

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

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA Nos.348 to 351/Hyd/2021		
Assessment Years: 2008-09 to 2010-11 & 2018-19		
Shri Gaddam Shyamprasad Reddy, Hyderabad PAN:AETPG9117P (Appellant)	Vs.	Dy. C. I. T. Central Circle 3(3) Hyderabad (Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri K.P.R.R. Murthy, CIT(DR)	
Date of hearing:	02/02/2023	
Date of pronouncement:	02/02/2023	

**ORDER**

**Per R.K. Panda, A.M**

The above batch of 4 appeals filed by the assessee are directed against the separate orders dated 17.06.2021 of the learned CIT (A)-11, Hyderabad relating to A.Ys. 2008-09 to 2010-11 & 2018-19 respectively. Since identical grounds have been raised by the assessee in all these appeals, therefore, all these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. First, we take up appeal in ITA No.348/Hyd/2021 for the A.Y 2008-09 as the lead case.

3. Facts of the case, in brief, are that the assessee is an individual and engaged in real estate business. He has not filed his original return of income for the impugned A.Y. A search and seizure operation u/s 132 of the I.T. Act was conducted in the case of GRR Holdings & Other Groups on 20.09.2017 and the case of the assessee was also covered. In response to notice u/s 153A of the I.T. Act issued on 26.11.2019, the assessee did not file any return of income. Subsequently, notice u/s 142(1) of the I.T. Act was issued to the assessee. Since there was non-compliance from the side of the assessee despite number of show-cause notices issued through email id as well as through notice server, the Assessing Officer proceeded to complete the assessment u/s 144 of the I.T. Act.

3.1 The Assessing Officer noted that during the course of search various Bank A/cs of the assessee were found which showed various credits in the form of cash deposits on various dates and other mode of transfers. For the impugned A.Y, an amount of Rs.59,41,000/- was credited on various dates in Axis Bank A/c No.27010100343886 and Rs.34,68,000/- was found to be deposited in Corporation Bank A/c No.01/000715. Since the assessee did not appear before the Assessing Officer nor responded to the various notices issued including absence of return in response to notice u/s 153A of the Act, the Assessing Officer in the ex-parte order passed u/s 144/153A determined the total income of the assessee at Rs.94,09,000/-. Similarly, for the A.Y 2009-10, the Assessing Officer determined the income of the assessee at Rs.66,22,900/-, for A.Y 2010-11 at Rs.53,26,495/- and for A.Y 2018-19 at Rs.98,50,598/-.

4. In appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer.

5. 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. On the facts and in the circumstances of the case the order passed by the CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant and without providing any sufficient opportunity of being heard.*

*2 On the facts and circumstances of the case, the Ld.AO has erred in passing the order u/s.153A of the Act without obtaining the prior approval of the competent Authority JCIT/Addl.CIT u/s.153D of the Act.*

*3 The Ld.CIT(A) ought to have appreciated that assessee is not in possession of books of accounts or other documents or evidence which reveal that the income represented in the form of asset, which has escaped assessments to or is likely to amount to fifty lakhs rupees or more in the relevant assessment year or in aggregate in the relevant assessment year.*

*4. The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO erred in issuing notice u/s.153A of the Act for this assessment year, under consideration without recording satisfaction that the books of accounts or other documents or evidence which reveal that the income, represented in the form of asset, has escaped assessments to or is likely to amount to fifty lakhs rupees or more in the relevant assessment year or in aggregate in the relevant assessment year.*

*5. Without prejudice to above, the Ld.CIT(A) ought to have appreciated that the recorded satisfaction is not in accordance with provisions of section 153A(1) of the Act.*

*6. The Ld.CIT(A) ought to have appreciated the fact that while completing the assessment u/s.153A of the Act, no addition can be made in the absence of any incriminating material.*

*7. The Ld.CIT(A) ought to have appreciated the fact the Ld.AO erred in making addition u/s.68 of Rs.94,09,000/- without there being incriminating material found at the time of search u/s.132, but merely basing on the bank entries which is not permissible u/s.153A of the Act.*

8. *The Ld.CIT(A) ought to have appreciated the fact the Ld.AO erred in completing assessment u/s.144 rws 153A of the Act on the basis of dumb documents found during the course of search operations at the premises of the assessee.*

9. *The Ld.CIT(A) ought to have appreciated the fact the Ld.AO erred in completing the assessment u/s.144 even though the assessee has responded to the notices issued by the AO and furnished the information called for.*

10. *The Ld. CIT(A) ought to have appreciated he fact that no addition u/s 68 or 69 can be made, when the appellant has not maintained any books of accounts.*

11. *The Ld. CIT(A) ought to have appreciated the fact that as per provisions of I.T Act, mere receipts of any amount cannot be considered as income in the hands of the assessee unless it is chargeable to tax as per charging sections of the Act under any five heads of income.*

12. *The Ld.CIT(A) ought to have appreciated that the amount deposited in bank account represents business advances received which do not come under the purview of income of the assessee for the assessment year under consideration.*

13. *Without prejudice to the above grounds, the Ld.CIT(A) erred in not giving telescoping effect towards the unexplained investments against the unexplained credits of the earlier years or current year.*

14. *The Ld.AO ought to have correctly applied the provisions of interest u/s.234B of the Act in calculating the interest u/s.234B in the assessment.*

15. *The Ld.CIT(A) ought to have appreciated the fact the Ld.AO erred in initiating the penalty u/s.271(1)(¢) of the Act without appreciating the facts of the case and without considering the submission of the appellant.*

16. *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.”*

6. The learned Counsel for the assessee submitted that although the Assessing Officer has passed ex-parte order, however, he has made high pitch assessment without considering various documents found during the course of search. The learned CIT (A) without giving adequate opportunity to the

assessee sustained the additions made by the Assessing Officer in the ex-parte order passed by him which is not justified. He submitted that given an opportunity, the assessee is in a position to substantiate his case with evidence to the satisfaction of the Assessing Officer.

7. The learned DR, on the other hand, referring to the order of the Assessing Officer as well as of the learned CIT (A) submitted that the conduct of the assessee shows volume. He has scant regard to the various statutory notices issued by the Assessing Officer as well as the learned CIT (A). He submitted that since the assessee has not come forward with any evidence as to how the additions made by the Assessing Officer is wrong or is not justified, therefore, the order of the learned CIT (A) should be upheld and the grounds raised by the assessee should be dismissed.

8. 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 AO in the instant case determined the total income of the assessee at Rs.94,09,000/- being the amounts found credited in the two Bank A/cs maintained by the assessee by way of cash deposits and other mode of transfers. The Assessing Officer made the addition since the assessee neither filed the return of income in response to the notice u/s 153A nor responded to the statutory notices issued by him. We find the learned CIT (A) also confirmed the additions made by the Assessing Officer in absence of any compliance from the side of the assessee despite number of opportunities granted by the him. It is the submission of the

learned Counsel for the assessee that in the interest of justice, the assessee should be given an opportunity to substantiate his case by filing the requisite details. 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 last opportunity to the assessee to appear before him and substantiate his case by filing requisite details and the Assessing Officer shall pass the order as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer on the appointed date without seeking any adjournment under any pretext failing which the Assessing Officer is liberty to pass appropriate order as per law. At the same time, because of the non-cooperational attitude of the assessee before the Assessing Officer as well as the learned CIT (A), we impose a cost of Rs.10,000/- on the assessee which shall be paid to the Prime Ministers' Relief Fund before 31.03.2023. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, appeal in ITA No.348/Hyd/2021 is treated as allowed for statistical purposes.

10. In the remaining appeals, identical grounds have been raised by the assessee. Following our reasonings given in the preceding para, the remaining 3 appeals are also allowed for statistical purposes. The grounds raised by the assessee in these appeals are accordingly treated as allowed for statistical purposes.

11. To sum up, all the four appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court at the time of hearing itself  
i.e. on 2<sup>nd</sup> February, 2023.

Sd/- <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	Sd/- <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 2<sup>nd</sup> February, 2023.

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Shri Gaddam Shyamprasad Reddy C/o P. Murali Mohan & Co. C.As, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Dy.CIT, Central Circle 3(3) Hyderabad
3	CIT (A)-11 ,Hyderabad
4	Pr. CIT- Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*