

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

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

ITA No.1693/Hyd/2019		
Assessment Year: 2008-09		
Pawan Kumar Makala H.No.23-172/1, Plot No.158, Madhura Nagar, Shamshabad, Ranga Reddy District. Telangana-501 218 PAN : APDPM3948K	Vs	ITO, Ward-8(2) Signature Towers, Kondapur. Hyderabad-5000 84.
(Appellant)		(Respondent)

ITA No.1695/Hyd/2019		
Assessment Year: 2008-09		
Bala Krishna Makala H.No.23-172/1, Plot No.158, Madhura Nagar, Shamshabad, Ranga Reddy District, Telangana-501 218, PAN : APDPM3947G	Vs.	ITO, Ward-8(2) Signature Towers, Kondapur, Hyderabad-5000 84.
(Appellant)		(Respondent)

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ITA No.393/Hyd/2014		
Assessment Year: 2008-09		
Smt Makala Lalitha H.No.23-172/1, Plot No.158, Madhura Nagar, Shamshabad, Ranga Reddy District, Telangana-501 218. PAN : APDPM6982B	Vs.	ITO, Ward-8(2) Signature Towers, Kondapur, Hyderabad-5000 84.
(Appellant)		(Respondent)

Assessee by:	Shri P.Murali Mohan Rao, CA
Revenue by:	Shri N.Swapna, Sr.AR
Date of hearing:	08.07.2022
Date of pronouncement:	30. 08.2022

ORDER

Per Shri Laliet Kumar, J.M.

These three appeals are filed by the assessee feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-10, Hyderabad, for the AY 2008-09 respectively.

2. Since the identical issues were raised in all these appeals, we are taking ITA No.1693/Hyd/2019 as lead case.

2.1. The grounds raised by the assessee in ITA 1693/Hyd/2019 reads as under :

"1) *The order of the learned Commissioner of Income-tax (Appeals) is erroneous both on facts and in law.*

2) *The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in making the assessment ex-parte u/s 144 of the I.T.Act without considering the return of income filed on 13.12.2011.*

3) *The learned Commissioner of Income Tax (Appeals) erred in not considering the final accounts like Profit and Loss Account, Capital Account, Receipts and Payments account and the annexures to the return of income filed.*

4) *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.1,00,000/- made by the Assessing Officer treating the same as unexplained investment.*

5) *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.1,23,75,000/- made by the Assessing Officer treating the same as unexplained investment.*

6. *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.4,00,000/- made by the Assessing Officer treating the same as unexplained investment.*

7) *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.50,000/- made by the Assessing Officer treating the same as unexplained investment.*

8. *The learned commission of Income Tax(Appeals) erred in confirming the addition of Rs.9,6,5,000/- made by the Assessing Officer treating the same as unexplained investment.*

9. *The learned Commissioner of Inocme Tax(Appeals) erred in confirming the addition of Rs.58,500/- made by the Asessing Officer treating the same as unexplained investment.”*

3. The ld. AR, has drawn our attention to paragraph 7.1 to 7.6 of the order of ld.CIT(A) in ITA No.1693/Hyd/2019 wherein it was provided as under :

“7.1 This is a case where survey u/s. 133A was conducted. In the course of the survey action, incriminating material was found based on which notice u/s. 148 was issued. Throughout, the appellant has not disputed the evidence which formed the basis for the re-assessment order.

7.2 The assessment order clearly shows that multiple opportunities were given to the appellant to present his case. There was total non-compliance, on the part of the appellant, before the AO. There was non-compliance even in respect of summons issued as no details / explanation was furnished. What is more is that no good or sufficient cause was shown which explains such non-compliance in a case where a survey action was undertaken. The additions were made on the basis of the impounded material and the evidences contained therein. The remand report dt. 14.12.2015 clearly brings out the facts of the case and throws light on the overall conduct of the appellant.

7.3 In the appeal proceedings, the appellant stated that return of income was filed on 13.12.2011. this return is not on the record of the AO and the remand report is clear that no such return is available. The appellant argued that there is an entry, in respect of the receipt of the return, in the office register. Mere entry in the register does not matter when the return has not actually comes on the record of the AO. In order to understand the conduct of the appellant, it is also pertinent to note that the appellant chose not to appear before the AO, with a copy of the return of income, in spite of the fact that numerous opportunities were given to explain his case. Therefore, the argument that a return of income was filed is rejected.


7.4 Without prejudice to what is said at para 7.3, as above, and in view of the additional grounds of appeal no. 1 and 2, it also becomes necessary to consider the question whether the return of income, filed on 13.12.2011, is a valid return of income in the eye of law. The relevant assessment year is 2007-08 and the due date for filing the return u/s. 139 expired long back. No return of income was filed prior to the issue of notice u/s 148. The appellant got an opportunity to file the return u/s. 148 which was served on the appellant on 14.06.2010. The appellant chose not to file any return within the prescribed time of 30 days from the date of service of the notice. Therefore, even if it is assumed that the appellant filed the return on 13.12.2011, such return has no legal validity. Accordingly, the argument that the AO failed to consider the return of income also stands rejected.

7.5 The appellant submitted that necessary explanation was furnished vide letter dt. 14.12.2011. In the remand report, the AO categorically denied having received any such letter. Perusal of the assessment record also shows that the said letter was not given to the AO. Even the appellant failed to furnish any proof in respect of the statement that a letter dt. 14.12.2011 was filed, before the AO. Therefore, the argument that the AO did not consider the explanation of the appellant is rejected.

7.6 On perusal of the submissions, made in the appeal proceedings, it is seen that the appellant who never filed return of income, stating that there was no taxable income, is now claiming that he is a man of many sources. As discussed, details filed seeking to explain the sources for the investments made were not available before the AO. In the present proceedings, the appellant did not file the details / documents as "additional evidence" along with a petition under rule 46A. No case has been made out for admission of the details/documents. This is understandable as the appellant claimed that letter dt. 14.12.2011 and the details were already provided to the AO. As already noted, this is a false claim. In effect, few details which are now furnished seeking to explain the case cannot be entertained."

4. The ld. AR has submitted that the order passed by the AO as well as ld.CIT(A) are not in accordance with law and are contrary to record. Our attention was drawn to Page Nos.1 & 17 of paper book whereby the acknowledgement of the income tax return was filed by the assessee on 13.12.2011.

Government of India



INCOME-TAX DEPARTMENT

ACKNOWLEDGEMENT

Received with thanks from MAKALA PAVAN KUMAR a return of income and/or return of fringe benefits in Form No. ITR 2.. for assessment year 2007-08, having the following particulars.

PERSONAL INFORMATION	Name MAKALA PAVAN KUMAR		PAN A/PD/P/M/39/48/K	
	Flat/Door/Block No PLOT NO.158		Name Of Premises/Building/Village	
	Road/Street/Post Office MADHURA NAGAR		Area/Locality SHAMSHABAD	
	Town/City/District RANGA REDDY DISTRICT		State ANDHRA PRADESH	

COMPUTATION OF INCOME AND TAX THEREON	1	Gross total income	62,366
	2	Deductions under Chapter-VI-A	—
	3	Total Income	62,366
	4	Net tax payable	—
	5	Interest payable	—
	6	Total tax and interest payable	—
	7	Taxes Paid	—
		a Advance Tax	—
		b TDS	—
		c TCS	—
	d Self Assessment Tax	—	
	e Total Taxes Paid (7a+7b+7c +7d)	—	
8	Tax Payable (6-7d)	—	
9	Refund (7e-6)	—	

COMPUTATION OF FRINGE BENEFITS AND TAX THEREON	10	Value of Fringe Benefit	—
	11	Total fringe b	—
	12	Total interest i	—
	13	Total tax and h	—
	14	Taxes Paid	—
		a Advance	—
	b Self Asses	—	
	c Total Tax	—	
15	Tax Payable (13-14)	—	
16	Refund (14c - 13)	—	

13 DEC 2011

Received by
Joint/Adol. S.I.T., Ward B, Hyderabad

APDPM3948K
PAVAN KUMAR MAKALA
B288884637
WARD B(2)

Receipt No _____ Date _____

Seal and Signature of receiving official _____

Government of India



8 (2)

o/c

INCOME-TAX DEPARTMENT

ACKNOWLEDGEMENT

Received with thanks from MAKALA BALAKRISHNA a return of income and/or return of fringe benefits in Form No. ITR for assessment year 2007-08, having the following particulars.

PERSONAL INFORMATION	Name MAKALA BALAKRISHNA		PAN A/PD/PM/39/47/G	
	Flat/Door/Block No PLOT NO. 158		Name Of Premises/Building/Village	
	Road/Street/Post Office MADHURA NAGAR		Area/Locality SHAMSHABAD	
	Town/City/District RANGA REDDY DISTRICT		State ANDHRA PRADESH	
COMPUTATION OF INCOME AND TAX THEREON	1	Gross total income	1	61,070
	2	Deductions under Chapter-VI-A	2	—
	3	Total Income	3	61,070
	4	Net tax payable	4	—
	5	Interest payable	5	—
	6	Total tax and interest payable	6	—
	7	Taxes Paid		
		a Advance Tax	7a	
		b TDS	7b	
		c TCS	7c	
	d Self Assessment Tax	7d		
	e Total Taxes Paid (7a+7b+7c+7d)	7e	—	
8	Tax Payable (6-7d)	8	—	
9	Refund (7e-6)	9	—	
COMPUTATION OF FRINGE BENEFITS AND TAX THEREON	10	Value of Fringe Benefits	10	
	11	Total fringe benefit tax liability	11	
	12	Total interest payable	12	
	13	Total tax and interest payable	13	
	14	Taxes Paid		
		a Adv		
		b Sel		
15	Tax Payable	15		
16	Refund (14c)	16		

Receipt No
Date

13 DEC 2011
Received by
O/o. Joint/Asst. Tax Department

Official

(Handwritten signature)

5. However, it was the contention of the Id. AR that despite the availability of the return of income in the records of Revenue, the Assessing Officer / Id.CIT(A) has wrongly mentioned that the assessee has not filed the return of income. It was submitted by the Id.AR that the matter may be remanded back to the file of the Id.AO for afresh adjudication.

6. On the other hand, the Id. DR has submitted that though, enough opportunities were given to the assessee but the assessee has not appeared before the lower authorities.

7. We have heard the rival contentions of the parties and perused the material available on record. Admittedly, the return of income reproduced hereinabove, which were allegedly filed by the assessee on 13.12.2011 after the last date of hearing before the Assessing Officer. The Id.CIT(A) has sought a remand report of the AO on these return of income filled by the assessee. However, the AO has denied the same by referring in the remand report that on the said acknowledgement number/serial number, pertains to one Shri. Makala Sathyanarayana. The above said facts were disputed by the assessee in reply to the remand report. The relevant paragraph nos. 5.2 and 5.3 of Id.CIT(A), wherein assessee disputes the Assessing Officer remarks were reproduced hereinbelow :

"5.2 After considering the additional grounds of appeal and th written submissions of the appellant, the AO furnished remand report dt. 11.12.2015 which is reproduced as below:

"It is to submit that in the above mentioned case, the Id.CIT(A)-10, Hyderabad has forwarded the written submissions filed by the assessee before him and directed to furnish a factual report on the written submission of the appellant. In the written submissions that appellant submitted that

1. *The Assessing Officer did not take into consideration any of the material facts available on record such as profit and loss account, Capital Account and Receipts and Payments account annexed to the return of income. Filed on 13.12.2011*
2. *The Assessing Officer completed the assessment u/s. 144 of the I.T.Act on 27.12.2011 determining the total income at Rs.46,39,000/- on the ground that the appellant constructed a house property at cost of Rs.46,39,000/-.*
3. *The A. O has not considered that the appellant and his brother jointly constructed a residential house on the joint property at a cost of Rs. 51,02,900/- and the value of the 50% of the same i.e. Rs. 25,51,450/- was disclosed by the appellant in return of income filed on 13.12.2011.*
4. *The AO has not considered that sources for the construction was opening cash balance in his capital account of Rs. 36,70,407/- at as on 01.04.2006 which was annexed to his capital account annexed with the return of Income filed on 13.12.2011.*
5. *The AO added entire cost of construction at Rs. 1,000/- per sft in the hands of the appellant at Rs. 46,39,000/-.*

The written submissions filed by the appellant are perused, The brief facts in this case are that a survey operation u/s 133A were conducted on 21.02.2008 and during the course of which some incriminating material connected to the appellant was found. A notice u/s 148 of the I. T. Act, 1961 was served on the assessee on 14.06.2010 requiring him to deliver a return of income, within 30 days from the date of service, in the prescribed form of his income for the said assessment year. The assessee did not respond to the notice. A notice u/s 142(1) along with the questionnaire was again issued on 05.10.2010 and served on the assessee to furnish the information like details of investments, details loans! advances, bank account statements, Books of Account, Balance Sheet & Profit and loss account etc., on 19.10.2010. As there no response from the assessee again a notice u/s 142(1) along with the questionnaire was issued on 03.01.2011 and served on the assessee to furnish the above details on 20.01.2011. In response to the said notice the AR of the assessee Sri G. Krishnaiah appeared and requested time to submit the information and his request was considered and case was posted for hearing on 01.02.2011 as per his convenient. There was no response either from the assessee or AR. A summons u/s 131 of the I. T. Act,1961 was issued to the assessee on 07.07.2011 requiring him to produce the information personally on 15.07.2011. There was no compliance to the summons issued on 19.07.2011 the AR of the assessee appeared and requested time to submit the information called for by 26.07.2011. Again there was no response from the assessee a notice u/s. 142(1) along with questionnaire was issued on 30.11.2011 proposing the addition of Rs.46,39,000/- towards the cost of construction of house and he was given date of hearing 12.12.2011.

Again there was no response from the assessee a notice u/s. 142(1) along with questionnaire was issued on 30.11.2011 proposing the addition of Rs.46,39,000/- towards the cost of construction of house and he was given date of hearing 12.12.2011 at 11.30 A.M. As there was no response from the assessee then Assessing Officer proceeds to complete the assessment u/s. 144 of the I.T.Act, 1961 and an order was passed on 27.12.2011.

Despite ample opportunity the assessee had not submitted any single piece of information as required during the assessment proceedings. Further the appellant submitted that he had filed his return of income along with capital account and balance and Profit and loss account on 13.12.2011. On verification of records no such information was received in this office and available in this office. But on verification of the return Receipt Register there was entry at serial no. 8200004645 dt. 13.12.2011 in respect of Sri Makala Satyanarayana, PAN: AJDPM6981C for AY 2007-08.

The additional grounds raised by the appellant cannot be considered as the assessee was provided sufficient time and opportunities during the assessment and no information in support of his grounds was furnished. As the assessee failed to comply to the notice issued by Assessing Officer u/s 143(2) and 142(1) the Assessing Officer proceeds to complete the assessment under best judgement assessment u/s 144 of the I. T. Act.

This report is submitted along with original written submission of the appellant. In view of the above the case may be considered on merits by Hon'ble CIT(A). "

5.3 The written submissions dt. 29.02.2016 of the appellant filed in response to the remand report are reproduced, as below.

"In continuation of the submissions made during the course of hearing. the appellant may be permitted to submit the following explanations w.r.t. the remand report of the Assessing officer.

During the course of appellate proceedings, the appellant submitted that the return of income for the assessment year 2007 -C8 was filed on 13.12.2011 before the Assessing Officer. A copy of the return of income was also submitted before the Hon'ble Commissioner of Income-Tax (Appeals). According to the appellant, the investments made in the properties were all from explainable sources and the appellant submitted the capital account along with the return of income. The investments made by the appellant and the sources for such investments were all explained in the statement annexed to the return of income filed. In the remand report the Assessing Officer mentioned that there is an entry in the return receipt Register on 13.12.2011 and that the return of income was not available on record. Therefore, the Assessing Officer mentions that the additional ground raised by the appellant cannot be considered.

In this regard, the appellant humbly submits that the assessment was made ex-parte on the ground that no return of income was filed. The appellant before the Hon'ble Commissioner of Income-Tax (Appeals)

submitted that the return of income was filed before completion of the assessment proceedings and that therefore, the assessment is not correct. In so far as investments are concerned, the appellant clearly submitted that the amounts were received from his mother Smt.M.Lalitha and the appellant derived income from house property. A copy of the return of income of Smt.M.Lalitha is annexed. The assessing Officer without verification of the return of income, mentioned that the additional evidence should not be considered.

In so far as the appellate is concerned, there is an evidence to show that the return of income was submitted and the records maintained by the Assessing Officer also show that the return of income was received by the Assessing Officer. In such circumstances, it is not correct for the Assessing Officer to mention that the additional evidence should not be admitted.

The appellant is submitting copies of the Balance Sheet and capital account; computation statement and the return of Income filed by Smt. M. Lalitha for the assessment year under consideration. The returns of income would indicate that she gifted the amounts as claimed by the appellant. Therefore, the source is explained.

The appellant is also submitting copy of the return of income filed by Sri M. pavan Kumar which clearly indicate that he has 50% share in the investments made.

In view of the above, the appellant submits that the Assessing Officer is not justified in making the additions."

8. The ld.CIT(A,) while deciding the appeals have not given a factual finding of fact whether the return was filed on 13.12.2011 or not. However, the ld.CIT(A) has rejected the said claim of the assessee by resorting to the provisions of section 46A of the Act, holding that the filing of the return of income by the assessee before the ld.CIT(A) is an additional document and which cannot be admitted.

9. In our considered opinion, it was incumbent on the ld.CIT(A) to give a finding as to filing of return of income on 13/12/2011. However, no such finding was given by the ld.CIT(A). However, the assessee has not filed the return of income before the assessing officer even after receiving of the notice under section 148 of the Act and further he had also failed

to file the return of income despite various opportunities granted by the assessing officer. The assessee had filed the return of income only after the last date of hearing i.e., on 12/12/2011. As a matter of fact, on account of non-filing of the return of income, the Assessing Officer was left with no other option but to compute the income of the assessee by resorting to the provision of section 144 of the Act. As the case may be now the situation is that the return of income was filed on 13.12.2011 after the conclusion of the proceedings before the Assessing Officer and the said return of income was available with the Id.CIT(A). In the light of the above, it is clear that availability of return of income on the record of the Revenue, would have the bearing on the outcome of the assessment proceedings.

10. In view of the above and also on account of the fact that the assessment was completed by the Assessing Officer under section 144 of Income Tax Act 1961, we deem it appropriate to remand the matter to the file of the AO with a direction to de novo examine this issue in the light of the above said observation. It is expected from the assessee to produce all the relevant documents before the Assessing Officer and shall cooperate to the Assessing Officer for early disposal of the case. The Id. AO is directed to decide the issue after following the principle of natural justice and after affording enough opportunities of being heard to the assessee. In light of the above, the appeal of the Revenue is allowed for statistical purposes.

11. Now coming to remaining two appeals filed by the assessee, since the issues raised in all the appeals are identical, hence following our decision in ITA No.1693/Hyd/2019, we allow other appeals i.e., ITA No.1695/Hyd/2019 and ITA NO 393/Hyd/2014 filed by the assessee, for statistical purposes.

12. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 30th August, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 30th August , 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Pawan Kumar Makala, H.No.23-172/1, Plot No.158 Madhura Nagar, Shamshabad, Ranga Reddy District Telangana-501 218.
2	Bala Krishna Makalam, H.No.23-172/1, Plot No.158 Madhura Nagar, Shamshabad, Ranga Reddy District Telangana-501 218.
3	Smt Makala Lalitha, H.No.23-172/1, Plot No.158 Madhura Nagar, Shamshabad, Ranga Reddy District Telangana-501 218.
4	ITO, Ward-8(2), Signature Towers, Kondapur Hyderabad-5000 84.
5	CIT(A)-10, Hyderabad
6	Pr.CIT-2, Hyderabad
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order