

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

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri K.Narasimha Chary, Judicial Member

ITA No.1387/Hyd/2016		
Assessment Year: 2010-11		
ITO, Ward-2 Vasanthapet Proddatur-516 360	Vs.	Sadhanakari Khaja Rahmathulla Chintapalli(village) Kalasapadu(Mandal) Kadapa(District) Andhra Pradesh PAN : BRFPK3718Q
(Appellant)		(Respondent)

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ITA No.674/Hyd/2017		
Assessment Year: 2010-11		
Sadhanakari Khaja Rahmathulla Chintapalli(village) Kalasapadu(Mandal) Kadapa(District) Andhra Pradesh PAN : BRFPK3718Q	Vs.	ITO, Ward-2 Vasanthapet Proddatur-516 360
(Appellant)		(Respondent)
Assessee by:		Shri K.C.Devdas, CA
Revenue by:		Shri P.V.Subba Raju, Sr.AR
Date of hearing:		24.08.2022
Date of pronouncement:		06.09.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

These are cross appeals. The first one is filed by the revenue and the second one is filed by the assessee and are directed against the order dated 19.07.2016 of Learned Commissioner of Income tax (Appeals), Kurnool relating to AY 2010-11. For the

sake of convenience, these were heard together and are being disposed-of by this common order.

2. Facts of the case, in brief, are that the ITO (Intelligence), Tirupati had forwarded information about the assessee that the department has in its possession information to the effect that the assessee deposited Rs.2,53,18,080 in cash in the Andhra Pragathi Grameena Bank, Porumamilla. In response to query letter issued by the ITO (Intelligence), Tirupati, the assessee's AR filed a letter according to which the assessee was a farmer looking after the agricultural lands of his father and all the amounts found deposited are either out of agriculture or belonging to some other agriculturists. In this background the ITO (Intelligence) Tirupati addressed a letter to the ITO Ward-2 Proddatur for examination of the case and further investigation for probable escapement of taxes. From the data available, the AO noticed that the assessee has not filed his ROI for the AY under consideration. Therefore, a notice u/s.148 was issued and served on the assessee.

3. In response to the notice issued u/s. 148, the assessee filed his return of income on 02.08.2013 disclosing total income of Rs.1,66,000/-. The AO issued statutory notices u/s. 143(2) & 142(1). However there was no compliance to the statutory notices issued by the AO for which the AO proceeded to complete the assessment u/s. 144 of the I.T.Act. The AO deputed his Inspector to examine and report regarding the contention of the assessee before the ITO(Intelligence) Tirupati where in the assessee had stated that the entire credits found deposited in the bank account are out of agricultural receipts and some farmers have utilized the bank account of the assessee for securing their money. The Inspector reported that 11 farmers had furnished written confirmations that they have utilized the bank account of the

assessee for securing their money and such total amount comes to Rs.11,00,000/-

4. During the course of assessment proceedings, the AO noted that out of the total deposit of Rs. 2.53 crores an amount of Rs. 11 lacs are prima facie established to be belonging to persons other than the assessee. However, the nature of crops grown, extent of land cultivated, marketing of the crops/yield, mode of receipt, persons/concerns to whom the crops were sold remain unexplained. He further noted that assessee is also a licence holder for retail sale of IMFL during the FY 2010-11 relevant to the AY 2011-12 which strengthens the stand that the assessee is not a pure agriculturist. He further noted from the bank statement that the assessee has transferred amounts to IBDDS on various dates, purchased DDs, issued cheques, etc. as per the following details.

SL	DATE OF TRANSACTION	PARTICULAR	AMOUNT
1	25/04/2009	TR TO IBDDS	150414
2	25/05/2009	DD ON KADAPA	215552
3	26/06/2009	TR TO IBDDS	501380
4	19/11/2009	DD ON KADAPA	50138
5	23/11/2009	16 DDs ON KADAPA	1484085
6	26/11/2009	TR TO IBDDS	601656
7	05/12/2009	DD ON KADAPA	501380
8	10/12/2009	DD ON KADAPA	691904
9	17/12/2009	DD ON KADAPA	872401
10	29/12/2009	DD ON KADAPA	752070
11	11/01/2010	DDs ON KADAPA	551518
12	20/01/2010	DD ON KADAPA	1143144
13	21/01/2010	DD ON KADAPA	200552
14	25/01/2010	DD ON KADAPA	902484
15	27/01/2010	DD ON KADAPA	501380
16	05/02/2010	DD ON KADAPA	501380
17	11/02/2010	DD ON KADAPA	401104

18	13/02/2010	TR TO IBDDS	601656
19	15/02/2010	DD ON KADAPA	802208
20	23/02/2010	DD ON KADAPA	501380
21	15/03/2010	TR TO IBDD	350966
22	15/03/2010	TR TO IBDD	902484
23	20/03/2010	DD ON KADAPA	852263
24	27/03/2010	TR TO IBDD	1102427

According to the AO, these activities are not carried on normally by an agriculturist. Therefore, the AO was of the opinion that the transactions are not for agricultural operations and the assessee had either carried out unknown business or utilized the bank transactions to evade legitimate tax payable. In view of the above, the AO made addition of Rs. 2,41,18,080/- to the total income of the assessee and completed the assessment determining the total income at Rs. 2,42,84,080/-.

5. In appeal, the Id.CIT(A) after obtaining a remand report from the AO deleted the addition to the extent of Rs.2,16,54,600/- and sustained addition of Rs.24,63,480/- by observing as under:-

"4.1 The remand report of the Assessing Officer brings on record the fact that the following six persons have deposited cash in the SS Account of the appellant Sri S. Khaja Rahamathulla during the F.Y2009-10 and requested the appellant to draw demand drafts in favour of Govt. of Andhra Pradesh, DDS, Kadapa towards purchase of stock on behalf of the above persons. The details for cash deposits made by the above persons in SS Account of appellant are as under:

S.No.	PAN	Name of the assessee	Amount deposited in Rs.
1	AOOPR0993M	Sri A.Ramanaiah	18,50,000
2	APMPP1696J	Sri K.Pamuleti	23,50,000
3	AHJPV4272H	Sri D.Venkateswara Rao	21,40,000
4	AHJPV4271E	Sri K.V.Subba Reddy	31,65,000
5	AEAPV5474M	Sri V.Venkataiah	29,00,000
6	ADFPH7103R	Sri S.Hazarathaiah	32,60,000
		Total	1,56,000

All the above persons are assessed to tax and they filed their returns of income for the assessment year 2010-11 and assessments u/s.143(3) were completed before initiation of the above proceedings in the case of persons mentioned at S.No.1 to 4 by rejecting the books of account and resorting to estimation of income.

4.2 This being the case, the Assessing Officer should have communicated to the jurisdictional AOs, the details of the above persons so as to verify whether the above persons had sources for such funds made out of their tax paid incomes. Merely on the mistaken notion, the AO went on to make the addition by adding up the credits in the bank account.

5. During the course of appeal proceedings the appellant produced confirmation letters, affidavits, copies of Income Tax returns etc. pertaining to the persons to whom the funds alleged to have belonged to. As the assessment was completed u/s.144 of the IT Act it is nothing but fair to admit the additional evidence produced and accordingly the same has been taken on record. The entire information has been forwarded to the assessing officer for his comments. The assessing officer vide remand report dated 25.04.2016 through the Addl. CIT, Kadapa Range furnished his comments. A copy of the remand report was made available to the appellant for their comments. The appellant filed detailed comments with regard to various observations contained in the remand report. The relevant parts are extracted hereunder:

5.1 At para 8, the assessing officer mentioned that sworn statements of six persons were recorded u/s.131 of the IT Act and discussed the relevant facts with regard to each deposer.

a. A. Ramanaiah : The assessing officer confirmed that the said person carried on business in liquor during the years 2008 to 2011 and also 2013 to 2014. He further mentioned that the said person filed return of income for the asst. year 2010-11 declaring total income of RS.1,82,140/- from liquor business. The assessing officer mentioned that as the account books produced by the assessee were not supported by proper evidences, the then assessing officer completed the assessment by invoking provisions of section 145 of the IT Act.

b. Sri K.Pamuleti: He also admitted that he carried on liquor business and filed return of income for the asst. year 2010-11 declaring total income of Rs.1,85,030/-. The case was taken up for scrutiny and the then assessing officer by invoking provisions of section 145 of the IT Act rejected the account books and estimated the income at 5% on purchases.

c. Sri VVenkataiah: He also admitted that he carried on liquor business and filed return of income for the asst. year 2010-11 declaring total income of Rs.2,48,710/-.

d. Sri Sadankari Hazarathaiah : He also admitted that he carried on liquor business and filed return of income for the asst. year 2010-11 declaring total income of Rs.2,30,910/-.

e. Sri DVenkateshwara Rao : He also admitted that he carried on liquor business and filed return of income for the asst. year 2010-11 declaring total income of RS.1 ,54,619/-. The case was taken up for scrutiny and the then assessing officer by invoking provisions of section 145 of the IT Act rejected the account books and estimated the income at 5% on purchases.

f. Sri K.venkata Subba Reddy. He also admitted that he carried on liquor business and filed return of income for the asst. year 2010-11 declaring total income of Rs.2,00,530/-. The case was taken up for scrutiny and the then assessing officer by invoking provisions of section 145 of the IT Act rejected the account books and estimated the income at 5% on purchases.

5.2 At para 9 the assessing officer observed that:

i. All above confirmed that they have deposited cash into the account of the assessee on different dates out of sale proceeds of liquor business.

ii. The assessing officer also mentioned that they have also given similar kind of statements in the affidavits submitted before the Hon'ble CIT(A), Kurnool.

iii. The assessing officer further mentioned that all six persons confirmed that since the assessee was working as an accountant in their liquor shops, sometimes when they were not available in station, gave cash to the assessee for obtaining of demand drafts through his account on behalf of them.

iv. The assessing officer further mentioned at para 10 that with regard to creditworthiness and genuineness towards purchase of demand drafts all the witnesses have submitted that they started liquor business out of their past savings and subsequent cash collection received from day to day sale of liquor were deposited into the account of the assessee to enable him to obtain demand drafts on behalf of them.

v. The assessing officer further confirmed that all above witnesses have filed their returns of income before the ITO, Ward-2, Produttur for the asst. year 2010-11 and out of those six cases four cases were completed u/s.143(3) of the IT Act after scrutiny.

5.3 From the above facts confirmed by the assessing officer it can be seen that:

i. All six persons mentioned above were assessed to tax regularly. As they were in liquor business and the turnover exceeded the minimum limit they have all maintained regular account books. Four persons produced before the then assessing officer, such regular account books pertaining to the financial year 2009-10 relevant for the asst. year 2010-11 in connection with scrutiny proceeding. For certain reasons the assessing officer might have not satisfied with the supporting evidences with regard to expenditure etc. but the undeniable fact is that all those

persons maintained regular account books. Further, as can be seen from the records all those account books were audited by Chartered Accountant and such audited financial statements were filed along with the respective returns of income.

ii. The then assessing officer scrutinized four cases with reference to the account books maintained and finalized scrutiny assessment proceedings by applying provisions of section 145 of the IT Act and estimating the income. From the same it is an implied fact that the assessing officer gone through the account books and verified all purchases, sales and expenditures etc. As the account books of the respective assessee clearly reflected the sources for purchases of liquor by the respective persons, it is clearly established that the assessing officer satisfied himself with regard to source of money for purchases of the goods.

5.4 At para 11 of the remand report the assessing officer mentioned that in response to summons all six witnesses informed that they maintained bank accounts during the financial year 2009-10 but the said account was closed subsequent to closure of the business. The assessing officer further observed that they have not produced books of accounts or bank account statements. The assessing officer confirmed that they enclosed copies of relevant pages of cash books evidencing on which dates they have given cash to the assessee.

6. As already submitted the assessee is a part time accountant working with, above six people. From the same it can be understood that he is person with pe!! means and do not have any strong financial basis. He used to be paid Rs.2000/per month by each employer for preparation for attending part time accountant work. Therefore, he was forced to oblige his employers in the process of conducting financial transactions. Whenever they required any bank transactions they used to handover the cash to the assessee, a part time accountant and he used to obtain demand drafts as per their directions. In this connection It is submitted that:

i. All six persons who were in liquor business during the financial year 2009-10 and who were engaging the services of the assessee as part time accountant confirmed that they used to handover the money to the accountant for getting deposited in his bank account and obtaining the demand drafts for furnishing to G.O.A.P.DDB Kadapa.

ii. All persons also confirmed that the source for handing Over the amount to the assessee was the accumulated balances of sale Proceeds in their respective liquor businesses.

iii. The fact that the assessee obtained Demand Drafts in favor of

G.DA PDD.B. Kadapa support the statement of all six persons and also that of the assessee that he being an accountant took the responsibility of depositing the amounts in his account and obtaining demand drafts for furnishing to G.DAP.DD.B Kadapa in the process of getting stocks for the respective liquor business of the six persons.

iv. It is submitted that the assessee being a person with meager financial Sources and eking out his livelihood by working as a part-time accountant With petty traders. Further. it is submitted that the assessee was assessed to tax for the asst. year 2010-11. Even for that year he did not have any taxable income but filed the retu5m of income compliance with notice issued by the department. The appellant is not assessed to tax either in earlier years or subsequent years.

6.1 At para 12 of the remand report the assessing officer quoted from the sworn statement of the assessee recorded on 03.02.2016. Hence, no comments,

6.2 At para 13 of the remand report the assessing officer observed that the assessee in his letter filed before ITO, Intelligence, Tirupati stated that the source for depositing amount of Rs.2,53, 18,0801- was out of agriculture income earned by him during the financial year 2009-10. The assessing officer further observed that the assessee in his subsequent submission before the Hon'ble CIT(A), Kurnool was that the six persons utilized his accounts for purchase of drafts.

It is a fact that the bank account of the assessee was utilized by all six persons and the same was confirmed by the concerned. It is also submitted that the assessee did not have any agriculture land holdings. In his hurry to comply with the notice of the ITO Intelligence Tirupati on the basis of improper advice of certain unexperienced persons, furnished the letter stating that the source for the deposits was agriculture income. As the letter furnished was not based on any factual information the same need not be given much cognizance.

6.3 At para 14 of the remand report the assessing officer observed that furnishing of copies of relevant pages of cash book was only after thought because none of the six persons produced regular account books or bank pass books before the assessing officer.

7. As already submitted, all six persons are assessed to tax and filed their regular returns of income along with audit reports. Assessments in four cases were completed after scrutiny. These facts clearly establish that all six persons maintained regular account books which were subjected to audit during the course of their business for the asst. Year 2010-11. Therefore, there is no scope for the assessing officer to assume that confirmations furnished by the six persons were only after thought. Hence, in the facts and circumstances of the case such conclusion is unwarranted.

7.1 At para 15 of the remand report the assessing officer mentioned that the Add! CIT, Kadapa returned back the remand report for re-examination of the all six persons with regard to violation of sections 269 SS and 269T of the IT Act for accepting and repayment of loans in cash. In that connection the assessing officer mentioned that he could examine only One person Mr.R.A.Ramanaiah and the remaining 5 persons did not respond. As those observations were made in connection with transactions pertaining to six persons it may not have any effect on the

computation of income in the case of the appellant. In this connection it is submitted that the AR of the appellant never agreed to Withdraw any additional grounds / additional evidence filed before the Hon'ble CIT(A). Further, it is also submitted that from the observations of the assessing officer it is clear that the assessing officer was of the opinion that all six persons accepted cash deposits and repaid the same in violation of provisions of sections 26988 and 269T of the IT Act. Thus, the assessing officer was clearly in his mind that all six persons violated the Provisions of the Act by accepting cash deposits through the assessee and processing the same through his account. In such circumstances it is not justifiable to treat all those deposits as that of the assessee u/s.68 of the IT Act.

7.2 At para 16 , 17 and 18 of the remand report the assessing officer mentioned only general remands and hence no comments are offered.

In his forwarding remarks the Add'. CIT Kadapa Range endorsed the Observations of the assessing officer contained in the remand report. For the reasons mentioned in the earlier part of this Submission as well as detailed explanation already Submitted the conclusions of the assessing officer may not substantiate the additions made in the assessment.

As can be seen from the assessment order the assessing officer observed that there were deposits in the bank account of the assessee to the tune of RS.2,53, 18,080/- during the financial year 2009-10. In this connection Copy of bank account maintained by the assessee in Andhra Pragathi Gramena Bank, Porimammilla (A/C.12001/22129) is submitted for kind perusal. From the bank aCCOunt it can be seen that the total credits appearing during the period 01.04.2009 to 31.03.2010 amounted to RS.2,08,47,611/- Therefore, the observation of the assessing officer that the total credits amounted to Rs.2,53,18,080/- is patently incorrect. The assessing officer allowed credit for an amount of RS.11 lakhs as mentioned at para 4 of the remand report and made addition of RS.2,41, 18,080/- If the difference mentioned earlier is reduced from the total credits appearing in the bank account the balance that has to be explained stands reduced to Rs. 1,97,47,611/- Therefore, the addition has to be reduced by an amount at RS.43,70,469/- (Rs.2,41, 18,080 - Rs. 1. 97,47,611).

(2) The assessee prepared a statement taking all cash transactions i.e. deposits and Withdrawals appearing in the said bank account. The relevant statement is submitted for kind perusal From the same it can be seen that during the accounting year the assessee withdrew RS.22, 03, 000/- during the period 01.04.2009 to 31.03.2010. If peak credit theory is applied the sources for deposits that are to be explained stand reduced to RS.1 ,80,27, 180/-.

(3) As already submitted six business persons claimed and confirmed that they were the owners of the said funds to the tune of Rs.1 ,55,87,168/-. As already submitted the claims of the concerned persons were supported by regular account books as well as audited financial statements. Further, the undeniable fact was that all those funds have gone from the bank account of the assessee in the shape of DDs for

purchase of liquor by all six persons. Thus, Pucca record is available with the concerned department to establish that those were the funds utilized by the six persons for purchase of materials in their regular course of business. As there were no outstanding liabilities in the respective balance sheets of six persons as on 31.03.2010, the Obvious conclusion that can be drawn is that all those loans were utilized for purchases by those six persons and subsequently, were cleared by them. Hence, the funds cannot be attributed to the assessee.

(4) Thus, if the peak credit is reduced by Rs. 1,55,87, 168/- the balance remains to be explained is RS24,40,012/-. The same is pooled up from the loans obtained by the assessee on behalf of the six traders for which details have already been furnished.

In this connection, it is also noticed that the department initiated proceedings u/s 271D of the IT Act in the cases of six persons and notices were issued on 05.05.2016. This fact also confirms the contention of the assessee that all those amounts were accepted on behalf of those respective persons in the course of their business and utilized for making purchases.

The remand report submitted by the assessing officer and detailed comments Submitted by the appellant and all evidences produced have been gone through

8. The grounds raised in appeal percolate to two specific issues:

i. Whether the assessing officer was justified in completing the assessment u/s. 144 of the IT Act.

ii. Whether the assessing officer was correct in making addition of RS.2,41, 18,080/-

Finalization of proceedings u/s.144 of the IT Act;

As can be seen from the assessment order the assessing officer allowed a number of opportunities to the assessee before finalization of assessment proceedings. The assessing officer finalized the assessment proceedings on 31.03.2015. The same clearly indicate that the assessing officer after allowing

maximum Possible opportunities finalized the assessment proceedings. Therefore. I don't see any injustice in Completing assessment u/s.144 of the IT Act on the basis of material available on record.

Addition of RS.2,41, 18,080/-:

The assessee maintained a bank account bearing no. 12001122129 in Andhra Pragatahi Grameena Bank, Porumammilla. There were substantial cash deposits in the said bank account during the financial year relevant for the asst year 201 0-11 . The assessing officer completed the assessment u/s.144 of the IT Act in the absence of any information from the appellant and made addition of Rs 2,4 1 , 18,0801-

mentioning the same represent total deposits in the bank account in the relevant accounting year.

8.1 During the course of appeal proceedings the appellant produced the relevant bank account and the same has been gone through. Prima facie the total cash deposits appearing in the said bank account during the relevant financial year amounted to RS.2,08,47,611/-. In the absence of any contrary material on record, the total cash deposits has to be held as RS.2,08,47,611/-. The appellant gets relief of Rs.44, 70,469/- on this count.

8.2 In the course of appeal proceedings the appellant in his written submissions claimed that as the cash deposits were rotated in the same bank account by way of deposits as well as withdrawals to the extent of RS.22, 03, 0001-, the same should be given credit by applying peak credit theory. Verification of the bank account indicate that there were cash deposits as well as cash withdrawals during the account year. Therefore, the claim of the assessee for adopting the peak credit requires consideration. Therefore, the peak credit is worked out and the same works out to RS.1 ,80,27,480/-.

8.3 As can be seen from the material all six persons were enquired into with regard to investments stated to have belonged to them and appearing in the above mentioned accounts. All six persons confirmed through their notarized affidavits and subsequent statements that the amounts belong to them and the same were deposited in the bank account of the appellant who happened to be their accountant. In the remand report the assessing officer discussed all the circumstances under which the addition was made. But, in spite of verifications made, no conclusive evidence was brought on record with regard to bogus nature of the claims of those six persons. The comments offered by the appellant in respect of various points mentioned in the remand report support the cause of the assessee that he was only a name lender and all the amounts belong to the persons who claimed ownership of the same. Thus, no convincing material has been brought on record either during the course of original assessment proceedings or remand proceedings to establish that the cash that appeared in the shape of deposits in the said bank account of the appellant belongs to him only, especially in the light of affidavits as well as other materials furnished by those persons. Hence, the claim of the appellant that the amounts belong to those six persons has to be accepted. The deposits attributable to those persons basing on the analyzation of the bank account and other relevant statements amounted to RS.1 ,55,65,000/-. Hence, the assessing officer is directed to delete the addition.

8.4 On the basis of material forwarded, in the course of remand proceedings the assessing officer after going through the same and after making enquiries submitted as under:-

"12. A sworn statement was also recorded from the assessee on 03.02.2016 for the purpose for which cash loans of Rs. 45,88,000/- was taken from 20 persons/ farmers. The assessee has agreed that he has

taken the above amount as loans from farmers. With regard to purpose of obtaining loans, the assessee submitted that since he was working as accountant with six wine shops, in order to obtain . " demand drafts for making payment to the A P. Beverages Corporation Ltd, on behalf of 6 wine shops owners due to non availability of cash on some dates he has taken hand loan from farmers and other persons of the village He deposited this amount in his bank account and purchased demand drafts on behalf of the 6 wine shop owners. As and when cash is received in the wine counters. the loans were repaid to the concerned. "

8.5. From the remand report it is seen that the appellant could not produce any convincing material before the assessing officer to establish that amount of Rs.45,88,000/- was available for him for making the said deposits. The appellant neither produced the so called creditors nor furnished any evidence in support of claim of borrowal of funds from various persons. Furnishing of names and addresses along with affidavits cannot be considered as sufficient evidence for establishment of genuineness of borrowals. Therefore, I agree with the assessing officer that the assessee could not discharge his responsibility with regard to the claim of borrowal of funds from various persons. Further, it may not be out of place to mention that the appellant claimed to have borrowed the funds for the sake of third parties i.e. to meet the immediate financial requirements of the above mentioned six persons. In such situation the burden lies on the appellant to establish with necessary supporting evidence that he borrowed the funds from third parties for meeting the immediate business necessities of the six persons. In the absence of any such material, the claim of the appellant cannot be accepted. Thus, the sources for making deposits to the tune of Rs.24,63,480/- (Rs.1,80,28,480 - Rs.1,55,65,000) is not established as genuine and hence the addition is sustained to that extent.

9. In the light of above discussion, the conclusions are summarized as under:-

9.1 Total deposits appearing in the bank account amounts to Rs.2,08,47,611/-. The peak credit on the basis of cash deposits works out to Rs.1,80,27,480/-. The Amount deposited that belongs to six persons (traders) discussed in the remand report works out to Rs.1,56,65,000/-. Thus, the sources available are sufficient for explaining the deposits appearing in the said bank account except Rs.24,63,480/made during the accounting year 2009-10 relevant for the asst. year 2010-11.

9.2 Hence, the addition made by the assessing officer on account of unexplained cash deposits is restricted to Rs.24,63,480/-. Hence, Ground NO.1 raised by the appellant is treated as dismissed and Ground NO.2 is treated as partly allowed. Accordingly, the appellant gets relief of Rs.2, 16,54,600/-."

6. Aggrieved with such relief granted by the ld.CIT(A), the revenue as well as the assessee are in appeal before the Tribunal by raising the following grounds:-

ITA N.1387/Hyd/2016 (By Revenue)

1) That the facts and circumstances of the case and in law the ld.CIT(A) erred in restricting the addition of Rs.2,41,18,080/- on account of unexplained cash deposits to Rs.24,63,480/-.

ITANo.674/Hyd/2017 (By Assessee)

- 1. The order of the Hon'ble is erroneous in law as well as facts of the case.*
- 2. In the facts and circumstances of the case, the Hon'ble CIT(A) ought not to have sustained the addition to the extent of Rs.24,63,480/-.*
- 3. The Hon'ble CIT(A) ought to have appreciated the facts in judicious manner and ought to have deleted entire addition including Rs.24,63,480/-.*

7. The ld. DR strongly challenged the order of the ld.CIT(A) in giving substantial relief to the assessee. Referring to the order of the ld.CIT(A), the ld. DR submitted that the findings given by the ld.CIT(A) on this issue are self contradictory. So far as the observation of the ld.CIT(A) that the AO has confirmed that the six persons named therein have deposited the cash into the account of the assessee on different dates out of sale proceeds of liquor business is concerned, he submitted that these are nothing but self serving documents. He submitted that when the AO had given a finding that assessee is a license holder for retail sale of IMFL during the FY 2010-11, the ld.CIT(A) without verifying either himself or by calling for a remand report from the AO on this issue to find out as to whether the assessee has made any transactions of liquor business or calling for details from the excise department should not have deleted the addition by merely accepting the version of the assessee. He submitted that grave injustice has been done to the revenue by not following due process of law. He further submitted that when the assessee was non cooperative during the course of assessment proceedings and

the power of the AO during the remand proceedings is limited, the ld.CIT(A) in the instant case, without going through the facts properly should not have deleted the addition. Relying on various decisions, he submitted that the order of the ld.CIT(A) be reversed and the order of the AO be restored.

8. The ld. Counsel for the assessee on other hand strongly supported the order of the ld.CIT(A) to the extent of relief granted by him. Referring to page no.1 to 27 of the paper book, he submitted that all the six persons in the instant case, who have deposited money into the bank account of the assessee are assessed to tax and their assessment orders have been passed u/s. 144 r.w.s. 147 after completion of assessment in the case of the assessee. In the said order, the respective AOs have considered the amount of cash deposited by them in the bank account of the assessee. He submitted that the money does not belonging to the assessee and he was only a part time accountant. The real transactions were done by various other persons by utilizing his bank account and therefore, the ld.CIT(A) has rightly deleted the addition. He submitted that the assessee has filed an affidavit which has not been controverted. Therefore, once the affidavit of the assessee has not been proved to be false or untrue by the lower authorities, the same has got evidentiary value and therefore, the ld.CIT(A) has rightly deleted the addition to the extent of Rs.2,16,54,600/-.

8.1 So far as, the cash deposit of Rs.24,63,480/- sustained by the ld.CIT(A) is concerned, the ld.Counsel for the assessee drew attention of the bench to Page 150 of the paper book and submitted that assessee has obtained an amount of Rs.45,88,000/- from different persons, a part of which was utilized for depositing in the bank and the assessee has subsequently repaid the amounts. He accordingly submitted that

the addition sustained by the Id.CIT(A) is not being in accordance with law has to be deleted. He also relied on various decisions.

9. We have considered the rival arguments made by both the sides, perused the orders of the AO and Id.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has deposited cash to the tune of Rs. 2,53,18,080/- in his savings bank account maintained with Andhra Pragati Grameen Bank vide A/c.12001/22129. Since, the assessee was a non filer of Income tax Return, the AO, after recording reasons, reopened the assessment and issued notice u/s. 148 of the I.T.Act. Although, the assessee filed return in response to notice u/s. 148 by declaring taxable income of Rs.1,66,000/- however, he did not respond to the statutory notices issued by the AO u/s. 143(2) & 142(1) for which the AO completed the assessment u/s. 144 of the I.T.Act. After accepting an amount of Rs.11 lacs as prima-facie belonging to persons other than the assessee, the AO made addition of Rs.2,41,81,080/- to the total income of the assessee. We find the Id.CIT(A) after obtaining a remand report from the AO deleted an amount of Rs. 2,16,54,600/- and sustained an amount of Rs.24,63,480/-. It is the submission of the Id. DR that when the assessee himself was a license holder for retail sale of IMFL during FY 2010-11 the Id.CIT(A) was not justified in deleting substantial addition by simply observing that these amounts were deposited by the six persons in the bank account of the assessee.

10. We find sufficient force in the above argument of the Id. DR. As mentioned earlier, there is no dispute to the fact that assessee is a license holder for retail sale of IMFL during FY 2010-11 relevant to the AY 2011-12, since the AO's finding on this fact has not been controverted by the assessee either before the Ld.CIT(A)

or before us. Although, the assessee had filed certain additional evidences during the appellate proceedings, however there is neither any submission by the assessee on this issue nor discussion by the Id.CIT(A) while deciding the appeal. The order of the Id.CIT(A) has already been reproduced in preceding paragraph and the same does not address the issue of ImFL business by the assessee. Merely because certain persons have stated that the deposits appearing in the bank account of the assessee belong to them and confirmed the same through affidavits, but the same in our opinion are merely self serving documents which cannot be relied upon especially when the assessee himself was a license holder of retail sale of IMFL and this fact has not been verified by the Id.CIT(A). In our opinion the case has not been properly adjudicated by the Id.CIT(A) in the way the same should have been adjudicated. As mentioned earlier, there is absolutely no discussion about the liquor business of the assessee by the Id.CIT(A) in his order. If the assessee is a retail trader of IMFL, it is not understood why some other persons will deposit cash into the bank account of the assessee. Although, the Id. Counsel for the assessee submitted that the six persons in the instant case have declared that such deposits made by them in the bank account of the assessee have been offered as their income and they have paid due taxes thereon, we find all those assessments were completed u/s. 144 r.ws.147 and the income has been estimated. On a pointed query raised by the Bench as to whether, these assessee's have accepted the so called assessment orders and paid taxes thereon, the Id. Counsel for the assessee was not in a position to give any affirmative reply. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with a direction to adjudicate the issue afresh by giving due opportunity being heard to the assessee. The assessee is also hereby directed to appear before the AO and file necessary details including the

transactions carried out by him, if any, in his retail trade of IMFL business. The assessee may produce any other evidence before the AO to substantiate his case and the AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the revenue as well as the assessee are accordingly allowed for statistical purposes.

11. In the result, both cross appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 06th September, 2022.

Sd/- (K.NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 06th September, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	ITO, Ward-2 Vasanthapet Proddatur-516 360
2	Sadhanakari Khaja Rahmathulla Chintapalli(village) Kalasapadu(Mandal) Kadapa(District) Andhra Pradesh
3	CIT(A), Kurnool
4	Pr.CIT, Kurnool
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order