filed on 26/11/2014 and 29/09/2015 declaring a loss of Rs.8, 546/- and the income of Rs.47,250/- respectively.

3. A survey under section 133A of the Income Tax Act, 1961 (for short “the Act”) was conducted on 16/12/2015 and it was found that the assessee did not offer to tax an amount of Rs.16,89,864/- and Rs.17,50,000/- in the original returns. In response to the notice issued under section 148 of the Act, assessee filed the returns of income on 12/11/2016 and 07/08/2017 admitting an income of Rs.16,89,864/- and Rs.17,97,250/- that escaped assessment and claim refund of Rs.1,21,540/- for the assessment year 2014-15. On verification, the learned Assessing

Officer found that the assessee had received an amount of Rs.2,86,99,000/- towards the share capital during the assessment year 2014-15 and Rs.4,75,10,000/- for the assessment year 2015-16. Learned Assessing Officer further found short-term borrowings in the trade payables to the tune of Rs.1,43,12,000/- for the assessment year 2014-15 and trade payables of Rs. 42,87,807/- for the assessment year 2015-16.

4. On verification of the material that was produced before him by the assessee in respect of the share applications and also the short-term borrowings and trade payables, learned Assessing Officer did not believe the version of the assessee. According to the learned Assessing Officer the share applicants in respect of whom the details were filed did not have the creditworthiness in respect of the investment. Further according to the learned Assessing Officer in spite of repeated demands the assessee failed to produce the books of account to prove that the necessary entries were passed on the dates stated by the assessee and the genuineness of the transaction was not proved.

5. Learned Assessing Officer, therefore, vide orders passed under section 143(3) of the Act made an addition of Rs.2,86,99,000/- for the assessment year 2014-15 and Rs.4,75,10,000/- for the assessment year 2015-16 respectively, which credits were found in the books of accounts as share capital of the assessee by treating the same as un-explained credits, under section 68 of the Act. So also he made an addition of Rs. 1,33,12,000/- and Rs.40,29,502/- for the assessment years 2014-15 and 2015-16 respectively towards short-term borrowings and trade payables.

6. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeals before the Ld. CIT(A) and filed certain documents, like statement showing list of shareholders with that the assessee and the amounts invested with the source thereon for the relevant assessment years with affidavits duly notarised, confirmation letters, certificate from the Revenue Department and the Income tax returns wherever available, short-term borrowings and trade payables with supporting documents like ledger copies, bank statements evidencing received in the subsequent payment along with TDS details, invoices wherever available etc., as additional evidence. Ld. CIT(A) forwarded such documents to the learned Assessing Officer for his comments/objections. Learned Assessing Officer submitted his comments/objections on 14/08/2018 as to the admissibility of the documents and also the report dt.29/10/2018 after verification of the details relating to the documents in the light of the identity and the creditworthiness of the parties and the genuineness of the transactions.

7. After considering the material before him in the light of the submissions made on behalf of the assessee, in respect of trade payables, Ld. CIT(A) recorded that in order to invoke the provisions of section 68 of the Act, there should be a credit either in the form of cash or bank in the books of accounts and since in these trade payables, there is no credit either in the form of cash or bank and they represent labour charges payable in which the civil works, section 68 of the Act is not at all applicable. He further went on to record that even otherwise these trade payables are arising out of labour work executed in the relevant year and outstanding as on 31/03/2014 and that the Ld. AR submitted that the 11

labour contractors appearing as on 31/03/2014 work labour into 3 head contractors and were paid in the subsequent years or bank channels. Ld. CIT(A) believed the submission that the payments will be made to the Mukadam/headman who will distribute to the other work contractors and since the plan of these three parties, to whom the payments were made prove their identity, the same has to be accepted. On this score Ld. CIT(A) directed the deletion of Rs.76,12,000/- for the assessment year 2014-15.

8. In respect of the assessment year 2015-16 the addition under trade payables was Rs.40, 29, 502/-. According to the Ld. CIT(A), Ld. AR submitted that all these trade payables were discharged during the subsequent years through banking channels as evidenced by the Ledger copies and bills/tax invoices showing complete address and the tax registration numbers, but the learned Assessing Officer without doubting this evidences had questioned the repayment through Directors in some cases. Ld. CIT(A) accepted the contention of the Ld. AR that the difference is only because learned Assessing Officer is looking at the trade payables alone, whereas some corridors are grouped under credit hours for capital goods and corridors for medical equipment under other long-term liabilities and submitted the ledger summary of the same, wherein the said corridors were duly reflected. On this score, Ld. CIT(A) directed the deletion of Rs.40,29,502/- made under section 68 of the Act.

9. Aggrieved by such deletion of the additions, the Revenue is before us in these appeals contending that the primary onus to prove the shareholders creditworthiness lies on the assessee in view of the judgement of the Hon'ble Apex Court in the case of CIT Vs. Lovely Exports Private Limited (P) Ltd., 299 ITR 268 (Del) and it is only the assessee that

has to offer the explanation in support of the identity and creditworthiness of the parties and the genuineness of transaction and then only the burden shifts to the learned Assessing Officer. According to the Ld. DR the assessee company has not to discharge the burden of proving capacity of the creditors to advance the money and most of the share application money was received in cash from the parties who are not assessed to tax and who are said to be the farmers whose agricultural income does not support the contention of investment in the assessee company. It is further submitted by him that the learned Assessing Officer was justified in making the addition towards the unproved trade payables and also sundry creditors.

10. Per contra, it is the submission on behalf of the assessee that all the share applicants had sufficient means to invest in the assessee company and as a matter of fact, the assessing officer in his remand report admitted the identity of the parties. Ld. AR submitted that all the share applicants are deriving agricultural income which fact is well brought out with supporting documents during the remand proceedings and the Ld. CIT(A) rightly accepted the same. Both the counsel made extensive references to the contents of the remand reports in support of their arguments.

11. We have gone through the record in the light of the submissions made on either side. It could be seen from the assessment orders passed under section 143(3) read with section 147 of the Act, that during the assessment proceedings for the assessment year 2014-15, which are more or less identical to the assessment year 2015-16, that the assessee submitted the details of the persons who had contributed towards the share capital. Learned Assessing Officer further found that Learned Assessing Officer found that all the amounts towards share capital were

paid in cash except an amount of Rs.13.5 Lacs and, therefore, the assessee was called upon to submit the share application forms. Assessee furnished the share applications in respect of only 58,690 shares as against 28,69,900 shares which were issued in total. The assessee submitted certain forms of renunciation of rights of shares but such forms were not signed by the concerned persons. Learned Assessing Officer further called for information in respect of the short-term borrowings to the tune of Rs.67 Lacs and trade payables to the tune of Rs.76,12,052/-. Learned Assessing Officer recorded that though required on 17/11/2017, to furnish the full evidence like share application, identity of the shareholders and their creditworthiness establishing the details as to the sources of the shareholders, assessee failed to produce the same. Since the assessee failed to produce the signed share applications and most of the share capital was received in cash, Assessing Officer required the assessee to produce the share applicants along with the details. Finally certain share application forms were furnished on 19/12/2017, but on verification learned Assessing Officer entertained a doubt in respect of such application forms. The reasons are that the proforma of share application found during the course of survey and submitted at the time of assessment on earlier occasion were different from the share application forms submitted by the assessee at a later date; that the address mentioned in share application forms submitted on two occasions are different; and that though the assessee furnished the share application forms of the family members who are available in India, the assessee failed to submit the share application form of one person who was not present in India at that time. For these reasons the learned Assessing Officer opined that the share

application forms submitted were prepared at a latter point of time to suit the convenience of the assessee.

12. Learned Assessing Officer further found that as per the instructions issued in the letter of offer, it was clearly stated that the amount towards the share application was to be paid by way of cheque or demand draft, but actually a sum of Rs.13.5 Lacs alone was by way of cheque as per the bank extracts of the company and rest of the amounts were received in cash, contrary to the instructions. So also, it was found that most of the amounts received in cash were not even credited to the bank account nor any evidence was produced to prove that the amounts were received on the dates which were mentioned on the application forms. It is the specific observation of the learned Assessing Officer that the assessee did not submit any books of account to prove that necessary entries were passed on respective dates.

13. Turning to the creditworthiness of the share applicants, learned Assessing Officer observed that the assessee produced the details of only seven persons and in respect of others no details nor evidences were furnished. Learned Assessing Officer dealt with the details in respect of such seven persons at length.

14. Turning to the aspect of creditworthiness of some of the share applicants whose details were furnished before the learned Assessing Officer by the assessee, learned Assessing Officer found in respect of one S. Veera Kishore Reddy that during the assessment years 2012-13 to 2015-16 for all the four years the total income of the assessee was Rs.22,52,163/- including the agricultural income of Rs.4.15 Lacs whereas

during the assessment years 2014-15 and 2015-16 the assessee invested a total amount of Rs.99,39,500/-. There is no explanation as to where from the additional monies have come. Further the Balance Sheet shows that the earnings of the assessee during those years were spent entirely on various assets enumerated in the Balance Sheet. Though capital of Rs.17.9 Lacs and marriage gifts of Rs.18.10 Lacs was shown, there is no supporting evidence. Further it was noticed that as per the Balance Sheet of Veera Kishore Reddy, total investments in the assessee company were shown to be to the tune of Rs.79,89,500/- whereas the assessee company had shown its investment as Rs.99,39,500/-, leaving some discrepancy. Unsecured loans of Rs.49,05,000/- were shown in his books but no details were furnished. For these reasons learned Assessing Officer held that there is no explained source for the investment by Veera Kishore Reddy, the claimed sources were not substantiated and the amount of investment as per the Balance Sheet is not tallying with the amount of investment declared by the assessee.

15. In respect of one S. Rama Krishna Reddy, the investment declared by the assessee during the assessment years 2014-15 and 2015-16 was Rs.1,06,50, 000/- whereas his total income during the assessment years 2011-12 to 2015-16 was Rs.36,75,595/- including the agricultural income of Rs.23,74,200/-. Balance Sheet for the assessment year 2011-12 alone is filed. No sources for such huge investment to the tune of more than Rs.1 crore is spent out by this person and there are no explainable sources revealed by any bank account.

16. As per the accounts of the assessee, one Y. Surendra Kumar Reddy invested a sum of Rs.56.6 Lacs whereas the returns of income for the

assessment years 2014-15 and 2015-16 reveal his total income as Rs.16,55,715/- as against the investment of Rs.56.6 Lacs. Neither the bank accounts nor the Balance Sheet was submitted and absolutely there is no explanation as to his source of income to invest in the assessee company.

17. One S. Manasa Reddy invested a sum of Rs.29 Lacs whereas her returns of income for the assessment years 2014-15 and 2015-16 reveals a total income of Rs.10,34,872/-. Though according to the Balance Sheet file by this person, the source for investment was unsecured loans and marriage gifts etc., no bank account nor any evidence was filed before the learned Assessing Officer.

18. According to the assessee company, Y. Preethi Reddy invested an amount of Rs.77,09,500/- out of which Rs. 50.50 Lacs was paid in cheque and the balance in cash, but according to the returns of income filed for the assessment years 2014-15 and 2015-16, her total income was only Rs.11,82, 702/-. Though she had explained the source for the balance of investment to the tune of Rs.22,09,500/- as unsecured loans, learned Assessing Officer did not believe the same because the details of the unsecured creditor were not filed.

19. According to the returns of income of S. Asha filed for the assessment years 2010-11 to 2014-15, her total income was Rs.22,98,499/- including the agricultural income of Rs.11,31,200/-, which is more than the investment made in the assessee company to the tune of Rs.21 Lacs but according to the learned Assessing Officer, since no Balance Sheet or bank accounts, the investment cannot be accepted.

20. Lastly, while dealing with the investment made by one Dr Venkata Rami Reddy, learned Assessing Officer found that between the assessment years 2012-13 and 2015-16 the total earnings of this person were to the tune of Rs.58,55,331/- as against which the claim of the assessee is that he invested a sum of Rs.99,39,500/-.

21. Learned Assessing Officer specifically noted that the Chartered Accountant of the assessee company is the same person who filed the returns of income of shareholders and that too in many cases after survey action, and therefore, it would be reasonable to draw an inference that the returns of income were filed only as an afterthought to claim the share applicants or regular assesseees. According to the learned Assessing Officer having regard to the standard of living of the share applicants, their earnings would be enough to support their living, without leaving much in their hands for investment. Further the learned Assessing Officer noted that the assessee did not submit valid shared applications duly signed by the persons claimed to have invested money.

22. So also, learned Assessing Officer recorded that for the assessment year 2015-16 also the assessee had submitted certain confirmations from the persons to whom amounts were shown as payable under the head trade payables, but on verification of the same, he found that the said confirmations were not in order, as such confirmations do not have any sales, PAN details or proper signature and, therefore, the same were not proper. Though the assessee filed subsequently a fresh set of confirmations, on verification of the same, it was found that the seals put on the confirmations were similar to the seals used by the assessee company and the two creditors located in Anantapur whose signatures

were not tallying. On this score, learned Assessing Officer observed that after accepting the confirmation from Venkata Rami Reddy and Vidya Sagar each for Rs.5 Lacs, the short-term borrowings to be added to the income of the assessee would be Rs. 57 Lacs. On the ground that no evidence is produced in respect of the trade payables, learned Assessing Officer brought to tax the entire sum of Rs.76,12,000/-.

23. As stated above, before the Ld. CIT(A), assessee produced additional evidence in the form of the statement showing the list of shareholders with addresses and the amounts invested with source thereon for the assessment years 2014-15 and 2015-16 with affidavits duly notarised, confirmation letters, certificate from Revenue departments and income tax returns for some years in respect of the share application money. In support of the short-term borrowings and trade payables, the assessee produced the ledger copies, bank statements evidencing receipt and subsequent repayment along with TDS details, invoices for certain transactions. Ld. CIT(A) send the same to the learned Assessing Officer calling for comments/objections.

24. It could be seen from the record that the learned Assessing Officer submitted his comments by letter dated 14/08/2018. Learned Assessing Officer reiterated his stand as is delineated in the assessment order. Since the assessee and also the Revenue are basing their contentions on the remand reports of the Learned Assessing Officer, we deem it just and necessary to refer to the contents of the remand report in detail.

25. In the first remand report, Learned Assessing Officer more or less reiterated his stand taken in the assessment order. However, in detail he

further stated that inasmuch as the most of the share application money was paid in cash, no cash register was ever produced and there are so many discrepancies in the share application forms produced by the assessee, learned Assessing Officer thought it fit to examine the shareholders. Such persons were never produced before the learned Assessing Officer nor were the discrepancies in the share application forms, as pointed out the learned Assessing Officer deleted.

26. Learned Assessing Officer further stated in his remand report that at no point of time the assessee expressed his inability to produce the share applicants nor did they produce any evidence, in respect of which the learned Assessing Officer could have thought it fit to issue notice under section 131 of the Act for their examination. Learned Assessing Officer further submitted that the share application forms produced on 19/12/2017 did not inspire confidence in his mind to accept the same as genuine for the reasons that the proforma of the share application forms, and the address mentioned therein are different from those dated 10/10/2017, and further that the share application forms relating to the family members who were available in India alone was submitted but not the share application form of one Sh. Mohan Bhumi Reddy, who is not in India at the time was not produced, giving rise to doubt that the share application forms were prepared at a later point of time.

27. Learned Assessing Officer further recorded that during the entire course of assessment proceedings or survey proceedings at no point of time did the assessee produce the books of accounts to enable him to verify the genuineness and accordingly the amounts received and expenditure incurred. He therefore submits that there was no occasion for

him to issue summons under section 131 of the Act or to call for information under section 133(6) of the Act from any person on presumption that the said person is a shareholder. Further according to the learned Assessing Officer there is a discrepancy in the letters dated 10/10/2017 and 19/12/2017 in respect of the number of shares proposed to be issued on various dates to various shareholders. Learned Assessing Officer has given the details of such discrepancies in his remand report. He specifically noted that the addresses given in the applications dated 10/10/2017 and 19/12/2017 are also different. He further stated that the thumb impressions of certain shareholders on the share application forms were not attested properly. He pointed out that Smt. N. Saraswati ethics thumb impression on the share application form but are signed on the affidavit. Learned Assessing Officer insisted that there is no reason for the assessee not to produce the share applicants.

28. Further, learned Assessing Officer pointed out another factor in support of his contention that the share applications were not received by the assessee at the time they are claimed to have been received. He had given a list of thirteen persons who are not share applicants as on 31/03/2013, but all such persons were allotted shares which were offered by the Board of Directors to existing shareholders on rights basis. On this learned Assessing Officer contends that inasmuch as the shares on rights basis could be offered only to existing shareholders, in proportion to the quantum of shares held by them and is only if any such shareholder renounces such offer, then the same could be offered to the other shareholders. However, in this case it is otherwise. On this learned Assessing Officer opined that if the shares are to be issued to new

applicants, the assessee is required to issue draft prospectus and different forms of obligations as per Companies Act, as the amount received from shareholders was not actually received from such persons and therefore the assessee try to create the evidence of notice/letter of offer to show certain persons had applied for share - which evidence was not available at the time of survey, but created subsequently to substantiate the allotment of shares.

29. Basing on this, learned Assessing Officer entertained a doubt as to whether really the share applicants paid the amounts stated to have been paid by them on the dates mentioned against their names. Further according to the learned Assessing Officer he had a doubt as to whether the share applications were received by the assessee at the time they claim to have been received.

30. In respect of the creditworthiness of the share applicants, in the remand report learned Assessing Officer referred to the names of the shareholders and while taking into consideration the average income such people could have derived from the agriculture and also the total investment made in the assessee company, calculated that some of such persons required a period between 5 years to 32 years to save the amount for such investment. Since such amount has to be saved in cash from year to year for such length of time, because no supporting bank statements are produced, learned Assessing Officer considered it to be unlikely because in the meantime such shareholders have to incur expenditure towards social, religious, family and personal obligation during that period. Learned Assessing Officer also doubted the creditworthiness of these people because even the period of savings to meet such investment should

assure constant agricultural income without failure of crops for such sustained period.

31. Another factor considered by the learned Assessing Officer is that most of the amounts are paid in cash and even the persons like the Chairman of the company who was a former member of the Union Public Service Commission and others who held various posts in State Government pleaded that they do not know anything about the prohibition of cash payments or cash receipts beyond a particular level. Added to this, the suspicion of the learned Assessing Officer is strengthened by the fact that in spite of repeated demands the assessee failed to produce the cash book or any other books of account either at the time of survey or at the time of assessment or at any time during the 1st appellate proceedings to verify the claim as to when the amount of cash was received by the assessee, in order to correlate the same with the period of expenditure.

32. In the remand report, learned Assessing Officer established that the identity and creditworthiness of the share applicants is highly doubtful because the cash was accepted towards share application money, shares were issued to fresh shareholders on rights basis, shares were issued without proper share application form, the issue of shares on rights basis was not intimated to all the shareholders as required under law and the amount received towards share application, though is required to be kept in escrow account till the shares are allotted, but not kept in such account.

33. Since the learned Assessing Officer stated in his first remand report that he was directed only to offer comments/objections without any

direction for verification from third parties, he did not verify the additional evidence, but only offered the comments/objections on the evidences, Ld. CIT(A) again called the objections/comments of the learned Assessing Officer on the submissions made by the assessee as well as the additional evidences. Learned Assessing Officer again submitted his second remand report on 29/10/2018. For the reasons recorded above, we deem it just and necessary to refer to the contents of the second remand report also in detail.

34. In the remand report dated 29/10/2018, learned Assessing Officer reiterated his earlier contention that at no point of time the assessee produced the books of accounts nor the shareholders, and at the same time the assessee never pleaded any inability to produce the shareholders. Further the case of the assessee has been that the shareholders are related persons and it is more of a family concern. Learned Assessing Officer recorded the fact that during the course of assessment the Department has tried to identify the real persons who have made the investment, but the assessee has been trying camouflage the investment made by some persons by showing the investments are made by some other persons and thereby screening the real investors, and in the circumstances, accepting the version of the assessee that nonavailability of share applications and receipt of money in cash is because of ignorance of law will be like assisting the assessee in money laundering.

35. Learned Assessing Officer, however, stated that the assessee established the identity of the shareholders, but in respect of their creditworthiness there is a grave doubt. Learned Assessing Officer, in the remand proceedings, issued summons and he had examined

creditworthiness of the persons who appeared in response to the summons. In respect of one SV Kishore Reddy and one Smt. S Manasa Reddy, who are wife and husband, learned Assessing Officer recorded that these two persons claimed marriage gifts to the tune of Rs.18 Lacs and Rs.16 Lacs respectively as on 01/04/2013 whereas the marriage took place in May 2013 and, therefore, the same cannot be believed. Further the drawings of Kishore Reddy are more than the amount spent by him on his trip to Africa. Further in the return of income for the assessment year 2015-16, he had shown loans to the tune of Rs.53 Lacs but stated that he had no details of the persons from whom the loans were taken to the tune of Rs.19.12 Lacs he was also unable to give the activities of the firms from where he secured loan of Rs. 3 Lacs.

36. In respect of Manasa Reddy, learned Assessing Officer recorded that though she has been declaring the income from dress designing boutique but no details relating to such business could be produced. Further on verification of the bank statement between 01/01/2014 and 21/03/2015 the learned Assessing Officer found that the balance therein never exceeded Rs.1.6 Lacs and most of the period it was in a range of Rs.10,000 to Rs. 20,000 only. Further she accepted that her return of incomes incorrect in respect of the agricultural income.

37. In respect of Y.Venkat Rami Reddy, learned Assessing Officer recorded that the said person submitted that he has no evidence whatsoever to show the cash accumulation and even the bank account did not indicate the same. According to this Venkat Rami Reddy, the investment made by him in the assessee company was out of the cash drawings made over a period of 35 or 40 years, which was given to various

relatives and was received back at the time of the investment. No details of the persons to whom the amounts were lent nor the receipt thereof could be produced. Learned Assessing Officer opined that it would be practically impossible to believe that the said person had given average of Rs.25,000 or Rs.50,000 per person, he should have lent an amount of Rs.1.80 crores to over 500 persons and it militates against the probability. Further according to this Venkat Rami Reddy for the last 20 years the gross income was Rs.1.82 crores after deductions and the TDS and taxes were paid net income was Rs.1.33 crores even without considering expenses towards house expenses, marriage expenses of children, their education so on and so forth. According to the learned Assessing Officer in view of this financial situation of this man, he will not be in a position to invest Rs.1.83 crores with the assessee, considering the net salary at Rs.1, 57, 68, 891/-in a period of 15 years.

38. Coming to Smt. Y Pushpalata, her investment was Rs.5 Lacs through banking channels and Rs.31 Lacs in cash, but according to her in her statement the entire amount of Rs.36 Lacs was invested in cash out of the agricultural income from 10.28 acres of land with the income from agriculture at Rs.1.11 Lacs. Her bank account did not reveal any accretion of cash and it would take more than 30 years for her to accumulate the investment from her agricultural income. Apart from that she constructed a house in 2008 by spending an amount of Rs.3 Lacs or Rs. 4 Lacs and she lent an amount of Rs.7 lacs to her son Surendra Kumar Reddy. Further the learned Assessing Officer found that her bank balance does not have any amount more than 1.2 lacs in the entire period of 10 years between 2008 to 2018 except when the FD matured in 2014.

39. Though Y Surendra Kumar Reddy claimed to have earnings from contract receipts, no details were produced either about receipts or about expenditure and though he claims income from agriculture there is no HUF either in his name or on the name of his parents Venkat Rami Reddy and Pushpalata. There is no evidence as to the agricultural income in his individual capacity. The drawings of this person during the years 2014 and 2015 are not enough even for the school fee of his children as per the oral discussion of such person with the learned Assessing Officer. Though this person claims to have invested in the assessee by borrowing a sum of Rs.21 Lacs transferred by her to the assessee, such a transaction is not to be found in the Balance Sheet of either of them. Further he claimed the source of investment of Rs.13 lacs as credits in the bank account, such account was never produced but on the other hand stated that such loans were repaid. Learned Assessing Officer could not find any of such transactions reflected in the returns of income. This Surendra Kumar Reddy received a gift of Rs.12 lacs from his wife Preeti Reddy in the financial year 2014-15 but such a transaction is not reflected in the return of income of Preeti Reddy on the other hand she had shown in her return of income a borrowal from her husband, by taking advantage of certain entries in bank accounts to explain the source of investment.

40. Coming to the investment of Preeti Reddy she claimed her agricultural income at Rs.6 Lacs but as per the return of income there was no declared agricultural income. She claims to have made investments to the tune of Rs.22 lacs in assessment year 2014-15 and 55 Lacs in assessment year 2015-16 but as per the Balance Sheet in the assessment year 2014-15 there is a loan of Rs.15 lacs, as when an a loan of Rs.5 Lacs

from M/s Surajram Hotels but the said loan was not reflected in the Balance Sheet filed along with return of income of her husband Surendra Kumar Reddy. In respect of investment in 2015-16 also, Preeti Reddy shown a loan of Rs.19.4 Lacs from her husband Surendra Kumar Reddy again, which again is not to be found in the return of income or Balance Sheet of Surendra Kumar Reddy. Though this Preeti Reddy assured to file the details of the persons from whom the loans were taken, no such details were furnished. According to her affidavit an amount of Rs.30,000/- was paid in cash and balance of Rs.21,79,500/- was paid in cheque, but the share application states that an amount of Rs.1.5 Lacs was received through banking channels and the balance of Rs.21,49,500/- was received in cash thereby there is a mismatch of the figures furnished by her. No books of accounts are produced by her.

41. In respect of Smt. Asha, learned Assessing Officer recorded that one of the sources for the investment claimed by her was gift from the father to the tune of Rs.7.5 Lacs but there is no evidence for such transaction. So also there is no evidence produced by her in support of her claim for agricultural income to the tune of Rs.1.88 lacs in assessment year 2013-14, Rs.4.46 Lacs in assessment year 2014-15 and Rs.5.36 Lacs in the assessment year 2015-16. Further according to the learned Assessing Officer in the statement recorded under section 131 of the Act she accepted that her affidavit in that respect was incorrect. By looking at the social background of her, the learned Assessing Officer dis-believed that she was doing any embroidery activity. She also does not have any bank account and she has not filed any return of income for the assessment year

2015-16. Learned Assessing Officer, therefore, did not accept her creditworthiness to invest Rs.21 Lacs with the assessee.

42. One S. Ramakrishna Reddy claims to have been deriving income from commission, contract income but absolutely there is no evidence to support such a claim this person claims to have invested Rs.50 Lacs in the assessment year 2014-15 and Rs.56.50 Lacs in the assessment year 2015-16. In the return of income, he declared agricultural income to the tune of Rs.2,18,700/- and assessment year 2013-14 and Rs.6.10 Lacs in the assessment year 2014-15 and Rs.6.48 Lacs in the assessment year 2015-16, but failed to explain the reason for the sudden increase from 2.18 Lacs in 2013-14 to Rs.6.10 Lacs in 2014-15 and Rs.6.48 Lacs in the assessment year 2015-16. Learned Assessing Officer found from the certificate issued by the MRO that the said lands owned by Ramakrishna Reddy would fetch agricultural income to the tune of Rs.2 Lacs per annum. Though he claimed to have received certain gifts, no evidence was produced nor any bank account was there. He had shown sundry creditors to the tune of Rs.58.27 Lacs in the Balance Sheet for the assessment year 2015-16, but no details like etc., of the creditors are furnished.

43. In respect of Smt. Y Lakshmi Narayanamma, Sri Y Narayana Reddy, Smt. D Narayanamma and Sri Gajapati Reddy, learned Assessing Officer recorded that they are dead and basing on the affidavit filed at the time of appellate proceedings their earnings would take more than 11 to 19 years for accumulating their investment. He further recorded that though summons were issued Smt. B Vara Lakshmi, Sri B Hari Rameswara Reddy and Sri Bal Reddy there was no response from them and the assessee also failed to produce them. On enquiries learned Assessing Officer came to

know that these persons are having income from agriculture and they are not assessed to tax, but no evidence is available about their earnings.

44. Learned Assessing Officer reiterated in the remand report that the assessee claimed that the share application forms were not available and stated that it is only a minor technical mistake. He further recorded that the only evidence produced by the assessee for establishing the creditworthiness of the share applicants is some of their affidavits and even if it is presumed that the respective persons had the said agricultural income, it would take a huge number of years for accumulation of such amount as invested by them, and that too it would be possible if such income was generated without any intervening factors or any unforeseen failures of crops or expenditure.

45. In respect of genuineness of the transactions, even the share application forms that were produced did not correlate in their details with the amounts received with the cash book or ledger and they cannot be relied upon. A small amount was received in cheques but a huge amount was received in cash basing on all these factors, learned Assessing Officer submitted his report stating that though the identity of the share applicants was established, their creditworthiness or the genuineness of the transaction was not proved.

46. Against the second remand report, assessee reiterated that by producing the PAN number, complete address, confirmation letters, duly notarised affidavits, income tax returns, bank statements and agricultural income certificates from the Revenue authorities, the assessee has discharged the duty to prove the identity, creditworthiness and

genuineness of the transaction of investment. It is contended that the learned Assessing Officer did not bring on record anything contrary and merely held that the investment by the said subscribers was not genuine on the basis of suspicion is mere surmise and conjecture without any basis. Further according to the assessee, the learned Assessing Officer though issued summons to Smt. Vara Lakshmi, Hari Rameswar Reddy and Bal Reddy, but morally not insisted upon producing them by stating that he would accept their agricultural income. According to the assessee for the assessment year 2014-15 the share allotment date was 24/03/2014 and for the assessment year 2015-16 the shares were allotted on 13 different dates all falling within the same year and the details were duly uploaded to the Government authorities. Assessee is, therefore, contended that there is no messing up of the things by taking the names of various family members.

47. Now coming to the short-term borrowings to the tune of Rs.57 lacs added during the assessment year 2014-15, during the remand proceedings, learned Assessing Officer found that this amount was due to 4 persons/entities, namely, M/s Kamadhenu then you outsourcing to the tune of Rs.2 Lacs, M/s. PVN Constructions to the tune of Rs.20 Lacs, Sri A R Reddy to the tune of Rs.25 lacs and from one Sh. Channa C Reddy to the tune of Rs.10 Lacs. However before the Ld. CIT(A) the assessee submitted that Rs.25 lacs was due to Smt. Y Preeti Reddy.

48. In respect of M/s Kamadhenu, M/s PVN constructions and Sh. Channa C Reddy, learned Assessing Officer recorded that during the second remand proceedings, that the parties confirmed the loan given and has submitted the bank statement reflecting the loan given in the paying

back. In respect of the balance Rs.25 lacs, was originally assessee had debited the same to one AR Reddy but subsequently claimed that this loan was given by Smt. Preeti Reddy, which was later converted into share capital, but the same was not reflected in the Balance Sheet and assessee stated that as the business turnover was less than Ltd required for maintenance of books of accounts, no allowance could be placed on the Balance Sheet filed with return of income. In as much as according to the assessee the said amount was considered for allotment of shares to the tune of Rs.22 lacs in the assessment year 2013-14, according to the learned Assessing Officer, assessee based on bank transaction and trying to claim credit for the same amount towards share capital and also towards loan outstanding. Learned Assessing Officer further recorded that the source for this bank transactions are to be claimed to the loans from her husband Y Surender Reddy but it was not so reflected in his accounts. Learned Assessing Officer therefore disputed the credit in favour of Smt. Preeti Reddy.

49. Insofar as the trade payables for the assessment years 2014-15 and 2015-16 are concerned, there were 11 persons on whose names the amount was outstanding but there are certain discrepancies in respect of the alleged payments inasmuch as the amount payable to one shake Raffi, Sheikh Hussein, Sheikh Mastan, Sheikh Salim, P Sridhar, K Ramesh and Bhaskar Reddy was paid to Sri Sheikh Sharif; the amount payable to Vadde Srinivasulu was paid to Sheikh Rashid and the amount payable to S Raghu, P Anjappa and Sh. O Ramalinga Reddy was paid to Sri O Ramalinga Reddy. Though the assessee claimed to have repaid the amount in the financial year 2014-15 after deducting TDS and through banking channels, by

producing the Ledger extract showing the payments to Sh. Sheikh Sharif, Sri Sheikh Rashid and Sri O Ramalinga Reddy, assessee failed to explain why such payments were made to the persons on behalf of others. On verification learned Assessing Officer found that the TDS was not done from the payments made to the said 3 persons, but the assessee paid the TDS on their behalf by debiting similar amount in their account towards labour charges. Basing on this learned Assessing Officer suspected the payments after deduction. Learned Assessing Officer further found that there is an increase in the capital WIP of Rs.14,27,15,904/- in civil works during the financial year 2014-15 but as per the Ledger extracts the work carried out was only to the tune of Rs.25,40,135/- and it was not known who are the other persons who have done the civil work during the financial year 2014-15. On a perusal of the details furnished by way of Excel sheets, learned Assessing Officer called upon the assessee to submit the reasons for clubbing of amounts due when as per the Ledger account submitted by the assessee payments were made to earlier deemed subcontractors without any problem, but the assessee failed to submit any explanation. For these reasons, the learned Assessing Officer concluded that in the absence of clinching material, the identity of the persons to whom the amounts were payable, the genuineness of transfer of payments from one person to other person and the creditworthiness of the persons to whom the final payments were made are not established.

50. In respect of the amount of Rs.40,29,502/- added for the assessment year 2015-16, such amount was payable to thirteen persons. On verification of the material furnished by the assessee pursuant to their statement that these persons were paid in subsequent years, learned

Assessing Officer accepted the grant of relief to the extent of Rs.97, 295/- in respect of the additions made on the basis of the amounts payable to M/s. Genuine Hvaeer Spares and Tools to the tune of Rs.18, 895/- and M/s. Spark Advertising Agency to the tune of Rs.78,400/- and recommended that the balance of addition cannot be deleted. The reason given by the learned Assessing Officer is that the amounts payable to M/s Synergy Infra Private Limited and M/s. Elite Space were paid to one Y.Surender Reddy without any authority and no reasons are forthcoming for such payment. In respect of about six persons mentioned at page No. 441 of the paper book, they were shown as the persons payable in the Ledger extract for the financial year 2015-16 as on 31/03/2016, but on verification of the list of the trade credit hours as on 31/03/2016 during the assessment proceedings for the assessment year 2016-17 no amounts were shown to be payable to them. It is, therefore, clear that in the list of the trade creditors as on 31/03/2016 furnished before the Ld. CIT(A) is not matching with the list of trade creditors as on 31/03/2016 produced before the learned Assessing Officer during the assessment proceedings for the assessment year 2016-17. No confirmation from the parties was produced.

51. Apart from this, learned Assessing Officer further stated that at no point of time in the during the survey, or at the time of assessment proceedings, the assessee derived any doubt in respect of the assets declared in the Balance Sheet; that WIP as on 31/3/2014 and 31/3/2015 was converted into capital asset during the financial year 2015-16; that the assessee had claimed initially depreciation on the said capital assets and later revised the claim for deduction under section 35AD based on the value of assets capitalised during the financial year 2015-16; and that the

assets were verified by an independent valuer and also by the bankers who have lent the amounts. He therefore drew an inference that once the debit side of the Balance Sheet is accepted to be correct and if the credits claimed are not found to be genuine, then the only solution acceptable is that the credits were not genuine and the same is required to be added to the income of the assessee under section 68 of the act as unexplained credit.

52. On the aspect of short-term borrowings and the trade payables, Ld. CIT(A) recorded that when Smt. Y Preeti Reddy appeared before the learned Assessing Officer, learned Assessing Officer did not about the genuineness of the transaction are not readily rights the question relating to the 25 lacs lent by her to the assessee. According to the Ld. CIT(A) he should have examined her on this aspect when she appeared and without doing so the learned Assessing Officer cannot doubt the genuineness of the transaction. He therefore recorded his satisfaction and directed the learned Assessing Officer to delete the addition of Rs.25 lacs for the assessment year 2014-15 under the head short-term borrowings.

53. In respect of trade payables, Ld. CIT(A) recorded that in order to invoke the provisions of section 68, there should be a credit either in the form of cash or bank in the books of accounts and since in these trade payables, there is no credit either in the form of cash or bank and they represent labour charges payable in which the civil works, section 68 is not at all applicable. He further went on to record that even otherwise these trade payables or arising out of labour work executed in the relevant year and outstanding as on 31/03/2014 and that the Ld. AR submitted that the 11 labour contractors appearing as on 31/03/2014 work labour into 3 head

contractors and were paid in the subsequent years or bank channels. Ld. CIT(A) believed the submission that the payments will be made to the Mukadam/headman who will distribute to the other work contractors and since the plan of these three parties to whom the payments were made prove their identity, the same has to be accepted. On this score Ld. CIT(A) directed the deletion of Rs.76,12,000/- for the assessment year 2014-15.

54. In respect of the assessment year 2015-16 the addition under trade payables was Rs.40, 29, 502/-. According to the Ld. CIT(A) Ld. AR submitted that all these trade payables were discharged during the subsequent years through banking channels as evidenced by the Ledger copies and builds/tax invoices showing complete address and the tax registration numbers, but the learned Assessing Officer without doubting this evidences had questioned the repayment through Directors in some cases. Ld. CIT(A) accepted the contention of the Ld. AR that the difference is only because learned Assessing Officer is looking at the trade payables alone, whereas some corridors are grouped under credit hours for capital goods and corridors for medical equipment under other long-term liabilities and submitted the Ledger summary of the same, wherein the said corridors were duly reflected. On this score Ld. CIT(A) directed the deletion of Rs.40,29,502/- made under section 68 of the act.

55. Having regard to the importance of the facts in this matter, and for the sake of completeness, we detailed the facts above as emanating from the orders of the authorities below and also the remand reports. A comprehensive understanding of the remand reports clearly establish that through the second remand report, the learned Assessing Officer did not dispute the identity of the parties. However, their creditworthiness and

genuineness of the transaction were still under fire. Learned Assessing Officer did not mince many words to say that the creditworthiness of the share applicants and genuineness of the transactions were far from being established. At no place did the learned Assessing Officer say that any of the share applicants had any sufficient means to make such huge investments. Although his contention has been that neither all the share applicants were produced nor the books of accounts are available for his perusal. He dealt with the creditworthiness of S/Shri S.V.Kishore Reddy, Y. Venkatrami Reddy, Y. Surendra Kumar Reddy, S. Rama Krishna Reddy and Smt. Pushpa Latha, Y. Preethi Reddy, Manasa Reddy and Asha in extenso. With facts and figures, learned Assessing Officer disputed their financial capacity to make the investments.

56. Absolutely there is no acceptable explanation from the assessee as to why the share application money with premium was received in cash. It is also not in dispute that Shri Y. Venkat Rami Reddy was a former member of Union Public Service Commission and it is not open for the learned AR to canvas that these people do not know that such huge amounts cannot be received in cash. Further, there is no dispute that the prospectus issued inviting the shares mandates the payment of share application money through banking channels.

57. The grave doubt entertained by the learned Assessing Officer in the assessee issuing the shares on rights basis without informing and offering the same to the existing shareholders is not at all addressed on behalf of the assessee. The facts recorded by the learned Assessing Officer as to the discrepancies in the share application forms produced on various occasions are beyond any dispute. Further the discussion made as to the

capacity of the eight persons in the remand reports also remains un-impeached.

58. On the face of this voluminous material against the assessee, we find it difficult to agree with the Ld. CIT(A) in his observations that the assessee had discharged its primary onus of establishing the identity, genuineness and creditworthiness of the investors. Such a finding has no basis in the facts. Absolutely there is no clinching evidence from any independent source in this matter to show that the alleged share applicants were the persons who really contributed for the share application money or that the alleged payments were made on the dates on which they are said to have been made. On the face of the discrepancies and the inherent contradictions pointed out by the learned Assessing Officer, the plea set up by the assessee has no legs to stand. Case of the assessee did not pass through the scrutiny laid in the decisions reported in PCIT vs. NRA Iron and Steel (P) Ltd (2019) 13 taxmann.com 48 (SC) and CIT Vs. NR Portfolio Private Limited (2013) 214 Taxman 408. In these circumstances, the irresistible conclusion that flows from the investigation made in this matter is that the assessee miserably failed to bring home the creditworthiness of the share applicants or the genuineness of the transaction. So also in respect of the short term borrowings and trade payables.

59. We are, therefore, of the opinion that the appreciation of the material made available before the Ld. CIT(A) is not at all satisfactory and the findings consequently reached by the Ld. CIT(A) do not inspire confidence in our mind to accept the same. Since there is no material on record to disturb the findings and the consequent additions made by the

learned Assessing Officer, we are of the considered opinion that the same cannot be interfered with. We, accordingly, set aside the orders of the Ld. CIT(A) and uphold the findings of the learned Assessing Officer.

60. In the result, appeals of the Revenue are accordingly allowed and consequently the cross objections preferred by the assessee are dismissed.

Order pronounced in the open court on this the 18th day of July, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

TNMM

Hyderabad,
Dated: 18/07/2022

Copy forwarded to:

1. Asst. Commissioner of Income Tax, Circle-1, Anantapur.
2. M/s.Saveera Hospital Private Limited, # 1-1348, Sai Nagar Colony, NH-44, Opp: Sakshi Office, Anantapur.
3. CIT(A)-Kurnool.
4. Pr.CIT-Kurnool.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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