

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.158/Hyd/2022		
Assessment Year: 2010-11		
Shri Sunil Kumar Ahuja Hyderabad PAN:ABLPA2822L	Vs.	Asstt. C. I. T. Central Circle 1(1) Hyderabad
(Appellant)		(Respondent)
ITA No.178/Hyd/2022		
Assessment Year: 2010-11		
Asstt. C. I. T. Central Circle 1(1) Hyderabad	Vs.	Shri Sunil Kumar Ahuja Hyderabad PAN:ABLPA2822L
(Appellant)		(Respondent)
Assessee by:	Shri S.Rama Rao, Advocate	
Revenue by:	Shri Rajendra Kumar CIT(DR)	
Date of hearing:	29/03/2023	
Date of pronouncement:	18/05/2023	

ORDER

Per R.K. Panda, A.M

The above two appeals are cross appeals and are directed against the order dated 28.02.2022 of the learned CIT (A)-11, Hyderabad, relating to A.Y.2010-11. For the sake of convenience, these were heard together and are being disposed of by this common order.

ITA 158/Hyd/2022 – (Assessee)

2. Grounds raised by the assessee are as under:

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

2. The learned CIT (A) erred in confirming the addition made by the Assessing Officer towards agricultural income of Rs.12,09,000/-.

3. Any other ground/grounds that may be urged at the time of hearing”

3. Ground of appeal 1 & 3 being general in nature are dismissed.

4. Ground of appeal No.2 relates to the order of the CIT (A) in confirming the addition of Rs.12,09,000/- by the Assessing Officer treating the agricultural income as income from other sources.

4.1. So far as the treatment of agricultural income of Rs.12,09,000/- 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.12,09,000/- 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.

5. 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 2005-06 respectively. Grounds raised by the assessee are thus partly allowed”.

6. Similarly, the Tribunal following the above order has given the benefit of Rs. 45,000/- as agricultural income for the AY 2007-08. Respectfully following the order of the Tribunal in assessee's own case for the preceding years, we are of the considered opinion that an amount of Rs.60,000/- 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.60,000/- 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.

7. In the result appeal filed by the assessee is partly allowed.

ITA No.178/Hyd/2022 (Revenue)

8. Grounds raised by the Revenue are as under:

“1. The Ld.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.

2. The Ld.CIT(A) erred in deleting the addition of Rs.2,44,14,000/- towards cash receipts recorded in cash book but not reflected in the day book.

3. The Ld.CIT(A) erred in concluding that the income of Rs.2,44, 14,000/- is included in the 'other income' of Rs.3,67,00,000/- admitted by the assessee in his return though the dates of the transactions relating to both are different.

4. *The Ld.CIT(A) erred in deleting the addition of Rs.5,08,48,600/- towards undisclosed investment being amount reflected in the books of account of one Sri OSS Prasad but not reflected in the books of the assessee.*

5. *The Ld.CIT(A) erred in accepting the assessee's explanation that he had paid totally Rs.7,67,55,400/- to Sri OSS Prasad and his concerns which includes Rs.5,08,48,600/- ignoring the fact that as per the details furnished, the amount paid to Sri OSS Prasad was only Rs.92,53,300/-.*

6. *The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary."*

9. Grounds of appeal 1 & 6 being general in nature are dismissed.

10. Ground of appeal No.2 by the Revenue relates to the order of the CIT (A) in deleting the addition of Rs.2,44,14,000/-

11. Facts of the case, in brief, are that the assessee filed original return of income on 30.10.2010 declaring total income of Rs.66,55,790/- and agricultural income of Rs. 12,09,000/-. He filed the revised return of income on 30.03.2012 declaring total income at Rs.4,25,60,720/- and Rs.12,09,000/-. The return was processed u/s. 143(1) and subsequently, the case was selected for scrutiny. Statutory notices u/s. 143(2) and 142(1) were issued to which the AR of the assessee appeared before AO and filed replies.

11.1 During the course of assessment proceedings, the AO noted that the assessee has offered additional income of Rs.3,67,00,000/-, the details of which are as under:

Date	Particular	Vch Type	Vch No	Credit
3.4.2009	Cash in Hand	Cash Receipt	SKA/6/2004-5	13,00,000
20.4.2009	Cash in Hand	Cash Receipt	SKA/28/2004	2,00,000
9.5.2009	Cash in Hand	Cash Receipt	SKA/50/2004	4,50,000
3.6.2009	Cash in Hand	Cash Receipt	SKA/51/2004	12,50,000
9.7.2009	Cash in Hand	Cash Receipt	SKA/92/2004	12,50,000

13.7.2009	Cash in Hand	Cash Receipt	SKA/93/2004	9,50,000
9.8.2009	Cash in Hand	Cash Receipt	SKA/118/2004	8,00,000
1.9.2009	Cash in Hand	Cash Receipt	SKA/144/2004	21,00,000
9.9.2009	Cash in Hand	Cash Receipt	SKA/145/2004	5,00,000
1.10.2009	Cash in Hand	Cash Receipt	SKA/148/2004	22,50,000
1.11.2009	Cash in Hand	Cash Receipt	SKA/172/2004	1,50,000
	Cash in Hand	Cash Receipt	SKA/189/2004	10,00,000
3.11.2009	Cash in Hand	Cash Receipt	SKA/190/2004	6,50,000
	Cash in Hand	Cash Receipt	SKA/192/2004	12,50,000
4.11.2009	Cash in Hand	Cash Receipt	SKA/193/2004	5,00,000
5.11.2009	Cash in Hand	Cash Receipt	SKA/194/2004	4,00,000
1.12.2009	Cash in Hand	Cash Receipt	SKA/215/2004	15,00,000
31.03.2010	Cash in Hand	Cash Receipt	SKA/280/2004	1,97,00,000
	Plots at Manasa Hills	Journal	158	5,00,000
	Total			3,67,00,000

12. He verified from the cash book and daybook that the above transactions are entered in the cash book and day book whenever there was shortage of cash balances as other income. Out of Rs.3,67,00,000/-, Rs.2,01,00,327/- is available as cash as on 31.03.2010 and the balance amount of Rs 1.66 crores invested in various properties, particularly Rs. 50 lakhs for land at Kondakal purchased from M/s. Dhanita Constructions. The land was registered as AGPA on 08.04.2009 for a consideration of Rs.60 lakhs. Rs. 10 lakhs paid by cheque on the day of agreement and Rs.50 lakhs in installments in cash in different dates. Further, on examination of cash book and ledger, he found that some of the cash transactions mentioned as profit on sale of land were not brought into daybook which was not brought to tax.

13. On verification of the cash book and daybook, he noted that number of cash receipt received as per cash book are not reflecting in the day book. The omitted cash transactions noted by the AO are as under:

S.No	Date	Particular	Amount (Rs.)
1	1/4/2009	Profit on sale of land	15,00,000
2	13/07/2009	Profit on sale of land	8,50,000
3	1/9/2009	Rent from Naveen	12,000

4	1/9/2009	Profit on sale of land	2,15,00,000
5	5/11/2009	Cash receipt	5,00,000
6	30/11/2009	Cash receipt	8,000
7	30/11/2009	Cash receipt	35,000
8	30/11/2009	Cash receipt	9,000
		TOTAL	2,44,14,000

13.1 He, therefore, asked the assessee to explain the discrepancies. The assessee explained that there are mistakes in daybook and cashbook originally submitted and filed another cash book. However, the Assessing Officer rejected the explanation of the assessee on the ground that the cash book and day book submitted in original shows that all the transactions are matching each other except the transaction pertaining to profit on sale of land. He scanned the first page of the original cash book and first page of the original daybook in the body of the assessment order and observed on examination of the same that it clearly shows that on 1.4.2009 an amount of Rs.15.00 lakhs was received as per cash book but the same was not reflected in the day book. While preparing the books of account, the assessee omitted to disclose the cash receipts. He therefore, treated the cash receipts appeared in the cash book as above as unaccounted income and added an amount of Rs.2,44,14,000/- to the income of the assessee u/s 68 of the I.T. Act by relying upon the decision of Hon'ble Supreme Court in case of Roshan D Hatti vs. CIT (107 ITR 938).

14. In appeal, the learned CIT (A) deleted the addition by observing as under:

“With regard to addition of Rs.2,44.14.000/-, the Assessing Officer in the remand report stated that the appellant has reconciled his books of accounts and submitted the revised cash book and on account of the discrepancy noticed, the appellant had admitted an amount of Rs.3,67,00,000/- to tax and that as per the appellant, the addition made by the Assessing Officer of Rs.2,44,14,000/- on account of

unaccounted cash receipts is included in the amount of Rs.3,67,00,000/- offered. No adverse observation was made regarding the contention of the appellant.

In view of the remand report submitted by the Assessing Officer wherein no adverse conclusion was drawn regarding the contention of the assessee that the amount of Rs.2,44,14,000/- is included in the additional Income admitted of Rs.3,67,00,000/-, the addition of the amount of Rs 2,44,14.000/- will lead to double taxation and in view of the same, the addition of Rs.2,44,14,400 is hereby deleted and the ground No.5 is allowed accordingly”.

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

16. The learned DR strongly objected to the order of the CIT (A) and submitted that when the Assessing Officer had given reasons while making additions, the learned CIT (A) was not justified in deleting the addition.

17. The learned Counsel for the assessee, on the other hand, while supporting the order of the CIT (A) submitted that the Assessing Officer in the instant case has made addition of Rs.2,44,14,000/- on the ground that there was deficiency in the cash book on various dates and the assessee did not offer profit from sale of land. He submitted that the observation made by the Assessing Officer is based on the original cash book. He submitted that the assessee filed its return of income on 29.9.2010 admitting total income of Rs.66,55,790/-. He filed revised return of income on 30.10.2010 admitting an income of Rs.4,33,55,790/- and the additional income offered represents profit from sale of land of Rs.3,67,00,000/- as per the P&L A/c annexed to the revised return of income filed. He submitted that the amount of additional income offered covers deficiencies found

by the Assessing Officer. He accordingly submitted that in the original cash book, there was deficit cash balance on various dates and some of the profit arising from sale of land were also not recorded in the cash book. After noticing the above discrepancy and observing that the cash found in the cash book is more than the profit on sale of land, the assessee offered the additional income of Rs.3,67,00,000/-. He submitted that the profit on sale of land is Rs.44.00 lakhs and the balance is on a/c of cash deficiency. He submitted that since the assessee did not offer the profit on sale of land, there was deficiency of cash balance. Since after considering the additional income of Rs.3,67,00,000/- which includes profit on sale of land, there is no other discrepancy, therefore, the addition made by the Assessing Officer will amount to double addition. Since the learned CIT (A) after obtaining a remand report from the Assessing Officer deleted the addition, therefore, the same should be upheld and the grounds raised by the Revenue on this issue should be deleted.

18. We have heard the rival arguments made by both the sides, perused the order of the AO and Id.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both the sides. We find the AO in the instant case made addition of Rs. 2,44,14,000/- on the ground that there is deficiency in the cash book on various dates and the assessee did not offer the income from profit on sale of land. Further, number of cash receipts received as per cash book are not reflecting in the day book, the details of which are given at para No.13 of this order. We find the Id.CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph.

19. We find the Id.CIT(A) called for a remand report from the AO who has given the following comments which has been reproduced by him at page 23 of his order and which reads as under:-

“The assessee had offered additional income of Rs.3,67,00,000/-. But, on verification of original cash book and day book, the AO noticed that number of cash receipts received as per cash book were not reflected in the das book. Such omitted cash transactions amounting to Rs.2,44, 14, 000/- were brought to tax by the AO u/s 68 of the I.T. Act as unaccounted income of the assessee.

However, during the remand proceedings, it is observed that the assessee had reconciled his books of accounts and submitted the revised cash book. Accordingly, the discrepancy noticed by the assessee of Rs. 3,67,00,000/- was offered to tax. Further, it is submitted by the assessee that the addition made by the AO of Rs. 2,44,14,000/- on account of unaccounted cash receipts is included in the amount of Rs. 3,67,00,000/- offered. In view of the above facts, the issue may be decided on merits.”

20. A perusal of the remand report nowhere shows that the AO has accepted the contention of the assessee. He has simply reproduced the submissions by the assessee and has requested the Ld.CIT(A) to decide the issue on merit. A perusal of the cash receipt disclosed as additional income of Rs. 3,67,00,000/- are as under:-

Date	Particular	Vch Type	Vch No	Credit
3.4.2009	Cash in Hand	Cash Receipt	SKA/6/2004-5	13,00,000
20.4.2009	Cash in Hand	Cash Receipt	SKA/28/2004	2,00,000
9.5.2009	Cash in Hand	Cash Receipt	SKA/50/2004	4,50,000
3.6.2009	Cash in Hand	Cash Receipt	SKA/51/2004	12,50,000
9.7.2009	Cash in Hand	Cash Receipt	SKA/92/2004	12,50,000
13.7.2009	Cash in Hand	Cash Receipt	SKA/93/2004	9,50,000
9.8.2009	Cash in Hand	Cash Receipt	SKA/118/2004	8,00,000
1.9.2009	Cash in Hand	Cash Receipt	SKA/144/2004	21,00,000
9.9.2009	Cash in Hand	Cash Receipt	SKA/145/2004	5,00,000
1.10.2009	Cash in Hand	Cash Receipt	SKA/148/2004	22,50,000
1.11.2009	Cash in Hand	Cash Receipt	SKA/172/2004	1,50,000
	Cash in Hand	Cash Receipt	SKA/189/2004	10,00,000
3.11.2009	Cash in Hand	Cash Receipt	SKA/190/2004	6,50,000

	Cash in Hand	Cash Receipt	SKA/192/2004	12,50,000
4.11.2009	Cash in Hand	Cash Receipt	SKA/193/2004	5,00,000
5.11.2009	Cash in Hand	Cash Receipt	SKA/194/2004	4,00,000
1.12.2009	Cash in Hand	Cash Receipt	SKA/215/2004	15,00,000
31.03.2010	Cash in Hand	Cash Receipt	SKA/280/2004	1,97,00,000
	Plots at Manasa Hills	Journal	158	5,00,000
	Total			3,67,00,000

21. Similarly, the cash receipts received as per cash book, but not reflected in the day book which is the subject matter of addition are as under:-

S.No	Date	Particular	Amount (Rs.)
1	1/4/2009	Profit on sale of land	15,00,000
2	13/07/2009	Profit on sale of land	8,50,000
3	1/9/2009	Rent from Naveen	12,000
4	1/9/2009	Profit on sale of land	2,15,00,000
5	5/11/2009	Cash receipt	5,00,000
6	30/11/2009	Cash receipt	8,000
7	30/11/2009	Cash receipt	35,000
8	30/11/2009	Cash receipt	9,000
		TOTAL	2,44,14,000

22. A perusal of the omitted cash transactions amounting to Rs. 2,44,14,000/- as reproduced above shows that not a single entry tallies with the entries as per the additional income declared at Rs. 3,67,00,000/-. Further, the amount declared at Rs. 3,67,00,000/- was on account of cash deficit on various dates whereas the amount of Rs. 2,44,14,000/- added by the AO is on account of omitted cash transactions which again consist of Rs. 2,38,50,000/- on account of profit on sale of land, Rs.12,000/- as rent from Shri Naveen and Rs. 5,52,000/- is on account of cash receipt. Therefore, the ld.CIT(A) in our opinion without considering the nature of the entries found in the cash book which were not recorded in the day book, deleted the addition which is not justified. In our opinion, there is a difference between

the introduction of cash as “other income” whenever there is deficiency in cash book and income from “profit on sale of land” not recorded in the books of accounts. Under these circumstances, we are of the considered opinion that the ld.CIT(A) is not justified in deleting the addition of Rs.2,44,14,000/-.

23. We find the Hon’ble Delhi High Court in the case of CIT vs. Jansampark Advertising and Marketing Pvt.Ltd. vide ITA No 525/2014 dated 11.03.2015 has held that in the hierarchy of the authorities, the AO is placed at the bottom rung. The two layers of appeals, before the matter engages the appellate jurisdiction of the Hon’ble Court, are authorities vested with the jurisdiction, power and obligation to reach appropriate findings on facts. It has been held that the obligation to make proper inquiry and reach finding on facts does not end with the AO. This obligation moves upwards to CIT (A), and also ITAT, should it come to their notice that there has been default in such respect on the part of the AO. In such event, it is they who are duty bound to either themselves properly inquire or cause such inquiry to be completed. Going by the above observations and ratio laid down by the Hon’ble Delhi High Court cited (supra) and going by the nature of entries which were on account of profit on sale of land and which were omitted to be recorded in the books of account, the ld.CIT(A) in our opinion is not justified in deleting the addition of Rs. 2,44,14,000/-. In view of the above discussion, the order of the ld.CIT(A) on this issue is reversed and the ground raised by the revenue is allowed.

24. In Ground of appeal 4 & 5, the Revenue is challenging the order of the CIT (A) in deleting addition of Rs.5,08,46,600/- made by the Assessing Officer.

24.1 Facts of the case, in brief, are that the AO during the course of assessment proceedings noted that the assessee is having huge transaction with Shri OSS Prasad MD of M/s. Dhantia Constructions and M/s. Dhantia Constructions (P) Ltd. As per cash book the assessee has paid of Rs.2,15,00,000/- on 1.9.2009. In view of this the AO obtained the ledger copy from Sri OSS Prasad and reproduced the scanned copy in the body of the order which is as under:-

O S S PRASAD
Plot No. 816, Road No. 41
Jubilee Hills, Hyderabad - 33

Sunil Kumar Ahuja
Ledger Account

1-Apr-2009 to 31-Mar-2010

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
-4-2009	By Opening Balance				5,08,48,600.00
To	Closing Balance			5,08,48,600.00	
				5,08,48,600.00	5,08,48,600.00

g.i.
5.09.09
Prasad

25. However, on examination of the above ledger copy of the assessee in the books of Shri OSS Prasad, he noted that the loan transaction is not recorded in assessee's books. Further, neither ledger copy nor the transaction details pertaining to this transaction are available in the books of the assessee. He noted that the assessee has paid Rs.2,15,00,000/- on 01.09.2009 to Shri O.S.S.Prasad by way of cash. This transaction is also not available in the assessee' ledger and also not in books of Shri

O.S.S. Prasad. The AO further noted that Shri O. Siva Shankara Prasad, having balance of Rs.5,08,48,600/- as credit but the same is not reflected in the assessee's books of accounts. He noted that the assessee is in practice of lending money to various people by taking immovable property as securities. Therefore, the assessee has intended not to disclose such income and this can be described as income hidden which has escaped assessment. Therefore, he added the amount of Rs.5,08,48,600/- to income of the assessee U/s.69 of the I.T. Act. While doing so, he relied on the decision of the Hon'ble Supreme Court in the case of L. R. Gupta Vs. Union of India reported in 194 ITR 32.

26. In appeal, the learned CIT (A) deleted the addition by observing as under:

"The Assessing Officer has made a further addition of Rs.5,08,48,600/- being undisclosed investment in the hands of the appellant. The ledger account has been reproduced by the Assessing Officer of the appellant in the books of Mr. OSS Prasad. It shows an opening balance of Rs.5,09,48,600/- and a closing balance of the same amount. The Assessing Officer has accepted that there are no transactions during the year and has thus taxed the opening balance of the ledger recorded by a 3rd party in the hands of the appellant. There are no transactions during the year which implies that this recording of entry of any amount could be an accumulation of transactions of the earlier years and has no relationship with the present year under consideration.

The appellant is not obliged to prove as to how the other person maintains the books of accounts by recording the amounts in the name of the appellant. The Assessing Officer has not questioned the 3rd party as to from where the opening balance was arrived and was pertaining to which year. Commonsense states that there is no transaction during this year and therefore no income can be connoted to the present year under consideration. In the remand report, the appellant stated that an amount of Rs.7,67,55,400/- has been paid to OSS Prasad and its concerns including M/s Dhanitha Constructions which is much higher than the said quantum. The Assessing Officer has not disputed these facts and there is nothing which has been substantiated by the Assessing Officer in regard to the addition made. OSS Prasad has stated that it has a liability to pay but the

Assessing Officer has not examined as to what happened to the liability and when it was repaid. Neither the cause of the liability which can only be in an earlier year has been established and any liability so recorded in the earlier year as a liability to be paid to the assessee can only be taxed in that earlier year when such liability accrued, if the same was resulting in an income or on a/c of payment through unaccounted sources. In view of the same, the addition made by the Assessing Officer is deleted as the opening balance recorded by a 3rd party can in no manner be considered as income of the appellant for this year especially when the assessee has transactions with the party in the earlier years and the Assessing Officer has not commented anything adversely in any regard and the ground no.8 is allowed accordingly.”

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

28. The learned DR strongly supported the order of the Assessing Officer. He submitted that the Assessing Officer while making addition on account of undisclosed investment has given justifiable reasons and therefore, the learned CIT (A) is not justified in deleting the addition.

29. The ld.counsel for the assessee while strongly relied on the order of the ld.CIT(A) on this issue filed the following written submission:-

According to the Assessing Officer, there were between the assessee and Sri OSS Prasad and his other concerns and that the account copy found during the course of search of Sri OSS Prasad shows an amount of Rs.5,08,48,600/-. He accordingly added the same.

The assessee humbly submits that the account copy extracted clearly indicate that there is no transaction during the year. The opening balance was Rs.5,08,48,600/- and the closing balance was Rs.5,08,48,600/-. This shows that there were no transactions during the year under consideration. It is submitted that the transaction between the assessee and Sri O.S.S.Prasad and his concerns dates back to the assessment year 2008-09. The Assessing Officer while completing the assessment for the AY 2008-09 found that there was a total transaction aggregating

Rs.4,75,00,000/- out of which cash amount was Rs. 2,05,50,000/- and the same was added for the AY 2008-09. That is being contested before the Hon'ble ITAT for the AY 2008-09 separately in appeal No. ITA/156/2022.

The opening balance cannot be taken into consideration for the assessment year under consideration.

Further, the appellant has provided funds to Sri O.S.S.Prasad, Smt. O.padmavathi, wife of Sri O.S.S.Prasad and to Dhanitha Constructions, a firm in which Sri O.S.S.Prasad is a partner. The aggregate of the loans given amounted to Rs.7,80,00,700/-.

From the account copies in the books of the assessee, the following amounts were given by the assessee. It is submitted that in fact amounts aggregating to Rs.7,67,55,400/- were paid by the appellant to Sri O.S.S.Prasad and his other concerns, the details of which are as under:-

1. Dhanitha Constructions-Rs.6,75,02,100
2. Sri OSS Prasad- Rs.92,53,300
3. Mrs. Padmavathi-Rs.12,45,300
4. Total amount paid Rs.7,80,00,700

The appellant submits that the total amount paid by the appellant was only Rs.7,80,00,700/- to Sri O.S.S.Prasad or to his concerns. It was also submitted that the amounts were paid towards purchase of properties. Therefore, as far as the appellant is concerned, they were shown as purchase price of the property and Dhanitha Constructions is concerned, they have shown the amount as loan. Therefore, there was discrepancy. It is submitted that the payment was recorded in the books of account of the appellant.

The assessee submits that all the payments made are recorded in the books of account. It is only a change in the nomenclature.

It is submitted that all the transactions with Sri O.S.S.Prasad and his group concerns consists of the following.

1. Advance received from Dhanitha Constructions and paid back (Page No.77 of the paper book)
2. Payments made to Sri O.S.S.Prasad and two others for purchase of agricultural land. The total amount paid was Rs.6,75,02,100/- to Dhanitha Construction, Rs.12,45,300/- to Mrs. Padmavath and Rs.92,53,300/- to Sri O.S.S.Prasad. Besides, it is specifically mentioned that the appellant returned advances received of Rs.67,50,000/- from Sri O.S.S.Prasad and Rs.2,15,00,000/- from Dhanitha Constructions (page 78 of the paper book)

3. *Account copy of Sri O.S.S.Prasad for the periods 2007 to 2008 wherein Rs.67,50,000/- was paid and returned back (page 79 of the paper book)*
4. *Agricultural land at Kollur belonging to Sri O.S.S.Prasad and Dhanitha Constructions purchased by the appellant(page 80 of the paper book)*
5. *These facts clearly indicate that all the transactions with Sri OSS Prasad are recorded in the books of the appellant. The Assessing Officer ought to have verified each individual transaction and seen that all the amounts were recorded by the appellant. He did not verify the facts in spite of the fact that the appellant provided copies and the details of the transactions.*

30. We have heard the rival arguments made by both the sides, perused the orders of the AO and Id.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both the sides. We find the AO in the instant case made addition of Rs. 5,08,48,600/- on the ground that the ledger copy obtained from Shri O.S.S.Prasad shows an amount of Rs. 5,08,48,600/- as received from assessee and the assessee has not recorded this loan transaction in his books of account. It is also the case of the AO that neither the ledger copy nor the transaction details pertaining to the transactions are available in the books of the assessee. Further, the assessee has paid an amount of Rs. 2,15,00,000/- on 01.09.2009 to Shri O.S.S.Prasad by way of cash which is also not recorded in the books of accounts maintained either by the assessee or Shri O.S.S.Prasad. In view of the above, the AO made addition of Rs. 5,08,48,600/- to the total income of the assessee. We find the Id.CIT(A) deleted the addition on the ground that there is no transactions during the year and the AO is not justified in taxing the opening balance as per the ledger account recorded by a third party. It is also observation of the Id.CIT(A) that the assessee is not obliged to prove as to how the other person maintains the books of accounts by recording the amounts in the name of the assessee. The reasoning

given by the ld.CIT(A) has already been reproduced in the preceding paragraph.

31. We find the order of the ld.CIT(A) does not address the non recording of the cash payments by the assessee to Shri O.S.S.Prasad on 01.09.2009 at Rs. 2,15,00,000/-. Although, the AO had found that assessee has paid Rs. 2,15,00,000/- on 01.09.2009 to Shri O.S.S.Prasad by way of cash and the transaction is not recorded in the books of accounts of the assessee or the other person, however, the ld.CIT(A) has closed his eyes to this vital aspect which is in contravention of the provisions of the I.T.Act, more particularly, provisions of section 269SS & 269ST and deleted the addition of Rs. 5,08,48,600/- without giving his opinion on the amount of the Rs. 2,15,00,000/- paid in cash on 01.09.2009. A perusal of the submission filed by the ld.counsel for the assessee before the ld.CIT(A) shows that they have paid an amount of Rs. 7,67,55,400/- on various dates towards purchase of various properties either from Shri O.S.S.Prasad or from the company in which he is interested. Although, the amounts paid to various concerns were given, however no date of payment or manner of the same was given by the assessee either before the ld.CIT(A) or even before us. Under these circumstances, the order of the ld.CIT(A) in our opinion is not based on proper appreciation of facts. We, therefore deem it proper to restore the issue to the file of the AO with a direction to adjudicate the issue afresh. Needless to say, the AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the revenue are accordingly allowed for statistical purposes.

32. In the result, the appeal filed by the assessee is partly allowed and the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 18th May, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
--	--

Hyderabad, dated 18th May, 2023.
Vinodan & Thirumalesh /sps

Copy to:

S.No	Addresses
1	Shri Sunil Kumar Ahuja, House No.6-3-596/72, 2 nd Floor, Naveen nagar, Erramanzil Colony, Hyderabad 500082
2	ACIT Central Circle 1(1) Aayakar Bhavan, Basheerbagh, Hyderabad 500029
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order