

**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.310,312 & 313/Hyd/2022		
Assessment Years: 2012-13,2014-15 & 2015-16		
Shri Raja Babu Nimmaturi C/o, P.Murali & Co. Chartered Accountants 6-3-655/2/3 Somajiguda Hyderabad-500 082 PAN : ACSPN1662R	Vs.	ACIT,CC-2(4) Hyderabad
(Appellant)		(Respondent)

ITA No.321/Hyd/2022		
Assessment Year: 2012-13		
Manjusha Nimmatoori C/o, P.Murali & Co. Chartered Accountants 6-3-655/2/3 Somajiguda Hyderabad-500 082 PAN : ACSPN1666M	Vs.	ACIT,CC-2(4) Hyderabad
(Appellant)		(Respondent)

ITA Nos.328-331/Hyd/2022		
Assessment Years: 2012-13 to 2015-16		
Anudeep Nimmatoori C/o, P.Murali & Co. Chartered Accountants 6-3-655/2/3 Somajiguda Hyderabad-500 082 PAN : AHBPN2081Q	Vs.	ACIT,CC-2(4) Hyderabad
(Appellant)		(Respondent)

ITA Nos.333-336/Hyd/2022		
Assessment Years: 2012-13 to 2015-16		
Smt.Yashoda Nimmatoori C/o, P.Murali & Co. Chartered Accountants 6-3-655/2/3 Somajiguda Hyderabad-500 082 PAN : ACSPN1657J	Vs.	ACIT,CC-2(4) Hyderabad
(Appellant)		(Respondent)

(Appellant)		(Respondent)
Assessee by:	Shri P.Murali Mohan Rao, CA	
Revenue by:	Shri Jeevan lal lavidiya, CIT-DR	
Date of hearing:	17.11.2022	
Date of pronouncement:	22.11.2022	

ORDER

Per Bench:

ITA No.310,312 & 313/Hyd/2022 filed by the assessee are directed against the separate orders dated 27.06.2022 of Learned Commissioner of Income Tax (Appeals)-12, Hyderabad relating to AY's 2012-13,2014-15 & 2015-16 respectively. ITA Nos.333-336/Hyd/2022 filed by the assessee are directed against the separate orders dated 27.06.2022 of Learned Commissioner of Income Tax (Appeals)-12, Hyderabad relating to AY's 2012-13 to 2015-16 respectively. ITA No.321/Hyd/2022 filed by the assessee is directed against the order dated 27.06.2022 of Learned Commissioner of Income Tax (Appeals)-12, Hyderabad relating to AY 2012-13. ITA No. ITA Nos.328-331/Hyd/2022 filed by the assessee are directed against the separate orders dated 28.06.2022 of Learned Commissioner of Income Tax (Appeals)-12, Hyderabad relating to AY's 2012-13 to 2015-16 respectively. Since common issues are involved in all these appeals, therefore, these were heard together and are being dispose of by this common order.

2. First we take ITA No.310/Hyd/2022 for AY 2012-13 in case of Raja Babu Nimmatoori as the lead case. Both the parties agreed that the outcome of this appeal is applicable to the remaining appeals.

3. Facts of the case, in brief, are that the assessee is an individual and is one of the trustees of M/s. Aurora Educational Society & other group trusts. The assessee has originally filed his return of income for the AY 2012-13 on 16.01.2014 admitting total income of Rs.21,85,250/-. The assessee has not claimed Chapter VIA deductions. A search and seizure operation u/s. 132 of the Act was conducted in the case of M/s. Aurora Educational Society & other Group in which the assessee was also covered. In response to notice u/s. 153A, the assessee filed his return of income admitting total income at Rs.12,59,850/-.

4. During the course of assessment proceedings the AO noted that assessee has claimed deduction of Rs. 12,85,400/- as interest payable on borrowed capital while computing the income from house property. In absence of any details given by the assessee during the course of assessment proceedings the AO disallowed the interest claimed at Rs. 12,85,400/-. Similarly, during the course of assessment proceedings the AO noted that assessee has made several cash deposits in the bank accounts maintained with UCO bank, SBI & ICICI bank totaling to Rs.1,48,95,000/-. On being asked by the AO to substantiate the source of such cash deposits, the assessee stated that certain amounts are deposited out of loan obtained and certain amounts are deposited out of earlier withdrawals and income of the assessee during the year. In absence of satisfactory explanation given by the assessee, the AO made addition of Rs.1,48,95,000/-

to the total income of the assessee u/s. 69A of the Act. The AO further noted that there are several credits in the bank accounts with the narration "By Salary" totaling to Rs.28,93,500/-. However, the assessee has admitted only an amount of Rs.8,01,000/- as income from salaries in his return of income filed in response to notice u/s. 153A. In absence of any proper explanation given by the assessee to his satisfaction, the AO treated an amount of Rs.20,92,500/- being the difference between salary income credited in the bank account and salary income declared by the assessee as unexplained and undisclosed income and added the same to the total income of the assessee.

5. In appeal, the Id.CIT(A) deleted the disallowance of interest on borrowed capital at Rs.12,85,400/- with certain direction. So far as the unexplained cash deposit of Rs.1,48,95,000/- is concerned, the Id.CIT(A) sustained an amount of Rs.26,60,000/- and deleted the balance addition. However, he sustained the addition of Rs.20,92,500/- in respect of salary addition made by the AO by observing as under:-

8.7 I have carefully considered the submissions of the AR. It is seen that there were total credits of Rs.28,93,500/- with narration of 'Salary' in the bank accounts of the appellant during the current year. The appellant has admitted "Income from Salary" of Rs.8,01,000/- only in the ITR filed for AY 2012-13. The appellant claimed that the balance amount of Rs.20,92,000/- was received from Ravi Rishi Educational Society towards sale of property situated at Bandlaguda, Hyderabad. The appellant has submitted copy of Agreement of Sale, resolution, confirmation from Ravi Rishi Educational Society and bank account statement of the appellant to substantiate its claim. On perusal of the agreement of sale, it is seen that the agreement is not a registered document and is only a self serving and internal document between the Ravi Rishi Educational Society and its trustee members. This agreement of sale document has no validity and cannot be verified independently as the parties involved in this document are related parties i.e. Ravi Rishi Educational Society and its trustee members, therefore cannot be relied upon. The unregistered agreement of sale between the trustees and the society is an internal arrangement which is an afterthought to somehow explain the 'Salary' entries. When the bank pass book entries with narration of 'By salary' to the extent of Rs.8,01,000/- were offered as salary income, there is no reason why the remaining salary credits to the

extent of Rs.20,92,000/- should also not be considered as salary income. The onus is on the assessee to prove his case. Therefore, the addition made on account of unexplained bank credits of Rs.20,92,000/- u/s.69A is confirmed and accordingly, Ground No.7 of the appeal is DISMISSED.

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

1.The Ld. CIT(A) erred in partly allowing the appeal.

2.The Ld. CIT(A) ought to have appreciated that, admittedly, there is no seized Technical material in the appellant's case for the assessment year under consideration. Ground

3. a. The Ld.CiT(A) ought to have deleted all the additions made in the assessment which are not based any seized material.

b. The Ld. CIT(A) ought to have appreciated that any addition which is not based on seized material, can be considered to be made in the assessment completed u/s 143(3) r.w.s. 153A of the Act only when the assessment for the assessment year under consideration is abated.

c. The Ld. CIT(A) ought to have appreciated that since the time for issue of notice u(s 143(2) of the Act has already lapsed in the appellant's case, the assessment cannot be said to be an 'abate assessment .

d. The Ld. CIT(A) ought to have appreciated that since the impugned assessment is unabated, all the additions made in the assessment which is not based on any seized material, are void ab initio.

4. Without prejudice to other grounds, the Ld. CIT(A) erred in dismissing the ground nos. 1, 2, 3, 4, 7 and 8 taken before him.

5. 'The Ld.CIT(A) having allowing ground no.5 erred in directing the AO to verify the interest certificate without deleting the addition of Rs.12,85 ,400 /-

6. Without prejudice to other grounds, the Ld. CIT(A) erred in dismissing the ground no.6 partly and confirming the addition made u/ s 69 A of the Act for Rs.26,60,000/-

7. Without prejudice to other grounds, the Ld. CIT(A) erred in dismissing the ground no.7 and confirming the addition made u/s 69 A of the Act for Rs.20,92,500/-.

8. 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 hearing of the appeal.

7. The grounds of appeal No. 1 and 8 being general in nature are dismissed. The ld.counsel for the assessee did not press ground of appeal No.2,3, 4 and 5 for which the ld. DR has no objection. Accordingly, the above grounds are dismissed as not pressed. So far as the ground of appeal No.7 is concerned i.e addition of Rs.20,92,500/- sustained by the ld.CIT(A) is concerned, the ld.counsel for the assessee submitted that due to inadvertent error by the bank, the narration was given as “salary” as against certain advances received by the assessee. He submitted that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the AO that the entries other than salary are actually not salary but certain loans and advances. He accordingly submitted that this ground may be restored to the file of the AO for fresh adjudication.

8. The ld. DR on the other hand while opposing the arguments advanced by the ld.counsel for the assessee on this issue submitted that the assessee failed to give any proof before the AO or the ld.CIT(A) that those entries wrongly mentioned by the bank as salary are actually not salary but loans and advances. He accordingly submitted that since the ld.CIT(A) has given justifiable reasons, therefore, the ground raised by the assessee on this issue should be dismissed.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and 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.20,92,000/- u/s 69A of the Act as unexplained and undisclosed income of the assessee on the

ground that as per the credit entries in the bank account with narration "By Salary" totaling to Rs.28,,93,500/-, the assessee has disclosed salary income of Rs. 8,01,000/- only and the balance amount of Rs.20,92,500/- was not disclosed as salary income. We find the ld.CIT(A) upheld the addition made by the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld.counsel for the assessee that the bank had inadvertently mentioned the narration as "By Salary" although those entries are actually on account of certain advances and given an opportunity the assessee is in a position to substantiate with evidence to the satisfaction of the AO that these are actually not salary but receipt of certain advances. 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 one more opportunity to the assessee to substantiate his case with evidence to his satisfaction that the entries mentioned by the bank against certain credits are actually not salaries but are advances. 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 on this issue are accordingly allowed for statistical purposes.

10. Identical issue have been raised by the respective assessees in other appeals, where the ld.CIT(A) had confirmed the addition made by the AO on account of undisclosed salary income on the basis of the narration given by the bank against certain credits. Following the reasoning given in the preceding para, we restore the issue to the file of the AO with similar direction. The grounds raised by the respective assessees on this issue are accordingly allowed for statistical purposes.

11. The other issue that is involved in ITA No.310/Hyd/2022 is regarding the order of the Id.CIT(A) in sustaining an amount of Rs.26,60,000/- out of the addition of Rs.1,48,95,000.

11.1 After hearing both the sides, we find the AO made addition of Rs. 1,48,95,000/- to the total income of the assessee on the ground that assessee was unable to explain the source of such deposits. We find the Id.CIT(A) sustained an amount of Rs.26,60,000/- and deleted the balance amount by observing as under:-

7.7 I have considered the submissions of the AR. It is seen that the appellant has deposited cash of Rs.1,48,95,000/- in different bank accounts during AV 2012-13. Out of total cash deposited of Rs.1,48,95,000!-, the appellant claimed to have received an amount of Rs.74,02,000/- from the societies towards repayment of different loans against the loans already advanced to the societies and has deposited these loan repayment amounts in UCO Bank accounts on different dates. The appellant has submitted bank account statements, ledger copies of the societies and confirmation certificates for loan repayments made by different societies to substantiate its claim. An amount of RS.19,00,000/- deposited in SBI Account No.7493 was received from Aurora Educational Society against the sale consideration received as per Agreement of Sale dated 15.06.2010. The appellant has submitted Agreement of Sale and confirmation from Society for payment of Rs.19,00,000/- to substantiate its claim. An amount of Rs.29,00,000/- deposited in ICICI Bank Account No.9104 was received from the assessee's friend Shri G. Sampath Kumar towards payment of tuition fee of his son Vamshi. The appellant has submitted confirmation from Shri G. Sampath Kumar to substantiate its claim. The balance amount of Rs.33,000/- was received from Aurora Educational Society towards payment of fuel in college's vehicles. The appellant has submitted confirmation from Aurora Educational Society to substantiate its claim. The appellant claimed that the amount of Rs.26,60,000/- deposited in UCO Bank Account No.4364 was received by his mother Smt. N. Yashoda from the savings of her Pension Account. The appellant has submitted confirmation from Smt. N. Yashoda to substantiate its claim. However, on perusal of records pertaining to Smt. N. Yashoda, it is seen that she has been receiving only Rs.1,20,000/- as family pension, and therefore Smt. N. Yashoda having such meagre pension cannot have enough sources to lend an amount of Rs.26,60,000/- to the appellant. The addition was made by the AO as the sources of the cash deposits in the bank account were not explained. The AR has explained the sources of the cash deposits upto Rs.1,22,35,000/- and provided the confirmation and ledger account of the societies from which the amounts were credited. Since cash deposits of Rs.1,22,35,000/- were paid by different societies and relatives of the

appellant and the transactions were shown in the books of the Societies and confirmation from the related person's were furnished, the sources for the cash deposits of Rs.1,22,35,000/- stand explained. However, the appellant could not explain the sources for cash deposit of Rs.26,60,000/- said to have been received from Smt.N.Yashoda as discussed above. Therefore, the AO is directed to delete the addition of Rs.1,22,35,000/- u/s.69A made on account of unexplained cash deposits and addition of Rs.26,60,000/- is confirmed. Accordingly, Ground NO.6 of the appeal is PARTLY ALLOWED.

12. It is the submission of the ld.counsel for the assessee that the ld.CIT(A) had sustained the addition of Rs.26,60,000/- on the ground that Smt.N.Yashoda, mother of the assessee, is receiving only Rs.1,20,000/- as family pension and therefore, does not have source to extend a loan of Rs.26,60,000/-. It is his submission that assessee's mother had sufficient amount in her bank account to extend such loan. A perusal of the order of the ld.CIT(A) does not show how much money was lying in the bank account of Smt.N.Yashoda from where she had withdrawn the money and had given to her son to be deposited in his bank account. Since the order of the ld.CIT(A) does not reflect the correct position and since it is the submission of the ld.counsel for the assessee that given an opportunity, the assessee can substantiate with evidence that the money was drawn out of the bank account of his mother, which in turn was extended to him for deposit, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the AO with direction to verify the bank account of Smt. N.Yashoda and find out what is the amount available in her bank account at the beginning of the year and whether the money was drawn from bank account or simply cash loan. If the assessee can prove with evidence to the satisfaction of the AO that the amount obtained from Smt.N.Yashoda was actually drawn from her bank account, then the AO may consider such claim and 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 on this issue is accordingly allowed for statistical purposes.

13. Other grounds in other appeals were not pressed by the ld.counsel for the assessee for which ld. DR has no objection. Therefore, we are not adjudicating the same.

14. In the result, all the appeals filed by the respective assessees are partly allowed for statistical purposes.

Order pronounced in the Open Court on 22nd November, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 22nd November, 2022.

Thirumalesh/sps

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4	Smt.Yashoda Nimmatoori C/o, P.Murali & Co. Chartered Accountants

	6-3-655/2/3 Somajiguda Hyderabad-500 082
5	ACIT,CC-2(4) Hyderabad
6	CIT(A)-12, Hyderabad
7	Prl.CIT(Central), Hyderabad
8	DR, ITAT Hyderabad Benches
9	Guard File

By Order