

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 No.156/Hyd/2022		
Assessment Year: 2008-09		
Shri Sunil Kumar Ahuja Hyderabad PAN:ABLPA2822L (Appellant)	Vs.	Asstt. C. I. T. Central Circle 1(1) Hyderabad (Respondent)
Assessee by:	Shri S. Rama Rao, Advocate	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	14/03/2023	
Date of pronouncement:	25/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 28.02.2022 of the learned CIT (A)-11 Hyderabad relating to A.Y.2008-09.

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

"1) The order of the learned CIT (A) is erroneous to the extent it is prejudicial to the appellant.

2) The learned CIT (A) erred in holding that the amount of Rs.2,05,50,000/- represent the unexplained investment and further erred in confirming the addition made by the Assessing Officer.

3). The learned CIT (A) erred in confirming the addition made by the Assessing Officer towards agricultural by income of Rs.11,38,820/-

4). The learned CIT (A) erred in confirming the rental income of Rs.5,10,210/- out of Rs.17,00,700/- made by the Assessing Officer.

5) Any other ground/grounds that may be urged at the time of hearing”

3. Ground of appeal No.1 & 5 being general in nature are dismissed.

4. In ground of appeal No.2, the assessee has challenged the order of the CIT (A) in confirming the addition of Rs.2,05,50,000/- made by the Assessing Officer as unexplained investment.

5. Facts of the case, in brief, are that the assessee is an individual and derives income from investment in real estate and share marketing. He had not filed his return of income within the due date. A search & seizure action u/s 132 of the I.T. Act was conducted at the residential and business premises of the assessee on 17.09.2008. In response to notice u/s 153A, the assessee filed return of income declaring income of Rs.71,26,959/- and agricultural income of Rs.11,38,820/-.

6. During the course of assessment proceedings, the Assessing Officer noted that pages 37 to 39 of the bundle of loose sheets and documents found and seized from the residence of Mr. O Sivasankar Prasad vide Annexure A/OSSP/Res/01 contain the details of the transactions entered during June, 2007. It was noticed from the above seized evidences that the total amount received from the assessee against land of Ac 20-15 Guntas in Survey No.257 of Kollur Village and other properties in Nandigama and Proddatur villages are Rs.2,69,10,000/- by cheque and Rs.2,05,50,000/- by cash. Even though both the parties have denied the cash transaction of Rs. 2,05,50,000/-

however, the Assessing Officer held the same to be taxable in the hands of the assessee as unexplained investment by giving the following reasons:

- 1) The loose sheets which contain the evidence in the form of notings in support of receipt of Rs.2,05,50,000/- were found and seized from the residence of Shri O. Siva Sankara Prasad at Plot No. 821, Road No. 41, Jubilee Hills, Hyderabad during the course of search on 17.09.2008.
- 2) It was admitted by Shri O. Siva Sankara Prasad that the notings in the seized loose sheets were made by him in his own handwriting. In his sworn statement recorded on the date of the search, Shri O. Siva Sankara Prasad admitted that an amount of Rs. 4.75 crores is received against the said AGPAs.
- 3) It was confirmed by Shri O. Siva Sankara Prasad that the entries relating to receipts by cheque and cash from Shri Sunil Kumar Ahuja were made by him and the same relate to the sale consideration received by Shri O. Siva Sankara Prasad, Smt. O. Padmavathi and M/s. Dhanitha Constructions Pvt Ltd towards the agreements of sale in respect of properties at Nandigama, Proddatur and Kollur.
- 4) It is confirmed by Shri O. Siva Sankara Prasad that the entries in the seized loose sheets were made by him in his own handwriting and Shri O. Siva Sankara Prasad has the complete knowledge of the transactions relating to the agreements of sale cum general power of attorneys for the transfer of properties at Nandigama, Proddatur and Kollur.
- 5) The entry relating to the payment of cash of Rs. 2,05,50,000/- was made by Shri O. Siva Sankara Prasad, the seller of the above properties at Nandigama, Proddatur and Kollur.
- 6) Shri O. Siva Sankara Prasad categorically stated in his sworn statement recorded on the date of search on 17.09.2008 that he has taken Rs 4.75 crores against the properties at Kollur. As is evident from the seized loose sheets the cash receipt of Rs.2,05,50,000/- is included in the total consideration of Rs.4.75 crores.
- 7) The noting contain complete details of sale consideration paid and is the detailed history of all transactions with the transferee of the property, since the entries relating to all the payments by cheques amounting to total of Rs.12,26,000/-, Rs.12,34,000/- and Rs.2,44,50,000/- are reflected in the seized loose sheet along with the dates on which the above agreements of sale were registered.
- 8) The noting contain detailed statement of transactions with the transferee of the property containing the mode of payment, date of the payment and the details of the person to whom the individual payments were made.
- 9) All entries relating to the payments of Rs. 12,26,000/-, Rs. 12,34,000/- and Rs.2,44,50,000/- by cheques to Smt. O. Padmavathi, Shri O. Siva Sankara Prasad and

M/s. Dhanitha Constructions Pvt Ltd., match with the sale consideration as recorded in the registered agreements of sale.

- 10) All entries relating to the payments of Rs. 12,26,000/-, Rs. 12,34,000/- and Rs. 2,44,50,000/- by cheques exactly match with the market value as per the sub-registrar for the purpose of valuation of stamp duty indicating the payment of cash, since the practice of payment of cash is prevalent in the real estate markets.

7. The Assessing Officer accordingly made the addition of Rs.2,05,50,000/- to the total income of the assessee.

8. In appeal, the learned CIT (A) sustained the addition made by the Assessing Officer by observing as under:

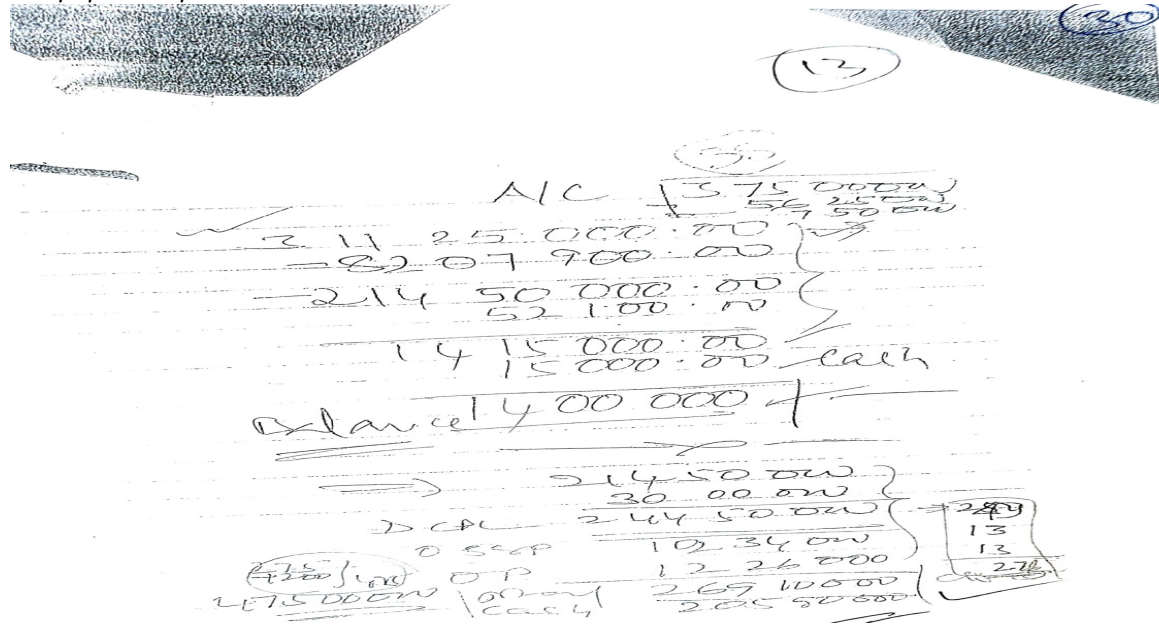
“With regard to addition of Rs.2,05,50,000/ made on account of unexplained investment, during the course of assessment proceedings, the Assessing Officer held that on verification of the seized material found from the premises of Sri OSS Prasad, it was noticed that the appellant had paid an amount of Rs.2,69,10,000/- by Cheques and Rs.2,05,50,000/- by cash towards purchase of 3 properties from Shri OSS Prasad and related parties and accordingly the amount of Rs.2,05,50,000/- was added to the income of the appellant as unexplained investment.

It is seen that the Assessing Officer has strangely in the assessment order of A.Y. 2009-10 passed on 30.12.2010 has made observations regarding this addition rather than in the present order which was also 30.12.2010. passed on The relevant portion of the order for A.Y. 2009-10 has been already reproduced above. While discussing this issue in A.Y. 2009-10 which was not relevant to that year, the Assessing Officer started with the theory on account of the statement of OSS Prasad that the blank cheques were given to the appellant and AGPA was executed for 3 properties. The appellant lent a sum of Rs.4.75 crores to OSS Prasad in the form of transferring through AGPA 3 properties with market value of Rs.2,69,10,000/- by cheque and the balance was paid by cash of Rs.2,05,50,000/-. Mr.OSS Prasad stated that once the sum is returned, then the AGPA would be cancelled and the interest portion is yet to be decided. Later on, Sri Prasad denied the statement and the nature of transaction and even the appellant denied the cash transaction and relied on the subsequent statement of OSS Prasad dated 04.11.2008. The Assessing Officer analysed the whole situation and dropped the theory of loan and considered it as unaccounted investment of Rs.2,05,50,000/- being cash paid over and above the registration value.

During the course of appeal proceedings, the appellant contended that the addition was made based on dumb documents which had no signatures and that the Assessing Officer relied upon the statement

of Sri OSS Prasad without providing for cross examination of the said person.

The paper is reproduced as under:



it is seen that the Assessing Officer has given a detailed discussion in the assessment order and the copies of statement of OSS Prasad and the loose sheets have been provided to the appellant. The Assessing Officer has to very clearly brought out the sum of Rs.4,75,00,000/- (rounded to very Rs.2,75,00,000/- + Rs.2,00,00,000/-) (mentioned as 475 being a total of 275 and 200 at the bottom of the page). The round figure of 275 has been worked out as 249 13 + 13 being the round figure of 3 cheques (Rs.2,44,50,000 +12,34,000 + 12,26,000) and the round figure of 200 for cash of Rs.2,05,50,000/-.

The same is evident from the bottom calculation mentioned at the page There is a further calculation of a sum of Rs.3,75,00,000/- wherein the sum in the arriving of a balance of Rs.2,14,50,000/- is mentioned Rs.14,00,000/-.

The calculation at the bottom of the page clearly mentions cash of Rs.2,05,50,000/- and the cumulative total of cheques of Rs. 2,69,10,000/ bringing out a total rounded to Rs. 4,75,000,000/- as such. The sum of Rs.2,05,50,000/- is directly related to these transactions as the calculation of the cheque and cash has been done separately. It was also noted by the Assessing Officer that the cheque amount of Rs.2,69,10,000/-exactly matches the sale amount mentioned in the sale documents (the said fact was also not refuted by the appellant) and the mention of the cash in the same account very clearly reflects that the balance of Rs. 2,05,50,000/- has been paid in cash. It would not be out of place to mention the initial statement o OSS Prasad that the total amount of money of Rs.4,75,00,000/- was received against these properties being the market value and the security in the form of AGPA executed for these 3 properties. The person also stated that the same would be

cancelled on the return of the said sum. Though Shri OSS Prasad has withdrawn the statement but the document is self-speaking along with the cheques record which was initially accepted, therefore, in no manner the documents are dumb but are interconnected. The Assessing Officer has taxed The sum of Rs.2,05,50,000/- a sum accounted money paid for properties, or which the sun. of Rs.2,05,50,000/- being paid in cash and unaccounted is an irrefutable fact in any manner in which the transaction is looked at, either from the loan perspective or from the sale transaction perspective.

During the course of Search on Mr.OSS Prasad, he confirmed the writing was made by him and both the entries of cheque and cash were made by him, which makes it a very clear transaction and also it was confirmed that the said entries relate to the agreement of sale of 3 properties at Nandigram, Proddatur and Kollur with the appellant as stated above.

The relevant observations of the Assessing Officer brought out in the assessment are as under:

1) The loose sheets which contain the evidence in the form of notings in support of receipt of Rs.2, 05, 50,000/- were found and seized from the residence of Shri O. Siva Sankara Prasad at Plot No. 821, Road No. 41, Jubilee Hills, Hyderabad during the course of search on 17.09.2008.

2) It was admitted by Shri O. Siva Sankara Prasad that the notings in the seized loose sheets were made by him in his own handwriting. In his sworn statement recorded on the date of the search, Shri O. Siva Sankara Prasad admitted that an amount of Rs. 4.75 crores is received against the said AGPAs.

3) It was confirmed by Shri O. Siva Sankara Prasad that the entries relating to receipts by cheque and cash from Shri Sunil Kumar Ahuja were made by him and the same relate to the sale consideration received by Shri O. Siva Sankara Prasad, Smt. O. Padmavathi and M/s. Dhanitha Constructions Put Ltd towards the agreements of sale in respect of properties at Nandigama, Proddatur and Kollur.

4) It is confirmed by Shri O. Siva Sankara Prasad that the entries in the seized loose sheets were made by him in his own handwriting and Shri O. Siva Sankara Prasad has the complete knowledge of the transactions relating to the agreements of sale cum general power of attorneys for the transfer of properties at Nandigama, Proddatur and Kolhur.

5) The entry relating to the payment of cash of Rs. 2,05,50, 000/- was made by Shri O Sivasankara Prasad, the seller of the above properties at Nandigama, Proddatur and Kollur.

6) Shri O. Siva Sankara Prasad categorically stated in his sworn statement recorded on the date of search on 17.09.2008 that he has

taken Rs 4.75 crores against the properties at Kollur. As is evident from the seized loose sheets the cash receipt of Rs.2,05,50, 000/- is included in the total consideration of Rs.4. 75 crores.

7) The notirna contain complete details of sale consideration paid and is the detailed history of all transactions with the transferee of the property, since the entries relating to all the payments by cheques amounting to total of Rs. 12,26,000/, Rs. 12,34, 000/- and Rs.2,44,50,000/- are reflected in the seized loose sheet along with the dates on which the above agreements of sale were registered.

8) The noting contain detailed statement of transactions with the transferee of the property containing the mode of payment, date of the payment and the details of the person to whom the individual payments were made

9) All entries relating to the payments of Rs. 12,26,000/, Rs. 12,34,000/ and Rs.2,44,50,000/ by cheques to Smt. O. Padmnavathi, Shri O. Siva Sankara Prasad and M/s. Dhanitha Constructions Put Ltd., match with the sale consideration as recorded in the registered agreements of sale.

10) All entries relating to the payments of Rs. 12,26,000/, Rs. 12,34,000/ and Rs. 2,44,50,000/ by cheques exactly match with the market value as per the sub registrar for the purpose of valuation of stamp duty indicating the payment of cash, since the practice of payment of cask is prevalent in the real estate markets.

From the above, it is clear that the sale consideration for the 3 properties at Nandigram, Proddatur and Kollur was decided at Rs.4,75,00,000/- out of which an amount of Rs.2,69,10,000/ mentioned in the Sale documents was paid through cheques and the balance consideration of Rs.2,05,50,000/- (over and above the value as per sale deeds) was paid in cash. The notings are very clear and there was no need for Shri OSS Prasad to do such notings are related to the appellant and during the course of search, Shri OSS Prasad admitted the same and was in the need of funds of Rs.4.75 crores and the properties were effectively transferred through a component of cheque and cash as already discussed above and that is where the recording and reconciliation has been made, the later denial is without any basis or justification in view of the explicit admittance by Shri OSS Prasad. For the purpose of Income Tax, there is enough basis to make an addition on preponderance of probability and in the present case, 3 properties have been transferred and in an Income Tax Search to find out the maintenance of identical documents with both the parties is only a chance, however, the circumstantial evidence is in the present case absolutely perfect. It is a matter of record that 3 properties have been transferred and their cheque values are identical with SRO value and has been recorded on the said page explicitly in the relevant quantum and also the balance cash component. Therefore, it will be highly dumb on the part of judicial authorities to call it a dumb document especially when there is a

proper account and the "cash" has been mentioned explicitly with the cheque transactions and the back ground of the earlier pages and the requirement of the quantum of Rs.2,05,50,000/-, It is not the case of any appellant that for a person to indulge in unaccounted transaction to be so explicit in recording these unaccounted transactions that there is nothing left to be inferred. The transactions are very clear as far as the matching of records in cheque are concerned and the recipient has very clearly recorded the same and no such motive of any other nature has been brought out by the appellant and even the appellant continues to do the transactions with Mr OSS Prasad. This is no way a dumb document, it shows YA the payment of cash and obviously the cash would be paid along with the cheques and therefore the Assessing Officer has rightly taxed the same. The subsequent denial are only a matter of convenience and the seized material is presumed to be correct as recorded as per the law of Section 292C as it has been recorded by OSS Prasad and the relevant statement of his has been recorded, the appellant would continue to deny the same as per convenience, but the other fact also stays that the market value of the property was more than SRO value for which the cash was paid over and above the registration value.

In view of the above discussion and facts, it is held that the noting of Rs.2,05,50,000/- represents the cash paid by the appellant towards purchase of properties or for other reasons to Shri OSS Prasad and related parties and in view of the same, the addition of Rs.2,05,50,000/- as unaccounted income and unexplained investment is upheld and the ground no.3 and 4 are dismissed accordingly".

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

10. The learned Counsel for the assessee strongly challenged the order of the CIT (A) in sustaining the addition of Rs.2,05,50,000/- and submitted that the assessee purchased properties from (i) Shri O.Shivashankar Prasad, (ii) Smt.O. Padmavathi and (iii) M/s. Dhanitha Constructions. Referring to page Nos. 28 to 32 of the Paper Book, which are the seized documents, he drew the attention of the Bench to page 30 where an amount of Rs.4,75,00,000/- is written out of which cash of Rs.2,05,50,000/- appearing has been treated as unexplained investment of the assessee. Referring to the statement recorded of Shri O.Shivashankar Prasad, the Assessing Officer held that the

assessee has received an advance of Rs.2,75,00,000/- against the AGPA. He submitted that the document which has been relied on by the Revenue is a dumb document and the same does not contain any date or name of the assessee or signature of anybody. Therefore, once the document relied on by the Revenue is not signed by the assessee, undated, not in his handwriting and especially when Shri O.Shivashankar Prasad has denied to have received any cash payments from the assessee subsequent to his original statement, no addition can be made in the hands of the assessee. Referring to the statement of Shri O.Shivashankar Prasad recorded u/s 131 of the I.T. Act by the DDIT (Inv) Unit-II (3) Hyderabad on 4.11.2008, he drew the attention of the Bench to question No.23, copy of which is placed at page No.40 of the paper book and submitted that the assessee has paid a total of Rs.6,69,10,000/-. He submitted that the amounts were given by the assessee to Shri O. Shivashankar Prasad, Smt. O. Padmavathi and Dhanitha Constructions and the entire amount given is not Rs.2,69,10,000/- but the amount given was Rs.6,69,10,000/-. He submitted that the amount given as per the document was more than the amount mentioned in the dumb document and therefore, it cannot be said that the assessee has given any amount in excess of the said amount of Rs.6,69,10,000/-. He accordingly submitted that the addition made by the Assessing Officer and sustained by the CIT (A) to the extent of Rs.2,05,50,000/- is not justified.

11. The learned DR, on the other hand, strongly relied on the order of the Assessing Officer and the CIT (A). He submitted that the document found from the premises of Mr. O.S.S. Prasad clearly indicates cash payment of Rs.2,05,50,000/-. The learned CIT (A) has given elaborate reasons while sustaining the addition

made by the Assessing Officer. Therefore, the same should be upheld and the ground raised by the assessee on this issue should be dismissed.

12. 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 find the AO in the instant case made addition of Rs.2,05,50,000/- on the ground that the assessee has purchased certain properties from Mr. O.S.S. Prasad, Smt. O. Padmavathi & M/s. Dhanitha Constructions (P) Ltd and out of the total consideration of Rs.4,75,00,000/- an amount of Rs.2,69,00,000/- was paid in cheque and Rs.2,05,50,000/- was paid in cash. Although the assessee as well as Mr. OSS Prasad have denied the cash transactions, however, he treated the amount of Rs.2,05,50,000/- as unexplained investment in the hands of the assessee, the reasons of which have already been reproduced at Para No.4.1 of this order. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have also been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that both the payer as well as the payee have denied the cash transactions, the seized document does contain the name of the assessee or the date of payment, the said document was not in the handwriting of the assessee and is an unsigned paper without giving the name of any person and therefore, the same cannot be a basis for making addition in the hands of the assessee.

12.1 A perusal of the seized document which is the basis for addition of Rs.2,05,50,000/- is as under:

(13)

(5)

A/C [3,75,00,000]
54,50,000

211 25,00,000.00
- 22,07,900.00

214 50,00,000.00
52,10,000.00

14 15,00,000.00
15,00,000.00 cash

Balance 4,00,00,000

214 50,00,000.00
30,00,000.00

244 244,50,000.00

244 10,34,000.00
12,26,000.00

267 10,00,000.00

267 2,05,50,000.00
2,05,50,000.00 cash

4,75,00,000.00
4,75,00,000.00

244 13
13
278

13. A perusal of the same does not show the name of the assessee, his signature or any date. A perusal of the statement u/s 131 of the Act of Shri OSS Prasad on 4.11.2008 copy of which is placed at page 33 to 45 of the Paper Book shows that Shri OSS Prasad in his answer to Question No.20 has replied as under:

.20 Please refer to answers to question no's 12 to 16 of your statement recorded u/s 132(4) on 17-09-2008, wherein you have stated that the agreements of sale cum general power of attorneys are executed in favour of Sri Sunilkumar Ahuja are in the nature of loan transactions and cumulative interest shall be paid at the time of cancellation of the agreements of sale. Please refer to pages 37 to 39 of the bundle of loose sheets found and seized vide Annexure A/OSSP/Res/01 dated 17-09-2008, wherein it was recorded by you that the transactions entered on 08-06-2007, 11-06-2007 and 21-06-2007 are loan transactions for a total loan amount of Rs.4,75,00,000/- out of which Rs.2,69,10,000/- was received by cheques and Rs.2,05,50,000/- was received in cash. Please comment


5. After reviewing all the transactions with Sri.Sunil Kumar Ahuja in detail, I have reiterated the actual mode and type of transactions vide., my answers to the Q. No 9 to 14 and Q.No 16 to 18 of my statement dated 30.10.2008. The above transactions are advances received against the agreements of sale cum General power of Attorneys (AGPA) executed by us.

14. Similarly the replied question No.21 reads as under:

.No.21 Furnish the details of the rate of interest charged on the above loan of Rs.4,75,00,000/-?

Ans. I submit that , as stated earlier the above transaction is not a loan and it was an advance against AGPA ,however the mode of loan being offered by Sri Sunil Kumar Ahuja against keeping various signed blank papers was not acceptable to me and hence the rate of interest point was not discussed.

15. Similarly he has denied to have received any cash payment in respect of Kokapet land in his reply to question No.22 which reads as under:

Q.No.22 Furnish the details of the cash received by you from Sri Sunilkumar Ahuja against the agreement of sale cum general power of attorney dated 23-04-2008 in respect of the land of Ac 5-39 guntas at Kokapet, Rangareddy district and the details of the rate of interest charged on the above loan? 

Ans. Against an AGPA of 5acre 39 guntas at Kokapet village lands, no cash was received by me from Sunil Kumar Ahuja , however Rs.4,00,00,000/- was received in the form of cheques towards advance.

16. It is also not known as to whether any such amount has been taxed in the hands of Shri OSS Prasad being cash received from the assessee on a/c of sale of land, if any since if the assessee has paid any money for purchase of land, the same should be a part of the sale consideration in the hands of the seller. Addition, if any, in our opinion cannot be made on the basis of premises and surmises. Under these circumstances, we are of the considered opinion that the matter requires a revisit to the file of the Assessing Officer with a direction to re-adjudicate the issue afresh. He shall go through the assessment of Shri OSS Prasad, Smt. O Padmavati and Dhanitha Constructions (P) Ltd and find out as to whether any addition has been made in their

hands on account of any cash receipt for sale of land or the AGPA from Shri Sunil Kumar Ahuja i.e. the assessee. Needless to say the Assessing Officer shall decide the issue as per fact and law. We hold and direct accordingly. Ground No.2 by the assessee is accordingly allowed for statistical purposes.

17. Ground No.3 relates to the addition of Rs.11,38,820/- as income from other sources as against the agricultural income declared by the assessee.

17.1 So far as the treatment of agricultural income of Rs.11,38,820/- as income from other sources is concerned, the facts in brief are that the Assessing Officer disbelieved the agricultural income on the ground that the assessee has not booked any income for agricultural activities. The receipts are coming to the books at regular intervals but there is no outgo and the assessee was not able to produce any evidence of carrying out of any agricultural activities other than its possession of the agricultural land. He compared the treatment of such agricultural income as other income in the past years and accordingly treated the amount of Rs. 11,38,820/- as income from other sources which has also been confirmed by the CIT (A). Aggrieved with such order, the assessee is in appeal before the Tribunal.

18. We have heard the rival arguments made by both sides. We find an identical issue had come up before the Tribunal in assessee's own case in the preceding A.Ys. We find the Tribunal in ITA Nos. 151 to 153/Hyd/2022, order dated 8.7.2022 while deciding the identical issue has granted partial relief to the assessee wherein the benefit of agricultural income of Rs.25,000/-

for the A.Y 2003-04, Rs30,000/- for the A.Y 2004-05 and Rs.35,000/- for the A.Y 2005-06 were granted by observing as under:

“9. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the 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 Assessing Officer in the instant case made addition of Rs.81,485/- treating the same as income from other sources as against agricultural income declared by the assessee. Similar additions have been made for the A.Y 2004-05 amounting to Rs.90,861/- and for A.Y 2005-06 Rs.95,377/-. We find the learned CIT (A) upheld the action of the Assessing Officer the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that since the assessee is holding 38.86 acres of agricultural land which is not in dispute, therefore, some benefit of agricultural income should be given to the assessee.

10. We find some force in the above argument of the learned Counsel for the assessee. Holding of 38.86 acres of agricultural land by the assessee is not in dispute since the learned CIT (A) has given a finding on this issue. However, the allegation of the Revenue is that the assessee failed to produce any evidence regarding the expenditure towards carrying out of such agricultural activities by him, the yield of flowers and vegetables and the sale of such products in the market. At the same time, holding of 38.86 acres of agricultural land is not in dispute. Therefore, in our opinion, some agricultural income should be made available to the assessee. On being a pointed query by the Bench at the time of hearing, the learned Counsel for the assessee submitted that the land is situated at Kurnool and rainfed. Therefore, considering the totality of the facts of the case and in the interest of justice, the benefit of Rs.25,000/- for the A.Y 2003-04, Rs.30,000/- for the A.Y 2004-05 and Rs.35,000/- for the A.Y 2005-06, as agricultural income, in our opinion, will meet the ends of justice. We hold and direct accordingly. The order of the learned CIT (A) for the above 3 years are accordingly modified and the Assessing Officer is directed to give the benefit of agricultural income of Rs.25,000/- for A.Y 2003-04, Rs.30,000/- for the A.Y 2004-05 and Rs.35,000/- for the A.Y 2004-06 respectively. Grounds raised by the assessee are thus partly allowed”.

19. Respectfully following the order of the Tribunal in the assessee's own case for the preceding 3 A.Ys, we are of the considered opinion that an amount of Rs.40,000/- may

reasonably be estimated as agricultural income for the impugned A.Y . We accordingly modify the order of the CIT (A) and direct the Assessing Officer to give benefit of Rs.40,000/- as agricultural income and the balance amount is to be treated as “income from other sources”. Ground of appeal No.3 by the assessee is accordingly partly allowed.

20. In Ground of appeal No.4, the assessee has challenged the order of the CIT (A) in confirming the addition of Rs.5,10,210/-out of Rs.17,00,700/- made by the Assessing Officer.

20.1 After hearing both the sides, we find that during the course of assessment proceedings, the Assessing Officer noted that the assessee has shown substantial cash received as rental income. On being confronted by the Assessing Officer during the assessment proceedings, the assessee submitted details of rent received, account confirmation copies and copies of rental agreement. The Assessing Officer issued summon u/s 131 to some of the persons for his examination. He noted that Shri Mohd.Asif Ali Khan in his statement submitted that he had borrowed a sum of Rs.4.5 lacs by pledging the property with the assessee @ 4% per month. To cover up the interest, a rent agreement was made and interest in the guise of rent was paid by him in cash. The assessee could not produce Shri Lakshmi Gopal, Bharadwaj and Smt. Sheela Lajwanti from whom rent was shown to have been received. It was found by the Assessing Officer that no such person was available at the address given by the assessee. He therefore, recorded the statement of the assessee during the course of assessment proceedings who stated that he stands by the transactions recorded in the book and the

statement given by the witness were given to suite their purposes. In absence of any satisfactory explanation given by the assessee during the assessment proceedings, the Assessing Officer treated the rent received over the years in cash as “income from other sources” in respective years. However, wherever the assessee has shown rent in excess of cash rent, he treated the cash portion as income from other sources and the balance was treated as a rent only. For the impugned A.Y, he treated an amount of Rs.17,00,700/- as income from other sources.

21. In appeal, the learned CIT (A) after obtaining a remand report from the Assessing Officer restricted the addition to the extent of deduction u/s 24 of the I.T. Act, 1961.

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

23. After hearing both the sides, we find that an identical issue had come up before the Tribunal in the assessee’s own case for the A.Y 2009-10. We find the Tribunal in ITA No.157/Hyd/2022 order dated 27.3.2023 has upheld the action of the CIT (A) by observing as under:

“14. We have heard the rival arguments made by both sides, perused the orders of the Assessing Officer and the 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 Assessing Officer in the instant case made addition of Rs.34,14,900/- by treating the same as “income from other sources” as against rental income shown by the assessee on the ground that the assessee could not prove the existence of the persons against whom he has shown the cash receipt as rental income as those persons were not in existence and were not traceable. It is the case of the Assessing Officer that the assessee had given certain amount as loan against mortgage of property and such interest income has to be treated as income from other sources and not rental income. We find the learned CIT (A)

sustained the addition the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that since the properties were mortgaged to the assessee for giving loan, therefore, the properties have become the property of the assessee and merely because the loanees were staying in their respective houses, such amount given by them as interest cannot be treated as income from other sources and has to be treated as rental income in the hands of the assessee.

14.1. We do not find any force in the above argument of the learned Counsel for the assessee. It is an admitted fact that the assessee was giving loan against mortgage of the property and such interest income received towards loan extended against mortgage of properties cannot partake the character of rental income. We find the learned CIT (A) while upholding the addition has also given a finding that since the assessee has already offered the rental income under the head income from house property as per remand report, the addition should be limited to the disallowance u/s 24(b) of the Act only which in our opinion is just and proper and needs no interference. Accordingly, ground of appeal No.3 by the assessee is dismissed”.

24. Since in the instant case also, the learned CIT (A) has restricted the disallowance to the extent of deduction claimed at Rs.5,10,210/- u/s 24 out of the total addition of Rs.17,00,700/- therefore, we do not find any infirmity in the order of the learned CIT (A) on this issue. Accordingly, ground raised by the assessee is dismissed.

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

Order pronounced in the Open Court on 25th April, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 25th April, 2023.

Vinodan/sps

Copy to:

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3	CIT-11 Hyderabad
4	Pr. CIT- Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order