

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

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA No.528/Hyd/2020		
Assessment Year: 2010-11		
C.Vamsi Krishna Flat No.-401 Rohiwal Windsor Apartment, Hill fort Road Saifabad Hyderabad-500 004 PAN : AHPPC3352D	V s.	DCIT,CC-2 Aaykar Bhawan Basheerbagh Hyderabad-500 04
(Appellant)		(Respondent)
Assessee by:		Shri P.Murali Mohan Rao, CA
Revenue by:		Shri M. Satish, CIT-DR
Date of hearing:		13.09.2022
Date of pronouncement:		16.11.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 23.07.2020 of Learned Commissioner of Income Tax (Appeals)-11, Hyderabad relating to AY 2010-11.

2. The grounds raised by the assessee are as under:-

Unexplained Cash Credits: Rs. 8,49,600/-

1. The learned CIT(A) failed to appreciate evidence on record for the unsecured loans aggregating to Rs.8,49,600/- together with confirmation letters from the creditors.

2. Further, the learned CIT(A) failed to appreciate that the issue is not covered under seized material within the meaning of Section 1S3A under which the assessment order was passed.

3. In view of the above, it is humbly pleaded that the CIT(A)'s order confirming the addition be deleted in the interest of justice

Short Term Capital Gain: Rs. 1,01,05,000/-

4. The learned CIT(A) failed to appreciate that the Appellant received a sale consideration of only Rs.42,24,000/- in respect of his property in question. The alleged receipt of Rs.1,08,08,000/- is only a guess work for which there is no evidence.

5. Further, the learned CIT(A) failed to appreciate that the issue is covered under Section 153C but the proceedings were not held nor order passed under Section 153C.

6. The Appellate Order confirming the addition is therefore challenged.

3. The assessee has also raised the following additional grounds

7. The Hon. ITAT is requested to kindly admit the grounds which are taken for the first time before them/ as per the ratio laid down by the Hon. Supreme court of India in the case of National Thermal Power Corporation Limited vs. CIT [1998] 229 ITR 383 (SC).

8. The Ld. CIT(A) erred in the adding the amount of Rs 23,66,606 as short term capital gain without appreciating the facts of the case.

9. The Ld. CIT(A) failed to appreciate the fact that

(A) Short Term capital Gain of Rs 10,000 arisen on transfer of Property is already included in the amount of 8,20,968 which was offered in the return of Income. Hence taxing the same amount as short term capital gain leads to double taxation. I

(B) Short Term capital Gain of Rs 170,000 arisen on transfer of Property is already included in the amount of 8,20,968 which was offered in the return of Income. Hence taxing the same amount as Short term capital gain leads to double taxation.

C) Short Term capital Gain of Rs 86,606 arisen on transfer of Property is already included in the amount of 8,20,968 which was offered in the return of Income. Hence taxing the same amount as Short term capital gain leads to double taxation.

10 The Ld. CIT(A) failed to appreciate the fact that

A) Short Term capital Gain of Rs 10,000 arisen on transfer of Property is already included in the amount of 21,86,606 which was offered as short term capital gain on transfer of Property . Hence taxing the same amount as short term capital gain leads to double taxation.

B) Short Term capital Gain of Rs 170,000 arisen on transfer of Property is Factual Ground already included in the amount of 21/86/606 which was offered as short term capital gain on transfer of Property. Hence taxing the same amount as Short term capital gain leads to double taxation.

C) Amount of Rs 16,00,000 received from Sri Ram Reddy is included in the amount of 21,86,606 which was offered as short term capital gain on transfer of Property. Hence taxing the same as unexplained credits in AY 2009-10 leads to double taxation

D) Amount of Rs.200,000 received from Uma Maheshwar Rao is included in the amount of 21,86,606 which was offered as short term capital gain on transfer of property. Hence taxing the same as unexplained credits in AY 2009-10 leads to double taxation.

11. The Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of appeal.

4. The ld. Counsel for the assessee referring to the decision of Hon'ble Supreme Court in the case of NTPC Ltd. vs CIT reported 229 ITR 383 submitted that the additional grounds raised by the assessee should be admitted. Referring to the decision of Hon'ble Bombay High court in the case of CIT vs Pruthvi Brokers and Shareholders Pvt.Ltd. reported in 349 ITR 36, he submitted that the Hon'ble High court in the said decision has held that assessee can always make a new claim, which was not made in the return of income, before the appellate authorities. He accordingly submitted that the additional grounds should be admitted for adjudication, since all material facts necessary for adjudication are already available on record.

5. The ld. DR on the other hand strongly objected to the admission of the additional grounds.

6. After hearing both the sides and considering the fact that all material facts are already available on record, therefore, we admit the additional grounds for adjudication.

7. In ground of appeal No.1, the assessee has challenged the order of the ld.CIT(A) in confirming the addition of Rs.8,49,600/-.

8. Facts of the case, in brief, are that the assessee is an individual. A search and seizure operation u/s. 132 of the I.T.Act 1961 was carried out on 25.11.2010 in the residential premises of the assessee. The assessee had filed the original return of income on 23.01.2012 declaring income of Rs.820,968/-. Subsequently, in response to notice u/s. 153A dated 01.11.2012, the assessee filed the return of income declaring total income of Rs.8,20,968/-. During the course of assessment proceedings, the AO noted that the assessee has shown the following unsecured loans as outstanding at the end of the year.

Sl.No.	Name of the creditor	Amount
1	Sri C.V.K.Murthy	Rs.1,00,000
2	Sri T.Subba Rao	Rs.6,49,600
3	Sri YH.Gangulaiah	Rs.1,00,000
4	Sree Minerals	Rs.55,00,000
Total		Rs.63,49,600

Vide Q.No.8 of the questionnaire dated 01-11-2012, the assessee was asked to furnish the details of the above unsecured loans received during the year along with the evidence to prove the identity and creditworthiness of the creditors and genuineness of the transaction. The assessee furnished the confirmation letters from Sri C.V.K Murthy and Sri.Y.Gangulaiah but failed to furnish any evidence to prove their creditworthiness. In respect of the other two persons the assessee failed to furnish any details/evidence in support of the claim. During the assessment proceedings the assessee was also directed to produce the said persons for examination. But the assessee could not produce any of the four persons for examination. In view of this, the said amount of Rs.63,49,600/- was treated by the AO as unexplained credit in the hands of the assessee.

9. Before the Id.CIT(A), the assessee filed confirmation letters from the above persons duly indicating the amounts lent along

with the copy of their bank statements reflecting transfers into his account along with ledger extracts showing the closing balances as on 31.03.2010.

10. Based on the arguments advanced by the assessee, the Id.CIT(A) called for remand report from the AO. After considering the remand report of the AO and rejoinder of the assessee to such remand report, the Id.CIT(A) sustained an amount of Rs.8,49,000/- and deleted the balance amount by observing as under:-

5.3) I have gone through the facts and submissions along with the contents of the remand report and rejoinder furnished by the appellant. With regard to M/s Sree Minerals, the AO himself has stated that Rs.55,00,000/- was received from M/s Sree Minerals in two tranches through banking channel and the same was also confirmed by the creditor, who is a regular filer. It was also mentioned by the AO that Rs.55,00,000/- was subsequently paid to this creditor in the next financial year. Hence, the cash credit pertaining to Sree Minerals stood explained satisfactorily and this addition of Rs.55,00,000/- is ordered to be deleted.

5.3.1) Now coming to the cash credits pertaining to Sri T Subba Rao, appellant's bank account nO.202011005700 maintained with ING Vysya Bank Ltd revealed the following deposits and payments, as under:

<i>Date</i>	<i>Dr.(Rs.)</i>	<i>Cr.(Rs.)</i>
<i>27-06-2009</i>		<i>1,50,000</i>
<i>07-07-2009</i>		<i>1, 49, 850</i>
<i>02-09-2009</i>		<i>1,00,000</i>
<i>14-09-2009</i>		<i>2,00,000</i>
<i>10-12-2009</i>	<i>2,00,000</i>	
<i>17-12-2009</i>		<i>2,49,750</i>
<i>Total</i>	<i>2,00,000/-</i>	<i>8,49,750</i>

The appellant has received an amount of Rs.8,49,750/- from Sri T Subba Rao and out of this, he made a payment of Rs.2,00,000/- on 10-12-2009 and there was a closing balance of Rs.6,49,600/- as on 31-03-2010. Though, the appellant has furnished the confirmation letter from Sri T

Subba Rao vide letter dated 18.02.2013, the credit worthiness of lending such a big amount is not proved since Sri T.Subba Rao though had PAN, was a non-filer. In view of the above, the addition of Rs.6,49,900/- standing in the name of Sri T. Subba Rao is sustained.

5.3.2) With regard to Sri CVK Murthy, though had PAN but a non-filer and the appellant has not proved creditworthiness of Sri Murthy. Hence, this amount of Rs.1,00,000/- is sustained.

5.3.3) The cash credit pertaining to Sri Ganguliah is also not explained satisfactorily because basically the PAN itself was not matched as per Income Tax Data Base. Hence, this cash credit is not accepted and the addition of Rs.1,00,000/- is sustained.

5.4) In view of the above, out of the addition of total cash credits of Rs.63,19,600/-, the cash credits pertaining to Sri T subba Rao (Rs.6,49,600), Sri CVK Murthy (Rs.1,00,000) and Sri T.Gangulaiah (Rs.1,00,000) totaling to Rs.8,49,000/- is not explained satisfactorily and deserve addition. This ground is partly allowed.

11. Aggrieved with such order of the Id.CIT(A), the assessee is in appeal before the Tribunal.

11.1. The Id.counsel for the assessee strongly challenged the order of the Id.CIT(A) in confirming the addition of Rs.8,49,600/- as made by the AO. He submitted that out of the four loans totaling to Rs.63,49,600/- made by the AO u/s. 68 of the I.T.Act, the Id.CIT(A) deleted addition of Rs. 55 lakhs in case of Sree Minerals. However, he sustained the addition in case of Shri T. Subba Rao for Rs.6,49,600/-, Shri C.V.K.Murthy for Rs.1 lakh and Y.H.Gangulaiah Rs.1 lakh. So far as the amount of Rs. 6,49,600/- received from T.Subba Rao is concerned, he submitted that the amount has been received through bank and part of the amount has been repaid to T.Subba Rao by the assessee through banking channel. He submitted that assessee has furnished the confirmation letter from T.Subba Rao, ledger account of Shri T.Subba Rao in the books of the assessee and bank statement for the period from 01.04.2009 to 21.02.2011. Similarly in case of Y.H.Gungulaiah, the assessee has received an amount of Rs. 1 lakh through bnaking channel and the assessee has also filed the

copy of confirmation letter from Y.H.Gangulaiah and his PAN. So far as the amount of Rs. 1 lakh received from C.V.K.Murthy is concerned, here also the assessee has received the amount through banking channel and the assessee has filed the confirmation copy and ledger account of Shri C.V.K.Murthy in the books of the assessee.

11.2 Referring to the decision of Hon'ble Bombay High Court in the case of CIT vs Orchid Industries reported in 88 taxmann.com 502, he submitted that merely because the loan creditor has not appeared before the AO, addition cannot be sustained when the assessee had produced documents to establish the genuineness of the party such as PAN of the creditor along with confirmation, bank statements showing payment etc. He also referred to the decision in the case of PCIT vs. Hitech residency Pvt.Ltd. reported in 96 taxmann.com 402. He accordingly submitted that the addition made by the AO and sustained by the Id.CIT(A) should be deleted.

12. The Id.DR on the other hand heavily relied on the order of the Id.CIT(A). He submitted that the assessee by not producing the relevant documents to establish the identity and creditworthiness of the loan creditor and the genuineness of the transaction failed to discharge the onus cast on him in terms of section 68 of the I.T.Act. Therefore, the Id.CIT(A) was fully justified in sustaining the addition to the tune of Rs.8,49,600/-

13. 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 received an amount of Rs.63,49,600/-from four parties, which the AO added u/s. 68 of the I.T.Act on the ground

that assessee could not produce the said persons for his examination and also failed to prove their creditworthiness. We find the ld.CIT(A) deleted an amount of Rs.55 lakhs received from one of the parties namely Sree Minerals but sustained the addition of Rs.8,49,600/- in respect of the three parties, the reasons of which have already been reproduced at para 10 of the order. It is the submission of the ld.counsel for the assessee that the assessee has filed the confirmation letters and PAN numbers of all the three creditors and the amount was received through banking channel and in one of the party namely T.Subba Rao out of the total amount received at Rs.8,49,600/- an amount of Rs.2 lakh was repaid during the year itself. Therefore, no addition should be made.

14. We do not find any force in the above argument of the ld.counsel for the assessee. It is the settled proposition of law that for accepting any cash credit, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the identity and creditworthiness of the loan creditor and the genuineness of the transaction. In the instant case, although the amounts have been received through banking channel, however the assessee did not produce the above three persons before the AO during the course of assessment proceedings, which is one of the reasons for making the addition by the AO apart from not proving the creditworthiness to his satisfaction. It is the submission of the ld.counsel for the assessee that given an opportunity the assessee is in a position to produce the above three persons before the AO for his examination and prove their creditworthiness. 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 grant one more opportunity to the assessee to substantiate his case by producing three parties for his examination and file necessary

evidence to prove their creditworthiness. 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 ground raised by the assessee is accordingly allowed for statistical purposes.

15. Ground No.2 and 5 were not pressed by the ld. Counsel for the assessee for which the ld. DR has no objection. Accordingly these grounds are dismissed as not pressed.

16. Ground NO.3 and 6 being general in nature are dismissed

17. In ground of appeal No.4, the assessee has challenged the order of the ld.CIT(A) in confirming the addition of Rs.42,24,000/-

18. Facts of the case in brief are that during the course of assessment proceedings, the AO noted that during the search and seizure operation at the business premises of M/s. Sri Krishna Construction, copy of an agreement of sale dated 20.01.2009 entered into by the assessee with Shri C. Veerabadra Reddy bellery for sale of landed property admeasuring 15.44 acres located at Belagallu, Bellary district for consideration of Rs.1,08,08,000/- was found and was impounded vide page No.76 to 77 of annexure A/TBC/5. The AO recorded the statement of the assessee u/s. 131 of the I.T.Act, 1961 in respect of this transaction dated 08.03.2013. He observed from the reply of the assessee that initially he claimed that the actual consideration received was Rs.27,00,000/- only. However, the assessee changed his version stating that actual consideration received by him for the said sale of the land was Rs.42,24,000/- and not Rs.1,08,08,000/- as mentioned in the sale agreement. However, the AO did not accept the claim of the assessee and made addition of Rs. 1,01,05,000/- as STCG by observing as under:-

i. From the registered sale deed no.2179/09-10 dated 26.06.2009 entered by Sri C.Vamsi Krishna(the assessee) with Sri Veerabhadra Reddy s/o BasavaReddy Bellary for sale 15.44 acre land, it is clear that the property in question was sold to same person as per the agreement dated 20.01.2009.

ii. The assessee himself has agreed that he has received the amount of Rs.27,00,000/- over and above the sale consideration, which makes it clear that the market value of the property is much more than that mentioned in the registered sale deed.

iii. However considering the fact the actual sale was within six months of the earlier agreement it is very unlikely that the assessee would have sold the property at the rate of Rs.1,00,000/ per acre as compared to the earlier agreed price of Rs.7,00,000/- per acre.

iv. The rate of Rs. 7,00,000/- per acre mentioned in the agreement is very much near to the prevailing market rate of the property at that time Otherwise it would not have been mentioned in the document.

v. The assessee has not produced any credible evidences to show that it was a distress sale due to diversion of ring road.

vi. During the assessment proceedings, the assessee was asked to produce Sri.Veerabhadra Reddy for examination. But the assessee failed to produce him.

In view of the above, the AO held that the actual consideration received by the assessee for the sale of property in question .was Rs.1,08,00,000/-. Accordingly, the short term capital gain is computed as under.

Actual sale consideration received:	Rs.1,08,00,000/-
Less: Cost of acquisition of the property:	Rs. 6,95,000/-
Short term capital gain	Rs.1,01,5,000/-
	-STCG-Rs.1,01,05,000/-

19. Before the Id.CIT(A), the assessee submitted that a master plan was reportedly proposed consisting of a ring-road expected to touch the area where the appellant's land was situated causing unexpected boom in real estate prices. Under the circumstances, the appellant was able to strike an agreement with Sri Veerabhadra Reddy to sell the property in question of 15.44 acres and accordingly entered into an agreement of sale (unregistered) dated 20.01.2009 with Sri Veerabhadra Reddy @ Rs.7,00,000/- per acre for a total consideration of Rs.1,08,08,000/- and received an advance of Rs.27,00,000/- with a condition that the balance

amount of Rs.81,08,000/- was to be paid within four months i.e. on or before 20.05.2009.

20. However, subsequent to this agreement of sale, changes were reportedly brought out in the master-plan and the proposed ring alignment drifted away from the appellant's land bringing an end to the abnormal real estate boom. As such the buyer did not show any enthusiasm and he did not report for registration within the agreed stipulated time of four months ending on 20.05.2009. It was submitted that in the changed circumstances, after hard bargaining with Sri Veerabhadra Reddy, the property was finally registered for an amount of Rs.15,44,000/- (as per fair market value) on 26.06.2009. It was submitted that the assessee received an amount of Rs.42,44,000/- (advance of Rs.27,00,000/- plus Rs.15,44,000/- on the date of registration) as total consideration on this sale. It was submitted by the assessee that in spite of bringing all these facts before the AO, the AO solely basing on the agreement of sale dated 20.05.2009 considered the sale consideration at Rs.1,08,08,000/-.

21. Based on the submissions made by the assessee, ld.CIT(A) called for a remand report from the AO. The AO in his remand report stated that assessee has not proved that the property was sold as a distress sale due to price crash and has also not produced Sri C.Veerabadra Reddy during the course of assessment proceedings. Therefore, the sale consideration was adopted at Rs.1,08,08,000/- computing the short term capital gain at Rs.1,01,05,000/-. The AO further reported that the submissions made by the assessee during the appellate proceedings were already considered during the assessment proceedings itself and no additional information has been furnished by the assessee. The ld.CIT(A) confronted the remand report of the AO to the assessee and after considering the

rejoinder of the assessee to such remand report, he confirmed the addition restricting the same to Rs.35,49,000/- by observing as under:-

6.5 I have gone through the facts and the submissions of the appellant including the remand report. During the course of amassment proceedings, the appellant has filed computation of capital gains as under:

<i>Property - 3</i>	
<i>Date of sale</i>	<i>11/09/2009</i>
<i>FY</i>	<i>2009-10</i>
<i>Sale consideration Land advance (shown under current liabilities - Veera Bhadra Reddy)</i>	<i>27,00,000</i>
<i>Cheque received on the date of sale</i>	<i>15,44,000</i>
<i>Cost of acquisition</i>	<i>6,95,000</i>
<i>Short term capital gains</i>	<i>35,49,000</i>

The appellant offered Short Term Capital Gains of Rs.35,49,000/- on account of above transaction. The consideration shown is inclusive of Rs.27,00,000/- which was already received in cash as per the agreement to sale. Though the appellant raised ground against addition of Rs.1,01,05,000/-, the disputed addition is reduced by Rs.35,49,000/- on account of above. The addition made by the AO on the basis of agreement to sale seized during the course of search is on sound footing and the same is confirmed.

22. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal.

22.1. The ld.counsel for the assessee strongly challenged the order of the ld.CIT(A) in sustaining the addition made by the ld.CIT(A). He submitted that although the agreement of sale was entered into by the assessee and Shri Veerabadra Reddy for sale of 15.44 acres of land located in Bellary for a consideration of Rs.1,08,08,000/-, however due to changed circumstances the buyer did not agree to purchase the land at the agreed price for which the assessee had to sell the same at lesser price. He submitted that the registered document shows a particular price which should be considered as correct in absence of any contrary material. Referring to the decision of Hon'ble Kerala High Court in the case of CIT vs. K.C.Agnes reported in 262 ITR 354, he

submitted that it is not necessary that the price stated in the agreement should be taken as against the amount mentioned in the sale deed. He further submitted that there is no evidence before the AO that assessee has received any extra money over and above what is mentioned in the sale deed. For the above proposition he relied on the decision of Hon'ble Supreme Court in the case of KP Varghese vs. ITO reported in 131 ITR 597, where it has been held that the burden of proving is that of revenue when there is allegation of under statement of concealment in the consideration shown. He further submitted that the market value of the impugned property is not more than the amount that was disclosed in the registered documents. Therefore, the question of payment of any money over and above the amount mentioned in the registered sale deed does not arise in absence of any corroborative evidence. He also relied on various decisions and submitted that the addition sustained by the Id.CIT(A) should be deleted.

23. The Id.DR on the other hand heavily relied on the order of the Id.CIT(A). He submitted that despite being asked by the AO to produce the Shri C. Veerabhadra Reddy for his examination, the assessee failed to produce him before the AO. Since the document found at the time of search clearly mentions the agreed price at Rs.1,08,08,000/-, therefore, the Id.CIT(A) was fully justified in sustaining the addition made by the AO.

24. 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 during the course of search and seizure operation at the business premises of M/s. Shri Krishna Constructions a copy of an agreement of sale dated 20.01.2009 entered into by the assessee with Shri C.Veerabhadra

Reddy of Bellary was found according to which assessee entered into agreement for sale of landed property admeasuring 15.44 acres located at Belagallu, Bellary district for a consideration of Rs.1,08,08,000/-. However, the assessee disclosed the sale consideration at Rs.15,44,000/-. On being confronted by the AO, the assessee denied to have received any money over and above what has been mentioned in the sale deed. The assessee also failed to produce the buyer Mr.C.Veerabhadra Reddy for his examination, for which the AO after considering the explanation by the assessee that he has received total Rs.42,24,000/- and not Rs.1,08,08,000/- made addition of Rs.1,01,05,000/- to the total income of the assessee.

25. We find in appeal, the Id.CIT(A) partly sustained the addition made by the AO, the reasons of which have already been reproduced in preceding paragraph. It is the submission of the Id.counsel for the assessee that he has not received any extra money over and above the amount of Rs.15,44,000/- as mentioned in the sale deed and the earlier advance of Rs. 27 lakhs both totaling to Rs.42,44,000/-. Further, it is also his submission that given an opportunity the assessee is in a position to produce the above person before the AO and substantiate that due to the changed circumstances, that is due to drifting away of the ring road from the side of the land, its market value fell down drastically for which the land was sold at a lesser price than the agreed price.

26. 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 give an opportunity to the assessee to substantiate his case by producing Mr.C.Veerabhadra Reddy for his examination. Further, the assessee is also directed to produce necessary evidence to show that the proposed plan

was drifted away from the land in question for which the price has come down. 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. This ground raised by the assessee is accordingly allowed for statistical purposes.

27. So far as the additional grounds are concerned, the assessee is aggrieved by the order of the Id.CIT(A) in confirming the addition of Rs.23,66,606/- made by the AO.

28. Facts of the case, in brief, are that in the Return of Income for the year under consideration, the assessee admitted an amount of Rs.8,20,968/- as short term Capital Gain. The assessee was asked to furnish the details of the transactions and also the copies of the sale deeds and purchase deeds of the said transaction. The assessee filed a revised computation sheet for the short term capital gain. As per the said statement the assessee has sold 4 immovable properties including the property sold to Sri,Veerabhadra Reddy. The AO accordingly computed the short term capital gain in respect of the remaining three properties sold, the details of which are as under:-

	<i>Actual Sale consideration received</i>	<i>Cost of acquisition</i>	<i>of STCG</i>
<i>Property-1</i>	<i>6,60,000</i>	<i>6,50,000</i>	<i>10,000</i>
<i>Property-2</i>	<i>6,85,000</i>	<i>5,15,000</i>	<i>1,70,000</i>
<i>Property-3</i>	<i>45,000,000</i>	<i>13,13,394</i>	<i>21,86,606</i>
<i>Total</i>			<i>23,66,606</i>

He accordingly made addition of the same to the total income of the assessee.

29. Before the Id.CIT(A), the assessee submitted that during the year under consideration the assessee has disposed off three

properties. However, in respect of property-3, the AO has wrongly adopted the consideration at Rs.45,00,000/- instead of Rs.35,00,000/-. Accordingly, the assessee submitted the quantification of short term capital gains as under:

	<i>Actual Sale consideration received</i>	<i>Cost of acquisition</i>	<i>STCG</i>
<i>Property-1</i>	<i>6,60,000</i>	<i>6,50,000</i>	<i>10,000</i>
<i>Property-2</i>	<i>6,85,000</i>	<i>5,15,000</i>	<i>1,70,000</i>
<i>Property-3</i>	<i>35,000,000</i>	<i>13,15,394</i>	<i>21,86,606</i>
<i>Short Term Capital Gains received</i>			<i>23,66,606</i>
<i>Less: Already declared in revised I.T>Returns</i>			<i>8,20,968</i>
<i>Addition to be made</i>			<i>15,45,638</i>

It was submitted that the AO has quantified the Short Term Capital Gains at Rs.23,66,606/- and has not given credit of Rs.8,20,968/- already offered by the assessee in his return, which resulted in excessive addition.

30. Based on arguments advanced by the assessee, the Id.CIT(A) called for a remand report from the AO. After considering the remand report of the AO and rejoinder of the assessee to such remand report, the Id.CIT(A) directed the AO to pass appropriate orders by observing as under:-

7.2) I have gone through the claim of the appellant. It is seen from the order that in respect of the property 3, the consideration is taken as Rs.45,00,000/-, whereas, short term capital gains (Rs.35,00,000 minus 13,15,394 = 21,6,606) is arrived at taking the same as Rs.35,00,000/- only by the AO. This is a mistake as rightly pointed out by the appellant. But it does not have effect on short term capital gains calculation. In the remand report the AO has also accepted that the short term capital gains returned by the assessee was not given credit, which resulted in excessive addition of Rs.8,20,968/- and the claim of the assessee was found to be correct and needs to be rectified. In view of the above, the AO is directed to pass appropriate orders while giving effect to this appellate order. This ground is allowed.

31. Aggrieved with such order of the Id.CIT(A), the assessee is in appeal before the Tribunal.

31.1. The ld.counsel for the assessee strongly challenged the order of the ld.CIT(A) in partly sustaining the addition made by the AO. He submitted that when the assessee has not received any extra money over and above, the amounts disclosed, the ld.CIT(A) is not justified in sustaining the addition. We find before the ld.CIT(A), the assessee has filed a chart showing quantification of the short-term capital gain and determining the same to be at Rs.15,45,638/-. The ld.CIT(A) directed the AO to verify the same and pass appropriate order. It is the submission of the ld.counsel for the assessee that the short term capital gain of Rs.10,000/-, Rs.1,70,000/- & Rs.86,606/- and another Rs.16 lakhs are already included in the amount of Rs.21,86,606/- and therefore, taxing the above amounts will amount to double taxation. 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 verify the claim of double addition, if any, and adjudicate the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The additional grounds raised by the assessee are accordingly allowed for statistical purposes.

32. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 16th November, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 16th November, 2022.

Thirumalesh/sps

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3	CIT(A)-11, Hyderabad
4	PrI.CIT(Central), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order