

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

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

ITA Nos.526 & 527/Hyd/2020		
Assessment Years: 2008-09 & 2009-10		
Shri C. Vamsi Krishna Hyderabad PAN:AHPPC3352D	Vs.	Dy. C.I. T. Central Circle-2 Hyderabad
ITA Ns.543/Hyd/2020 A.Y. 2009-10		
Dy. C.I. T. Central Circle-2 Hyderabad (Appellant)		Shri C. Vamsi Krishna Hyderabad PAN:AHPPC3352D (Respondent)
Assessee by:	Shri P. Murali Mohan, CA	
Revenue by:	Shri M. Satish, DR	
Date of hearing:	08/09/2022	
Date of pronouncement:	16/11/2022	

ORDER

Per Rama Kanta Panda, A.M

ITA No.526/Hyd/2020 by the assessee is directed against the order dated 23.7.2020 of the learned CIT (A)-11, Hyderabad relating to A.Y.2008-09. ITA No.527/Hyd/2020 filed by the assessee & ITA No.543Hyd/2020 by the Revenue are cross appeals and are directed against the order dated 23.7.2020 of the learned CIT (A)-11, Hyderabad relating to the A.Y 2009-10. For the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

ITA No.526/Hyd/2020 A.Y. 2008-09

2. Facts of the case, in brief, are that the assessee is an individual and is a partner in M/s. Sri Krishna Constructions. He had filed his original return of income on 31.07.2009 declaring total income of Rs.10,65,848/-. A search and seizure action u/s 132 of the I.T. Act was carried out on 25.11.2010 in the business premises of the assessee. In response to notice u/s 153A, the assessee filed return of income declaring total income of Rs.10,65,848/- which was the income originally returned in the return of income filed on 31.7.2009.

3. During the course of assessment proceedings, the Assessing Officer noted that the assessee has taken cash loan of Rs.19.00 lakhs from Shri M. Asif Basha and Rs.5.00 lakhs from Sri Srinivasulu Reddy. Vide question No.8 of the questionnaire dated 1.11.2012, the Assessing Officer asked the assessee to furnish the details of unsecured loans received during the year along with the evidence to prove the identity and creditworthiness of the creditor and genuineness of the transaction. The assessee produced confirmation letter from Shri M. Asif Basha. However, the assessee failed to furnish proof of creditworthiness of Mr.Asif Basha. So far as the loan of Rs.5.00 lakhs claimed to have been taken from Shri Srinivasulu Reddy, the assessee could not furnish any details. In absence of any evidence to his satisfaction, the Assessing Officer made addition of Rs.25.00 lakhs (i.e., Rs.19.00 + Rs.5.00 lakhs) to the total income of the assessee.

4. The Assessing Officer similarly noted that as per page No.3 of the Diary found and seized from the residential premises of the assessee during the search and seizure operation, the assessee has received an amount of Rs.5.00 lakhs from Shri Srinivasulu Reddy on 5.9.2007 towards interest purpose. On being asked by the Assessing Officer to explain the transaction in his sworn statement dated 8.3.2013, the assessee stated that he was not able to recollect it. In absence of any satisfactory explanation given by the assessee, the Assessing Officer made addition of Rs.5.00 lakhs. The Assessing Officer also made an addition of Rs.3.50 lakhs as unexplained cash credit being cash received from Smt. Sharmila and unexplained cash investment of Rs.42.00 lakhs. Accordingly, the Assessing Officer determined the total income of the assessee at Rs.85,15,848/-.

5. In appeal, the learned CIT (A) deleted the addition of Rs.3.50 lakhs and Rs.42.00 lakhs for which the Revenue is not in appeal and therefore, we are not concerned with the same. So far as remaining additions are concerned, the learned CIT (A) sustained the addition made by the Assessing Officer.

5.1 So far as the addition of Rs.29 lakhs is concerned, the learned CIT (A) sustained the addition by observing as under:

“1) I have gone through the facts and submissions. The contention of the appellant that there was no seized material for making the addition of Rs.24,00,000/- is not acceptable because the promissory notes reflected the seized material and based on these promissory notes only the AO has made the addition of Rs.24,00,000/-. The AO in the remand report has submitted that the appellant has not objected to the addition of Rs.19,00,000/- in appellate proceedings. With regard to the cash credit of Rs.5,00,000/- from Sri Srinivasulu Reddy the appellant submitted that he has received this amount from one Sri Srinivasulu Reddy as advance towards sale of land and since the transaction did not materialize, Current the same amount was shown under the head Liabilities. However, the confirmation from Sri that he has advanced Srinivasulu Reddy, states the loan of Rs.5,00,000/- to the

transaction was appellant. If the towards advance for sale of land, why would the for sale of land, why would the purchaser (Sri Srinivasulu Reddy) provide hand loan to the seller i.e., appellant? Further, the signature in the matching confirmation letter is also not with the Creditor's name. As creditworthiness and of genuineness the above two creditors in the form of I.T. Returns, PAN, were not produced even in remand report proceedings, the addition of Rs.24,00,000/- as unexplained cash credit is sustained and this ground is dismissed”.

6. So far as the addition of Rs.5.00 lakhs is concerned, the learned CIT (A) sustained the addition by observing as under:

“9.1 The AR in his reply to remand report has stated that the addition of Rs.5,00,000/- was put before him in assessment proceedings suddenly and hence was not part of questionnaire issued u/s 142(1) and is a guess work. The contention of the appellant is not acceptable because the assessee is in the knowledge that the addition of Rs.5,00,000/- was made on a/c of earning interest income which was received from Sabhashiva Rao. This receipt of interest income was not disclosed originally in the return filed for the A.Y 2008-09. The addition is made on the basis of entry in the diary and was also confronted in the statement. Hence, the argument of the appellant is not acceptable and the addition of Rs.5,00,000/- is sustained and this ground is dismissed.”

7. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The learned CIT (A) failed to appreciate the material on record to establish the fact that the amounts in question, Rs.19,00,000/- and Rs.5,00,000/- treated as Unexplained Cash Credits were borrowed by the Appellant from persons of creditworthiness as per the facts on record.

2 The learned CIT(A) further failed to appreciate that the said amounts borrowed by the Appellant are not covered under seized material within the meaning of Section 153A of the Act under which the assessment order was passed.

3. In view of the above, it is humbly prayed that the additions in question assessed wrongly and confirmed by the CIT(A) may be deleted in the interest of justice”.

8. The assessee has also raised the following additional grounds:

“4. 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).

5. The Ld. CIT(A)/ Assessing Officer erred in adding the amount of Rs 500,000 as undisclosed interest income during the year under consideration is without proper justification.

6. The Ld. CIT(A)/ Assessing officer failed to appreciate the fact that amount of Rs 500,000 received from C. Sambasiva Rao is duly explained during the assessment proceedings itself and same cannot be treated as undisclosed interest Income for the AY 2008-09 and hence it to be deleted.

7. 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.”

9. Referring to the additional grounds, the learned Counsel for the assessee submitted that all facts are already available on record and therefore, in view of the decision of the Hon'ble Supreme Court in the case of NTPC vs. CIT (1998) 229 ITR 383 (S.C), the additional ground raised by the assessee should be admitted.

10. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers & Shareholders reported in 349 ITR 336, he submitted that the assessee can always make a new claim not made in the return of income before the appellate authorities. He accordingly submitted that the additional grounds raised by the assessee should be admitted.

11. The learned DR, on the other hand, strongly opposed the admission of the additional grounds.

12. After hearing both the sides and considering that all material facts necessary for adjudication of the issue are already

available on record, therefore, in view of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd(supra), the additional grounds raised by the assessee is admitted for adjudication.

13. In ground of appeal No.1, the assessee has challenged the addition of Rs.24.00 lakhs (i.e., Rs.19 lakhs + Rs.5 lakhs) made by the Assessing Officer and confirmed by the learned CIT (A) as unexplained cash credit.

13.1 So far as addition of Rs.19.00 lakhs being cash loan from Shri M. Asif Basha is concerned, the learned Counsel for the assessee referring to the confirmation letter of Shri M. Asif Basha, copy of which is placed at page No.17 of the Paper Book submitted that she had confirmed to have given loan of Rs.19.00 lakhs on different dates and stated that the amount was given out of her business income and she is having PAN Number. He accordingly submitted that the said amount could not have been added merely on the ground that the assessee has agreed for the addition.

13.2 So far as the amount of Rs.5.00 lakh from Shri Srinivasulu Reddy is concerned, he submitted that the assessee during the appeal proceedings had produced the confirmation letter, bank statement and ledger copy relating to the above transaction. The assessee has also furnished the PAN No. Therefore, the addition sustained by the learned CIT (A) is not in accordance with law. Relying on various decisions, he submitted that the addition made by the Assessing Officer and sustained by the learned CIT (A) is not in accordance with law and therefore, the same should be deleted.

14. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that despite given ample opportunities, the assessee failed to substantiate with evidence to the satisfaction of the Assessing Officer regarding the creditworthiness of Shri M. Asif Basha. Therefore, only confirmation letters and PAN No. will not be sufficient to discharge the onus cast on him. So far as the amount of Rs.5.00 lakh received from Shri Srinivasulu Reddy is concerned, here also, the assessee did not produce any evidence, therefore, the CIT (A) was fully justified in sustaining the addition made by the Assessing Officer. He further submitted that the confirmation letters furnished by the assessee in the case of Srinivasulu Reddy cannot be accepted because the signature of the creditor is different from the name of the creditor. He accordingly submitted that the order of the learned CIT (A) be upheld.

15. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. So far as the addition of Rs.19.00 lakh being amount of loan obtained from Shri M. Asif Basha is concerned, we find the AO made the addition on the ground that the assessee failed to substantiate with evidence to his satisfaction regarding the creditworthiness of Shri M. Asif Basha to advance cash loan of Rs.19.00 lakhs. The Assessing Officer in his remand report submitted that the assessee did not object to the addition of Rs.19.00 lakhs in appeal proceedings. It is the submission of the learned Counsel for the assessee that he has never admitted addition of Rs.19.00 lakhs being cash loan from Shri M. Asif

Basha. It is also his submission that the assessee is in a position to produce Shri M. Asif Basha before the Assessing Officer to substantiate his creditworthiness and the genuineness of the transaction. 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 Assessing Officer with a direction to grant one opportunity to the assessee to produce the said person before him for his examination and file necessary evidences to substantiate his creditworthiness to advance such cash loan of Rs.19.00 lakhs. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly.

16. So far as Rs.5.00 lakhs received from Shri Srinivasulu Reddy is concerned, we find the assessee during the course of appeal proceedings has produced confirmation letter, bank statement and ledger a/c of the said transaction. We find the amount of Rs.5.00 lakhs obtained from Shri Srinivasulu Reddy is duly reflected in the Bank A/c of the assessee and the said amount is towards sale of land. It is the objection of the Revenue that the confirmation letter was signed by Mr.Rajesh in place of Shri Srinivasulu Reddy. It was clarified by the learned Counsel for the assessee that Mr. Rajesh is the Manager of Srinivasulu Reddy who has signed the confirmation on behalf of Mr.Srinivasulu Reddy regarding the amount in question which is routed through banking channels and on account of sale of property. 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 Assessing Officer with a direction to verify the details and if the amount is shown as sale of land and the amount is received through banking channel, then delete the addition. Needless to say, the

AO shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. Ground of appeal No.1 raised by the assessee is accordingly allowed for statistical purposes.

17. So far as the additional ground is concerned, the same relates to the order of the learned CIT (A) in confirming the addition of Rs.5.00 lakhs made by the Assessing Officer on account of interest.

17.1 The learned Counsel for the assessee referring to the seized document drew the attention of the Bench to the same which is as under:

“5.9.07 by Samba Siva Rao, cash received 5,00,000/- interest purpose”.

18. Referring to the copy of the confirmation letter, ledger copy of Shri Srinivasulu Reddy and copy of the bank statement evidencing the receipt of the same, copies of which are placed at page 27 to 29 of the paper book, he submitted that all these evidences were filed before the ld.CIT(A) which he has not considered. Since the amount is not interest and it is a loan given through proper banking channel, therefore, appropriate relief be granted to the assessee.

19. The learned DR, on the other hand, strongly objected to the evidences now being produced by the learned Counsel for the assessee. Referring to the decision of the Hon'ble High Court in the case of CIT vs. A.K. Babu Khan reported in 102 ITR 757, he submitted that the additional evidence should not be admitted since the assessee was not prevented by sufficient cause for not filing the above said documents before the Assessing Officer during the course of assessment proceedings.

19.1 Ld.counsel for the assessee submitted that since these details were filed before the Id.CIT(A), therefore, these are not additional evidences.

20. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made an addition of Rs.5.00 lakhs being interest received by the assessee from Shri Sambasiva Rao. However, a perusal of the seized document shows that the cash is received for interest purpose. Thus, it is clearly discernible from the seized document that it is not interest income but an amount of Rs.5.00 lakhs received from Shri Sambasiva Rao as loan. Since the Assessing Officer while making the addition has failed to understand the notings in the seized document, the extracts of which have already been reproduced earlier and since the assessee has filed certain documents before the learned CIT (A) as certified in the Paper Book but the same was not properly appreciated by Id.CIT(A), therefore, considering the totality of the facts of the case and in the interest of justice, we restore the issue to the file of the Assessing Officer with a direction to decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. The ground raised by the assessee in the additional ground is accordingly allowed for statistical purposes.

21. So far as the grounds challenging the validity of assessment u/s 153A in absence of seized material is concerned, the learned Counsel for the assessee did not press the ground for

which the learned DR has no objection. Accordingly, the legal ground challenging the validity of the assessment is dismissed.

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

ITA Nos.527/Hyd/2020 & 543/Hyd/2020 (A.Y 2009-10)

23. Facts of the case, in brief, are that the assessee filed original return of income on 31.7.2009 declaring total income of Rs.12,45,850/-. In response to the notice u/s 153A, the assessee filed the return of income declaring total income of Rs.8,38,343/-. The Assessing Officer completed the assessment determining the total income of the assessee at Rs.2,95,20,850/- by making various additions.

24. In appeal, the learned CIT (A) gave part relief by granting relief on certain additions and sustained certain other additions.

25. Aggrieved with such part relief granted by the learned CIT (A), the assessee as well as the Revenue are in appeal before the Tribunal by raising the following grounds of appeal:

ITA 527/Hyd/2020 – Grounds of Appeal (Assessee).

“1 The learned CIT(A) failed to appreciate that the amount of Rs.18,00,000/- represents sale consideration received from Smt G.L. Aruna Reddy through Sri Rami and Sri Uma Maheswara Rao and accepted as such for the A.Y.2010-11.

2. The learned CIT(A) further failed to appreciate that the issue is not based on the seized material within the meaning of Section 153A of the Act under which the order was passed.

3 In view of the above, it is humbly prayed that the addition wrongly confirmed the by Appellate Order be deleted in the interest of justice.

25.1 Additional grounds raised by the assessee reads as under:

“4. 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).

5. The Ld. CIT(A) failed to adjudicate the ground no 4 taken before him i.e addition of Rs 11,00,000 made by the assessing officer as unexplained investment in purchase of property at Dadegallu Village.

6. The Ld. CIT(A) failed to appreciate the fact that addition of Rs.11,00,000 made by the assessing officer is without proper justification and hence it is to be deleted.

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

25.2 ITA No.543/Hyd/2020 (A.Y 2009-10) (grounds of appeal by the Revenue):

“1 The Id.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.

2. The Id. CIT(A) erred in deleting the addition of Rs.2,50,00,000/- made without 2 towards unexplained investment in purchase of property at Bellary without appreciating the facts had brought on record by the Assessing Officer that the assessee failed to explain the sources for the same.

3. The Id.CIT(A) failed to 132(4) of appreciate the fact that in the statement recorded u/s. the Act, the assessee had admitted that a sum of Rs.2,50,00,000/- was paid by him in cash towards purchase of property at Bellary.

4. The that the Id.CIT(A) erred in deleting the addition of Rs.2,50,00,000/- on the ground property referred to was purchased by the assessee's father vide sale deed dated registered 22/11/2011.

5. The Id.CIT(A) erred in ignoring the fact that the addition was based on seized material with specific notings of amounts paid and dates falling in

the F.Y.2008-09 and cannot be related to the transaction of purchase of property by the assessee's father in 2011.

6. The Id.CIT(A) erred in deleting the addition of Rs.3,50,000/- made towards unexplained cash credits on the ground that the addition was made without reference to seized material.

7. The Id CIT(A) erred in not following the principle laid down by the jurisdictional High Court in the case of Gopal Lal Bhadraka vs DCIT 346 ITR 106, wherein it was held that for the purpose of section 153A/153C of the IT Act the assessing officer can take into consideration material other than what was available during search and seizure operation for making an assessment.

8. The Id CIT(A) erred in deleting the addition of Rs.4,07,507/- without appreciating the fact that the assessee failed to explain the difference in the income admitted in the original return filed on 31.07.2009 and the return filed u/s 153A the Act.

9. The appellant craves leave to amend or alter any ground or add ground which may be any other necessary."

26. After hearing both the sides and considering that all material facts are already available on record, therefore, in view of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd the additional grounds raised by the assessee are admitted for adjudication.

27. In Ground of appeal No.1, the assessee has challenged the order of the learned CIT (A) in confirming the addition of Rs.18.00 lakhs made by the Assessing Officer.

28. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noted that the assessee has shown an amount of Rs.16.00 lakhs as cash loan from Sri Ram Reddy and an amount of Rs.2.00 lakh as cash loan from Sri Uma Maheshwar Rao. Vide Question No.8 of the questionnaire dated 1.11.2012, the assessee was asked to furnish the details of the above unsecured loans received during the year

along with evidence to prove the identity and creditworthiness of the loan creditors and genuineness of the transaction. However, in absence of any details furnished by the assessee, the Assessing Officer made addition of the same to the total income of the assessee as unexplained cash credit.

29. Before the learned CIT (A), the assessee submitted that an amount of Rs.18.00 lakhs represented sale proceeds of land from Smt. G.L. Aruna represented by her agent Shri Rami Reddy and Shri Uma Maheshwar Rao and this amount was shown in the computation of capital gain filed for the A.Y 2010-11. It was accordingly requested that the addition made by the Assessing Officer is not correct.

29.1 However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and sustained the addition by observing as under:

“8.2) The claim of the appellant is verified with reference to remand report. It is noticed that the appellant has shown Sri Ram Reddy (Rs.16,00,000/-) and Sri Uma Maheswar Rao (Rs.2,00,000/-) as current liabilities not as advance for sale of property as claimed. During the assessment proceedings and the appellate proceedings, the appellant has made conflicting claims. Even during the remand proceedings, the appellant on one hand filed confirmation from Mr.Ram Reddy and Mr.Uma Maheswar Rao as to the credit given to the appellant, whereas, the appellant claims it to be part of consideration for sale of property to Smt. G.Aruna. It is clear that the appellant has not explained whole gamut of transactions and entries made w.r.t. above and the evidence produced by the appellant lacks credibility in view of conflicting claims made by the appellant. Accordingly, the addition is confirmed and this ground is dismissed.”

30. Aggrieved with order of the learned CIT (A), the assessee is in appeal before the Tribunal.

31. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in confirming the

addition made by the Assessing Officer. He submitted that the assessee has received the money from family members of Smt. G. Aruna as advance for sale of property. Referring to page No.18 of the Paper Book which is the confirmation obtained from Shri Uma Maheshwara Rao, the learned Counsel for the assessee submitted that Shri Uma Maheshwara Rao in his confirmation letter has admitted to have given Rs.2.00 lakhs as cash to the assessee on 18.12.2008 without interest which was furnished before the Assessing Officer. In the said confirmation it has also been stated that the said amount was paid back by the assessee to him in cash on 25.3.2010.

32. Similarly Mr. Rami Reddy in his confirmation letter has confirmed to have given cash loan of Rs.16.00 lakhs to the assessee without interest which was refunded back to him on 25.3.2010. Referring to page 108 of the Paper Book, he drew the attention of the Bench to the ledger a/c of Shri Rami Reddy in the books of the assessee wherein the amount of Rs.16.00 lakhs has been shown to have been received from Mr. Rami Reddy. Similarly, referring to page 109 of the Paper Book, the learned Counsel for the assessee drew the attention of the Bench to the ledger a/c of Shri Uma Maheshwara Rao in the books of the assessee wherein an amount of cash receipt of Rs.2.00 lakhs has been shown. He submitted that these entries are recorded in the books of account prior to the search.

33. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Orchird Industries (P) Ltd reported in 88 Taxmann.com 502, he submitted that the Hon'ble High Court in the said decision has held that where the assessee has produced documents to establish the genuineness of the parties

such as PAN No.of all creditors along with confirmation, their bank statements showing payment of share application money, etc., merely because those persons had not appeared before the Assessing Officer would not negate the case of assessee so as to invoke section 68 of the I. T. Act. He accordingly submitted that the order passed by the learned CIT (A) being not in conformity with the facts of the case should be set aside and the ground raised by the assessee be allowed.

34. The Id DR, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that the assessee is making conflicting claims and has not come out with the truth, therefore, the order of the learned CIT (A) being in consonance with law should be upheld.

35. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made an addition of Rs.18.00 lakhs being the amount of loan of Rs.16.00 lakhs from Shri Rami Reddy and an amount of Rs.2.00 lakhs from Shri Uma Maheshwara Rao on the ground that the assessee failed to furnish the identity and creditworthiness of the above two unsecured loan creditors and the genuineness of the transactions. We find the learned CIT (A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that the above amount, though shown as loan, was in fact received from the family member of Smt. G. Aruna for advance for sale of property. It is also his submission that all

these entries were recorded prior to the search and part of the books of account of the assessee prior to the search. We find the assessee in the instant case though mentioned that the amounts were received as advance for sale of property and the sale was concluded during the A.Y 2010-11, however, the same was rejected by the learned CIT (A) on account of conflicting claims made by the assessee on the ground that these are current liability and not advance for sale of property as claimed. It is the submission of the learned Counsel for the assessee that the said amounts were received as advance from Smt. G.L. Aruna through Shri Rami Reddy and Shri Uma Maheshwara Rao and the sale was concluded during the A.Y 2010-11 and the amounts were accepted as sale proceeds in the A.Y 2009-10 and therefore, the addition cannot be made has not been properly appreciated by the lower authorities. 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 Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate with evidence to his substantiate that the amount, which has been received as advance for sale of property, has in fact advance for the sale of property and the sale has been concluded in the subsequent year. The AO shall decide the issue as per fact and law. We hold and direct accordingly. Ground of appeal No.1 is accordingly allowed for statistical purposes.

36. Ground of appeal No.2 was not pressed by the assessee for which the learned DR has no objection. Accordingly Ground of appeal No.2 is dismissed as not pressed.

37. Ground of appeal No.3 being general in nature is dismissed.

38. So far the additional grounds are concerned, the grievance of the assessee is that the learned CIT (A) failed to adjudicate the ground taken before him challenging the addition of Rs.11.00 lakhs made by the Assessing Officer.

39. After hearing both the sides, we find during the search & seizure operation at the business premises of Sri Krishna Constructions, a copy of the agreement entered into by the assessee along with Shri Syed Yunus and Shri Balaji for the purchase of landed property of 8 acres belonging to Shri E.Eshappa and two others, located at Dagegallu Village, Koppal District at the rate of Rs.13.00 lakhs per acre was found and impounded vide page No.85 to 88 of the Annexure A/TBC/03. Vide Qu.No.3 of the questionnaire dated 1.11.2012, the assessee was asked to furnish the details of the transaction and the sources thereof along with the documentary proof in support of his claim. In his reply the assessee stated that his share of investment in the said transaction was Rs.11.00 lakhs and the source for the above investment was out of the advance of Rs.27.00 lakhs received from Shri Veerabhadra Reddy. The Assessing Officer noted that although the assessee in his initial reply stated that the advance of Rs.27.00 lakhs received from Shri Veerabhadra Reddy as the source for the investment, however, he subsequently changed his version and stated that he has taken loan of Rs.55.00 lakhs from M/s. Sai Minerals and the said amount was stated as source. In view of the inconsistent stand of the assessee, the Assessing Officer rejected the explanation and made addition of Rs.11.00 lakhs to the total income of the assessee.

40. The assessee took a specific ground as Ground of appeal No.4 before the learned CIT (A) which reads as under:

“The Assessing Officer failed to understand that the amount of Rs.11.00 lakhs which was adjusted Sri Balaji and Sri Younus jointly on behalf of the Appellant and reimbursed by him subsequently was a genuine transaction backed by sufficient evidence. In view of this, the addition of Rs.11.00 lakhs made by the Assessing Officer as unexplained investment is with no justification”.

41. However, the learned CIT (A) inadvertently forgot to adjudicate the ground. We therefore, deem it proper to restore the issue to the file of the learned CIT (A) with the direction to adjudicate the ground raised before him challenging the addition of Rs.11.00 lakhs. The learned CIT (A) shall decide the issue as per fact and law. We hold and direct accordingly. Thus, grounds of appeal No.5 & 6 are treated as allowed for statistical purposes.

42. Ground of appeal No.7 raised by the assessee being general in nature is dismissed.

ITA No.543/Hyd/2020 (by Revenue)

43. Grounds of appeal 1 & 9 raised by the Revenue being general in nature are dismissed.

44. In Grounds of appeal No.2, 3 & 4, the Revenue has challenged the order of the learned CIT (A) in deleting the addition of Rs.2,50,00,000/-.

45. Facts of the case, in brief, are that during the course of search and seizure operations u/s 132, certain loose sheets were found and seized vide annexure A/CVK/1 at the residential

premises of Sri C.Vamsi Krishna, Bellary. Page No. 76 to 79 of the above referred seized material pertain to undated cheques issued by Sri R. Chandrahas for an aggregating value of Rs 1,00,00,000/-. In the back side of these cheques (page No 76,77 and 79) various financial transactions are noted. On back side of page 76 is written as "1 acre -1.30 lakhs advance received 1 crore only dated 7/7/08 and dated 18/08/08 received 15 lakh only signed by R. Chandrahas and dated 10/02/2009 received 1 crore 30 lakhs and confirmed by R.Chandrahas by putting his signature. Likewise on back side of page no. 77 it is noted as 1 acre- amount 2.75 lakhs dated 10/11/2008' and different notings are made as below:

Rs 50 lakhs on 13/4/09

Rs 65 akhs on 13/5/09

10 lakhs on 13/8/09

Rs 2 lakhs on 1/9/09

Rs 5 lakhs on 25/9/09

RS 10 lakhs on 15/10/09

Rs 40 lakhs on 22/3/10

Rs. 13 lakhs on 15/4/10

Rs.40 lakhs on 26/04/10

Rs. 30 lakhs on 16/7/10

Rs. 20 lakhs on 9/8/10

Rs 20 lakhs on 27/10/10

RS. 1.5 lakhs on 25/9/10

46. Similar notings were found on back side of Page No.79 acknowledged by R. Chandrahas for having received Rs 12 lakhs on 10/02/09, Rs 7 Lakhs on 30/06/09 and Rs 16 lakhs on 7/12/09 When the assessee was confronted with this material

during the course of statement recorded u/s 132(4) on 25.11.2010 he replied that he had entered into an oral agreement with Sri R. Chandrahas to purchase three acres of property located at Ram Nagar, Bellary for a total consideration of Rs.26 crore and out of which an amount RS. 2.5 crore paid in cash and balance amount of Rs.10 lakh was not yet paid. Hence, the property was not registered. When the assessee was asked to explain the source of cash of Rs.2.5 crores which was paid to R. Chandrahas, he stated that he did not know whether the money is accounted or not and after discussing with his auditor if cash paid was unaccounted same would be disclosed as undisclosed Income.

47. Later on the assessee changed his version in his reply to the questionnaire dated 15.02.2011 issued by the Asst Director(Inv), Tirupati wherein he submitted that his father purchased a property from Sri Shivananda through a middleman by name Sri R. Chandrahas. He also stated that the property was purchased for Rs.1950 lakhs in February 2011 and the oral deed was arrived at long ago. Lest the party should go back on the deal, undated cheques for an aggregate value of RS 1,00,00,000/- were collected from the middleman Sri R. Chandrahas and retained with him as safe custody/ collateral security.

48. During the assessment proceedings the assessee was asked to explain the same in his sworn statement recorded u/s.131 on 08-03-2013. The relevant portion of the statement which is reproduced by the AO reads as under.

Q.24 Now I am showing you cheques found and seized vide Annexure A/CVK/01 (page nos. /6 to 79) from your residence on the date of search. Please explain the Same.

A. The cheques belong to Sri Chandrahas of Bellary, who is one of Our close Family friends. Now and then, he visits me and stays with me for dinner. He had left the above cheques in my custody. The cheques produced above are the same cheques he had left with me. Beyond this I have nothing to say.

Q25 Please state the reason why Sri Chandrahas has kept the above cheques in your custody.

A I do not know the reason. Since he is an elderly gentleman I obliged him

Q. 26 Please give the full address and details of Sri Chandrahas.

A. Sri Chandrahas is a businessman and has a stone crusher. He stays at Infantry Road, Near Vasavi School, Bellary. I will produce his complete postal address in a day.

Q.27. Now I show you the statement recorded u/s. 132(4) on the date of search, i.e. on 25.11.2010 from you. Vide the statement in answer to question no.3 (page no. 5) you have stated that you have entered into an oral agreement with Sri Chandrahas to purchase 3 acres of property located at Ramnagar, Bellary for a consideration of Rs.2.6 Crores, out of which you paid an amount of Rs.2.5 crores in cash. Please offer your explanation.

A. On the day of the search, I was under severe mental pressure. I faced a situation which I had never faced before. This is all I can say about the statement gave which is not correct.

Q 28. The above statement dt.25. 11.2010 was recorded on oath, but still, you are saying that you have given incorrect statement after taking oath. Please offer our explanation

A. I submit that I am a god fearing man I am a layman and I have explained to already you that I was under great mental pressure that made me make the statement in question.

Q.29. Vide final show cause notice dt.22.2.2013, you are requested to produce Sri Chandrahas for examination on or before 28.2.2013 before me. But till date you have not produce Sri Chandrahas for examination. Please offer your explanation.

A. I have already explained to you that during the same time you issued the show cause notice I was laid up in the hospital and was discharged only day before yesterday. I therefore, could not produce Mr.Chandrahas for examination as directed by you. I will make my best efforts to meet him

and request him to present himself before you and clarify the entire issue.

49. The AO noted that the assessee once again changed his version stating that the said cheques were left by Mr.Chandrasahas and he did not know why the cheques were left at his residence. He, therefore made addition of Rs.2,50,00,000/- to the total income of the assessee by recording the following:-

1. During the course of Sworn statement recorded u/s 132(4) on 24.11 2010 Sri C.Vamsi Krishna admitted that he had entered into an oral agreement with Sri R. Chandrasahas to purchase three acres of property located at Ram Nagar Bellary for a total consideration of Rs 2.6 crore and out of which an amount Rs 2.5 crore paid in cash.

2. As seen from the above the assessee was not consistent in his explanation with regard to the transaction with Sri Chandrasahas. He changed his version twice.

3. The assessee's version that the cheques amounting to Rs.1 crore were left by Sri.Chandrasahas at his residence and he did not know the reason why it was left at his residence is not believable.

4. On reverse/back side of the page no.76 of the seized material A/CVK/01 dated 25.11.2010 it is clearly mentioned that Chandrasahas has received the advance and the receipt was duly acknowledged by Sri R. Chandrasahas by putting his signature there under.

5. During the post search proceedings as well as the assessment proceedings the assessee was asked to produce Sri.Chandrasahas for examination, but the assessee failed to produce him. From the above it is clear that the assessee has paid an amount of S.2.5 Crores for the purchase of land out of the total agreed consideration of S2.6 crores and in lieu of this the assessee had taken the undated cheques or Rs.1,00,00,000/- as security from Sri.Chandrasahas. As the assessee failed to explain the sources for the said investment, the said amount of Rs.2,50,00,000/- is treated as unexplained investment in the hands of the assessee.”

50. Before the learned CIT (A), the assessee made elaborate submissions based on which the learned CIT (A) called for a remand report from the Assessing Officer which was

confronted to the assessee. After considering the remand report of the Assessing Officer and submission of the assessee to such remand report, the learned CIT (A) deleted the addition by observing as under:

"7.4 I have gone through the facts of the case and the submissions of the appellant. I have also gone through the remand report of the AO and the reply to remand report by the Considering all appellant. After the above, my observations are as under:

7.4.1) Firstly, in course of search on 25.11.2010, four undated cheques of Rs.25 lakhs aggregating to Rs.1 Cr drawn on Andhra Bank, Infantry Road, Branch, Bellary signed by Sri R.Chandrabhas was found and seized from the residential premises of the appellant Sri C.Vamsi Krishna. On the back side of the cheques which are numbered as 76 to 79 of annexure A/CVK/1, financial transactions indicating receipt of Rs.2.50 crores by Sri Chandrabhas, along with his signature was also noticed. When this was put forth before the appellant on the date of search, he has stated in his statement recorded u/s 132(4) that he entered into an oral agreement with Sri Chandrabhas to purchase three acres of property located at Ram Nagar, Bellary for a consideration of Rs.2.6 crores. Out of this Rs.2.6 crores, he had made payment of Rs.2.5 crores in cash to Sri R.Chandrabhas and since balance amount of Rs.10 lakhs was not paid, the registration could not be completed as on the date of search.

7.4.2) Thereafter in the statement recorded again u/s 132(4) on 15.02.2011, the appellant submitted that in fact his father, Sri C.Satyanarayana, had entered into an oral agreement long ago to buy the said property at Ram Nagar from one Sri Sivananda of Bellary through the middleman Sri C.Chandrabhas. Accordingly, the property was registered on 22nd February, 2011, for a consideration of Rs.19.50 lakhs. However, the appellant stated that his father took four undated cheques aggregating to Rs.1 crore from Sri Chandrabhas, the middleman, as collateral security in the event of the party backing off from the said purchase. The retraction of the appellant is as under:

During the assessment was proceedings the assessee asked to explain the same in his sworn statement recorded u/s 131 on 08-03-2013. The relevant portion of the statement is reproduced as under:

Q.24. Now I am showing you cheques found and seized vide Annexure A/CVK/01 (Page nos. 76 to 79) from your residence on the date of search. Please explain the same.

A: The cheques belong to Sri Chandrabhas of Bellary, who is one of our close family friends. Now and then, he visits me and stays with me for dinner. He had left the above cheques in my custody. The cheques produced above are the same cheques he had left with me. Beyond this I have nothing to say.

Q.25. *above cheques in your custody. Please state the reason why Sri Chandrahas has kept the A: I do not know the reason. Since he is an elderly gentleman, I obliged him.*

Q.26. *Please give the full address and details of Sri Chandrahas.*

A Sri Chandrahas is a businessman and has a stone crusher. He stays at Infantry Road, Near Vasavi School, Bellary. I will produce his complete postal address in a day.

Q.27. *Now I show you the statement recorded u/s 132(4) on the date of search i.e. on 25.11.2010 from you. Vide the statement in answer to question no.3 (page no.5) you have stated that you have entered into an oral agreement with Sri Chandrahas to purchase 3 acres of property located at Ramnagar, Bellary for a consideration of Rs.2.6 crores, which you paid an amount of Rs.2.5 crores in cash. Please offer your explanation*

A. On the day of the search, I was under severe mental pressure. I faced a situation which I had never faced before. This is all I can say about the statement I gave which is not correct

Q.28. *The above statement dt. 25.11.2010 was recorded on oath, but still you are saying that you have given incorrect statement after taking oath. Please offer your explanation.*

A: I submit that I am a god fearing man, I am a layman and I have already explained to you that I was under pressure that made me great mental make the statement in question.

Q.29 *requested to produce Sri Chandrahas for examination on or before 28.2.2013 before me. But till date you have not produced Sri Vide final show cause notice dt. 22.2.2013, you are Chandrahas for examination. Please offer your explanation.*

A: I have already explained to you that during the same time you issue the show cause notice I was laid up in the hospital and was discharged only day before yesterday. I therefore, could not produce Mr.Chandrahas for examination as directed by you. I will make my best efforts to meet him and request him to present himself before you and clarify the entire issue.

Thus, in the said statement the assessee once again changed his version stating that the said cheques were left by Mr.Chandrahas and he did not know why the cheques were left at his residence."

7.4.3) *The statement of Sri Chandrahas recorded during the remand proceedings on 26.09.2019 with reference to seized material (Page no.76) which is extracted and reproduced, as under:*

"Q.4) I am showing you page nos. 76 to 79 of Annexure A/CVK/01 seized during the course of search operation at the residential premises of Sri C. Vamsi Krishna on 25.11.2010. Please go through the same and confirm whether the writing made on them are done by you or not?

Ans: I have gone through the page nos. 76 to 79 of Annexure A/CVK/01 sir. These are four leaves of cheques signed by me the amount of Rs.25,00,000/- each drawn on Andhra with Bank, Infantry Road Branch, Bellary which are undated and not addressed to any payee. The signatures put on the cheques are mine.

Q.5) Please go through the reverse side of the cheques as mentioned by you in answer to Q.No.4 and confirm whether the writing are made by you or not?

Ans: Sir, the reverse side of cheques at page no.76, 77 and 79 are having some entries. There is nothing written on the reverse side of cheque at page no. 78. The entries made on reverse side of cheques are made by me and I have also put my signature at the end of entries.

Q.6) Please go through the entries made on the reverse side of cheques at page no.76, 77 and 79 and explain the content.

Ans: The entries on the reverse side of cheque at Page no.76 reads as

"D 7.7.008

1 Acre 1,30, 000/ Rs. Total 2 Acres

4 Months Time

Advance received 1 Crore only

D.19.8.008 Received 15 lakh only R Chandrahas

D.10.02.009 Received 1 Crore 30 lakh only ..R Chandrahas

Total 2.60 crores 2 acres Amount Received

The entries made in this page pertain to the transaction related to sale of land. The total amount received was Rs.2.60 crores for 2 acres land@ Rs.1.30 crore per acre. The amount was received by me and the same is acknowledged with my signature after each transaction. "

Q.7) In answer to A.No.6 you have explained that the amount of Rs.2.60 crore was received by you as per entries on the reverse side of cheque at page no.76. Please explain from whom you had received the money and what was the purpose.

Ans: Sir, I am now 60 years old and at this point of time I am unable to recall exactly who had given the money. Further, the money received by me was on behalf of somebody for a land deal. I do not recall now the person for whom the money was received. Further, I can say that I did not receive any amount for AY 2009-10 sale of my land as I was having agricultural land measuring about 19.52 acres in Unthakal Village, 18 kms away from Bellary during that period which is still under my possession.

Q.8).....

Q.9).....

Q.10).....

Q.11) I am showing you the statement given by Sri C.Vamsi Krishna recorded during the course of search and seizure operation in his case, wherein, he has stated that he paid an amount of Rs.2.60 crores to you for purchase of land. Please offer your remarks.

Ans: Sir, I am now 60 years old and at this point of time I am unable to recall exactly who had given the money. However, I can say that Sri C.Vamsi Krishna had not given me amounting any money to Rs.2.60 crore at any point of time.

7.4.4) AS could be seen Sri.Chandrasahs from answer to Q.No.6, stated that he did receive Rs.2.60 crores for 2 acres of land, whereas the property in question was 3.00 acres. But vide Q.no.11 above, Sri Chandrasahs has stated that he received Rs.2.60 crores on behalf of somebody else and not from Sri Vamsi Krishna. This shows that Sri Chandrasahs was acting as a middlemen to other persons also and was accepting monies as advance in land/plot dealings, which is evidenced by his own handwritten notings mentioned on the back side of the cheques.

7.4.5) As seen from the records, Ram Nagar property was purchased by appellant's father Sri C.Satyanarayana from one Sri Shivanand and the same was registered on 22nd January, 2011. In support of the same, the appellant has furnished the registration deed of Ram Nagar property. He has also filed bank account statement of Sri Chandrasahs and financial position of his business stating that Chandrasahs is just a middleman in the above transaction. The appellant submitted The appellant submitted that the said property in question was no purchased by his father and he has relation to the above transaction and denied the Rs.2.60 on-money amount of crores paid to Sri Chandrasahs. Even Sri Chandrasahs in his statement recorded during remand proceedings confirmed that he did receive Rs.2.60 crores on behalf of somebody but the same was not paid by the appellant Sri Vamsi Krishna and that he do not remember on whose basis he received the amount since he is aged.

7.4.6) In the instant case, the AO has held that the appellant made investment for buying the property at Bellary. But the fact is that the appellant's father Sri Satyanarayana is the purchaser and Sri Sivananda of Bellary is the seller and Sri Chandrasahs appears to be middlemen. The sale and purchase transaction between above person is evidenced by the Registration deed dated 22/11/2011. The AO in course of assessment proceedings and remand proceedings has not conclusively proved that the said property in question actually belonged to the appellant.

7.4.7) The AO relied on the notings but as could be seen from the notings, it is observed that the appellant's name is not recorded more so, the extent of property in question also varies. Sri Chandrasahs has mentioned as "Total 2.60 crores 2 acres Amount Received", while the Ramnagar property in question is 3 acres. The AO in his assessment order has made the addition.

7.4.8) as unexplained investment in the name of the appellant, whereas the said property was not registered in the name of the appellant. It is pertinent to mention here that the said Ramnagar property is registered in the name of Sri C.Satyanarayana, who is appellant's father. The AO relied on the statement of the appellant recorded during the course of search and parts of statement of Sri Chandrahas recorded during the remand proceedings. The retraction and the statement dated 08.03.2013 during assessment proceedings have been negated by the AO without bringing any further evidence on record. The statement of Chandrahas is not limiting the transaction to the appellant. Sri Chandrahas has in fact categorically denied having received amount from the appellant.

7.4.9) In view of the factual position, the addition of Rs.2.50 crores made in the hands of the appellant is not warranted since the property is purchased by appellant's father Sri C.Satyanarayana. In view of the above, the addition of Rs.2.50 crores made in the hands of the appellant is ordered to be deleted. This ground is allowed”.

51. Aggrieved with such order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

51A. We have considered the rival arguments made by both the sides, perused the orders of the AO and the 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 AO in the instant case made addition of Rs.2,50,00,000/- in the hands of the assessee on the ground that assessee has purchased a property from Mr. R.Chandrahas for which certain documents were seized vide Annexure A/CVK/01. According to the AO page No. 76 to 79 of the seized material contain some undated cheques issued to Shri R.Chandrahas for an aggregated value of Rs. 1 crore and on the back side of the said cheque various financial transactions were noted. Since the assessee could not explain the transaction the AO made addition of Rs. 2,50,00,000/- in the hands of the assessee, the reasons of which have already been reproduced in the preceding paragraph. We find in appeal, the Id.CIT(A) deleted the addition on the ground that the property was

purchased in the name of the father of the assessee Mr.C.Satyanarayana and the AO without bringing any further evidence on record made addition in the hands of the assessee which is not justified. The relevant observation of the ld.CIT(A) deleting the addition has already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the ld.CIT(A) on this issue. Since the property has been purchased by the father of the assessee Shri C.Sathyanarayana, a finding given by the ld.CIT(A) and not controverted by the revenue, therefore, in our opinion addition, if any, could have been made in the hands of Mr.C.Sathyanarayana and not in the hands of the assessee. The ld. DR also could not controvert the findings given by the ld.CIT(A) on this issue by bringing any material before us. In this view of the matter and in view of the detailed reasoning given by the ld.CIT(A), we do not find any infirmity in the order of the ld.CIT(A) deleting the addition of Rs. 2,50,00,000/-. Accordingly, the same is upheld. The ground raised by the revenue is dismissed.

52. In Ground of appeal No.6, the revenue has challenged the order of the learned CIT (A) in deleting the addition of Rs.3,50,000/- made towards cash credit.

53. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noticed from the capital account of the assessee for the year under consideration that an amount of Rs.3,75,000/- was received by the assessee from Sharmila HUF in the form of cash on 31-03-2009. When the assessee was asked to explain the nature of cash receipt and the sources for the said amount along with the supporting evidence, the assessee vide his letter dated 09-03-

2013 replied that the said amount was received by him from his wife Smt. Sharmila out of his HUF income in which he himself and his wife are members. The assessee's contention was not accepted by the AO in absence of any evidence to prove that the said amount was received from the HUF. He accordingly treated the amount of Rs.3,75,000/- as unexplained income in the hands of the assessee.

54. Before the learned CIT (A), the assessee filed details of the cash flow statement, balance sheet, ledger account and extent of land holding etc., in support of the agricultural land which were forwarded by him to the Assessing Officer seeking a remand report. On the basis of the remand report of the Assessing Officer and submission of the assessee to such remand report, the learned CIT (A) deleted the addition by observing as under:

“6.1) I have gone through the facts on the record and the remand report and counter comments offered by the appellant. The assessee filed return of income originally on 31.07.2009 and time limit to issue notice u/s 143(2) has lapsed before the date of search. The return to was processed u/s 143(1)(a). The assessment is deemed to be completed. As could be seen from the assessment order, the AO made the addition of Rs.3,75,000/- on the basis of capital account furnished by the appellant in course of assessment proceedings and not on the basis any incriminating material found in course of search. Since 153A proceedings are specific proceedings and the addition need to be backed up by the existence of incriminating / seized material, the addition Rs.3,75,000/- made was not on the basis of seized material, but was made as a routine / general addition. It is seen that the explanation regarding source was also disregarded without bringing any material contrary to assessee's claim on record. In view of the above, the addition made without reference to seized material cannot stand in the eye of law and the same is ordered to be deleted. The appellant succeeds on this ground”.

55. Aggrieved with such order of the learned Cit (A), the Revenue is in appeal before the Tribunal.

55A. We have heard the rival arguments made by both the sides, perused the orders of the AO and the ld.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 AO in the instant case made addition of Rs. 3,75,000/- on the ground that assessee could not explain the amount of Rs.3,75,000/- received from the HUF with supporting evidence. We find the ld.CIT(A) deleted the addition on the ground that the addition is not made on the basis of any seized material, but on the basis of the capital account furnished by the assessee during the course of assessment proceedings. We find the decision of the ld.CIT(A) on this issue is contrary to the decision of the Hon'ble Aandhra Pradesh High Court in the case of Gopal lal Badruka vs DCIT reported in 346 ITR 106. Therefore, the order of the ld.CIT(A) cannot be accepted on this legal issue that no addition can be made in absence of any incriminating material found during the course of search. However, the request of the ld.counsel for the assessee that given an opportunity, the assessee in a position to substantiate with evidence to the satisfaction of the AO regarding the source of the HUF from where the amount of Rs. 3,75,000/- was received is accepted. We, therefore, 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 cogent evidence to his satisfaction. The AO shall decide the issue as per fact and law. We hold and direct accordingly. The ground raised by the revenue is accordingly allowed for statistical purposes.

56. In Ground of appeal No.8, the Revenue has challenged the order of the CIT (A) in deleting the addition of Rs.4,07,057/-.

57. Facts of the case, in brief, are that the Assessing Officer noted that in the original return of income filed on 31-07-2009 for the assessment year under Consideration the assessee has admitted an amount of Rs.12,45,850/- as his total income. However, in the return of income filed in response notice u/s.153A, the assessee has admitted an amount of Rs.8,38,343/- only. When the assessee was asked to explain the above difference of Rs.4,07,507/- between the income originally returned and income returned in response notice u/s.153A, the assessee could not give any explanation. Hence, the said amount of Rs.4,07,507/- was treated by the AO as undisclosed income and added to the income returned by the assessee.

58. Before the learned CIT (A), the assessee filed the following submissions:

During the year, the assessee earned the following income:

	As per original return	As per revised return
Exempted income being share of profit from SKC	1,61,939	1,61,939
Interest from SKC	10,30,904	10,30,904
Less: Exempted income	1,61,939	1,61,939
Taxable Income	10,30,904	10,30,904
Expenses wrongly claimed (A)	1,73,551	1,73,551
Income returned	8,57,353	8,57,551
Deductions under VI-A	19,010	19,010
Taxable Income Returned (B)	8,38,434	8,38,434
Total Income wrongly computed by Assessing Officer (C)	4,07,487	4,07,487
Additions accepted as per Assessing Officer	1,73,551	1,73,551

1. As shown in the above statement, the learned Assessing Officer Computed the appellant's taxable total income as Rs.12,45,830/- (A) instead of as Rs. 10,30, 904/- (X) by wrongly including therein Receipts of Rs.1,61,039/- exempted earnings under section 10(2A) of the Act (Appellant's share of profit from Sri Krishna Constructions wherein he is partner and on which firm tax has been paid).

2. *The total income earned by the Appellant including the exempted income of Rs. 1, 61, 039/- was Rs. 11,92, 843/- only, This figure was wrongly taken by the learned Assessing Officer as Rs.12,45,830/- (A).*
3. *While the taxable income returned by the appellant amounted to Rs.8,57,343/- - (B) (Income before deductions under Chapter VI), the same was wrongly taken by the learned Assessing Officer as Rs.8,38,33/-(C) (Income after deductions under Chapter VI).*
4. *While proposing additions, the learned AO wrongly computed the gross income as Rs.12,45,830/- (A) - vide Para 1 supra. Likewise, the net income returned by the appellant was also wrongly computed by him as Rs.8,38,343/- -(C) Vide para 3 supra.*
5. *It is obvious from the above statement that instead of making additions for a sum of Rs.1,73,551/- (X-B) which is the correct thing to do, the learned Assessing Officer by oversight and non application of mind, made additions for Rs.4,07,487/-(A-C) The excess additions made by the RS.2,33,936/- without learned Assessing Officer for justification are contested.*

59. Based on the arguments advanced by the assessee, the learned CIT (A) restored the issue to the file of the Assessing Officer with a direction to adopt the correct taxable amount and pass consequential order while giving effect to the order by observing as under:

“9.2 As could be seen from the computation of total income there is difference in amounts taken while calculating the taxable income. It is also claim of the appellant that profit from the firm is included in total income, which should be excluded. As such, the AO is directed to adopt the correct taxable amount and pass consequential order while giving effect to this appellate order. This ground is allowed for statistical purposes.”

60. Aggrieved with such order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

61. We have heard the rival arguments made by both the sides, perused the orders of the AO and the ld.CIT(A) and the paper book filed on behalf of the assessee. We find the AO in the instant case made addition of Rs.4,07,057/- on the ground that there is difference in the income declared by the assessee in the original return of income and in the return of income filed in

response to notice u/s. 153A and the assessee was unable to explain the difference of Rs.4,07,507/-. We find before the ld.CIT(A), the assessee filed the details of the total income under various heads as per original return of income as well as income as per revised return based on which the ld.CIT(A) directed the AO to adopt the correct taxable amount and pass consequential order, since the AO in the computation has included certain income which is exempt from tax. The order of ld.CIT(A) giving direction to the AO has already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the ld.CIT(A) on this issue. A perusal of the order shows that the ld.CIT(A) has only directed the AO to adopt the correct taxable amount and pass consequential order by considering the profit from the firm, which is exempt and which was included in the total income. We, therefore, do not find any infirmity in the order of the ld.CIT(A) on this issue. Accordingly, the same is upheld and the ground raised by the revenue on this issue is dismissed.

62. In the result, the appeals filed by the assessee are allowed for statistical purposes and the appeal filed by the revenue 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.
Vinodan & Thirumalesh /sps

Copy to:

S.No	Addresses
1	Shri C. Vamsi Krishna, Flat No.40, Rohiwal Windsor Apartment, Hill Fort Road, Saifabad, Hyderabad 500004
2	Dy.CIT, Central Circle 2, Aayakar Bhavan, Basheerbagh, Hyderabad
3	CIT (A)-11 ,Hyderabad
4	Pr. CIT-Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order