

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

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

ITA Nos.1398 to 1402/Hyd/2019 and ITA 1555/Hyd/2019		
Assessment Years: 2011-12 to 2016-17		
ACIT, Central Circle-1(1) Block-A, Room No.6, 7 th Floor, Aaykar Bhawan. Hyderabad-500 001.	Vs	Tumu Rajkumar S/o Sri Tumu Sri Ramulu R/o D.No.8-2- 283/82/NG/39, Road No.65, Nandagiri Hills, Jubilee Hills, Hyderabad-500 033 PAN: ACAPT4169M
(Appellant)		(Respondent)

ITA No. 1371/Hyd/2019		
Assessment Year: 2015-16		
Tumu Rajkumar S/o Sri Tumu Sri Ramulu R/o d.No.8-2- 283/82/NG/39, Road No.65, Nandagiri Hills, Jubilee Hills, Hyderabad-500 033 PAN: ACAPT4169M.	Vs	ACIT, Central Circle-1(1) Block-A, Room No.6, 7 th Floor, Aaykar Bhawan, Hyderabad-500 001.
(Appellant)		(Respondent)

CO.Nos.32 to 35/Hyd/2019 Arising out of ITA Nos.1398/Hyd/2019 to 1401/Hyd/2019		
Assessment Years: 2011-12 to 2014-15		
Tumu Rajkumar S/o Sri Tumu Sri Ramulu R/o d.No.8-2- 283/82/NG/39, Road No.65, Nandagiri Hills, Jubilee Hills, Hyderabad-500 033 PAN: ACAPT4169M	Vs.	ACIT, Central Circle-1(1) Block-A, Room No.6, 7 th Floor, Aaykar Bhawan, Hyderabad-500 001,
(Appellant / Cross Objector)		(Respondent)
Assessee by:	Shri S.Venkateswarlu, Advocate	
Revenue by:	Shri K.P.R.R.Murthy, CIT-DR	
Date of hearing:	30.08.2022	
Date of pronouncement:	30.08.2022	

ORDER

PER LALIET KUMAR, JM:-

These are the seven connected appeals and four cross objections filed by the Revenue as well as the assessee feeling aggrieved by the separate orders of Id. Commissioner of Income Tax (Appeals) – 11, Hyderabad, (hereinafter referred as “Id.CIT”) passed on 31.05.2019 for A.Ys. 2011-12 to 2016-17 as mentioned above.

2. Both the parties agreed that appeal in ITA No.1400/Hyd/2019 and Cross Objection in C.O. No.34/Hyd/2019 for A.Y. 2013-14 be taken as lead appeal / CO. Accordingly, we are taking the said appeal and C.O. for the purpose of deciding the appeals.

3. The grounds raised by Revenue in ITA No.1400/Hyd/2019 reads as under :

"1. The Ld.CIT(A) erred both in law and on facts of the case in allowing relied to the assessee.

2. The Ld.CIT(A) erred in deleting the addition made on protective basis and failed to appreciate the fact that the evidence containing the details of sale consideration received of Rs.1,34,66,500/- was found in the residential premises of the assessee.

3. The Ld.CIT(A) failed to appreciate the fact that the assessee has not furnished an. supporting evidence before the A.O to prove that the cash withdrawn during the relevant year and in the earlier years was utilized for making deposits during the year.

4. The Ld.CIT(A) erred in deleting the addition made towards unexplained cash deposits without appreciating the fact that no prudent person will withdraw cash from the bank for the purpose of re-depositing the same into the bank account.

5. The Ld.CIT(A) erred in allowing the additional evidence in respect of addition made towards rental income of Rs.61,36,172/-. unexplained loan from M/s. SR Wheels of Rs.16,20,000/- and agricultural income of Rs.1,85,600/- without giving an opportunity to the AO as per Rule 46A(1) of the IT Rules while admitting the additional evidence.

6. The Ld.CIT(A) erred in holding that the addition made by the AO of Rs. 1,85,600 towards agricultural income is not warranted since meager amount of Rs.15,000/- per acre was shown to have been received by the assessee as agricultural income out of 13.2 acres of agricultural land. ignoring the fact that the principle of res-judicata does not apply to income tax, when no evidences were tiled before the Assessing Officer to prove that the agricultural activity had taken place in the said agricultural land.

7. The Ld. CIT(A) erred in not appreciating the fact that mere holding of agricultural land dues not entitle to claim agricultural income without substantial proof for agricultural activity undertaken.

8. The Ld.CIT(A) erred in deleting the addition made towards unexplained loan without appreciating that the fact the assessee has not furnished any evidence to prove the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor before the AO in respect of the loan taken from Mis. S R Wheels. Further. the primary onus lies on the assessee to prove the genuineness of the transaction along with documentary evidence."

4. The only effective ground raised by the assessee in C.O 34/Hyd/2019 reads as under :

“The ld.CIT(A) failed to hold that the assessment made u/s. 143(3) read with section 153A, is null and void in absence of seized/incriminating material.”

4.1 Assessee also filed additional ground which reads as under :

“Since approval obtained u/s 153D of the IT Act was a mechanical and invalid approval having been granted without due application of mind to the facts of the case, impugned order of assessment made u/s 143(3) / 153A is invalid and not in accordance with law.”

5. First we will take the C.O filed by the assessee. In C.O.No.34/Hyd/2019 for A.Y. 2013-14, the assessee has submitted that the ld.CIT(A) had failed to hold that the assessment made u/s 143(3) r.w.s 153A as null and void as there is no incriminating material during the search. In this regard, the ld.AR relied upon the decision of the Hon'ble Delhi High Court in the case of Pr. CIT v. Meeta Gutgutia reported in [2017] 82 taxmann.com 287/248 Taxman 384/395 ITR 526 in paras 69 to 72 considering the Judgment in the case of Kabul Chawla (supra), wherein it was held as under :

"69. What weighed with the Court in the above decision as the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be accepted to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the A.O. to proceed on surmises and estimates without there being any incriminating material qua the A.Y. for which he sought to make additions of franchisee commission.

70. *The above distinguishing factors in Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.*

71. *For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of section 153A by the Revenue for the A.Ys. 2000-01 to 2003-04 was without any legal basis as there was no incriminating material quaeach of those A.Ys.*

Conclusion

72. *To conclude :*

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153 A of the Act against the Assessee in relation to A.Ys. 2000-01 to 2003-04."

6. The Revenue preferred Special Leave Petition (SLP) before the Hon'ble Supreme Court in the case of Meeta Gutgutia (supra), which had been dismissed by the Hon'ble Supreme Court in the case of Pr. CIT Vs. Meeta Gutgutia reported in [2018] 96 taxmann.com 468/257 Taxman 441 (SC).

7. It was submitted by the Id.AR that even the SLP filed by the Revenue against the order challenged by the Meeta Gutgutia was dismissed by the Hon'ble Supreme Court and therefore, the law laid down by the Hon'ble Delhi High Court is required to be applied.

8. Per contra, the Id.DR has submitted that the Hon'ble Jurisdictional High Court in the case of Gopal Lal Bhadraka Vs. DCIT reported in 27 Taxmann.com 167 had decided the case in favour of the Revenue. Therefore, the decisions passed by the non jurisdictional Courts cannot be applied in the present case. The Id.DR however, contended that the Department appeal in the case of Kabul Chawla (supra) was dismissed by the Hon'ble Supreme Court because of the low tax effect. Further, in the case of Meeta Gutgutia (supra), the Hon'ble Delhi High Court

considered its earlier decision in the case of Kabul Chawla (supra). Lastly, it was submitted that the dismissal of the SLP petition by the Hon'ble Supreme Court does not laid down any law, unless the order of dismissal is a speaking and reasoned order. Ld.DR further submitted that Hon'ble Madhya Pradesh High Court in the case of CIT Vs. Darshan Talkies reported in [1996] 217 ITR 744 (M.P.) has held as under:

"The decision of the High Court is binding and the pendency of a petition for special leave to appeal to the Supreme Court from such a decision cannot obliterate its impact. It is binding until it is reversed or overruled."

9. We have heard the rival contentions of the parties and perused the material available on record. The Hon'ble Jurisdictional High Court in the case of Gopal Lal Bhadraka Vs. DCIT (supra) had decided the issue in paras 17 and 18 in favour of the Revenue with the following findings:-

"17. By virtue of section 158BI of the Act, the various provisions of Chapter XIV-B of the Act are made inapplicable to proceedings under section 153A/153C of the Act. The effect of this is that while the provisions of Chapter XIV-B of the Act limit the inquiry by the Assessing Officer to those materials found during the search and seizure operation, no such limitation is found in so far as section 153A/153C of the Act are concerned. Therefore, it follows that for the purposes of section 153A/153C of the Act the Assessing Officer can take into consideration material other than what was available during the search and seizure operation for making an assessment of the undisclosed income of the assessee.

18. At this stage, we may mention that learned counsel for the assesseees relied upon Manish Maheshwari v. Asst. CIT [2007] 289 ITR 341 (SC) for the purposes of interpreting section 158BB of the Act. We have gone through the decision cited by learned counsel and find that it does not support his case for the simple reason that the provisions Chapter XIV-B of the Act are not applicable to proceedings under section 153A/153C of the Act. Consequently, the principles of section 158BB of the Act cannot be imported for the purposes of interpreting section 153A/153C of the Act. The view expressed by the Supreme Court in Manish Maheshwari has no application to the present case."

10. In view of the above said categorical finding by the Hon'ble jurisdictional High Court, we have no other option but to apply the law as laid down by the jurisdictional High Court. The ITAT, Hyderabad Bench is situated within the territorial jurisdiction of the Hon'ble Jurisdictional High Court and therefore, is bound to apply the law laid down by the Hon'ble Jurisdictional High Court. Admittedly, the decision in the case of Gopal Lal Bhadraka Vs. DCIT (supra) had not been distinguished by any of the co-ordinate Benches of jurisdictional High Court or has been overruled by the Hon'ble Supreme Court. We may also draw support from the decision of the co-ordinate Bench of the Tribunal, Mumbai in the case of Bank of India Vs. ACIT reported in [2021] 125 taxmann.com 155 wherein it was held as under:-

"While dealing with judicial precedents from non-jurisdictional High Courts, we may usefully take of observations of Hon'ble jurisdictional High Court in the case of CIT v. Thana Electricity Co. Ltd. [1994] 206 ITR 727 (Bom.), to the effect "The decision of one High Court is neither binding precedent for another High Court nor for the courts or the Tribunals outside its own territorial jurisdiction. It is well-settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect". Unlike the decisions of Hon'ble jurisdictional High Court, which bind us in letter and in spirit on account of the binding force of law, the decisions of Hon'ble non-jurisdictional High Court are followed by the lower authorities on account of the persuasive effect of these decisions and on account of the concept of judicial propriety- factors which are inherently subjective in nature. Quite clearly, therefore, the applicability of the non-jurisdictional High Court is never absolute, without exceptions and as a matter of course. That is the principle implicit in Hon'ble Supreme Court's judgment in the case of Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd. [2008] 173 Taxman 322/305 ITR 227 wherein Their Lordships have upheld the plea that "non-consideration of a decision of Jurisdictional Court or of the Supreme Court can be said to be a mistake apparent from the record".

11. In the light of the above, the only ground raised by the assessee in the C.O. are dismissed.

12. Now we will deal with the additional ground filed by the assessee in the C.O.

12.1. Before us ld.AR submitted that a consolidated approval was given by the authority concerned u/s 153D of the Act. In this regard, he relied upon the decision of ITAT, Delhi in the case of Sanjay Duggal Vs. ACIT in ITA No.1813/Del/2019 and others dt.19.01.2021.

13. Per contra, the ld.DR had submitted that the additional ground raised by the assessee is for the first time and the record has to be verified by the Department.

14. We have heard the rival contentions of the parties and perused the material available on record. In this regard, we may point out that the approval letter dt.28.12.2017 was granted by the Addl.CIT, Central Range for the A.Ys. 2013-14 to 2016-17. In the said approval letter, it was mentioned that the Addl.CIT had perused the draft assessment order and the checklist submitted by the Assessing Officer and thereafter, had granted the approval u/s 153D of the Act. In our view, the contention of the ld.AR that separate approval is required to be given is not correct as the bare perusal of Section 153D make it abundantly clear that no assessment shall be passed by the Assessing Officer except with the prior approval of the JCIT in respect of each assessment year. In the present case, it is not the case that the approval for each assessment year had not been granted by the Addl.CIT. However, it is the case of the assessee before us that separate order granting the approval is required to be passed by the Addl.CIT. In our view, the reading of relevant provision by ld.AR is not correct as the law only contemplates passing of the assessment

order after obtaining approval for each assessment year from the Addl.CIT and the section 153D has not prohibited passing of the consolidated order of approval. In the light of the above, the additional ground raised by the assessee is devoid of merit. The decision relied upon by the assessee in the case of Sanjay Duggal (supra) is not applicable to the facts of the present case as the approval was granted by the Addl.CIT after perusing the draft assessment orders and other documents. In the light of the above, the additional ground filed by the assessee is dismissed.

15. In the result, the C.O.No.34/Hyd/2019 is dismissed.

16. Now we will take the lead appeal i.e., ITA No.1400/Hyd/2019 filed by the Revenue.

16.1 With respect to the appeal filed by the Revenue, ld.DR had drawn our attention to Paras 4.2, 5.2, 6.2 and 7.2 of the order passed by the ld.CIT(A). It was submitted by the ld.DR that ld.CIT(A) had decided the issue merely on the basis of the submissions made by the assessee during the appellate proceedings and he has not called for the remand report from the Assessing Officer. In Para 4.2, 5.2, 6.2 and 7.2 of the order passed by the ld.CIT(A) it was provided as under :-

“4.2) I have gone through the facts of the case and the submissions of the appellant. In the statement recorded of Sri Phani Kumar before the AO, he has stated that the contents on the sheet were with regard to the proposed flats to be received on completion of development to his share and the estimate value of some of that flats. The details belong to Mr.Phani Kumar has not been denied by the AO and addition has been made in his hands on substantive basis. As the factum of details belonging to Mr. Phani Kumar is not under dispute, no addition is warranted in the case of the assessee. Further, since, no development of project has taken place at all in the case of the appellant by the proposed builder i.e. Cyber City Developers, there is no reason to make addition at all in the hands of the appellant. In view of the above, the addition of Rs. Rs.1,34,66,500/- is ordered to be deleted. This ground is allowed.

5.0) Ground no.4 is regarding addition of Rs.27,85,000/-. The AO in course of assessment proceedings has observed that. the appellant has deposited on various dates cash of Rs.27,85,000/- in his bank account(s). As the appellant has not produced any information with regard to the

source of the above deposit(s), the AO made treated the entire credits and made the addition u/s 68 of the I.T.Act.

5.1) In course of the appellate proceedings the AR submitted as under:

For AY 2013-14, The AO has added Rs.2785000/- towards the cash I deposited in bank, stating that the appellant has not explained it or not I furnished Receipts and Payments A/c.

The appellant submit, that during the assessment, as required by the AO, he has submitted all his bank account statements{ and when AO pointed out to explain some credits/cash deposits in the statement, he has explained that all the cash deposits, are out of cash withdrawals only, before such date of deposit, and also explained or shown, some prior cash withdrawals, equated to some cash deposit items, as appear in the same bank statement, i.e., The source/withdrawal, are very much available in the same bank statement, where deposits are noticed.

The appellant further submit that while asking/mentioning, The cash deposit of "Rs.27,85,000/-" the AO did not give any details, i.e., the bank account No, (of 3 Bank A/c's submitted) the date or amounts of cash deposits, i.e., the extracted cash deposit amounts, in arriving such total amount, by A.O, and in absence of which, the Assessee was unable to explain or equate them item wise with the cash withdrawals. The AO asked to file Receipts and payments A/c, and the appellant explained that he had 'not maintained any books of accounts', as there is no business income and unable to prepare or file Receipts and Payments A/c, but clearly explained, that all the cash deposits are out of cash Withdrawals only, which are clearly available in the same Bank A/c statement, in which the cash deposits are noticed.

The appellant further explained, that he is assessed to I. T, for several years, and had no business or business income, and the same case with other members of family, assessed to I. T, and he do not maintain any books of accounts, or prepare any Balance sheet, in order to now draw any Receipts and Payments A/c or cash flow statement as desired by AO.

The assessee further explained, that his annual income from rent is @Rs.24 Lakhs, and interest income Rs.8.40 lakhs, and also took bank loans and he has not made any investment in this year, and all the original cash withdrawals are, out of the said income credited in bank account only, and withdrawn and such drawn amounts are only deposited back into bank. The appellant humbly submit that having given bank A/c statements, reflecting the source/income credited, cash withdrawals, and subsequent deposits, all in the same Bank A/c statement, the income and all the cash deposit stand as explained. The AO ignored all the actual/practical facts, and added the same, as unexplained, despite the withdrawals clearly available and stands explained.

However the appellant, now further submissions has Prepared/ a flow of transactions i.e., first, the withdrawals and later the deposits/ in a chronological order, i.e. date wise, and filed herein, showing/clearly tallying all the cash deposits, to the earlier withdrawals/ transactions/ credits/debits in bank A/c statements. The AD should appreciate the fact/ that the assessee's income of Rent and Interest is only from only SBI, and

the deposits there in/ and there is no scope for any income to be received and not accounted or understated to be treated as unexplainable.

5.2) I have considered the assessment order, submissions of the assessee, documents placed on record. The following position emerges:-

(i) The assessee has three bank accounts namely SBI, Kohinoor Banjara Branch (A/c No.20064577712), SBI Secunderabad Branch (A/c No.10725295429) and SBI, Erragadda Branch (A/c No.3106100240).

(ii) The appellant submitted the Xerox copies of the above bank account statements in course of appellate proceedings duly indicating complete cash/cheque/RTGS transactions' of the above three bank accounts with details of deposits/withdrawals along with opening bank balance from 01.04.2013 to closing bank balance till 31.03.2014.

(iii) The assessee has no other business income other than rental income and some interest receipts out of the fixed deposits held in bank accounts and whatever the deposits and withdrawals made in the above bank accounts are the receipts out of the above source. The AO did not took cognizance of the same.

(iv) The additions were made by the AO treating all the credits, cash deposits as well as cheque deposits in the bank accounts as unexplained, whereas it constitutes the security refund deposits/interest on FDRs/ rental income and some of them contain even cheque/RTGS transfers.

(v) The assessee filed explanation with regard to the credits/cash deposits in the bank accounts and the source for cash deposits being earlier withdrawals in the bank accounts. Further, the explanation given by the assessee is from the bank account statements and no new claim of source as to source of introduction of cash from outside is made.

(vi) The objections raised by the AO without verifying the claim of the assessee is untenable. The assessee has source from rental deposits and fixed deposit interest. Apart from this the assessee has deposited amounts received from Cyber City Builders which was nothing but Security Refundable Deposit received from time to time.

(vii) The fact that the assessee has withdrawals prior to deposition of cash in various bank accounts has not been disputed by the AO. There is no adverse finding as to the claim of the assessee. There is no material brought on record by the AO to show that the cash withdrawn earlier has been used by the assessee for any other purpose or has been invested for purchase of any other assets. In view of such factual position, the claim of the assessee that earlier cash withdrawals have been used for cash deposits later cannot be denied.

(viii) In view of the position emerging as above, it is held that the addition of Rs.27,85,000/- is not warranted and the same is deleted. This ground is allowed.

6.0) Ground no.5 is with regard to addition made on account of rental income. The AO in his Assessment Order has observed as under:

It is seen from the details filed by the assessee explaining credits in the Bank account that assessee had received Rental Income of Rs.86,09,252/-

including loan proceeds received from SBI, whereas assessee has admitted only Rs.24,73,080/- as Rental Income in the Return of Income. As such assessee was issued a show cause notice dated 05.12.2017 requesting to explain the same. In response to the said notice the assessee has not furnished any explanation. In view of this the difference amount of Rs.61,36,172/- is treated as undisclosed Rental Income and accordingly added to the total income.

6.1) In course of appellate proceedings the AR submitted his written submissions as under:

The appellant submit, that he is receiving a credit of Rs.2,08,404 /: every month from 581 Erragadda Branch, towards the monthly rent from SBI, as credited in his SB A/c No.31061002440 from April 2012 to March 2013, regularly, every month. This is as per the 8ank statement, given to AO and as asked, the appellant explained, the regular monthly rental income credits, which are self explanatory. Apart from this rent credits, there are other clearing credits, among which there is, one single credit of Rs.59 lakhs, from the same SBI, but this is a loan taken from 581, and credited in the same SB account, and the same is explained as loan from SBI by the appellant, in the Asst proceedings.

The AO also has mentioned in his order "that assessee has received rental income of Rs. 86, 09,252/- including loan from 581," and asked the assessee by a notice to explain the same. But the AD did not indicate, how he arrived at this Rs.86,09,252/- or details, components of it or any abstract of credits, in the bank account, totaling to said Rs.86,09,252/- . The AO himself, having mentioned, "that the assessee received rental income of Rs.86,09,252 including loan proceeds," did not mention or split the components, of rental income and loan part, in absence of which, the assessee, was unable to understand the AO's query, i.e., how the said above amount of Rs.86,09,252/- is arrived or to reply thereto. There are 12 monthly credits of Rs.2,08,404/- each, credited for rent receipt, at every month end, i.e., $12 * 2,08,404 = 25,00,848 + Rs.59,00,000/-$ loan from SBI single credit, to the same SB A/c, and the two added, (Rs.84,00,848/-) are not tallying to the said Rs.86,09,252/- as mentioned by AO.

But having explained and showed monthly rental credits in the 8ank statement, the assessee has done his part to explain the rental income, and for the single credit of RS.59 lakhs in Sept.2017, the assessee explained it as a loan received/credited by SBI, and the bank entry also indicated it as (a loan) from "RACPC Regional/ Retail Asset credit processing cell, explained by the appellant, and the same is also endorsed by the AO also as income "including loan proceeds," on the basis of loan A/c statement filed, and as such there is nothing more, to ask or explain, as the loan receipt of Rs.59 lakhs stands fully explained / self-explanatory/ and the addition on this account is to be deleted.

For the balance/difference of RS.84,00,848/- and Rs.86,09,252/- as mentioned by AO, it is observed that the AO has taken/abstracted the rent at 13 times/months in a year, i.e., if one more month rent of RS.2,08,404/- is added to Rs.84,00,848/- it would make it to Rs.86,09,252/- as arrived by the AO by mistake. The appellant submits that the rental income as clearly stated by every monthly credit, and the loan of Rs.59 lakhs is

credited only once in the year, are explained/supported by loan A/c statement clearly, also endorsed as "rent including loan proceeds of Rs.59 lakhs by AO;" is to be deleted / and difference of Rs.2,08,404/- is also clarified as apparent mistake occurred by AO, the additions made on the basis of mistakes, is unjust and unwarranted. (The copy of loan A/c for Rs.59.00 lakhs is filed herein also, as a ready reference.)

6.2) I have gone through the facts of the case and the submissions of the appellant. As could be seen from the bank account statement for the period under consideration, there is a credit of Rs.59 lakhs in assessee's SB A/c No.31061002440 on 28.09.2012. This amount is the loan sanctioned by RACPC, SGI towards housing loan. The assessee has also got monthly rent of Rs.2,08,404/- crediting every month. Further, as contented by the appellant, the AO has calculated rent for 13 months instead of 12 months inadvertently. In view of the above facts, the addition of Rs.61,36,172/- on account of undisclosed rental income is not warranted and the same is deleted. This ground is allowed.

7.2) I have gone through the submissions and also the bank account statement. The assessee is a partner in SR WHEELS and as could be seen from the bank account statement of SR Wheels furnished before me, an amount of Rs.16,20,000/- was seen to have been received by the appellant from the Firm Mis SR Wheels and the same has been routed through banking channel. In view of the above, the credit of Rs.16,20,000/- is explained and the addition is ordered to be deleted. This ground is allowed."

17. Per contra, the ld.AR had submitted that the documents were available with the ld.CIT(A) / Assessing Officer and no fresh documents were filed before the ld.CIT(A). He had also supported the case of ld.CIT(A) on merits.

18. We have heard the rival contentions of the parties and perused the material available on record. The paras 4.2, 5.2, 6.2 and 7.2 of the order passed by the ld.CIT(A) clearly show that the ld.CIT(A) had decided the issue based on the submissions made by the assessee before him. With respect to the addition of Rs.1,34,66,500/-, the ld.CIT(A) had mentioned that as the additions were made in the hands of Shri Phani Kumar, therefore, the additions made by the Assessing Officer on protective basis in the hands of the assessee have been deleted. We have perused the assessment order in the case of said Phalini

Kumar for A.Y. 2014-15 (though the assessment year before us is 2013-14). In the said assessment order, it was mentioned *“the assessee assured your goodselves that the assessee would offer the capital gains on the said flats as and when they are registered in favour of the agreement holder or their nominee”*.

19. The perusal of assessment order in the case of Phani Kumar clearly shows that no additions were made in the hands of assessee for an amount of Rs.1,34,66,500/-. What has been admitted by the assessee in the said order is to pay the capital gains as and when the flats are registered. The issue before us is entirely different than the issue falling for consideration of the A.Y. 2014-15 in the case of Phani Kumar. In the light of the above, we deem it appropriate to remand back this issue to the file of Assessing Officer for fresh adjudication.

20. With respect to the other issues, our attention was drawn to Para 5.2, 6.2 and 7.2 of the order of Id.CIT(A). Perusal of the order of Id.CIT(A) clearly shows that the Id.CIT(A) has merely relied upon the submissions of the assessee and has not bothered to confront the documents / submissions / reports to the Assessing Officer during the appellate proceedings. The Id.CIT(A) has decided the issues after relying upon the documents / submissions filed by the assessee, treating them as gospel truth and no efforts were made to cross verify those facts after using his own powers or calling the remand report/comments of Assessing Officer. Before the Assessing Officer, no information was furnished by the assessee with regard to the other issues, which is clear from the perusal of the order passed by the Assessing Officer and we can refer to the findings of the Assessing Officer mentioned in paras 4 to 7 of the assessment order.

21. In fact, it is the duty of the authority to apply its mind and follow the procedure laid down by the law before deciding the issues. There is a clear cut violation of Rule 46A of Income Tax Rules 1962 as no opportunity of hearing was granted by the Id.CIT(A) while deciding the appeal to the Assessing Officer. For the above said purposes, we may reply upon the decision in the case of CIT Vs. NE Technologies India (P.) Ltd reported in [2016] 65 taxmann.com 180 (Andhra Pradesh) wherein it was held as under :

“5. Section 250 of the Act prescribes the procedure in appeal. Section 250 (1) of the Act enables the CIT (A) to fix a day and place for the hearing of the appeal, and to give notice of the same to the appellant, and to the assessing officer against whose order the appeal is preferred. Section 250 (2) of the Act stipulates that the appellant, and the assessing officer, shall have a right to be heard at the hearing of the appeal. Section 250 (4) of the Act stipulates that the Commissioner may, before disposing of any appeal, make such further enquiry as he thinks fit or direct the assessing officer to make further enquiry and report the result of the same to him.

6. Rule 46-A of the Rules reads as under:

(1) The appellant shall not be entitled to produce before the Deputy Commissioner (Appeals) [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer]; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal; or

(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) *The [Deputy Commissioner (Appeals)] or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity--*

(a) *to examine the evidence or document or to cross-examine the witness produced by the appellant, or*

(b) *to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.*

(4) *Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]*

7. *While clause (1) of Rule 46-A of the Rules enables the appellant to produce, before the first appellate authority, any evidence, other than the evidence produced by him before the course of proceedings before the assessing authority, sub-rule (2) stipulates that no evidence shall be admitted, under sub-rule (1), unless the appellate authority records, in writing, reasons for its admission. Under sub-rule (3) the first appellate authority shall not take into account any evidence, produced under sub-rule (1), unless the assessing officer has been allowed a reasonable opportunity to examine the evidence or documents, or to examine the evidence.*

8. *While it is no doubt true that nothing contained in sub-rules (1) to (3) of Rule 46-A, affect the power of the first appellate authority to direct production of any documents, or the examination of any evidence, in order to dispose of the appeal, it is clear from sub-sections (1) and (2) of Section 250 of the Act itself that the assessing officer has a right to be heard at the hearing of the appeal.*

9. *Rule 46-A (3) of the Rules disables the CIT (A) from taking into account any evidence produced before him unless the assessing officer has been allowed a reasonable opportunity to examine the evidence or documents. In the present case, admittedly, no such opportunity has been afforded to the assessing officer. The Tribunal has held that, if the evidence is clinching in nature and does not leave any further room for doubt, no useful purpose would be served in performing the ritual. What the Tribunal failed to note is that Rule 46-A (3) requires the assessing officer to be given an opportunity to examine the documents produced by the assessee for the first time before the first appellate authority. This mandate of Rule 46-A (3) could not have been dispensed with, as it is a statutorily prescribed rule of natural justice. This mandate under Rule 46-A (3) is in tune with Section 250(2) of the Act which requires the assessing authority, or his representative, to be given an opportunity of being heard before the appeal is decided.*

10. *The Gujarat High Court in Vali Mohamed Ahmedbhai (supra) rejected the view, similar to the one taken by the Tribunal, and held that the CIT (A) should not have taken into account any evidence produced under Rule 46-A(1) unless the Income-tax officer has been allowed a reasonable opportunity to examine the evidence or to cross-examine the witness whose evidence was taken on record or to produce any evidence in rebuttal of the additional evidence produced by the assessee; the CIT (A) could not have relied on the additional evidence without giving such opportunity to the Income-tax officer; even if no such rule was in existence, ends of justice and fair play demand that, when the assessee produces additional evidence in his appeal, an opportunity is given to the ITO to test the evidence or to counter the effect of the evidence by producing evidence in rebuttal or otherwise; the ITO had the right to object to the production of additional evidence; since something adverse to the ITO was sought to be done in the course of the appeal, by way of augmenting the record, the ITO ought to have been heard, and given an opportunity to meet the additional material, by way of cross-examination, counter-evidence and urging submissions in the context of the augmented record; when a prayer for additional evidence is made, it is an independent and substantive application seeking a new right; notice of such application was necessary to the ITO; he should have been afforded the opportunity to oppose it; no order granting the request for additional evidence could have been passed behind the back of the ITO in violation of principles of natural justice; and notice of the appeal cannot be equated with the notice of a future application to lead additional evidence.*

11. *The statutory obligation which the CIT (A) was required to discharge, under Rule 46-A(3) of the Rules, cannot be whittled down, or brushed aside as performing a ritual. While sub-rule (4) of Rule 46-A of the Rules, no doubt, confers power on the first appellate authority to cause production of documents, justice and fair play would require the assessing authority to be given the opportunity to examine such documents and put forth his objections, if any, thereto. The document which the assessee intends to place before the appellate authority, cannot be entertained by the CIT (A) except on fulfillment of the following conditions:- (1) recording reasons in writing for receiving such evidence; and (2) giving the assessing authority an opportunity to examine the documents.*

12. *The order under appeal must be, and is accordingly, set aside. As the CIT (A) has examined the documents, without giving the assessing officer an opportunity of being heard, his order must also be set aside. The CIT (A) shall make available copies of the documents, placed before him by the assessee, to the assessing officer and, after giving him an opportunity of being heard in this regard, pass orders afresh and in accordance with law.*

22. In the light of the above, we deem it appropriate to remand back the matter to the file of the AO with a direction to denovo 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 AO is directed to decide the issue after following the principle of natural justice and after affording the opportunities of being heard to the assessee. Thus, the lead appeal ITA No.1440/Hyd/2019 filed by the Revenue is allowed for statistical purposes. In view of the above, we refrain ourselves from deciding the other grounds urged by the Revenue.

23. Now coming to remaining appeals and Cross Objections filed by both the parties, since the issues raised in all the appeals and cross-objections are identical with the issues raised in lead appeal and C.O., we respectfully, following our decision for A.Y. 2013-14 decided above in ITA No.1400/Hyd/2019 filed by Revenue and C.O. No.34/Hyd/2019 filed by the assessee, all the remaining appeals filed by the Revenue are allowed for statistical purposes and the Cross-Objections filed by the assessee are dismissed.

24. In the result, all the appeals filed by the Revenue are allowed for statistical purposes and the C.O.s filed by the assessee are dismissed.

25. Now we will take the appeal of assessee ITA No.1371/Hyd/2019 for A.Y. 2015-16 for adjudication.

25.1. With respect to ITA No.1371/Hyd/2019 filed by the assessee, we have already remanded back the appeal of Revenue to the file of Assessing Officer with a direction to conduct a denovo assessment. In the light of the above, we deem it appropriate to remand back even the appeal filed by the assessee to the file of Assessing Officer for deciding the issue afresh. Thus, the appeal of assessee in ITA No.1371/Hyd/2019 is allowed for statistical purposes.

26. In the result, the appeal of assessee in ITA No.1371/Hyd/2019 is allowed for statistical purposes.

27. To sum up, all the captioned appeals filed by the Revenue and the assessee i.e., ITA No.1371/Hyd/2019 are allowed for statistical purposes and all the Cross Objections filed by the assessee are dismissed. A copy of this common order be placed in respective case files.

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

Sd/-

Sd/-

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

Thirumalesh/sps

Copy to:

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1	ACIT,Central Circle-1(1), Block-A, Room No.6, 7 th Floor, Aaykar Bhawan, Hyderabad-500 001
2	Tumu Rajkumar, S/o Sri Tumu Sri Ramulu R/o d.No.8-2-283/82/NG/39, Road No.65, Nandagiri Hills, Jubilee Hills, Hyderabad-500 033
3	CIT(A)-11, Hyderabad
4	Pr.CIT(Central), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order