

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.247/Viz/2020 & ITA No. 01/Viz/2021

(निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16)

Asst. Commissioner of Income
Tax (International Taxation),
Visakhapatnam.

(अपीलार्थी/ Appellant)

Vs. Sri Vittalam Nataraj Prasad,
Tirupati.
PAN: ADSPV 7764 M

(प्रत्यर्थी/ Respondent)

C.O. Nos. 14 & 15/Viz/2021

(In आयकर अपील सं./ I.T.A. No.247/Viz/2020 & ITA No. 01/Viz/2021)

(निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16)

Sri Vittalam Nataraj Prasad,
Tirupati.
PAN: ADSPV 7764 M

(अपीलार्थी/ Appellant)

Vs. Asst. Commissioner of
Income Tax (International
Taxation),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

आयकर अपील सं./ I.T.A. No. 02 & 03/Viz/2021

(निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16)

Asst. Commissioner of Income
Tax (International Taxation),
Visakhapatnam.

(अपीलार्थी/ Appellant)

Vs. Smt. Nallamilli Sridevi,
Tirupati.
PAN: AGHPN 1002 C

(प्रत्यर्थी/ Respondent)

C.O. Nos. 16 & 17/Viz/2021
(In आयकर अपील सं./ I.T.A. No. 02 & 03/Viz/2021)
(निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16)

Smt. Nallamilli Sridevi,
Tirupati.
PAN: AGHPN 1002 C

Vs. Asst. Commissioner of
Income Tax (International
Taxation),
Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri Pawan Chakrapani, CA

प्रत्यर्थी की ओर से / Revenue by

: Sri MN Murthy Naik, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 08/02/2023

घोषणा की तारीख/Date of

: 16/03/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeals are filed by the Revenue and the Cross Objections are filed by the two assesseees (Sri Vittalam Nataraj Prasad and Smt. Nallamilli Sri Devi). Since some of the issues raised by the Revenue in their appeals are identical as well as the cross objections raised by the assessee are interconnected with the appeals of the Revenue, all these appeals are clubbed, heard together and disposed off in this consolidated order. Appeal wise adjudication is given in following paragraphs of this order.

ITA No. 247/Viz/2020 (AY: 2014-15)**(By Revenue)**

2. This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-10, Hyderabad [CIT(A)] in DIN & Order No. ITBA/APL/S/250/2020-21/1028055116(1), dated 24/09/2020 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2014-15.

3. Briefly stated the facts of the case are that the assessee is a non-resident filed his return of income electronically on 16/11/2014 for the AY 2014-15 admitting the total income of Rs. 52,81,470/-. Subsequently a revised return of income was filed on 24/1/2016 declaring a total income of Rs. 64,69,210/-. Subsequently, the case was selected for scrutiny and a notice U/s. 143(2) was issued to the assessee on 26/7/2016 by ACIT, Circle-2(1), Tirupati. Subsequently the case was transferred from ACIT, Circle-2(1), Tirupati to DCIT, International Taxation, Visakhapatnam. A notice U/s. 142(1) was issued on 8/9/2016 posting the case on 15/9/2016. The assessee's Authorized Representative Sri C.P. Rambabu, Income Tax Practitioner appeared on 15/9/2016 and furnished the information as required by the Ld. AO. Subsequently, the assessee along with the Authorized Representative

appeared and furnished the information called for by the Ld. AO from time to time. On verification of the return of income and the information furnished by the assessee, the Ld. AO noticed that the assessee is working as an Assistant Professor, International Society Medical Education Pvt Ltd., Nepal. The Ld. AO required the assessee to furnish proof in support of interest on housing loan, interest on Secured Overdraft (SOD) and confirmation letter from Smt. Nallamilli Sri Devi towards loan given by the assessee. Further, the Ld. AO also requested the assessee to furnish the sources for increase in capital, properties purchased, investments, loans and advances during the FY 2013-14 and also asked to furnish the sources towards cash deposits in bank accounts. In response the Assessee's Representative furnished the copies of the housing loan maintained at Andhra Bank, Tirupati. The Ld. AR submitted that the loans were claimed as expenditure as the loan is utilized for personal purposes. On verification of the bank accounts submitted by the assessee, the Ld. AO noticed that there is a huge amount of cash deposits in bank accounts and on request the assessee furnished the sources for all cash deposits made in the bank account. Further, the Ld. AO also requested the assessee to submit the proof of salary receipt from Nepal for Rs. 2.16 Crs. The Ld. AO also requested the assessee to submit type of currency paid during the FY 2013-14 for

transfer of such amount from Nepal to India. In response, the Ld. AR submitted that the assessee was drawing the salary of Rs. 2.16 Crs from ISME Medical College, Nepal. The Ld. AR further submitted that the salary has been drawn at Nepal in cash in Indian Currency and deposited in India. The Ld. AO by invoking the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 issued by the Reserve Bank of India vide Notification No. FEMA 6/RB-2000, dated 3rd May, 2000 found that the Indian Currency cannot be brought from Nepal in Denominations of above Rs. 100/-. In view of the restrictions of by the Exchange Management (Export and Import of Currency) Regulations, 2000, a show cause notice dated 15/12/2016 was issued calling for explanation from the assessee. In response the Ld. AR of the assessee submitted that out of the consolidated salary received by the assessee in Nepal which is already taxed in Nepal has been brought into India and deposited in various bank accounts in India in assessee's account. The Ld. AO considered the explanation of the assessee is not in accordance with the Exchange Management (Export and Import of Currency) Regulations, 2000 and treated the cash deposits made by the assessee in India as income from other sources. Further, the Ld. AO also added an amount of Rs. 33,60,000/- by way of cheque into the assessee's bank account and since no explanation was offered by

the assessee, Ld. AO added the same to the assessee's total income. Further, the Ld. AO on verification of the Balance Sheet furnished by the assessee treated the amount of Rs. 40,568/-, the difference between the actual amount received from the students and the amount disclosed in the balance sheet, as income of the assessee which was not disputed by the assessee. Further, the Ld. AO also made addition of Rs. 1,49,68,154/- since the assessee failed to explain the sources for the excess amount of unexplained deposits in the bank account of the assessee. aggrieved by the above additions, the assessee filed an appeal before the Ld. CIT(A)-10, Hyderabad.

4. Before the Ld. CIT(A), the assessee raised the issue of jurisdiction for the issue of notice U/s. 143(2) of the Act which was dismissed by the Ld. CIT(A). On merits, the Ld. CIT(A) partly allowed the appeal by confirming the additions made by the Ld. AO for Rs. 40,568/- and by deleting the additions of Rs. 2.16 Crs; Rs. 33,60,000/- and Rs. 1,49,68,154/-. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

5. The raised has raised 11 grounds in its appeal however, Grounds No. 2, 3, 4 & 5 relate to deletion of addition of Rs. 2,16,00,000/-. Grounds No.6, 7 & 8 relate to deletion of addition of Rs. 33,60,000/-.

Grounds No. 9 & 10 relate to deletion of addition of Rs. 1,49,68,154/-.
Grounds No. 1 and 11 are general grounds.

6. The Revenue has raised four (2,3,4 & 5) grounds regarding the deletion of addition by the Ld. CIT(A) for Rs. 2.16 Crs.

7. At the outset, the Ld. DR submitted that the assessee has earned salary income of Rs. 2.16 Crs from Nepal and has made cash deposits in Andhra Bank, Tirupati for Rs. 2.16 Crs. The Ld. DR further submitted that the Ld. AO has rightly invoked the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and has treated the amount of Rs. 2.16 Crs as income of the assessee. He therefore pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. AR submitted that the assessee was drawing consolidated salary of Rs. 2.16 Crs in Nepal and has deposited the same into the Andhra Bank, Tirupati. The Ld. AR further submitted that the Ld. AO has not accepted the contention of the assessee that the same income cannot be taxed once again in India in the hands of the assessee it has already been taxed in Nepal. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld.

8. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. It is the case of

the Ld. AO that the assessee has deposited huge amount of Rs. 2.16 Crs by way of cash into the assessee's bank account in Andhra Bank, Tirupati. The Ld. AO considering the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 issued by the Reserve Bank of India vide Notification No. FEMA 6/RB-2000, dated 3rd May, 2000 concluded that the Indian Currency cannot be brought from Nepal in denominations of above Rs. 100/-. For the sake of convenience, the above regulation is reproduced below:

"In exercise of the powers conferred by clause (g) of sub-section(3) of Section 6, sub-section (2) of section 47 of the foreign Exchange Management Act 1999 (42 of 1999), the Reserve Bank makes the following regulations for export from and import into India of currency or currency notes, namely:

8. *Export and import of currency to or from Nepal and Bhutan:*

Notwithstanding anything contained in these regulations, a persona may:

- i) Take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs. 100 in either case);*
- ii) Bring into India from Nepal or Bhutan, Currency notes of Government of India and Reserve Bank of India notes other than notes of denominations of above Rs. 100 in either case:*
- iii) Take out of India to Nepal or Bhutan, or bring into India from Nepal to Bhutan, currency notes being the currency of Nepal or Bhutan."*

9. The Ld. AO also in his order called for the copies of the bank vouchers of cash deposited by the assessee and found that the cash been deposited in high denominations of Rs. 500 and Rs. 1000. Considering the restrictions in bringing high denomination currency from Nepal has

rightly concluded that these cash deposits are unexplained and has rightly added to the income of the assessee. The argument of the Ld. AR was that it was converted into low denomination currency at the borders of India and Nepal could not be accepted in the absence of any valid evidence substantiating such conversion. But the Ld. CIT (A) deleted the addition stating that the assessee has already paid taxes in Nepal. The Ld. CIT(A) has failed to consider that Rs. 500/- and Rs. 1000/- (higher denomination notes) should not be brought from Nepal which is a violation under FEMA regulations. Hence, the Ld. CIT(A) has erred in deleting the additions made by the Ld. AO. We are therefore of the considered view that the Ld. AO has rightly considered Rs. 2.16 Crs as income of the assessee under "income from other sources" and we therefore uphold the order of the Ld. AO on this Ground and set-aside the order passed by the Ld. CIT(A) on this issue.

10. Grounds No. 6, 7 & 8 are with respect to deletion of Rs. 33,60,000/- by the Ld. CIT (A) for the cheque deposits made in the bank account of the assessee. The Ld. DR submitted that these cheque deposits were not explained before the Ld. AO and hence the Ld. AO has rightly treated the same as unexplained income of the assessee. He therefore pleaded that the order of the Ld. AO be upheld. Per contra, the Ld. AR submitted that these cheque deposits are from joint account of

the assessee as per the bank statement submitted before us in the paper book. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

11. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. The Ld. AR has demonstrated before us regarding the cheque deposits made into the assessee's accounts from the joint account of the assessee along with his wife Smt. N. Sridevi. We find from the submissions made by the Ld. AR that these are cheque transfers either from the assessee's own account or from the joint account of the assessee along with his wife and we considered the sources being properly explained by the Ld. AR. Therefore, we find no infirmity in the order of the Ld. CIT(A) on this issue as the Ld. CIT(A) has rightly allowed the same and therefore we do not wish to interfere with the order of the Ld. CIT(A) on this ground. Thus, this ground raised by the Revenue is dismissed.

12. Grounds No. 9 and 10 with respect to deletion of addition of Rs. 1,49,68,154/- by the Ld. CIT(A) being the difference amount received from the students on behalf of the Medical College in Nepal and the amount transferred to the Medical College in Nepal. The Ld. DR submitted that the assessee has made cash deposits and cheque deposits including RTGS, NEFT transfers and has received a sum of Rs. 15,34,83,979/- in the bank account on behalf of the Medical College in

Nepal. However, the assessee has transferred only Rs. 13,85,15,825/- to the Medical College in Nepal. Therefore, the Ld. DR submitted that the assessee has rightly treated the difference of Rs. 1,49,68,154/- as unexplained cash deposits and added the same to the total income of the assessee. Therefore, the Ld. DR pleaded that the order of the Ld. AO be upheld. Per contra, the Ld. AR submitted that this account is like a running account and the balance amount payable to the Medical College in Nepal has been paid in the subsequent Asst. Year. The Ld. AR further pleaded that the above amount included cash deposits of Rs. 15,34,83,979/- which includes the salary income earned by the assessee and deposited it to the Indian account by the assessee and hence the telescoping benefit shall be granted to the assessee. The Ld. AR further submitted that the benefit of telescoping for Rs. 2.16 Crs should have been granted to the assessee as the assessee has transferred an excess amount of Rs. 66,30,846/- to the Medical College, Nepal. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

13. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly the assessee has collected an amount of Rs.15,34,83,979/- by way of cheque and cash deposits including bank transfers during the impugned assessment year and has paid only Rs. 13,85,15,825/- to the Medical

College, Nepal. The Ld. AR also failed to submit the bank account of the assessee where the cash deposits at Rs. 2.16 Crs was made by the assessee and linking the same with the account maintained for the purpose of collection from students for transferring it into Medical College, Nepal. In the absence of any valid substantiating evidence, the claim of the assessee, we are of the considered view that the Ld. AO has rightly treated the difference amount of Rs. 1,49,68,154/- as the income of the assessee and the benefit of telescoping shall not be granted to the assessee. Therefore we are not inclined to uphold the order of the Ld. CIT(A) on this issue and allow the ground raised by the Revenue.

14. Grounds No.1 and 11 are general in nature and therefore they need not be adjudicated.

15. In the result, appeal of the Revenue is partly allowed.

C.O. No.14/Viz/2021 (AY: 2014-15)
(By Assessee - Sri Vittalam Nataraj Prasad)

16. The assessee has raised the following grounds in his Cross Objection:

"1. The order of the Ld. CIT(A)-10, Hyderabad insofar as it is against the respondent / cross objector is opposed to law, facts, equity and weight of evidence and circumstances of the case.

2. *The Order passed by the Ld. CIT(A)-10, Hyderabad is just and proper and the same requires to be upheld on the facts and circumstances of the case.*

3. *The respondent / cross objector denies himself liable to be assessed over and above the income returned an amount of Rs. 64,69,210/- under the facts and circumstances of the case.*

4, *Without prejudice the Ld. CIT(A) failed to adjudicate all the grounds raised by the respondent / cross objector under the facts and circumstances of the case:*

- i) *The Ld. CIT(A)-10, Hyderabad failed to appreciate that the order of assessment passed by the Ld. AO U/s. 143(3) of the Act is bad in law as the mandatory notice U/s. 143(2) of the Act was not issued within the time limit prescribed for the purpose of making assessment order U/s. 143(3) of the Act under the facts and circumstances of the case.*
- ii) *The Ld. CIT(A) failed to appreciate that the notice U/s. 143(2) of the Act, issued by the ACIT, Circle-2(1), Tirupati is bad in law as the Ld. ACIT Circle 2(1), Tirupati had no jurisdiction over the respondent / cross objector, under the facts and circumstances of the case.*
- iii) *The Ld. CIT(A) failed to appreciate that the Ld. DCIT(IT), Visakhapatnam is not justified in proceeding on the basis of notice issued U/s. 143(2) of the Act, issued by the Ld. ACIT, Circle 2(1), Tirupati without issuing mandatory notice U/s. 143(2) of the Act within the time limit prescribed under the Act, under the facts and circumstances of the case.*
- iv) *The Ld. CIT(A) failed to appreciate that no valid notice U/s. 143(2) of the Act was issued within the limitation period prescribed under the Act, by the DCIT (IT), Visakhapatnam and the assessment framed thereby is ab initio void and fit to be quashed, under the facts and circumstances of the case.*
- v) *The Ld. CIT(A) failed to appreciate that the Ld. AO is not justified in law in expanding the limited scrutiny assessment beyond its scope, under the facts and circumstances of the case.*

5. *The respondent / cross objector craves to add, alter, delete, substitute or modify any of the grounds urged above.*

6. *For the above and other grounds that may be urged at the time of hearing of the appeal, the respondent / cross objector prays that the appeal may be allowed in the interest of equity and justice."*

17. The main issue raised by the assessee in its cross objection is with respect to validity of issuance of notice U/s. 143(2) of the Act for the purpose of making assessment U/s. 143(3). The other grounds raised by the assessee are in supportive nature of the decision of the Ld. CIT (A).

18. With respect to validity of the notice issued U/s. 143(2) of the Act, the facts are that the assessee filed its return of income on 16/11/2014 belatedly where the due date of filing of the return of income for the AY 2014-15 is 31/08/2014. Subsequently, the assessee revised the return of income on 24/1/2016. The notice U/s. 143(2) was issued on 26/7/2016.

19. The Ld. AR argued before us that since the return of income dated 16/11/2014 was filed belatedly it is prohibited to file the revised return U/s. 139(5) of the Act for belated return. The Ld. AR therefore submitted that belated return is non-est in the eyes of law and assessment cannot be made based on the revised return filed on 24/1/2016. The Ld. AR further argued that notice U/s. 143(2) should have been issued on or before 30/09/2015 and hence the notice issued U/s. 143(2) on 26/7/2016 is not valid in law. Further, the Ld. AR also submitted that initially as per the notice issued u/s. 143(2) the case was selected for limited scrutiny for examining of interest expenses and unsecured loans.

The Ld. AR further submitted that the Ld. Assessing Officer has travelled beyond the limited scrutiny and hence the assessment order was passed U/s. 143(3) of the Act is not valid in law. Further, the Ld. AR also submitted that notice U/s. 143(2) was issued by ITO, Circle-2(1), Tirupati where the assessment was completed by the DCIT (International Taxation), Visakhapatnam. The Ld. AR further submitted that no fresh notice U/s. 143(2) was issued by the Ld. DCIT (international taxation), Visakhapatnam. The Ld. AR further submitted that this issue was raised before the Ld. CIT(A) but not before the Ld. AO. The Ld. AR accepted that the assessee participated in the assessment proceedings. The Ld. AR therefore pleaded that the scrutiny assessment order passed U/s. 143(3) of the Act is invalid in law and shall be quashed. The Ld. AR relied on the decision of the Hon'ble ITAT, Visakhapatnam Bench in ITA No. 602/Viz/2019 in the case of D. Ushareddy vs. ITO.

Per contra, the Ld. DR submitted that the assessee's return of income can be treated as modified return and not as a revised return. Further, the Ld. DR submitted that the assessee's case was selected for complete scrutiny and not for limited scrutiny as per the screen shot submitted before the Bench. The Ld. DR further submitted that as per section 143(2) of the act, any return furnished U/s. 139 or in response to a notice U/s. 142(1) can be taken up for scrutiny. The Ld. DR further

submitted that the assessee has not raised any objection before the Ld.AO and has participated in the assessment proceedings.

20. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. We find from the screen sheet submitted by the Ld. DR that it is a complete scrutiny and not a limited scrutiny. Merely, by mentioning a heading "limited scrutiny" in the issuance of notice U/s. 143(2) of the Act does not convert the proceedings into a limited scrutiny assessment. Further, we find that the assessee has voluntarily filed revised return on 24/1/2016 revising the original return filed belatedly on 16/11/2014. In this connection, the provisions of section 143(2) of the Act are relevant to extract here which reads as under:

"Sec, 143(2): Where a return has been furnished under [section 139](#), or in response to a notice under sub-section (1) of [section 142](#), the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein,....."

21. From the plain reading of the above section we find that any return filed u/s. 139 or in response to a notice U/s. 142(1) of the Act can be selected for a scrutiny within six months from the end of the assessment

year in which the return was filed by the assessee. Therefore, the issuance of notice U/s. 143(2) dated 24/1/2016 by the Ld. AO is well within the limits prescribed and hence the valid notice. It was also admitted by the Ld. AR that the assessee has participated in the assessment proceedings who has challenged only before the Ld. CIT(A). The Ld.CIT(A) has rightly dismissed the legal ground raised by the assessee. Reliance placed by the Ld. AR in the case of D. Ushareddy is distinguishable on the fact that in that case the file was transferred from a non-jurisdictional Assessing Officer, who has issued notice U/s. 143(2), to a jurisdictional Assessing Officer. Further, the jurisdictional Assessing Officer has not issued a fresh notice U/s. 143(2) of the Act. The assessee has also participated in the proceedings before the jurisdictional Assessing Officer without objecting to the non-issuance of notice U/s. 143(2) of the Act as prescribed U/s. 124(3A) of the Act. In the instant case, since the assessee is a non-resident Indian, the case was transferred to the DCIT (International Taxation), Visakhapatnam and therefore the case relied upon by the Ld. AR is of no help to the assessee. In the light of the above facts, we are of the considered view that this legal ground raised by the assessee in his cross objection is dismissed.

22. The other grounds raised by the assessee are supportive in nature and therefore they need not be adjudicated.

23. In the result, Cross Objection filed by the assessee is dismissed.

ITA No. 01/Viz/2021 (AY: 2015-16)

(By Revenue)

24. This appeal filed by the Revenue against the order of the Ld. CIT(A)-10, Hyderabad in DIN & Order No. ITBA/APL/S/250/2020-21/102815937, dated 07/10/2020 arising out of the order passed U/s. 143(3) of the Act dated 31/3/2017 for the AY 2015-16.

25. The Revenue has raised 11 grounds in its appeal. However, Grounds No.2, 3, 4, 5 are with respect to deletion of addition towards cash deposits in bank accounts of Rs. 2,16,00,000/-. Grounds No. 6, 7 & 8 with respect to deletion of addition towards interest expenditure of Rs. 27,23,730/-. Grounds No.9, 10 & 11 relate to deletion of addition towards interest income from savings bank accounts of Rs. 11,65,279/-. Ground No.12 is a general ground.

26. The Grounds No. 2, 3, 4 & 5 are identical to that of the grounds raised by the Revenue in its appeal ITA No. 247/Viz/2020 for the AY 2014-15. While adjudicating the Revenue's appeal ITA No.247/Viz/2020 in the above paragraphs of this order, we have discussed the issue at length and held that since the Ld. AO has rightly considered Rs. 2.16 Crs as income of the assessee and we therefore uphold the order of the

Ld. AO on this Ground and quash the order of the Ld. CIT(A) on this issue. Since the facts and circumstances of the issue are identical, our decision given on these grounds (2,3,4 & 5) of the Revenue's Appeal in ITA No. 247/Viz/2020 mutatis mutandis applies to the instant grounds also. Accordingly, these grounds raised by the Revenue are allowed.

27. With respect to Grounds No. 6, 7 & 8 regarding the unaccounted interest payment of Rs. 27,23,730/- the Ld. AR submitted that the assessee has taken a secured over draft (SOD) from Andhra Bank, Tirupati and has paid interest on the same for the overdraft availed during the impugned assessment year. The Ld. AR further submitted that it is like a running current account and the credits in the SOD account will automatically take care of the interest payments. He therefore pleaded that the order of the Ld. CIT (A) be upheld. Per contra, the Ld. DR submitted that the assessee has not paid the interest to the bank and hence the Ld. AO has rightly disallowed the same. He pleaded that the order of the Ld. AO be upheld.

28. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. From the submissions of the Ld. AR we find that the assessee has taken a SOD facility from Andhra Bank, Tirupati for the purpose of construction of a house. The SOD account is like a running current account of the

assessee where the amounts credited into the SOD is adjusted against the interest in the overdraft account. We also find merit in the argument of the Ld. AR that whenever the amount exceeds the credit balance available in the account, it becomes an overdraft account for a short period until credits into the accounts are made by the assessee to regularize the overdraft facility. The Ld. CIT (A) in para 13.2 has rightly considered the same and held as follows:

"13.2. I have considered the submission made by the appellant and I am of the opinion that the amount of interest, which was charged by the Andhra Bank, Tirupati Branch, on the short term overdraft (SoD) Account No. 003330100005862, is a running account of the appellant, the amount which are credited is adjusted against the interest in the overdraft accounts or from the undisclosed sources, the amount which is out of the books of accounts or from the undisclosed sources, the amount which is debited to the account is accounted in the bank statement, the addition made by the AO only on the basis that the amount is not reflected in the books of accounts. As rightly pleaded by the appellant, the AO has not brought on record any evidence that the amount is paid out of undisclosed income. The recording of these transactions in the books of accounts is more a matter of form, rather than substance. The addition does not stand on merits and hence the Ground of appeal raised by the appellant is allowed."

29. We find that the Ld. CIT(A) has rightly considered the interest payment and we do not find any infirmity in the order of the Ld. CIT(A) on this ground and hence the grounds raised by the Revenue on this issue are dismissed.

30. With respect to Grounds No. 9, 10 & 11 where an addition made by the Ld. AO for Rs. 11,65,279/-, the Ld. AR submitted that the assessee has suo motto accepted the addition of interest received by the assessee from SB Account which was not considered while filing the return of income. Per contra, the Ld. DR relied on the order of the Ld. AO.

31. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities on this issue. Admittedly Rs. 11,65,279/- was the interest earned by the assessee from the SB Account maintained by the assessee. This interest income was not disclosed while filing the return of income by the assessee for the impugned assessment year. We find that the Ld. CIT(A) has erred in considering the interest income as set off against the interest expenditure thereby giving benefit of double deduction to the assessee. We are therefore of the considered view that the Ld. AO has rightly considered the interest income as income from other sources and therefore we are inclined to uphold the order of the Ld. AO on this issue and set-aside the decision of the Ld. CIT(A). Thus, the Grounds No. 9, 10 & 11 raised by the Revenue are allowed.

32. Grounds No.1 & 12 are general in nature and they need not be adjudicated.

33. In the result, appeal of the Revenue is partly allowed.

C.O. No.15/Viz/2021 (AY: 2015-16)
(By Assessee- Sri Vittalam Nataraj Prasad)

34. This cross objection is raised by the assessee wherein the assessee has raised six main grounds (Ground no.4 has sub-grounds). A perusal of the Grounds raised by the assessee in the instant Cross Objection, we find that the Grounds are identical to that of the grounds raised by the assessee in his Cross Objection No.14/Viz/2021 for the AY 2014-15 which is adjudicated in the above paragraphs of this order. Considering the similarity of the issues involved in both the Cross Objections, our decision given in CO No. 14/Viz/2021 (supra) mutatis mutandis applies to the instant Cross Objection No. 15/Viz/2021 also. Accordingly, the Cross Objection raised by the assessee is dismissed.

35. In the result, Cross Objection raised by the assessee is dismissed.

ITA No. 02/Viz/2021 (AY: 2014-15)
(By Revenue)

36. This appeal is filed by the Revenue against the order of the Ld. CIT(A)-10, Hyderabad in DIN & Order No. ITBA/APL/S/250/2020-21/102816126, dated 7/10/2020 arising out of the order passed U/s. 143(3) of the Act, dated 30/12/2016 for the AY 2014-15.

37. Briefly stated facts of the case are that the assessee, Smt. Nallamilli Sridevi, is a non-resident filed here original return of income electronically for the AY 2014-15 on 16/11/2014 declaring total income of Rs. 28,77,080/-. Subsequently, the assessee filed a revised return on 24/1/2016 declaring a total income of Rs. 29,02,330/-. The assessee's case was selected for scrutiny under CASS with a direction to the Assessing Officer to examine certain issues viz., (i) Interest expenses; (ii) purchase of property reported in Form 26QB; (iii) substantial increase in capita in a year and (iv) sale consideration of the property reported in ITR is less than the sale consideration of property reported in AIR and to verify the cash deposits. Accordingly, a notice U/s. 143(2) was issued to the assessee on 25/7/2016 by the ITO (IT), Nellore and later the case was transferred to Asst. CIT (IT), Visakhapatnam. A notice U/s. 142(1) calling for information was issued to the assessee on 12/8/2016 and the in response the assessee along with her representative appeared from time to time and furnished the information called for. The assessee has also been asked to furnish the proof in support of interest on housing loan, interest on SOD, interest on LIC loan and also confirmation letter from Sri V. Nataraj Prasad towards loan taken by the assessee, sources for cash deposits, sources for capital increase and sources for properties purchased during the FY 2013-14. In response the assessee submitted

that an amount of Rs. 46,89,488/- relates to interest on housing loan with Andhra Bank, Tirupati and Rs. 11,56,812/- relates to interest on SOD availed from Andhra Banak, Tirupati. Regarding purchase of property the assessee submitted that the assessee has taken housing loan of Rs.7,07,29,984/- for property at Mumbai and Rs. 1,87,24,200/- for property at Tirupati. The assessee also submitted confirmation letter for Rs.2,89,09,000/- towards loan taken from her husband Sri V. Nataraj. With respect to capital introduction the assessee submitted that it is nothing but the salary of Rs. 1,80,00,000/-- received from ISME Medical College, Nepal as the assessee is working as an Asst. Professor and interest on FDRs of Rs. 27,09,550/- and the balance relates to other income. On verification of the assessee's bank accounts, the Ld. AO asked the assessee to furnish the sources for huge deposits made in banks as well as the proof in support of the salary income received from Nepal. The assessee submitted that the salary has been drawn at Nepal in cash in Indian Currency and deposited in India. The Ld. AO by invoking the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 issued by the Reserve Bank of India vide Notification No. FEMA 6/RB-2000, dated 3rd May, 2000 found that the Indian Currency cannot be brought from Nepal in Denominations of above Rs. 100/- . In view of the restrictions of by the

Exchange Management (Export and Import of Currency) Regulations, 2000, a show cause notice dated 15/12/2016 was issued calling for explanation from the assessee. In response the Ld. AR of the assessee submitted that out of the consolidated salary received by the assessee in Nepal which is already taxed in Nepal has been brought into India and deposited in various bank accounts in India in assessee's account. The Ld. AO considered the explanation of the assessee is not in accordance with the Exchange Management (Export and Import of Currency) Regulations, 2000 and treated the cash deposits made by the assessee in India as income from other sources. Further, with respect to cash deposits in various bank to the tune of Rs. 1,00,90,882/- the assessee submitted before the Ld. AO that the same is nothing but her salary drawn from Nepal and on being asked to submit the reconciliation statement the assessee admitted that there is a deficit cash of Rs. 17,60,024/- and agreed to voluntarily offer the same as additional income for the FY 2013-14. Considering the assessee's explanation, the Ld.AO added the amount of Rs. 17,60,024/- as unexplained cash deposits. Further, the Ld. AO in the absence of any cogent evidence for the cash deposits in various banks, treated the amount of Rs. 55,00,000/- as unexplained cash deposits and added the same to the total income of the assessee. Thus, the Ld.AO computed the assessee's

income and determined the assessed income at Rs. 2,81,62,354/- against the returned income of Rs. 29,02,330/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A).

38. Before the Ld. CIT(A), the assessee raised the issue of jurisdiction for the issue of notice U/s. 143(2) of the Act which was dismissed by the Ld. CIT(A). On merits, the Ld. CIT(A) partly allowed the appeal by confirming the additions made by the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

39. Before the Tribunal, the Revenue has raised 07 grounds however, Grounds No.1, 2, 3 & 4 relate to the deletion of addition towards cash deposits in bank accounts of Rs. 1,80,00,000/-; Ground No. 5 pertains to deletion of addition towards unaccounted cheque deposits of Rs. 55,00,000/-; Ground No.6 pertains to the Ld. CIT(A)'s action in admitting the additional evidence without providing reasonable opportunity to the Ld. AO to examine and rebut the same as envisaged under sub-rule(3) of Rule 46A of the Income Tax Tules, 1961 and Ground No. 7 raised by the Revenue is a general ground.

40. The two main cruxes of the issues are that:

- (i) Unexplained cash deposits of Rs. 1,80,00,000/- in the bank account maintained by the assessee and

- (ii) Addition of cheque deposits of Rs. 55,00,000/- in the assessee's bank account.

41. With respect to the first issue viz., unexplained cash deposits of Rs. 1,80,00,000/- in the bank account maintained by the assessee, on identical issue in the case of Sri Vittalam Nataraj Prasad while adjudicating the Revenue's appeal in ITA No. 247/Viz/2020, AY 2014-15 in the above paragraphs of this order, this Bench of the Tribunal has taken a view, after considering the facts and circumstances of the case as well as on careful perusal of the material available before the Tribunal, that the Ld. AO has rightly considered Rs. 1.80 Crs as income of the assessee and accordingly uphold the order of the Ld. AO on this issue and quashed the order of the Ld. CIT(A) on this issue. Since, the facts and circumstances of the instant case are identical to that of the case decided by this Bench (supra), our decision given therein applies mutatis mutandis to the issue raised by the Revenue in the instant appeal also. Accordingly, we uphold the order of the Ld. AO and quash the order of the Ld. CIT(A) on this issue and allowed the relevant grounds raised by the Revenue.

42. With respect to second issue viz., Addition of cheque deposits of Rs. 55,00,000/- in the assessee's bank account, the Ld. AR submitted that the sources for cheque deposits from assessee's joint bank account

maintained with her husband. He therefore pleaded that it cannot be treated as unexplained / unaccounted cheque deposits as each amount is deposited by way of cheque transfers either from assessee's own account or from the joint account. He therefore pleaded that the order of the Ld. CIT(A) be upheld. Per contra, the Ld. DR submitted that no bank statement was provided before the Ld. AO and the assessee has furnished only before the Ld. CIT(A). The Ld. DR further submitted that such additional evidence should have been remanded back to the Ld. AO for his remand report after examining the same. The Ld. DR relied on the order of the Ld. AO.

43. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly it is noticed that the assessee has made cheque deposit in the bank accounts the details are as under:

Sl no	Deposited in Account No.	Cheque No.	Date	Amount (Rs.)
1.	Andhra Bank SOD A/c. 003331100000742	464052	29/1/2014	9,00,000
2.	Andhra Bank SOD A/c. 003331100000742	464055	3/2/2014	9,00,000
3.	Andhra Bank SOD A/c. 003331100000742	464057	4/2/2014	9,00,000
4.	HDFC A/c. 5200000036461	452904	7/6/2013	25,00,000
5.	HDFC A/c. 5200000036461	958245	5/7/2013	3,00,000
	Total amount			55,00,000

44. The Ld. AR demonstrated before us from the paper book submitted with respect to the bank accounts maintained by the assessee, fund transfer by way of cheque has been made either from the joint account or from the assessee's own account as follows:

Sl no	Deposited in Account No.	Cheque No.	Date	Amount (Rs.)	
1.	Andhra Bank SOD A/c. 003331100000742	464052	29/1/2014	9,00,000	Transferred from Joint A/c No.32599745670
2.	Andhra Bank SOD A/c. 003331100000742	464055	3/2/2014	9,00,000	Transferred from Joint A/c No.32599745670
3.	Andhra Bank SOD A/c. 003331100000742	464057	4/2/2014	9,00,000	Transferred from Joint A/c No.32599745670
4.	HDFC A/c. 5200000036461	452904	7/6/2013	25,00,000	The receipt of loan repayment from Sri P. Surendrababu to whom hand loan was given on 28/5/2013
5.	HDFC A/c. 5200000036461	958245	5/7/2013	3,00,000	From Husband's account in SBI, Tirupati
			Total amount	55,00,000	

45. From the above it is that the assessee has either transferred from her own account or from the joint account held with her husband or from her husband's account which has been fully explained by the Ld. AR. Therefore, we are of the considered view that the Ld. CIT(A) has rightly allowed the grounds raised by the assessee on this issue and hence we do not find any infirmity in the order of the Ld. CIT(A) on this

issue. Accordingly, the respective grounds raised by the Revenue are dismissed.

46. With respect to Ground No.7 raised by the Revenue regarding providing an opportunity to the Ld. AO as per Rule 46A of the IT Rules, 1962 for the additional evidence submitted before him, we are of the view that the Ld. CIT(A) has powers U/s. 250(4) of the Act "*in case if any further enquiry is required which the Ld. CIT(A) may thought fit, he may direct the Assessing Officer to make further enquiry and request for a remand report*". In the instant case, these bank transfers are either from the assessee's own account or from the joint account with her husband or from the assessee's husband's account. Therefore, it does not require any further enquiry by the Ld. AO and the Ld. CIT(A) has exercised his powers u/s. 250(4) of the Act and has rightly disposed off the additional evidence submitted before him. We therefore do not find any infirmity in the order of the Ld. CIT(A) on this issue also. Accordingly, the relevant ground raised by the Revenue on this issue is dismissed.

47. Ground No. 7 is general in nature and need not be adjudicated.

48. In the result, appeal filed by the Revenue is partly allowed.

C.O. No.16/Viz/2021 (AY: 2014-15)

(By Assessee: Nallamilli Sridevi)

49. This cross objection is raised by the assessee wherein the assessee has raised six main grounds (Ground no.4 has sub-grounds). A perusal of the Grounds raised by the assessee in the instant Cross Objection, we find that the Grounds are identical to that of the grounds raised by the assessee in the case of Sri Vittalam Nataraj Prasad (assessee's husband) vs. ACIT (IT), Visakhapatnam in his Cross Objection No.14/Viz/2021 for the AY 2014-15 which is adjudicated in the above paragraphs of this order. Considering the similarity of the issues involved in both the Cross Objections, our decision given in CO No. 14/Viz/2021 (supra) mutatis mutandis applies to the instant Cross Objection No. 16/Viz/2021 also. Accordingly, the Cross Objection raised by the assessee is dismissed.

50. In the result, Cross Objection raised by the assessee is dismissed.

ITA No.03/Viz/2021 (AY: 2015-16)
(By Revenue)

51. This appeal filed by the Revenue against the order of the Ld. CIT(A)-10, Hyderabad in DIN & Order No. ITBA/APL/S/250/2020-21/102816246, dated 7/10/2020 arising out of the order passed U/s. 143(3) of the Act, dated 31/3/2017 for the AY 2015-16.

52. The Revenue has raised 10 grounds in its appeal. However, Grounds No.1, 2, 3 & 4 are with respect to deletion of addition towards cash deposits in bank accounts of Rs. 1,80,00,000/-. Grounds No. 5, 6 & 7 are with respect to deletion of addition towards interest expenditure of Rs. 48,17,402/-. Grounds No.8, 9 & 10 relate to deletion of addition towards unaccounted closing bank balance of Rs. 3,67,544/-.

53. The Grounds No. 1, 2, 3 & 4 are identical to that of the grounds raised by the Revenue in its appeal ITA No. 247/Viz/2020 for the AY 2014-15 in the case of Sri Vittalam Nataraj Prasad. While adjudicating the Revenue's appeal ITA No.247/Viz/2020 in the above paragraphs of this order, we have discussed the issue at length and held that since the Ld. AO has rightly considered the disputed amount (in the present case disputed amount is Rs. 1.80 Crs) as income of the assessee and we therefore uphold the order of the Ld. AO on this Ground and quashed the order of the Ld. CIT(A) on this issue. Since the facts and circumstances of the issue are identical, our decision given on these grounds (2,3,4 & 5) of the Revenue's Appeal in ITA No. 247/Viz/2020 mutatis mutandis applies to the instant grounds 1, 2, 3 & 4 also. Accordingly, these grounds raised by the Revenue are allowed.

54. Grounds No. 5, 6 & 7 are with respect to deletion of addition towards interest expenditure of Rs. 48,17,402/-. This issue is identical to

that of the issue raised by the Revenue in its appeal No.01/Viz/2021, AY: 2015-16 (Grounds No. 6, 7 & 8) in the case of Sri Vittalam Nataraj Prasad (husband of the present assessee). Since the facts and circumstances of the present case and the issue on hand are identical to that of the issue decided by this Bench in ITA No. 01/Viz/2021, AY: 2015-16 in the case of Sri Vittalam Nataraj Prasad (supra), our decision given therein mutatis mutandis applies to the instant issue also. Accordingly, we find that the Ld. CIT(A) has rightly considered the interest payment and adjudicated the issue on hand and granted relief to the assessee after discussing the issues at length vide paragraphs 13 to 13.4 of his order. Thus, we do not find any infirmity in the order of the Ld. CIT(A) on this ground and hence the grounds raised by the Revenue on this issue are dismissed.

55. With regard to the deletion of addition towards unaccounted closing bank balance of Rs. 3,67,544/- (Grounds No.8, 9 & 10), we find from Form 35 filed by the assessee before the Ld. CIT(A) that this ground was never raised before him and hence not adjudicated by the Ld. CIT(A). Furthermore, we find more assessment order the assessee has accepted to admit this amount of Rs. 3,67,544/- as unexplained income. We therefore considered these grounds raised by the Revenue as infructuous and needs no further adjudication.

56. In the result, appeal of the Revenue is partly allowed.

C.O. No. 17/Viz/2021 (AY: 2015-16)
(By Assessee – Smt. Nallamilli Sridevi)

57. This cross objection is raised by the assessee wherein the assessee has raised six main grounds (Ground no.4 has sub-grounds). A perusal of the Grounds raised by the assessee in the instant Cross Objection, we find that the Grounds are identical to that of the grounds raised by the assessee in the case of Sri Vittalam Nataraj Prasad (assessee's husband) vs. ACIT (IT), Visakhapatnam in his Cross Objection No.14/Viz/2021 for the AY 2014-15 which is adjudicated in the above paragraphs of this order. Considering the similarity of the issues involved in both the Cross Objections, our decision given in CO No. 14/Viz/2021 (supra) mutatis mutandis applies to the instant Cross Objection No. 17/Viz/2021 also. Accordingly, the Cross Objection raised by the assessee is dismissed.

58. In the result, Cross Objection raised by the assessee is dismissed.

Pronounced in the open Court on the 16th March, 2023.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 16.03.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sri Vittalam Nataraj Prasad, 556, Balaji Colony, Tirupati – 517501, Andhra Pradesh. (ii) Smt. Nallamilli Sridevi, 558, Balaji Colony, Tirupati – 517501, Andhra Pradesh.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, D.No. 50-92-34/1, Ground Floor, Infinity Tower, Shantipuram, Shankarapuram Road, Visakhapatnam-530016, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
(ii) The Chief Commissioner of Income Tax (IT & TP), Hyderabad.
(iii) The Chief Commissioner of Income Tax (IT) (SZ), Bengaluru.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax-10, Hyderabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam