

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.1634/Bang/2019
Assessment year : 2016-17

The Deputy Commissioner of Income Tax, Central Circle, Mysuru.	Vs.	Shri H. Omkarappa (HUF), # 3, A Block, APMC Yard, Sagar Road, Shivamogga. PAN: AABHH 1124B
APPELLANT		RESPONDENT

Appellant by	:	Shri Dev Ratan Kumar, CIT(DR) (ITAT), Bengaluru.
Respondent by	:	Shri Ramasubramaniyan, CA

Date of hearing	:	11.08.2022
Date of Pronouncement	:	23.08.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal by the revenue is against the order of the CIT(Appeals)-2, Panaji dated 3.4.2019 for the assessment year 2016-17.

2. The revenue has raised the following grounds:-

1. The order of the learned CIT(A) is opposed to law and facts of the case.
 2. Whether in the facts and circumstances of the case and in law, the CIT(A) erred in deleting addition of Rs 1,89,12,957 added on account of income from unaccounted sales without appreciating the fact that the additional income was declared by the assessee in the statement recorded u/s 132(4) of the I.T. Act.
 3. Whether in the facts and circumstances of the case and in law, the CIT(A) erred in deleting addition of Rs. 63,90,490 on account of excess stock found during the course of search without appreciating the fact that the A.O has clearly worked out the difference in on the basis of documents found and also the physical stock found at the time of search/survey.
 4. Whether in the facts and circumstances of the case and in law, the CIT(A) erred in deleting addition of Rs. 1,02,18,644/- without appreciating the fact that the addition made on similar issue i.e Capital investment in the firm M/s N R Halagappa & Company for the A. Y 2012-13 was confirmed by the CIT(A) Davanagere vide order dated 21.08.2017 and on further appeal, the ITAT vide order ITA No. 31/Bang/2018 dated 25.01.2019 has set aside the order of the CIT(A) to the file of the A.O for fresh consideration.
 5. For these and such other grounds that may be urged at the time of hearing the order of Ld. CIT(A) may be set aside and that of Assessing Officer may be restored.
3. The brief facts of the case are that assessee is a HUF carrying on business of arecanut as a proprietary concern under the name & style of N R Halagappa & Sons. The assessee is also a partner in the firm, N R Halagappa & Company in the status of HUF. For the year under consideration, the assessee filed return of income on 29.9.2016 declaring an income of Rs.10,30,740. A notice u/s. 143(2) of the Income Tax Act 1961 (the Act) was issued. The assessee submitted various details called for by the AO. The AO concluded the assessment by making the following additions:-

- (i) Income from unaccounted sales – Rs.1,89,12,954.
- (ii) Excess stock found during the search – Rs.63,90,490.
- (iii) Unexplained capital account balance : Rs.1,02,18,644.

4. The AO also initiated penalty proceedings u/s. 271(1)(c) of the Act. The assessee preferred appeal before the CIT(Appeals), who deleted the additions made by the AO. Aggrieved, the Revenue is in appeal before the Tribunal.

5. Ground Nos.1 & 5 are general and does not warrant separate adjudication.

Unaccounted Sales

6. A search and seizure action u/s. 132 of the Act was carried out on 24.11.2015. During the course of search in the case of proprietary concern of M/s. N R Halagappa & Sons, some incriminating material was found at the residence of Shri H. Omkarappa wherein it revealed that assessee had suppressed sales in the regular books of account. Statement of Shri H. Omkarappa, Karta of HUF, proprietor of N R Halagappa & Sons, was recorded on 5.1.2016 wherein it was stated as follows:-

“Do you have anything else to say?”

I have gone through the seized material. After going through the same, it appears that unaccounted income has indeed been generated by NR Halagappa and Sons, the trading firm, in various years from AY 2010-11 to AY 2016-17.

After going through the seized material, I can state that the unaccounted turnover which is recorded in these documents can be summarized as shown in Column No. 3 of the table below. Also, I wish to state that the Gross Profit for the corresponding Assessment Year has been taken to arrive at the unaccounted income earned by me during the corresponding Financial Year. Consequently, the unaccounted income has been calculated and placed in Column No. 4 of the table below.

S. No.	Asst. Year	Unaccounted Turnover in the hands of NR Halagappa and Son (Rs.)	Unaccounted Income in the hands of NR Halagappa and Sons (Rs.)
1	2010-11	3,10,04,700	8,27,825
2	2011-12	9,31,18,905	29,23,934
3	2012-13	4,66,42,734	83,957
4	2013-14	3,42,95,357	5,69,303
5	2014-15	13,59,654	27,507
6	2015-16	4,58,40,700	10,63,504

I wish to state that I shall pay tax on the unaccounted income stated above for the corresponding AYs as mentioned above, without claiming any other expenditure as all the expenditure has already been claimed by me in my regular books of accounts.

I have to state that the total quantity of arecanut that has been traded in NRHS and NRH & Co. has drastically come down during the current Financial Year. As per the data available in my books, the quantity of arecanut sold in the books of NRHS during the period April to November 2013 is 14,76,000Kgs. The quantity of arecanut sold during the period April to November 2014 is 6, 33,226 Kgs. The quantity of arecanut sold during the period April to November 2015 is 2,40,100Kgs. These figures can be verified from my audited books of accounts for FY 2013-14 and FY 2014-15 and the seized books of accounts for FY 2015-16. Consequently, I state that I shall offer a minimum regular income of Rs. 15,00,000/- and I shall increase this figure in case my business improves in the next three months. However, I also wish to state that the same modus operandi followed by me in the earlier FYs was followed in the current Financial Year as

well. To cover for these discrepancies, over and above the regular income of Rs. 15,00,000/-, I shall offer an amount of Rs. 1,85,04,420/ as undisclosed Income for AY 2016-17 in the hands of the trading concern N R Halagappa and Sons as has been mentioned above and I shall path the taxes towards the total income before December 2016. Since I have offered this undisclosed income, I may please be exempted from penal and prosecution proceedings.”

7. The AO noticed that assessee in the return of income filed on 29.09.2016 has declared a business income of Rs.10,91,466 only and called upon the assessee to show cause as to why the differential income of Rs.1,89,12,954 [$1,85,04,420 + 15,00,000 - 10,91,466$] disclosed by the assessee should not be assessed as additional income. The assessee filed a reply dated 2.11.2017 which is extracted from the order of the AO reads as follows :-

- During recording the statement, he was under severe stress and was not able to think due to some extortion calls received for money and therefore statement recorded u/s 131 on 05.01.2016 cannot be considered as completely correct.
- The assessee contends that he agreed to declare Rs.15,00,000/- with the expectation the sales will improve but it did not.
- The assessee contends that he was under the impression that some of the sales which were not recorded in the earlier years could not be declared in the earlier years and hence he agreed to declare Rs.1,85,04,420/- as profit for A.Y.2016-17.
- The assessee contends that as he was mentally not stable and without any proper understanding of seized material he declared an odd figure of Rs.1,85,04,420/-.
- The assessee contends that statement u/s 132(4) cannot be considered as confession statement.
- The assessee has relied upon various case laws in support of his claim.

8. The AO did not accept the above submissions of the assessee and concluded the assessment by making an addition of Rs.1,89,12,954. The AO held that the assessee has clearly stated in his submissions that he has followed the same *modus operandi* as in the earlier years i.e., indulging in unaccounted sales and has made a declaration of additional income of Rs.1,85,04,420 and regular income of Rs.15,00,000. The AO further stated that the retraction of declaration made in the statement during the scrutiny proceedings is without any basis and cannot be accepted.

9. The assessee preferred further appeal before the CIT(Appeals) aggrieved by the order of the AO. The CIT(Appeals) had taken the said sum of Rs.1,85,04,420 as undisclosed turnover declared by the assessee and applied Gross Profit ratio based on earlier years profit ratio and applied it on the said amount to arrive at the addition of Rs.3,69,875. Aggrieved, the revenue is in appeal before us.

10. The Id. DR submitted that the entire decision of the CIT(Appeals) is on a wrong premise of income declared by the assessee as undisclosed turnover declared by the assessee. He drew our attention to the relevant para of the statement recorded which is extracted hereinabove, where the assessee had given a clear statement stating that he shall offer Rs. Rs.1,85,04,420/- as undisclosed income for A.Y.2016-17. The Id. DR further submitted that the CIT(Appeals) has not understood the statement recorder and has proceeded to delete the addition on a wrong understanding. The Id DR further submitted

that when the assessee in the statement recorded has very clearly agreed to offer additional income and not additional turnover the CIT(Appeals) is not justified in deleting the said addition by applying the profit ratio on the additions made by the AO treating it as turnover.

11. The Id. AR submitted that the assessee has declared additional turnover only and has agreed to offer the same to tax. The Id AR also submitted that the reply to Q.No. 9 should be read along with the reply given to previous question in Q.No.7 and 8 given by the assessee, which is extracted below:-

“7. I am showing you document No. 23 which was seized during the course of the Search. Please describe the contents of this document.

This is original sale bill of NR Halagappa and Sons. These bills represent the actual amount of income that is generated from sales. These transactions may be compared with the books of accounts and the unaccounted income generated may be estimated. Here, the figure before the brackets represents the selling price of arecanut and the figures inside the brackets represent the quantity of arecanut that was actually sold.

8. I am showing you documents numbered 12 to 21 out of the documents that were seized in your residence during the course of the Search. Please describe the contents of these documents.

These diaries represent hand written documents containing details of the actual sales of arecanut. These notings may be compared with my books of accounts and the unaccounted turnover can be arrived at.

12. The Id. AR also submitted that from the table given in reply to Q.No.9 where the assessee has accepted the unaccounted turnover and the profit thereon, it is clear that the profit ratio of the assessee is in the

range of 2% to 3% year on year, whereas if the addition of Rs.1,85,04,420 is treated as profit and added to income would result in a profit percentage of 7%, which is impossible in the business of arecanut. He also submitted that the unaccounted turnover and the income for the six assessment years stated above has been accepted by the revenue in the assessment completed u/s. 153A of the Act, which would mean that the profit ratio is accepted by the revenue. It is also submitted that in the statement recorded where the assessee mentions about the same *modus operandi* followed in earlier years, it has to be considered holistically, which means that the assessee has followed the same practice of having unaccounted turnover similar to earlier years has offered the additional turnover of Rs.1,85,04,420 for the year under consideration.

13. The Id. AR submitted that there is no corroborative evidence in support of the claim that the amount declared is not the turnover, but the income of the assessee.

14. We have considered the rival submissions and perused the material on record. The assessee during the search proceedings has declared both the unaccounted turnover and the profit thereon. The average profit offered to tax is worked out by the CIT(Appeals) at 2%. The addition made by the AO is based on the statement of the assessee where he has offered an amount of Rs.1,85,04,420 as undisclosed income and that the assessee was not under any undue pressure while making the said declaration. We notice that the assessee while

answering the Q.No.9, has provided details of the sales that are recorded in the books of accounts and agreed to offer a minimum income of Rs.15,00,000 against what is recorded in the books of accounts. We also notice that the assessee has declared that he has used the same *modus operandi* for the year under consideration also and in the same context have used the words to say “ I shall offer an amount of Rs.1,85,04,420 as undisclosed income for AY 2016-17”. It is the contention of the Id AR that there is no corroborative evidence support to state that the amount offered is not turnover but income and addition is made merely based on the statement recorded by ADIT u/s.131 of the Act which cannot be used for making addition. We see merit in this argument of the Id AR as the revenue has not brought anything on record to substantiate that the amount offered is income only and not turnover. Given this, we are of the considered view that this issue needs to be examined based on facts and evidences to verify whether the amount offered income or turnover of the assessee. We therefore remit the issue back to AO to look into the issue afresh and decide afresh based on facts on the nature of amount offered after giving reasonable opportunity of being heard to the assessee. The assessee is directed to provide the required details as may be called for by the AO and cooperate with the proceedings. It is ordered accordingly.

15. The learned AR had also raised a legal contention with regard to ground relating deletion of addition of Rs.1,85,04,420. It was submitted that the statement dated 05.01.2016 is not a statement recorded u/s 132(4) of the I.T.Act during the course of search, but a

statement recorded u/s 131 of the I.T.Act by the ADIT after completion of search (post-search statement). It was contended that the learned AR had no power to invoke section 131 of the I.T.Act as only the Assessing Officer and other Income Tax Authorities specified in section 131 of the I.T.Act alone can invoke section 131 of the I.T.Act. It is stated that the ADIT is not an authority mentioned in section 131 of the I.T.Act. It was further submitted that even the power granted to record on oath u/s 131(1A) of the I.T.Act can be invoked only prior to the commencement of taking action under clause (i) to (v) of section 132(1) of the I.T.Act. Hence, section 131(1A) of the I.T.Act can be recorded only prior to search. It was concluded that since the statement was recorded post-search, the ADIT had no jurisdiction to record such statement. Hence, it was contended that statement recorded by the ADIT on 05.01.2016 has no evidentiary value and cannot be relied upon while making the said addition.

16. This contention of the learned AR is without any legal backing. The Hon'ble Gujarat High Court in the case of *Arti Gases v. Director of Income-tax (Investigation)* reported in (2001) 248 ITR 55, at page 63 had held that notice u/s 131(1A) of the I.T.Act can alone be issued after completion of search undertaken under the provisions of section 132 of the I.T.Act. The relevant finding of the Hon'ble Gujarat High Court, reads as follows:-

“We have considered the rival submissions made by the learned advocates. We have also perused Circular No. 551, dated January 23, 1990,* referred to by the learned advocate, Shri Puj. Upon

considering the rival submissions, we are of the view that the notices under section 131(1A) can also be issued after completion of the search undertaken under the provisions of section 132 of the Act. In our opinion, it would be absolutely logical to call for information so as to have better particulars or to have a complete idea about the material seized during the search. If some material is seized at the time of the search and the authorised officer wants to have some details so as to understand the nature of the documents, he may issue notice under section 131(1A) of the Act. In our opinion, in a given case such a notice cannot only help the Department but can also help the assessee. If the assessee is in a position to give more explanation so as to satisfy the authorised officer that the documents seized by him do not reveal any undisclosed income, but the income or transactions referred to in the documents had been duly shown by him in his books of account or if the assessee gives any information to the effect that the first impression of the authorised officer with regard to the nature of the documents was not correct, we are sure that such a notice would help the assessee himself. If the assessee is called upon to give some information or to explain certain documents or writings seized during the process of search, in our opinion, no harm can be caused to the assessee and as stated hereinabove, such particulars can be helpful not only to the Department but to the assessee also. We, therefore, do not agree with the submissions made by the learned advocate, Shri Puj, that such a notice can be issued only before initiation of proceedings under section 132 of the Act. Moreover, even under the provisions of section 133 of the Act, the Assessing Officer or the officers referred to in the said section are having power to call for information. So issuance of such a notice during or after the search cannot be said to be bad in law.”

17. In view of the above finding of the Hon'ble Gujarat High Court in the case of *Arti Gases v. Director of Income-tax (Investigation)* (supra), we hold that the statement recorded subsequent to the search by the ADIT has got evidentiary value and can be relied upon in making the addition of Rs.1,85,04,420. Hence, the above contention raised by the learned AR is rejected as devoid of any merits.

Excess stock found during the course of search

18. During the search proceedings u/s. 132 of the Act, physical inventory of stock was taken at the office as well as godown of the assessee at Abbalgere. The total quantity of stock was recorded at 81,762 kgs. During the course of assessment proceedings, the AO accepted 37,262 kgs of stock as belonged to partnership firm, M/s. N R Halagappa & Company, based on the relevant evidence furnished by the assessee. The assessee furnished further details relating to stock in the name of N R Halagappa & Sons, proprietary firm, to the extent of 21,555 kgs which was accepted by the AO. For the balance of 22,945 kgs. [81,762 – 37262 – 21555], the AO proposed to make an addition as excess stock @ Rs.278.5 per kg. The assessee submitted that the balance quantity of 22,945 kgs relates to the own produce of H. Omkarappa, HUF and H.O. Aravind, HUF. These stocks were lying at the godown at Abbalgere where the agricultural land of above persons is situated and this fact was also brought to the notice of the officials during the course of search. The stocks were subsequently sold and disclosed before the tax authorities in the return of income for the AY 2016-17, the details of which are as follows:-

H. Omkarappa, HUF	-	Rs.62,00,032
H.O. Aravind	-	Rs.32,92,225

19. Based on the above, the assessee contended that the stock is not unaccounted stock and therefore no addition is warranted. The AO rejected these submission of the assessee and proceeded to make the addition towards unaccounted closing stock for an amount of Rs.63,90,490 on the ground that during the course of search, it was stated by Shri Aravind in the statement u/s. 132(4) dated 24.11.2005 and for the following reasons as stated in the assessment order:-

- During the course of search and survey physical inventory of stock was taken separately at the office and the godown at Abbalgere.
- The copy of the working of the stock position as on the date of search has been given to the assessee on the date of survey and again during the course of assessment proceedings on 08.12.2017 but there is no claim made therein about any stock belonging to any party other than the assessee.
- A claim regarding the stock belonging to N.R. Halagappa & Co. was made by Sri H. Aravind on the day of search/survey and was duly recorded in the statement u/s 132(4).
- The stock belonging to N.R. Halagappa & Co. has been identified and reduced from the stock of the assessee while computing the stock position accepting the claim of the assessee made at the time of search.
- No claim was made on the date of search/survey about any stock belonging to H Omkarappa (HUF) and H O Arvind (HUF) because the assessee was aware that the stock belonged to M/s. N.R.Halagappa & Sons only.
- No claim was made during the post search investigation about any stock belonging to H Omkarappa (HUF) and H O Arvind (HUF) before the ADIT(Inv.).

- It is only during the assessment proceedings when the discrepancy is pointed out the assessee is making a claim that the stock belongs to H Omkarappa (HUF) and H O Arvind (HUF) as an afterthought.
- The contention of the assessee that H Omkarappa (HUF) and H O Arvind (HUF) have subsequently sold arecanut and declared agricultural income in no way proves that the stock found in Abbalgere godown did not belong to the assessee.
- The mere fact that H Omkarappa (.HUF) and H O Arvind (HUF) have been declaring agricultural income does not prove that the stock now found as excess belonged to them.

20. On further appeal, the addition was deleted by the CIT(Appeals) by holding that the AO merely stated that the explanation of the assessee is mere afterthought without examining the facts and the material available on record. The CIT(Appeals) concluded that the excess stock does not belong to the assessee and the same cannot be added u/s. 69 in the hands of the assessee. Aggrieved, the revenue is in appeal before the Tribunal.

21. The ld. DR submitted that the excess stock of 22,945 kgs is found in the godown of the assessee and based on the material found during the course of search, the AO has rightly concluded that the stock was not recorded in the books of account and hence made an addition towards excess stock. He submitted that the assessee's contention that the stock belonged to H.O. Omkarappa, HUF and H O Aravind, HUF was not substantiated by any evidence and the CIT(Appeals) without going into these facts, has accepted the submissions of the assessee. The subsequent sale of stock and

declaration of the agricultural income by these persons was not properly verified by the CIT(Appeals).

22. The Id. AR submitted that the AO in the order has mentioned that a statement was recorded from Shri Aravind u/s. 132(4) wherein it was stated that the stock found belonged to both N R Halagappa & Sons and N R Halagappa & Company. However, the assessee was not provided with copy of the statement so recorded from Mr. Aravind and therefore the assessee was not given a property opportunity to explain the discrepancy in the stock. The Id. AR further submitted that the department has not brought anything contrary to show that the stock does not belong to H.O. Omkarappa, HUF and H O Aravind, HUF. He also reiterated that the stock belonging to these two HUFs were subsequently sold and the income was declared in their returns. The Id. AR therefore submitted that the CIT(Appeals) has rightly allowed the claim of the assessee after proper verification of these facts.

23. We have considered the rival submissions and perused the material on record. The AO in the assessment order has stated that as per the recorded statement from Mr. Aravind u/s.132(4) that the excess stock belongs to N R Halagappa & Sons and N R Halagappa & Company. During the course of hearing the bench questioned whether any addition towards the excess stock is made in the hands of partnership firm N R Halagappa & Company for which the Id DR could not provide any details. Further the contention of the Id DR is that the CIT(Appeals) have merely accepted the statement of assessee

without verification of facts or records. Further it is the submission of the Id AR that the assessee was not provided with sufficient opportunity to confront the statement recorded from Mr.Arvind as the copy of the same was not provided. In view of the above discussion, we remit the issue back to the AO, for verification of the issue afresh after giving a reasonable opportunity of being heard to the assessee.

Addition towards capital account balance in M/s. N R Halagappa & Company

24. The assessee is a partner in the firm, N R Halagappa & Company. During the assessment proceedings, the AO called for the financial statements of the partnership firm. The AO observed that the balance as on 31.3.2016 in the capital account of the assessee in the books of the firm was a sum of Rs.3,27,92,215. However, the sum was not shown in the books of account of the assessee. Therefore, the AO held that by not accounting the capital account balance in the partnership firm in the balance sheet of the assessee, the assessee has under-stated the assets to the extent of the said capital balance. The AO added the difference between the closing balance and opening balance of the capital account in the partnership firm amounting to Rs.1,02,18,644 as unexplained.

25. The assessee made detailed submissions before the CIT(Appeals) with the details of the break-up for the current year transactions in the capital account of the firm. The CIT(Appeals) considered each of the items and concluded that no addition is

warranted towards the difference between the opening balance and closing balance of the capital account of the firm. The relevant extract of the CIT(A)'s order is reproduced below:-

“7.1. The above submissions of the appellant are duly considered. Tax litigation is not an adversal litigation. The sole purpose of tax litigation and adjudication is to tax the Taxable income. From the balance sheet of the firm, it can be seen that the following are the credits to the capital account

IT refund	20,739
Profit for the year	16,799
Addition to capital	39,00,000
Sale of Agricultural produce	86,99,110
Interest	4,10,391

7.2 There is a credit of Rs.20,739/- in the capital account which is Income Tax refund. This is not a taxable income.

7.3 A sum of Rs.16,799/- represents share of profit of the year for the Appellant. As per section 10(2A), profits from partnership firm is exempt as profit for the year is arrived at after paying the applicable taxes in hands of the firm. Therefore, it is not taxable in the hands of the appellant.

7.4 The appellant introduced additional capital of Rs.39,00,000/- which was transferred from his business balance sheet. Therefore, it is not a taxable credit.

7.5 It is submitted by the Appellant that the sale of agricultural produce from the lands owned by the appellant in its HUF capacity is routed through the partnership firm and the sale proceeds were credited to the appellant's capital account in the books of the firm as additional capital introduced. From the income tax return of the appellant it is clearly evident that agricultural income of Rs.62,00,032/- (net of expenses) has been disclosed. Also, Agricultural income is claimed as exemption u/s 10(1) of the Act.

7.6. A credit of Rs.4,10,391/- is interest on capital in the partnership firm. The same is claimed as expenditure in the books of the firm, hence it is taxable income in hands of the Appellant. It is evident from the return of income of the appellant, that Rs.7,23,860/- being interest received from the firm has been offered for taxation. Since the interest income is already taxed, the same cannot be taxed again in the hands of the appellant.

7.7. As stated earlier, the sole purpose of tax litigation and adjudication is to tax the Taxable income. It can be clearly seen that no income has escaped taxation. It would be injustice to the appellant if a sum of Rs1,02,18,644/- (Closing capital of Rs.3,27,92,215 – Opening capital Rs.2,25,73,571) is taxed in its hand.

7.8 Merely because the investment is not shown in the business balance sheet, will not amount to unexplained investment for making an addition u/s 69 of the Act since, it is not required to be shown as the investment is made in the HUF's personal capacity. However, it is shown in the personal balance sheet as investment in the partnership firm along with personal assets like agricultural land, jewellery, vehicles etc. The appellant also filed a consolidated financial statement which shows assets and liabilities of business and personal assets like investment in partnership firm, agricultural land, jewellery, vehicles etc. In view of this, an addition made u/s 69 of the Act as unexplained investment for not showing the investment in partnership firm in the books of account of the appellant's business is factually incorrect. Hence, the AO is directed to delete the addition of Rs.1,02,18,644.”

26. The Id. DR submitted that the Tribunal in the case of Shri H. Omkarappa v. ACIT [ITA No.31/Bang/2018 for AY 2012-13] has considered similar issue of the assessee in his individual capacity and remanded the issue back to the file of AO for a *de novo* examination and hence he prayed for similar directions in the given case.

27. The Id. AR strongly objected to the issue being remitted back to the AO and submitted that in the aforesaid the decision of the Tribunal, the issue was remitted to the AO since the details of the movement of capital during the year was not examined, whereas in the present case, however, the CIT(Appeals) has verified each of the line items in the capital account and has given a clear finding as to why each of the line items are not be treated as taxable credit. In the light of the above, the Id. AR submitted that the decision of the CIT(Appeals) should be upheld.

28. We have considered the rival submissions and perused the material on record. The coordinate bench of the Tribunal is assessee's individual case for AY 2012-13 in ITA No.31/Bang/2018 by order dated 25.01.2019 has considered a similar issue and has remitted the issue back to the AO after admitting the additional evidence submitted by the assessee in that case. The Tribunal has held that –

“ In our view, the ends of justice require that the documents now furnished by the assessee should be scrutinized by the AO and thereafter a categorical finding should be recorded by the AO under the four corners of law as these documents goes to the root of matter. Moreover tax litigation is not an adversarial litigation, sole purpose of litigation and adjudication is to tax the Taxable income. In view thereof we admit these documents / additional evidence. As we have admitted the fresh evidence on behalf of the asse, these documents are required to be examined by the assessing officer for the purposes of verifying the claim of the assessee, that there was no investment altered in the books of account and the assessee had duly shown the investment in the firm. Needless to say the assessing officer shall be guided by the ingredients required to prove the case of the assessing officer under Section 69 of the Act, which make it abundantly clear that

where in the financial year immediately preceding the assessment year the assessee has made investment which is not recorded in the books of account the same is liable to be taxed as unexplained investment. Thus it is clear that only such investments which were made in the financial year immediately preceding the assessment year under consideration can be brought to tax as unexplained investment u/s. 69 of the Act. With this observation, we deem it appropriate to remand the matter back to the file of the AO to do de novo examination of the addition made by the AO of an amount of Rs.71,25,105/- in accordance with law only. Needless to say while doing so the AO shall consider the documents now admitted by the Tribunal and shall also give opportunity of hearing to the assessee.”

29. In the case under consideration, the CIT(Appeals) has verified and given a clear finding of each of the line items pertaining to the movement of the balance during the year under consideration and has decided on the taxability. However the CIT(Appeals) has not verified whether the balance is correctly reflected in the assessee's books of accounts. The Tribunal in the individual case for AY 2012-13 (supra) has remitted that issue back to the AO to verify the whether the investments are recorded in the books including the opening balance. Further in the present case, the AO has made the addition on the basis that the capital account of the assessee in the partnership firm is not reflecting in the proprietorship balance sheet. This, in our considered view, is not the correct basis as the balance sheet of the proprietorship would only reflect the transaction that are routed through the same and would not reflect the transactions if any done by the assessee directly from the HUF account. Therefore it is important that the consolidated balance sheet of the assessee HUF needs to be verified to examine if the transactions of partnership firm are correctly recorded in the

assessee HUF account. We therefore remit this issue to AO to verify the consolidated statement of accounts of the assessee and decide the issue afresh in accordance with law. Needless to say that the assessee should be given an opportunity of being heard.

30. In the result, the appeal by the revenue is allowed for statistical purposes

Pronounced in the open court on this 23rd day of August, 2022.

Sd/-

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd August, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.