

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.155/Hyd/2022		
Assessment Year: 2007-08		
Shri Sunil Kumar Ahuja, Hyderabad PAN:ABLPA2822L (Appellant)	Vs.	Asstt. C. I. T. Circle 1(1) Hyderabad (Respondent)
Assessee by:	Shri S.Rama Rao, Advocate	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	13/03/2023	
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.2007-08.

2. 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 filed his return of income on 2.11.2007 declaring an income of Rs.34,60,554/- and agricultural income of Rs.1,08,410/-. A search and seizure operation u/s 132 of the Act was conducted at the residential and business premises of the assessee on 17.09.2008. Notice u/s 153A of the Act issued on 28.07.2009 was served on the assessee on 17.08.2009. In

response to such notice the assessee filed the return of income on 30.11.2009 admitting the income originally declared. The Assessing Officer completed the assessment u/s 153A r.w.s. 143(3) on 30.12.2010 determining the total income of the assessee at Rs.3,21,13,545/- by making various additions.

3. In appeal, the learned CIT (A) gave part relief to the assessee.

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

“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 confirming the addition on income of account of agricultural income of Rs.1,08,410/- without considering the fact that no information to the contrary was found during the course of search and seizure operations.

3) The learned CIT (A) erred in holding that the profit on sale of land at Rs.1,12,06,602/-is taxable as income from business.

4) The learned CIT (A) erred in confirming the addition of t Rs.4,69,050/- from out of Rs.15,63,500/- assessed by the Assessing Officer

5) The learned CIT (A) erred in confirming the addition of Rs.46,60,325/- received as gift from Smt. Subha Ahuja wife of the appellant to the children.

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

5. Ground of appeal 1 and 6 being general in nature are dismissed.

6. In ground of appeal No.2, the assessee has challenged the order of the learned CIT (A) in confirming the addition made

by the Assessing Officer towards agricultural income of Rs.1,08,410/-, treating the same as income from other sources.

6.1. So far as the treatment of agricultural income of Rs.1,08,410/- as income from other sources is concerned, the facts in brief are that the Assessing Officer disbelieved the agricultural income declared by the assessee on the ground that the assessee has not booked any income for agricultural activities. The receipts come 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.1,08,410/- 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.

7. 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”.*

8. Respectfully following the order of the Tribunal in assessee’s own case for the preceding 3 A.Ys, we are of the considered opinion that an amount of Rs.45,000/- 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.45,000/- as agricultural income and the balance amount is to be treated as “income from other sources”. Ground of appeal No.2 by the assessee is accordingly partly allowed.

9. So far as the ground of appeal No.3 is concerned, the same relates to the order of learned CIT(A) in confirming the addition of Rs.1,12,06,602/-.

9.1 Facts of the case in brief are that the Assessing Officer during the course of assessment proceedings noted that the assessee was in possession of land admeasuring Ac 4.94 at Vadlapudi near Gajuwaka, Vishkhapatnam since 19-01-2004. The land was purchased vide document no. 157/2004 for a consideration of Rs. 27,50,000. Out of the above land, Mr. Sunil Kumar Ahuja registered Ac. 1.0 of land in the name of M/s. JAPS Housing & Infrastructure Pvt. Ltd. On 06.04.2004 vide registered document no. 1300 of 2004 for a consideration of Rs.5,56,700/-. The remaining land of Ac. 3.94 is registered in the name of M/s Sarwagna Infratech Pvt. Ltd., on 06.04.2004 Vide registered document no. 1299 of 2004 for a Consideration of Rs. 21,93,398/-.

9.2 He noted that part of the above land admeasuring Ac. 1.0 is sold by M/s. JAPS Housing & Infrastructure Pvt. Ltd. to M/s D.K. Reddy Developers & Hospitalities Pvt. Ltd., on 16.12.2006 for a consideration of Rs.25,00,000/-.

9.3 For the balance land of Ac. 3.94, Shri Sunil Kumar Ahuja stated that he had agreed to transfer his entire shareholding in M/s Sarwagna Infratech Pvt. Ltd., to M/s D.K. Reddy Developers & Hospitalities Pvt. Ltd., for a sum of Rs. 1,34,00,000. It was claimed that out of the total amount, a sum of Rs. 1,21,00,000 has been received as advance. When asked to explain the basis for the valuation of the shares, the assessee stated that the shares in M/s. Sarwagna Infratech Pvt. Ltd., are

valued on the basis of the market value of land of 3.94 acres held by the company. However, he stated that there is no written agreement for the said sale of shares in M/s. Sarwagna Infratech Pvt. Ltd. Also, the assessee stated that there is no timeframe for completion of the said receipt of balance amount of Rs.13,00,000/- and completion of the said transfer of shares.

9.4 A statement of Shri D. Koti Reddy, Managing Director of M/s. D.K. Reddy Developers & Hospitalities Pvt. Ltd., was recorded wherein he also confirmed that there is no written agreement for the purchase of above shares with Shri Sunil Kumar Ahuja. Shri D. Koti Reddy also confirmed that the above land of 3.94 acres is in his possession on behalf of M/s. Sarwagna Infratech Pvt. Ltd., from the date of purchase of 1 acre of land i.e., from 16.12.2006. Shri Sunil Kumar Ahuja was asked to furnish the details of the transaction in the sworn statement recorded under sec. 131 on 27.11.2008 and 01.12.2008. The Assessing Officer reproduced the relevant portions of the above statements as under:

From statement recorded on 27.11.2008:

"Q.No.8 Please furnish the details of valuation of the shares, sale consideration, number of shares sold, basis for valuation of the shares of M/s. Sarwagna Infratech P. Ltd.

Ans. The shares held by me in M/s. Sarwagna Infratech P. Ltd were agreed to be sold at Rs.1,34,00,000/- out of which I have received Rs.1,21,00,000/- and the balance of Rs.13,00,000/- is yet to be received. The valuation of shares held by me was at Rs.1,34,00,000/- and the valuation of shares was done mutually by me and M/s. D.K Reddy Developers & Hospitalities P. Ltd. I have not yet transferred any shares to M/s. D.K Reddy Developers & Hospitalities P. Ltd.

Q.No.9 Please furnish whether any agreement was entered into between you and M/s. D.K Reddy Developers & Hospitalities P. Ltd., for transfer of shares of M/s. Sarwagna Infratech Limited. If so, please furnish the copy of the same.

Shri Sunil Kumar Ahuja
Hyderabad

PAN : ABLPA2822L
Asst. Year 2007-08

Ans. *submit that we have only oral agreement for sale of shares of M/s. Sarwagna Infratech Limited and there is no written agreement.*

From statement recorded on 27.11.2008:

Q.34 *Please go through the following registered agreements of sale cum general power of attorneys and furnish the dates on which you have given possession of the properties to Mr. D.Koti Reddy and M/s. D.K.Reddy Developers & Hospitalities P. Ltd:*

D.K.Reddy Developers & Hospitalities P. Ltd.,	Vadlapudi Ac.1.00	2500000	16.12.2006 5751/2006
M/s. Happy Home Developers P. Ltd.,	-do-	550000	06.04.2004 1300/2004
M/s. Happy Home Developers P. Ltd.,	Vadlapudi Ac.3.94	2193398	06.04.2004 1299/2004
M/s. Happy Home Developers P. Ltd.,	Vadlapudi Ac.4.94	2750000	19.01.2004 157/2004

Ans. *I submit that I have purchased about Ac.4.94 in Vadlapudi and registered in the name of myself. Later, I have transferred the lands into the names of M/s. JAPS Housing & Infrastructure P. Ltd of Ac.1.00 and remaining Ac.3.94 was transferred to M/s. Sarwagna Infratech P. Ltd. Out of the above lands, Ac.1.00 in the name of M/s. JAPS Housing & Infrastructure P. Ltd was sold to M/s. D. Koti Reddy Developers & Hospitalities P. Ltd. Further, I have received advance against sale of shares of the company M/s. Sarwagna Infratech P. Ltd from M/s. D K Reddy Developers & Hospitalities P. Ltd., and Mr. D. Koti Reddy. The lands of Ac.3.94 are in the possession of M/s. Sarwagna Infratech P. Ltd.*

Q.35 *Please furnish the basis for valuation of shares of M/s. Sarwagna Infratech P. Ltd for transfer of your shares to M/s. D. Koti Reddy Developers & Hospitalities P. Ltd.*

Ans. *submit that we have arrived at the valuation of the land of Ac.3.94 in Gajuwaka, Visakhapatnam and on the basis of the land valuation, the shares were also valued.*

Q.36 *Please furnish the market value of Ac.3.94 of land at Gajuwaka as on 31.03.2007 & 31.03.2008.*

Ans. *I am not aware of the market value of the land of Ac.3.94 of land at Gajuwaka as on 31.03.2007 & 31.03.2008.*

Q.37 *Please explain as to why the shares of M/s. Sarwagna Infratech P. Ltd are not transferred even after receiving substantial amount of consideration which are much more than the net worth of M/s. Sarwagna Infratech P. Ltd and the market value of land of Ac.3.94.*

Ans. *As I have to receive the balance payment and I have to complete the formalities of transferring the shares of the company and that is the reason, the shares of the company are not transferred."*

9.5 The payment by M/s. D.K. Reddy Developers & Hospitalities Pvt. Ltd., commenced as early as July, 2006 and the substantial consideration of Rs.91,00,000/- was received by

March, 2007. The details of payments made by Shri D. Koti Reddy as noted by the Assessing Officer are as under:

Date	Amount (Rs)	Paid to
15.02.2006	7,00,000	M/s. Sarwagna Infratech Pvt Ltd
29.4.2006	5,00,000	M/s. Sarwagna Infratech Pvt Ltd
03.7.2006	2,00,000	M/s. Sarwagna Infratech Pvt Ltd
3.7.2006	3,00,000	M/s. Sarwagna Infratech Pvt Ltd
20.7.2006	5,00,000	M/s. Sarwagna Infratech Pvt Ltd
29.7.2006	5,00,000	M/s. Sarwagna Infratech Pvt Ltd
1.9.2006	5,00,000	M/s. Sarwagna Infratech Pvt Ltd
14.10.2006	4,00,000	M/s. Sarwagna Infratech Pvt Ltd
13.11.2006	10,00,000	Mr. Sunil Kumar Ahuja
15.11.2006	5,00,000	M/s. Sarwagna Infratech Pvt Ltd
15.11.2006	5,00,000	M/s. Sarwagna Infratech Pvt Ltd
5.3.2007	10,00,000	M/s. Sarwagna Infratech Pvt Ltd
12.3.2007	25,00,000	M/s. Sarwagna Infratech Pvt Ltd
22.02.2008	20,00,000	Mr. Sunil Kumar Ahuja
28.04.2008	10,00,000	Mr. Sunil Kumar Ahuja
Total	1,21,00,000	

10. He observed that most of the above payments 'were deposited into the bank accounts of M/s. Sarwagna Infratech Pvt. Ltd., and not to Shri Sunil Kumar Ahuja, which indicate that the payments made are not for the shares. By March, 2007, payment of Rs.91,00,000/- was received. He noted that the market value of the above land is Rs.98 lakhs only. According to the registration authorities, the market value of 3.94 acres of land as in March, 2007 is Rs.98,50,000/- @ Rs.25,00,000/- per acre. By March, 2008, payment of Rs.1,11,00,000/- was received which is in excess of the market value of the land. According to the Assessing Officer, the claim that the amounts received are for transfer of shares is only a colorable device to evade tax. There is no timeframe for the alleged transfer of shares to be completed. In essence, M/s. Sarwagna Infratech Pvt, Ltd.. is only a shell company and the consideration received is for the transfer of land only. M/s Sarwagna Infratech Pvt Ltd., is incorporated in April,

2004 and there are no activities in the company till date. Shri Sunil Kumar Ahuja owns 99% of the shareholding of the company. The land of 3.94 acres is registered in the name of the company Ac.3.94 on 06.04.2004. Shri D. Koti Roddy claimed that he had taken possession over from 16.12.2006.

11. The fact that the possession of the said land has been handed over to Shri D. Koti Reddy from one of the seized documents in Annexure A/SKA/Res/PO/1. The said seized documents placed at page 74 of the paper reflects the receipt found and seized from the assessee's residence. The paper reflects the receipt of original documents pertaining to 4.94 acres situated at Gajuwaka, Vadlapudi against the advance towards purchase of shares of the company Sarwagna. In view of the above fact, the Assessing Officer treated the transaction as short-term capital gain and taxed accordingly by computing as under:

Sale of consideration	Rs. 1,34,00,000
Cost of purchase	<u>Rs. 21,93,398</u>
Short term capital gain	Rs. 1,12,06,602

Accordingly, a sum of Rs.1,12,06,602/- was brought to tax as STCG.

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

“With regard to addition of Rs. 1,12,06,602/- made on account of profit of sale of land, the background of the case is as follows:

The appellant had purchased 4.94 acres of land at Vadlapudi Visakhapatnam vide Doc No.157 of 2004 for a sum of Rs.27,50,000/-. Subsequently, out of the above land, a piece of land of Ac 1.0 guntas was registered in the name of M/s JAPS Housing infrastructure Pvt Ltd on 06.04.2004 vide registered Doc No. 1300 of 2004. (The same was sold on 16.12.2006 to M/s DKRDHPL for a sum of Rs. 25,00,000/-). The

balance land of Ac 3.94 was registered in the name of M/s Sarwagna Infratech Pt. Ltd (SIPL) (a company in which the appellant holds 99% shares) on 06.04.2004 vide registered document n0. 1299 of 2004 for a consideration of Rs.2 1,93,398/-.

Subsequently, for the balance land of Ac 3.94, rather than transferring the land in the name of the company, the shareholding of SIPL was transferred to M/s DKRDHPL for a sum of Rs.1,34,00,000/- which was based on the market value of the said land as computed by the appellant. The sum of Rs. 1,21,00,000/- was received as advance between the period 15.02.2000 to 28.04.2008 and Rs.13,00,000/- was outstanding.

Out of the sum of Rs.1,21,00,000/-, a sum of Rs.81,00,000/- was received in the account of M/s SIPL and Rs.40,00,000/- in the account of the appellant. The Assessing Officer noted that the market value of the property as on Rs. 1,11,00,000/- by 31.03.2008. 31.03.2007 was Rs.98,50,000/- whereas it has received a consideration of Rs.1,11,00,000/- by 31.3.2008.

The Assessing Officer noted that the shares were not transferred and in the statement recorded of both D.KOTI Reddy, MD of M/s DKRDHPL being the buyer and the appellant, the seller and both stated that the full amount payment is yet to be done.

It is a fact that the appellant holds the land through the company and there is a seized document which has been recorded by the Assessing Officer in the assessment order which holds that the possession of the property was given. Both the parties have undisputedly accepted that the sum of Rs. 1,21,00,000/- was the part consideration for the transfer of land and the shareholding is yet to be transferred.

To sum up, the appellant has thus agreed to transfer his entire shareholding in SIPL to M/s D.K. Reddy Developers & Hospitalities Pvt. Ltd., for a sum of Rs. 1,34,00,000/-. It is claimed that out of the total amount a sum of Rs. 1,21,00,000/- has been received as advance.

Further, the following points were noted in this regard:

a) The shares were valued on the basis of the market value of land of 3.94 acres held by the company. The Assessing Officer has noted that the amount is much more than the registered value as per SRO,

b) Shri D. Koti Reddy, Managing Director of M/s. D.K. Reddy Developers & Hospitalities Pvt, Ltd confirmed that there is no written agreement for the purchase of above shares and that the above land of 3.94 acres is in his possession on behalf of M/s. Sarwagna Infratech Pvt. Ltd from 16.12.2006, which is in the relevant assessment year under consideration.

c) Most of the above payments towards the said purchase of shares were received by the appellant directly or through the Company, which

indicates part performance and a sum of Rs.91,00,000 / - has already been received till 31.03.2007, till the present assessment year.

In view of the above facts, it is important to note that the capital gains is liable even for transfer of shareholding In the present case, the part performance regarding the consideration of shares has taken place and also the possession of the said land has been given. The relevant section is as under:

In this regard, the relevant provisions of Section 2(47) are reproduced as under:

(47) "transfer", in relation to a capital asset, includes, --

(i) the sale, exchange or relinquishment of the asset ; or

(ii) the extinguishment of any rights therein ; or

(iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment.

(iva) the maturity or redemption of a zero-coupon bond; or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 QJ 1882); or

(Dy any transaction (whether by way of becoming a member of or acquiring shares in a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 1.--For the purposes of sub-clauses (v) and (vi), "immovable property" Shal have the same meaning as in clause (a) of section 269UA.

Explanation 2.--For the removal of doubts, U is hereby clarified that "transfer" includes any interest therein, or creating any interest in any asset in any manner whatsoever, and shall be deemed to have always included disposing of for parting with an asset or directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or registered or incorporated outside India or outside India) or otherwise notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

As per the above provisions of Section 2(47)(vi), it is clearly stated that any' transaction by way of acquiring Shares in a company which has the effect property immovable of transferring, or enabling the enjoyment of, any constitutes transfer. In the instant case, the possession of property was g1vel on 16.12.2006 to the purchaser On account of payments made to the appellant for purchase of shares of SIPL with a part consideration as o 31.03.2007 of Rs.91.00.000 /- and therefore, the same constitutes a

'transfer liable for capital gains as per the Transfer of Property Act for the year under consideration on account of part performance.

During the course of appeal proceedings, the appellant stated that the transaction pertains to only the sale of shares by him and the AO is not justified in mentioning that there is any sale of land.

In the remand report, the Assessing Officer stated that there are no fresh and new evidences furnished during the remand proceedings. However, it is seen from the books of accounts that Rs.1,21,00,000/- is shown as advance for sale of shares of M/s Sarwagna Infratech Pvt. Ltd.

In the instant case, it is to be noted that the M/s SIPL had no business activity since inception in 2004 and based on the observations noted by the Assessing Officer and reproduced above, for which no contradicting documentary evidence has been furnished by the appellant, it is held that the said transaction of transfer of shares was only a colorable device to evade taxes/reduce registration costs on account of transfer of land.

As already discussed above, the transfer of 1 shareholding which is as per Section 2(47)(vi) is liable for capital gains and the Assessing Officer's perspective that it is a colorable device would be on account of not invoking the said definition. In view of the undisputed facts of possession, the confirmation by both the parties that the advance was for the transfer of shares, the same would constitute transfer within the of "Section 53A of Transfer of Property Act and as the holding is less than 3 years the computation made by the Assessing Officer of a Short-Term Capital Gain of Rs.1,12,06,602/- is hereby confirmed and the ground no.3 is dismissed accordingly".

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

14. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in confirming the addition made by the Assessing Officer. He submitted that the assessee is a shareholder of Sarwagna Infratech Pvt Ltd along with other shareholders and was in possession of 500 shares of Rs.1000/- each out of 1000 shares. He submitted that in lieu of the introduction of the share capital, the assessee transferred 3 Acres 94 guntas land situated at Gajuwaka, Vizag in the year 2004-05. The other party Shri D.Koti Reddy wanted to acquire the

land. He submitted that instead of purchasing land, Shri D. Koti Reddy wanted to purchase 500 shares for a total consideration of Rs.1,21,000/- out of which Rs.13,00,000/- remained payable. He submitted that the company neither transferred the land nor the assessee transferred the shares in favour of Shri D.Koti Reddy. Therefore, no capital gain arose to the assessee. He submitted that in the instant case, the Assessing Officer taxed the difference between the agreed price of the transfer of shares and the investment made in the shares as capital gain which has been upheld by the CIT (A). He submitted that since there was no transfer of shares during the year under consideration, therefore, no capital gain arose to the assessee and therefore, no addition is called for. As far as the transfer of shares are concerned, he submitted that the transfer is effective only when they are registered either with the company or with the Registrar, which was not done in the instant case and therefore, no capital gain arose. He submitted that if the Assessing Officer is of the view that the transaction is that of sale of land, the capital gain cannot be taxed in the hands of the assessee as the land was held by the company and even the land was also not transferred. He accordingly submitted that the order of the CIT (A) be set aside and the grounds raised by the assessee should be allowed.

15. The learned DR, on the other hand, strongly relied on the order of the CIT (A).

16. 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 made addition of Rs.1,12,06,602/-

as short-term capital gain on the basis of seized document marked as Annexure A/SKA/Res/PO/1 and seized from the residence of the assessee which reflects the receipt of original document pertaining to 4.94 acres of land situated at Gajuwaka, Vadlapuri against the advances towards purchase of shares of the company Sarwagna Infratech Pvt Ltd. We find in appeal, the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that the assessee had transferred 3.94 acres of agricultural land situated at Gajuwaka, Vizag in the year 2004-05 in lieu of introduction of share capital in the company Sarwagna Infratech Pvt Ltd wherein he holds 500 equity shares of Rs.1000 each out of the total 1000 equity shares. It is his submission that one of the other Directors Shri D. Koti Reddy who wanted to acquire the land instead of purchasing the land, wanted to purchase 500 shares for a total consideration of Rs.1,21,00,000 out of which an amount of Rs.1,08,00,000/-only were paid and Rs.13.00 lakhs remained payable. It is also his submission that the company neither transferred the land nor the assessee transferred the shares in favour of Shri D. Koti Reddy and therefore, no capital gain arose to the assessee. It is also his submission that the transfer of shares are effective only when they are registered either with the company or with the Registrar, which in the instant case has not been done and therefore, no capital gain arose.

17. We find some force in the above arguments of the learned Counsel for the assessee. It is an admitted fact that the land was in the name of the company Sarwagna Infratech Pvt Ltd and the land has not been sold or transferred to Shri D.Koti

Reddy through any registered sale deed. Further, the submission of the learned Counsel for the assessee that the shares are also yet to be transferred although the assessee has received an advance of Rs.1,08,00,000/- out of the agreed consideration of Rs.1,21,00,000/-remained unverified since, the assessee, neither before the Assessing Officer nor before the CIT (A) had stated that the shares are yet to be transferred. Therefore, we are of the considered opinion that the matter requires a re-visit to the file of the Assessing Officer to find out from the office of the Registrar of the Company regarding the date of transfer of shares by the assessee in the name of Shri D. Koti Reddy and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground of appeal No.3 by the assessee is accordingly allowed for statistical purposes.

18. In Ground of appeal No.4, the assessee has challenged the order of the CIT (A) in confirming the addition of Rs.4,69,050/- out of Rs.15,63,500/- made by the Assessing Officer.

18.1 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.15,63,500/- as income from other sources.

19. In appeal, the learned CIT (A) after obtaining a remand report from the Assessing Officer upheld the action of the Assessing Officer to the extent of disallowance u/s 24(b) only.

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

21. 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”.

22. Since in the instant case also, the learned CIT (A) has restricted the disallowance to the extent of deduction claimed at Rs.4,69,050/- u/s 24 out of the total addition of Rs.15,63,500/-, 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.

23. In ground of appeal No.5, the assessee has challenged the order of the learned CIT (A) in confirming the addition of Rs.46,60,325/- received as gift from Smt. Subha Abhuja.

24. The facts, in brief, are that the Assessing Officer during the course of assessment proceedings, noted that there are cash deposits on various dates amounting to Rs.46,60,326/- the details of which are as under:

S.No	Date	Cash received
1	18.04.2006	8,70,000
2	10.05.2006	5,00,000
3	20.06.2006	1,00,000
4	1.7.2006	5,00,000
5	4.7.2006	1,00,000
6	7.7.2006	6,00,000
7	18.7.2006	2,00,000
8	19.7.2006	17,90,325
	Total	46,60,326

25. On being confronted by the Assessing Officer to explain the source of cash deposits, the assessee explained that these cash deposits were out of cash gifts received from Smt. Subha Ahuja on various dates. On being further questioned by the Assessing Officer, the assessee submitted that he separated from his wife in the year 2001 and is not aware of her whereabouts and cannot produce Smt. Subha Ahuja. In view of the above, the Assessing Officer held that when the assessee is not aware of the whereabouts of Smt. Subha Ahuja after separation from 2001 therefore, how he has received cash gifts. He therefore, disbelieved the arguments advanced by the assessee. So far as the explanation of the assessee that the cash

gift is for his son is concerned, the Assessing Officer held that if that was for his son, then why such cash is utilized for his business activities and also routed through his a/c which is not comprehensible. When the assessee produced the copy of the balance sheet of Smt. Subha Ahuja from 1.4.99 to 31.3.2008 which is maintained in his laptop, the Assessing Officer held that such balance sheet is fraudulently prepared to create fictitious evidences. Rejecting the various explanations given by the assessee, the Assessing Officer held that Rs.46,60,325/- received from Smt. Subha Ahuja is bogus and the assessee has introduced his own cash since he failed to discharge the onus cast on him by proving the genuineness and creditworthiness of the transaction.

26. In appeal, the learned CIT (A) upheld the action of the Assessing Officer by observing as under:

“Further, it is seen that all the gifts are in cash and no evidence regarding the generation of the said cash has been submitted. If the amounts were lying as cash in hand with Smt Shubha Ahuja, the same would have been part of wealth tax returns and if such assets which were disclosed in VDIS 1997 were sold by Smt Shubha Ahuja, then the same would result in capital gains and the relevant record of the same would exist. In the present situation, there is no proof submitted by the appellant regarding the production of the donor nor any credible transactions either through bank or asset sales or in the form of Income Tax returns or Wealth Tax Returns indicating the mode and the existence of the said cash which has been said :: have been gifted. The amounts were supposedly received by the appellant as a natural guardian of the son and the same is chargeable even in that case under the clubbing of income provisions especially when the identity of the donor and other requirements are not properly established. These cash receipts and there is no evidence but for certain unregistered gift deeds, no confirmations, no bank transactions, no creditworthiness of the donor has been established by the appellant. And even the deployment of such funds have not been established. Even in the remand proceedings, nothing has been established but for reiterating the same. In view of the above, the addition of Rs.46,60,325/- is hereby confirmed and the ground No.8 is dismissed accordingly”.

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

28. The learned Counsel for the assessee strongly challenged the order of the CIT (A) in sustaining the addition of Rs.46,60,325/-. He submitted that the gift of Rs.46,60,325/- was received from Smt. Subha Ahuja, ex-wife of the assessee in favour of his minor child. He submitted that Smt. Subha Ahuja filed a declaration u/s 68(2) of the Voluntary Disclosure of Income Scheme, 1996 by admitting jewellery, silver, the land purchased and other investments aggregating to Rs.26,20,185/-. She divorced the assessee in the year 2001. After prolonged persuasion, she transferred the properties held by her valued at Rs.46,60,325/- as gift in favour of her son Ashish Kumar Ahuja whose responsibility is taken over by the assessee. He submitted that the son is staying with his father and not with his mother. Further the receipt of the gift is confirmed by a gift document duly signed by Smt. Subha Ahuja. Since the assessee explained the source of the cash deposit, therefore, the addition u/s 68 cannot be made. He accordingly submitted that the order of the learned CIT(A) be set aside and the ground raised by the assessee should be allowed.

29. The learned DR, on the other hand, strongly supported the order of the learned CIT (A).

30. 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 made addition of Rs.46,60,325/- being the cash deposit made in the cash book on various dates, the details of which are already given at Para No.24. The addition was made on the ground that the assessee could not explain satisfactorily the gift of Rs.46,60,325/- received from Smt. Subha Ahuja, his ex-wife, who divorced him in the year 2001 and the assessee is not aware of her whereabouts. Further, the assessee could not explain the creditworthiness of the donor and genuineness of the transaction. We find the learned CIT (A) upheld the addition made by the Assessing Officer the reason of which have already reproduced in the preceding paragraph. We do not find any infirmity in the order of the learned CIT (A) on this issue. First of all, the assessee in his statement recorded u/s 131 on 1.12.2008 had categorically stated that he was separated from his wife in the year 2001 and is not aware of her whereabouts, therefore, he could not produce her for examination. Secondly, there is no Wealth Tax Returns filed by Smt. Subha Ahuja to substantiate such huge amounts lying as cash in hand. No capital gain has been declared by her on account of the sale of jewellery or land which was declared by her under the VDIS scheme. Further, if the contention of the assessee that such gifts were made to her son, then it is not clear as to how and why the assessee introduced such money in his books of account for his business purposes instead of keeping the said money in the a/c of the minor son for whom the gift was meant. The gift deed is also an unregistered one and the entire amounts were received on various dates in cash which raises serious doubts and is against human probabilities. Under these circumstances and in view of the detailed order passed by the learned CIT (A) on this issue, we do not find any infirmity in the same. Accordingly, the order of the

CIT (A) is upheld and the ground raised by the assessee is dismissed.

31. 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:

S.No	Addresses
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3.	PCIT Central Circle, Hyderabad
4.	DR, ITAT Hyderabad Benches
5.	Guard File

By Order