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

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

| Appeal in ITA No | Assessee | Revenue | A.Y |
|---|---|---|---|
| 1704/Hyd/2018 | Shri Srinivas Uppu, Secunderabad PAN:AADPU6152G | Dy. CIT, Central Circle 1(2) Hyderabad | 2009-10 |
| 1705/Hyd/2018 | - Do - | -do- | 2010-11 |
| 1706/Hyd/2018 | Shri P. Amruth Prasad, Hyderabad PAN:ACUPP3686K | -do- | 2009-10 |
| 1707/Hyd/2018 | -do- | -do- | 2010-11 |
| 1894/Hyd/2018 | Dy. CIT, Central Circle 1(2) Hyderabad | Shri P. Amruth Prasad, Hyderabad PAN:ACUPP3686K | 2010-11 |

| | |
|---|---|
| Assessee by: | Shri K.C. Devdas, CA |
| Revenue by: | Shri Jeevan Lal Lavidiya, CIT(DR) |
| Date of hearing: | 27/04/2023 |
| Date of pronouncement: | 25/05/2023 |

## ORDER

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

ITA No.1704/Hyd/2018 and 1705/Hyd/2018 filed by the assessee are directed against the common order dated 24.05.2018 of the learned CIT(A)-11, Hyderabad, relating to A.Ys 2009-10 & 2010-11 respectively. ITA 1706/Hyd/2018 filed by the assessee is directed against the order dated 24.05.2018 of the learned CIT(A)-11, Hyderabad, relating to A.Y 2009-10. ITA No.1704/Hyd/2018 filed by the assessee and ITA 1894/Hyd/2018 filed by the Revenue are cross appeals and are directed against the order dated 24.05.2018 of the CIT (A)-11

Hyderabad relating to A.Y 2010-11. Since identical grounds have been raised in all these appeals, therefore, for the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

**ITA 1704/Hyd/2018 A.Y (2009-10) (Assessee)**

2. Facts of the case, in brief, are that the assessee is an individual and Managing Partner in Amsri Builders and also a director and partner in several other companies/firms of AMSRI Group. He filed his return of income on 5.3.2010 declaring total income of Rs.7,21,340/-.The return was processed u/s 143(1) on 7.10.2011. Subsequently, a search & seizure operation u/s 132 of the I.T. Act was carried out in the residential premises of the assessee and AMSRI Group and its associated concerns on 27.12.2013. In response to notice u/s 153A, the assessee filed the return on 13.8.2015 declaring total income of Rs.7,21,340/-. Statutory notices u/s 143(2) & 142(1) were issued and served on the assessee to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

3. During the course of search action, certain loose sheets have been found and seized from the residences of Shri P.Amruth Prasad, Shri U.Srinivas and registered office premises of M/s.Amsri Builders which contained unsecured loans obtained in cash/cheque and interest payments not routed through any books of accounts were found. In this connection, it was stated that the material detailed was related to the partners of the firm: Sri P, Amruth Prasad and Sri Uppu Srinivas. It was further stated that they have brought in some unsecured loans in their individual capacity to meet the business exigency. Further, they

have withdrawn from the bank accounts to pay the customers in the form of compensation over their long pending advances with the companies. Basing on the above sheets relating to their individual status, the assessee group has constructed cash book for the entries found in the loose sheets during the post search proceedings. As per the above, the amounts brought in the form of total cash loans from various parties were worked out to Rs.5,36,38,000/- i.e. Rs 3,06,43,G00/- during the F.Y, 2008-09 and Rs.2,29,95,000/- for F.Y. 2009-10. The Assessing Officer issued show-cause letter dated 02.02.2016 asking the assessee to prove the identity, genuineness and creditworthiness of these loan creditors.

4. However, the assessee, according to the Assessing Officer, could not furnish any confirmation letter from the loan creditors or any other evidence to prove the creditworthiness of the creditors by providing the Bank statement, I. T. Returns, source of income, P&L A/c of the loan creditors, etc., According to him, mere furnishing of the address & PAN Nos. in some of the cases could not discharge the onus cast on the assessee. The Assessing Officer observed from the loose sheets identified in the seized material that it contain certain entries representing borrowals of cash loan by Partners Shri Uppu Srinivas and Shri P. Amruta Prasad. He worked out the total cash loan pertaining to the A.Y 2009-10 at Rs.3,06,43,000/-. In absence of any satisfactory explanation, the Assessing Officer treated 50% of the said cash loans amounting to Rs.1,53,21,500/- in the hands of the assessee by invoking the provisions of section 68 of the I.T. Act. He accordingly computed the total income of the assessee for the impugned A.Y at Rs.1,60,42,840/- as against the returned income of Rs.7,21,340/-. In view of the above, the Assessing

Officer treated an amount of Rs.1,53,21,500/- as unexplained income. Similarly, the Assessing Officer made addition of Rs.1,14,97,500/- in the hands of the assessee for the A.Y 2010-11. Similar additions were made in the hands of Shri Amruth Prasad for the A.Y 2009-10 amounting to Rs.1,53,21,500/- and Rs.1,14,97,500/- for the A.Y 2010-11.

5. Before the learned CIT (A) the assessee made elaborate arguments. However, the learned CIT (A) was also not satisfied with the arguments advanced by the assessee and sustained the addition on the ground that the assessee failed to prove the identity and creditworthiness of the loan creditors and the genuineness of the transaction as required u/s 68 of the Act.

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

1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.
2. The Hon'ble CIT(A) ought to have observed that the assessing officer without appreciating the relevant facts properly and judiciously arrived at certain abrupt conclusions and basing on the same made the addition and therefore ought to have deleted the addition.
3. The Hon'ble CIT(A) ought to have observed that basing on certain sumrizations the assessing officer arrived at the conclusion that the amount of Rs.1,53,21,500/- constitute unexplained cash credits and therefore the Hon'ble CIT(A) ought to have deleted the addition.
4. The Hon'ble CIT(A) ought to have observed that the assessing officer made the addition of 50% of total alleged cash credits of Rs.3,06,43,000/- without any basis and therefore ought to have deleted the addition.
5. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in dividing the total of cash credits between two partners on estimation basis at 50% each and such estimated addition u/s.68 cannot be upheld and therefore ought to have deleted the addition.
6. The Hon'ble CIT(A) ought to have observed that the details pertaining to those credits were identified from seized material and therefore they never can be treated as bogus.
7. Any other ground will be raised at the time of hearing.

7. The learned Counsel for the assessee at the outset filed the following additional evidences and requested the Bench to admit the same under Rule 29 of the I.T. Rules:

***I Advances taken against properties of Rs. 2,77,48,500/-***

| S. No. | Name of the Party | Advance Amount | Property Particulars | Securitization Details | Description of Transaction | S. No | Supporting Documents submitted to AO |
|---|---|---|---|---|---|---|---|
| 1 | Pola Srinivas, Kanukurthi Yadaiah, K Venkat Reddy & Others | 1,41,94,500 (Para 5.1 of CIT (A) appeal as per page No.8 & 9) | Commercial space situates at Amsri – Central court owned by the assessee | Registered Agreement of sale cum General power of attorney with possession vide doc No.453/2009 dated 19/02/2009 | 1. Assessee availed secured loan from Pola Srinivas and others.<br>2. Assessee executed registered document infavour of Pola Srinivas and others<br>3. The said advances were repaid and cancelled by vide registered cancellation agreement of sale cum GPA vide doc No.1981/2012 dated 25th August 2012. | 1 | Registered agreement of sale cum GPA with possession vide doc No.453/2009 |
| | | | | | | 2 | Registered Cancellation of agreement of sale cum GPA with possession vide doc No.1981/2012. |
| | | | | | | 3 | Promissory notes infavour of Pola Srinivas. |
| | | | | | | 4 | Ration card of Mr. Pola Srinivas |
| | | | | | | 5 | Ration card of Kanukurthi Yadaiah<br>Driving License of K Venkat Reddy |
| 2 | Katla Laxma Reddy, K Venkateswar Rao & others | 1,33,54,000 (Para 5.1 of CIT (A) appeal as per page No.10,11 & 12) | **Property1** :- Flat at Amsri Central court **Property2:** - Commercial space at Amsri Plaza | ***Property1:-*** Registered Agreement of sale cum General power of attorney vide doc No.2589/2008 dated 25/11/2008 ***Property2:-*** Registered Agreement of sale cum General power of attorney vide doc No.2251/2008 | 1. Assessee availed secured loan from Katla Laxma Reddy and others.<br>2. Assessee executed registered documents infavour of Katla Laxma Reddy and others<br>3. The said advances were repaid.<br>4. However the lender was filed court case against the assessee on different names | 1 | Pan : AGKPK6478J copy of PAN of Mr. Katla Laxma Reddy. |
| | | | | | | 2 | AKEPK1198F copy of PAN of Mr. K Venkateswar Rao. |
| | | | | | | 3 | Registered agreement of sale cum GPA vide doc No.2589/2008 |
| | | | | | | 4 | Registered agreement of sale cum GPA vide doc No.2251/2008. |
| | | | | | | 5 | Promissory notes infavour of Katla Laxma Reddy. |
| | | | | | | 6 | Promissory notes infavour of Katla Jeevan Reddy |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | dated 25/10/2008 | | 7 | Court Judgment copy for the suit filed by K laxma Reddy CC No.22/14 & 23/14 |
| | | | | | | 8 | Court Judgment copy for the suit filed by K Jeevan Reddy CC No.182/2014 &183/14. |
| | | | | | | 9 | Residential Address of Katla Laxma Reddy: Flat No.401, Manjeera heights, Phase-1, Block – A, Chitra layout R R District court, L B Nagar. |
| | | | | | | 10 | Office address of Katla Laxma Reddy: Flat No.208, Rajinigandha Apartments, chaitanyapuri, Dilsukhnagar, R R Dist. |
| *Total* | | *2,77,48,500* | | | | | |

***II. Advance taken with receipt and security of Rs. 2,39,50,000/-***

| S.No | Name of the Party | Adv. Amount | Supporting Documents submitted to AO |
|---|---|---|---|
| 1 | Sravan Kumar (Para 5.1 of CIT (A) appeal as per page No.9 &10) | 40,00,000 | 1. Copy of receipt cum Confirmation from Sravan Kumar . 2. PAN of Mr. Sravan Kumar ABWPV8627M 3.Residential address Mr. Sravan Kumar : R/o.201, venkata sainivas, Road No.1, Margadarshi colony, kothapet, Hyd. |
| 2 | K Swamy (Para 5.1 of CIT (A) appeal as per page No.10) | 46,50,000 | 1. Legal suit filed by Mr. K Swamy before the court of the Spl. Judicial Magistrate of the first class (PROH & excise offences) a Nalgonda. |
| 3 | Sunkam Krishna Prasad | 10,00,000 | 1. Promissory notes worth of Rs.10,00,000/-. 2. Cheques issued infavour of Sunkam Krishna Prasad worth of Rs. 10,00,000/-. |
| 4 | Venkateswara Rao K (Para 5.1 of CIT (A) appeal as per page No.12) | 5,00,000 | PAN of Mr. K Venkateswara Rao: AKEPK1198F |
| 5 | Suryanarayana K (Para 5.1 of CIT (A) appeal as per page No.12) | 25,00,000 | 1. PAN of Mr. K Suryanarayana: AGVPK5448H 2. Residential Addressof Mr K Surya Narayana: Plot No.2, P & T Colony, Kharkhana, secunderabad. |
| 6 | Mr. Podduturi Subbaiah & NRS group (Para 5.1 of CIT (A) appeal as per page No.12) | 1,08,00,000 | Residential Address of Podduturi Subbaiah : R/o. 276/2, Chittuluru vani street, Nandyal, Karnool district. |
| 7 | Dr. Mohan Raj (Para 5.1 of CIT (A) appeal as per page No.13) | 5,00,000 | 1. PAN of Dr Mohan Rai : ABHPV7011N 2. Residential Address of Dr Mohan Raj : # 9-1-104, 2nd floor, Flat No.207 Amsri Plaza, S.D.Road, Sec-bad –500003. |
| **Total** | | **2,39,50,000** | |

***III : Loans taken from close friends and relatives of Rs. 19,39,500/-***

| S.No. | Name of the Party | Amount |
|---|---|---|
| 1 | Chitra P | 1,50,000 |
| 2 | Ganesh R | 1,49,000 |
| 3 | Gayatri | 1,30,000 |
| 4 | Giri P | 1,65,000 |
| 5 | Krishna Seth | 15,000 |
| 6 | Nagaraju | 3,00,000 |
| 7 | Raja Ram CVS | 1,50,000 |
| 8 | Ranga Rao T K | 5,00,000 |
| 9 | Ravender | 1,28,000 |
| 10 | Sai Ram L | 1,24,500 |
| 11 | Sheetal Kumar | 1,28,000 |
| | **Total** | **19,39,500** |

**Grand Total (I +II+III) = 5,36,38,000/-**

8. Referring to the decision of the 3rd Member Bench of the Tribunal in the case of Abhay Kumar Shroff vs Income-Tax Officer reported in 1997 63 ITD 144 (Pat), he submitted that the Tribunal

in the said decision has held that if the documents sought to be admitted even at the 2nd appellate stage are of a nature and qualitatively such that they render assistance to the Tribunal in passing orders or required to be admitted for any 'other substantial cause', it would rather be the duty of the Tribunal to admit them. Accordingly, it was held that if the receipt or admission of additional evidence was vital and essential for the purpose of consideration of the subject-matter of appeal and to arrive at a final and ultimate decision, the Tribunal was amply empowered to admit additional evidence under rule 29 of the Tribunal Rules. He accordingly submitted that since these additional evidences are vital and essential for rendering justice and deciding the appeal, therefore, in the interest of justice, the additional evidences should be admitted. He, however, submitted that he has no objection if the Revenue is given an opportunity to go through the same and decide the issue as per fact and law.

9. The learned DR, on the other hand, strongly opposed the admission of the additional evidences. He submitted that the assessee neither during the assessment proceedings nor before the CIT (A) has filed all the details which he is filing now in the shape of additional evidence. Therefore, the additional evidence should be rejected and the grounds raised by the assessee should be dismissed and the order of the CIT (A) be upheld.

10. 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. It is an admitted fact that during the course of search operation u/s 132 of the Act on 27.12.2013, certain loose sheets were found and

seized which contain certain entries representing borrowals of cash loans by the Partner Shri Uppu Srinivas i.e, the assessee and Shri P. Amrutha Prasad, the other Partner. We find in absence of any satisfactory explanation given by the assessee to prove the identity and creditworthiness of the parties from whom loans have been obtained and the genuineness of the transaction, the AO invoked the provisions of section 68 of the I.T. Act. He worked the total cash loan pertaining to A.Y 2009-10 at Rs.3,00,00,046/- and accordingly made addition of Rs.1,53,21,500/- in the hands of the assessee being 50% of the same. We find the learned CIT (A) upheld the action of the Assessing Officer. It is the submission of the learned Counsel for the assessee that if the additional evidences now being filed are admitted and the matter is restored to the file of the Assessing Officer for his examination and verification, justice will prevail.

11. Before deciding the issue, we have to first see the admissibility of the additional evidences now being filed before the Tribunal for the first time. So far as the admissibility of the same before the Tribunal, an identical issue had come up before the Tribunal (Third Member Bench) in the case of Abhay Kumar Shroff vs Income-Tax Officer. The Patna Bench of the Tribunal (3rd Member) reported in 63 ITD 144 while deciding the issue has observed as under:

> *9. I have considered the matter carefully. At the outset, I would refer to rule 29 of the Appellate Tribunal Rules, 1963 which runs as under :-*
>
> *"The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case*

*without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by, them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced."*

*If one analyses the language of this rule what emerges is that although no right is vested in the parties to an appeal before the Tribunal to produce additional evidence - whether oral or documentary, if the Tribunal required any document to be produced or witnesses to be examined or affidavit to be filed, it may far reasons to be recorded do so. However, it is not as if this power vested in the Tribunal is arbitrary or unbridled. This rule itself prescribes the contingencies under which the exercise of such power is permissible. One such situation is whether the taking of additional evidence 'enables the Tribunal to pass orders' or 'for any other substantial cause. The rule also visualises a situation where income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence but this aspect need not be elaborated as the same is not relevant here. It would, thus, be noticed that where additional evidence enables the Tribunal to pass orders or for any other substantial cause it could require the parties to do so. There is no gain saying that while this power could be exercised by the Appellate Tribunal suo motu the jurisdiction vested in the Tribunal could be got invoked at the instance of one of the parties before it.*

*10. Before proceeding further let us examine the nature of the documents available at pages 2 to 7 which are sought to be admitted by the Tribunal.*

*11. While pages 2 to 5 are copies of correspondence entered between the assessee and the HUF landlord during the relevant period, copies 6 and 7 constitute a letter of almost the same period which emanated from the Asstt. General Manager, Union Bank of India, Bombay-2, containing terms of lease and the advance of loan of Rs. 11.40 lacs.*

*12. If we go through the grounds of appeal taken by the assessee in these two appeals which are similar, the first ground challenges the disallowance of interest paid by the assessees in a sum of Rs. 1,16,250 each to the bank which they claimed was for business purposes while held to be otherwise by the*

*department. Similarly, the other substantial dispute in these appeals is in respect of the treatment of the amount of deposit in a sum of Rs. 7,75,000 given by the Bank to the HUF, the transaction claimed in consideration of commercial expediency to enable the bank to get the premises in question at a much lower rent than the market rent. The plea further taken by the assessees is that the rental income earned by them out of the renting of the premises was quite high even after deducting the interest paid to the bank and as such, there was no justification with the department to negate their claim. On the above facts and circumstances of the case could it be said that the documents in question briefly referred to hereinbefore are not necessary from the Tribunal's view point which under section 254 of the Income-tax Act is called upon to dispose of the appeals before it by passing such orders thereon 'as it thinks fit'. Patently, those documents would enable the Tribunal to pass orders effectively and their absence may not unfold the actual controversy and lead to miscarriage of justice. No doubt that not a whisper has been made by the assessee as to why there was lapse on their part in not bringing this vital piece of evidence before the authorities below, yet this failing or reticence on their part or even ignorance or whatever one may term in cannot be said to produce any devastating effect of the magnitude where the powers vested by rule 29 referred to supra in the Appellate Tribunal could sand set at nought. The gravamen of the charge against the assessee as to the non- production of these vital documents either before the Assessing Officer or before the learned CIT(A) would heave a different effect in law to my mind. It is that the assessee as a matter of right cannot file or filing them before the Tribunal as a matter of course. If the assessee produces some documents at the appropriate time they have to be taken into consideration subject of course to all just exceptions, such as their relevance, etc. If not done at the assessment stage, the admission documents has to be governed by rule 46A of the Income-tax Rules, 1962, if produced for the first time before the first Appellate Authority. Having missed the bus and the matter travelled to the Appellate Tribunal, the admission of documents is to be governed by rule 29 of the Appellate Tribunal Rules, 1963 discussed hereinbefore briefly. What I want to emphasise is that, if the documents sought to be admitted even at the second appellate stage are of a nature and qualitatively such that they render assistance to the*

*Tribunal in passing orders or required to be admitted for any 'other substantial cause', it would rather be the duty of the Tribunal to admit them. Learned Judicial Member has rightly made reference to the Tribunal's decision in Rajmoti Industries' case (supra) wherein on an analysis of various decisions, it was held that is the receipt or admission of additional evidence was vital and essential for the purpose of consideration of the subject-matter of appeal and arrive at a final and ultimate decision, the Tribunal was amply empowered to admit additional evidence under rule 29 referred to supra.*

*13. In this connection, reference may be made much more authoritatively to a decision of the Apex Court in the case of K. Venkataramiah v. A. Seetharama Reddy AIR 1963 SC 1526, wherein their Lordships of the Supreme Court had occasion to interpret and outline the object of rule 27 of the Order 41 of the Civil Procedure Code, 1908. Interestingly, the language of Order 41 rule 27 CPC and rule 29 of the Appellate Tribunal Rules is almost the same inasmuch as with a little different wording rule 27 of Order 41 of the CPC also says that parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the Appellate Court. But, if, inter alia, as provided by clause (b) of clause (1) of rule 27 of Order 41 CPC the 'Appellate Court' requires any document to be produced or any witness to be examined to enable it to 'pronounce judgment' and for any 'other substantial cause', the Appellate Court may allow such evidence or document to be produced. In K. Venkataramiah's case (supra), the Hon'ble Supreme Court held as under :-*

*Under Rule 27(1), the Appellate Court has the power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment', but also for 'any other substantial cause'. There may well be cases where even though the Court finds that it is able to pronounce judgment on the stage of record as it is, and so it cannot strictly say that it requires additional evidence to enable it to pronounce judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence for any other substantial cause under rule 27(1)(b) of the Code.*

*Such requirement of the Court is not likely to arise ordinarily unless some inherent lacuna or defect becomes apparent on an examination of the evidence. It may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement of the Court upon its appreciation of the evidence as it stands.*
*Held on facts that the High Court allowed additional evidence to be admitted as it required such evidence either to enable it to pronounce judgment or for any other substantial cause within the meaning of R. 27(1)(b) of O. 41 of the Code."*

*14. As is evident, the Summit Court has gone to the extent of laying down law as per which in a case even where strictly speaking a Court did not require additional evidence to enable it to pronounce judgment, if it considers that in the interest of justice something which remains obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner, it should be done as it would fall within the realm of allowing additional evidence for any other substantial cause as found in rule 27(1)(b) Order 41 of the Code. Further, such a defect may be pointed out by a part but as held by the Privy Council in a decision in Parsotim Thakur v. Lal Mohar Thakur AIR 1931 PC 143, the requirement must be the requirement of the Court upon its appreciation of evidence as it stands.*

*15. The powers that are vested in the Appellate Tribunal in the matter of admission of additional evidence, therefore, are identical to the power vested in a Appellate Court under the Civil Procedure Code. The two provisions as has been noticed are not only similar but identical and that being so the view taken by the Hon'ble Supreme Court while interpreting the relevant CPC provision applies in law with equal force to the Appellate Tribunal while exercising powers under rule 29 of the Appellate Tribunal Rules, 1963.*

*16. I am, therefore, inclined to agree more with the ld. Judicial Member and answer question No. 1 accordingly."*

12. Since according to the decision of the 3rd Member which carries the weight of a Special Bench decision, if the documents sought to be admitted even at the 2nd appellate stage are of a nature and qualitatively such that they render assistance

to the Tribunal in passing orders or required to be admitted for any 'other substantial cause', it would rather be the duty of the Tribunal to admit them. Accordingly, it was held that the receipt or admission of additional evidence was vital and essential for the purpose of consideration of the subject-matter of appeal and arrive at a final and ultimate decision, the Tribunal was amply empowered to admit additional evidence under rule 29 referred to (supra). Respectfully following the decision of the Tribunal, Third Member Bench cited (Supra), we admit the additional evidences and restore the issue to the file of the Assessing Officer with a direction to decide the issue afresh in the light of the above additional evidences and in accordance with law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

13. In the result, appeal filed by the assessee in ITA No.1704/Hyd/2018 for the A.Y 2009-10 is allowed for statistical purposes.

**ITA 1705/Hyd/2018 (A.Y 2010-11)**

14. Grounds raised by the assessee for the A.Y 2010-11 are as under:

1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.
2. The Hon'ble CIT(A) ought to have observed that the assessing officer without appreciating the relevant facts properly and judiciously arrived at certain abrupt conclusions and basing on the same made the addition and therefore ought to have deleted the addition.
3. The Hon'ble CIT(A) ought to have observed that basing on certain sumrizations the assessing officer arrived at the conclusion that the amount of Rs.1,14,97,500/- constitute unexplained cash credits and therefore the Hon'ble CIT(A) ought to have deleted the addition.
4. The Hon'ble CIT(A) ought to have observed that the assessing officer made the addition of 50% of total alleged cash credits of Rs.2,29,95,000/- without any basis and therefore ought to have deleted the addition.
5. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in dividing the total of cash credits between two partners on estimation basis at 50% each and such estimated addition u/s.68 cannot be upheld and therefore ought to have deleted the addition.
6. The Hon'ble CIT(A) ought to have observed that the details pertaining to those credits were identified from seized material and therefore they never can be treated as bogus.
7. Any other ground will be raised at the time of hearing.

15. After hearing both sides, we find the above grounds are identical to the grounds of appeal in ITA No.1704/Hyd/2018. We have already decided the issue and restored the issue to the file of the Assessing Officer with certain directions. Following similar reasonings, we restore the issue to the file of the Assessing Officer for fresh adjudication. The grounds raised by the assessee are allowed for statistical purposes.

16. In the result, appeal filed by the assessee in ITA No.1705/Hyd/2018 for the A.Y 2010-11 is allowed for statistical purposes.

**ITA 1706/Hyd/2018 – A.Y 2009-10 (Shri P. Amruth Prasad)**

17. Grounds raised by the assessee for the A.Y 2009-10 are as under:

1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.
2. The Hon'ble CIT(A) ought to have observed that the assessing officer without appreciating the relevant facts properly and judiciously arrived at certain abrupt conclusions and basing on the same made the addition and therefore ought to have deleted the addition.
3. The Hon'ble CIT(A) ought to have observed that basing on certain sumrizations the assessing officer arrived at the conclusion that the amount of Rs.1,53,21,500/- constitute unexplained cash credits and therefore the Hon'ble CIT(A) ought to have deleted the addition.
4. The Hon'ble CIT(A) ought to have observed that the assessing officer made the addition of 50% of total alleged cash credits of Rs.3,06,43,000/- without any basis and therefore ought to have deleted the addition.
5. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in dividing the total of cash credits between two partners on estimation basis at 50% each and such estimated addition u/s.68 cannot be upheld and therefore ought to have deleted the addition.
6. The Hon'ble CIT(A) ought to have observed that the details pertaining to those credits were identified from seized material and therefore they never can be treated as bogus.
7. Any other ground will be raised at the time of hearing.

18. After hearing both sides, we find the above grounds are identical to the grounds of appeal in ITA No.1704/Hyd/2018. We have already decided the issue and restored the issue to the file of the Assessing Officer with certain directions. Following similar reasonings, we restore the issue to the file of the Assessing Officer for fresh adjudication. The grounds raised by the assessee are allowed for statistical purposes.

19. In the result, appeal filed by the assessee in ITA No.1706/Hyd/2018 for the A.Y 2009-10 is allowed for statistical purposes.

**ITA 1707/Hyd/2018 (A.Y 2010-11) Shri P. Amruth Prasad**

20. Grounds raised by the assessee for the A.Y 2010-11 are as under:

1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.
2. The Hon'ble CIT(A) ought to have observed that the assessing officer without appreciating the relevant facts properly and judiciously arrived at certain abrupt conclusions and basing on the same made the addition and therefore ought to have deleted the addition.
3. The Hon'ble CIT(A) ought to have observed that basing on certain sumrizations the assessing officer arrived at the conclusion that the amount of Rs.1,14,97,500/- constitute unexplained cash credits and therefore the Hon'ble CIT(A) ought to have deleted the addition.
4. The Hon'ble CIT(A) ought to have observed that the assessing officer made the addition of 50% of total alleged cash credits of Rs.2,29,95,000/- without any basis and therefore ought to have deleted the addition.
5. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in dividing the total of cash credits between two partners on estimation basis at 50% each and such estimated addition u/s.68 cannot be upheld and therefore ought to have deleted the addition.
6. The Hon'ble CIT(A) ought to have observed that the details pertaining to those credits were identified from seized material and therefore they never can be treated as bogus.
7. Any other ground will be raised at the time of hearing.

21. After hearing both sides, we find the above grounds are identical to the grounds of appeal in ITA No.1704/Hyd/2018. We have already decided the issue and restored the issue to the file of the Assessing Officer with certain directions. Following similar reasonings, we restore the issue to the file of the Assessing Officer for fresh adjudication. The grounds raised by the assessee are allowed for statistical purposes.

22. In the result, appeal filed by the assessee in ITA No.1707/Hyd/2018 for the A.Y 2010-11 is allowed for statistical purposes.

**ITA 1894/Hyd/2018 – A.Y 2010-11 (Revenue)**

23. Revenue raised the following grounds of appeal for the A.Y 2010-11:

**GROUNDS OF APPEAL**

1. The Ld CIT(A) erred in appreciating that the facts of the present case are different from the case of CIT vs M/s Mahindra & Mahindra Ltd (Civil Appeal No. 6949-6950 of 2004) as quoted by him.

2. The Ld CIT(A) erred in not appreciating the fact that the assessee during the assessment proceedings has denied having got any benefit from waiver of loans whereas the lenders have categorically confirmed during assessment proceedings that they have written off the amount of Rs. 1,62,09,305/- receivable from the assessee in the AY 2010-11.

3. The Ld CIT(A) ought to have appreciated the fact that the AO has established that all the crucial conditions pursuant to the settlement agreement dated 13.01.2010 happened during FY 2009-10 itself and hence the income should be taxed in AY 2010-11 only.

4. The Ld.CIT(A) erred in not appreciating the fact that "forgiveness of debt" is nothing but cessation of trading liability and ought to have confirmed as such.

5. The ld.CIT(A) erred in deleting the addition relating to transfer of shares on the ground that the shares were not transferred during the relevant assessment year 2010-11, ignoring the fact that the evidence is very much available on records confirming that such transfer took place only during the relevant assessment year 2010-11.

6. Any other ground(s) that may be urged at the time of hearing.

**(P. KRISHNA KUMAR)**
Dy.Commissioner of Income tax
Central Circle-1(2), Hyderabad.

23.1 The Revenue has raised the following additional ground:

> *"The Ld.CIT(A) erred in not appreciating the fact that the income should be assessable as business income u/s 28(i) of the Income Tax Act, 1961 as the amount of trade advances were appropriated by the assessee for the work already done by him of arranging 373 acres of land and other works mentioned in the clause 2.3.1 of the Financial Terms, Conditions and Timelines for settlement of agreement dated 13th January 2010."*

24. The learned DR referring to the decision of the Hon'ble Supreme Court in the case of NTPC Ltd vs. CIT reported in 229 ITR 383 submitted that all material facts necessary for adjudication of the issue are available on record and no new facts are required to be investigated. Since the ground raised by the Revenue is purely a legal one and no new facts are required to be investigated and all material facts necessary for

adjudication of the above additional ground are available on record, therefore, the same should be admitted.

24.1 After hearing both sides and considering the fact that the additional ground raised by the Revenue is purely a legal one and no new facts are required to be investigated, therefore, following the decision of the Hon'ble Supreme Court in the case of NTPC Ltd vs. CIT (Supra), the additional ground raised by the Revenue is admitted.

25. Facts of the case, in brief, are that the AO during the course of assessment proceedings noted that a settlement agreement was entered into by Amsri Principals with Smith Group on 13.01.2010. As per para 2.5 of the above settlement agreement dated 13.01.2010, it was agreed for waiver of dues of Sri U. Srinivas, Sri P. Amruth Prasad Goud and their partnership firm M/s. Amsri Builders. He examined the issue of implication of forgiveness of liabilities to the tune of Rs.28.46 crore as per the settlement agreement and observed that amounts to be payable to the farmers through Sri Uppu Srinivas and Sri P Amruth Prasad were not reached the destination. Hence, the advances, which has been paid to both the persons and the flagship firm M/s Amsri Builders so far for various projects, have been converted into loans as per the MOU dated 24-05 2008. Subsequently by the way of settlement agreement dated 13.01.2010, the liabilities quantified together with interest as detailed therein have been forgiven and treated as no longer be due from AMSRI Principals and M/s.Amsri Builders.

26. He observed that during the course of Search and Seizure Operation on 27.12.2013 at the office premises of M/s. Amsri

Builders, 5th floor, Amsri Plaza, SD Road, Secunderabad, document containing summary of settlement agreement was found and the same was seized as page No.s 123 to 126 of Annexure-A/AB/OFF/17. Gist of the agreement with regard to debt forgiveness is mentioned below:

*Debt Forgiveness: In addition to the initial payment and the additional payment, within five working days following the date the aggregation of the land for the project has been completed, Smith will confirm in writing that the following loans have been forgiven and will no longer be due from AMSRI.*

*1. Loan of Rs.15,00,00,000/-, plus interest accrued upto Sep. 9, 2009 of Rs.7,36,12,500/- plus continuing interest as per Loan Agreement dated March, 13, 2006.*
*2. Loan of Rs.9,03,00,000/- as per Loan Agreement dated May 24, 2008*
*3. Loan of Rs.2,12,50,192/- advanced to settle AMSRI withholding tax liability.*
*4. Total debt forgiveness- Rs.33,51, 62,692/-, or approximately $ 70,00,000 at today's rate of exchange ($ 1:Rs.48)*

27. The AO noted that M/s Veer West Realty India Pvt. Limited (previously known as M/s Amsri Spire Constructions Pvt. Limited), during post search proceedings before Investigation Wing vide its letter dated 22-08-2014 furnished the required information. As per the information filed vide Annexure-6 of letter dated 11-04-2014 and Annexure 2 of letter dated 22-08 2014, the cessation of liability has been detailed and confirmed as under:

| *S.No* | *Company* | *Name of the person/ entity to whom advances were made* | *Amount paid* | *Amount utilized* | *Amount due in INR and in crores* |
|---|---|---|---|---|---|
| *1* | *M/s. Spire Advisory Services India Pvt Ltd* | *Patnam Amruth Prasad Goud* | *7,50,00,000* | *5,87,90,695* | *1,62,09,305* |

| | | | | | |
|---|---|---|---|---|---|
| | *(previously known as M/s. Amsri Spire Reality Pvt Ltd* | | | | |
| *2* | *-do-* | *Amsri Builders* | *9,00,00,000* | *3,00,000* | *8,97,00,000* |
| *3* | *M/s. Veer West Realty India Pvt Ltd previously known as Amsri Spire Constructions (P) Ltd* | *-do-* | *57,96,25,000* | *54,01,80,327* | *3,94,44,673* |
| *4* | *-do-* | *-do-* | *48,53,60,000* | *34,60,33,438* | *13,93,26,562* |
| | *T O T A L* | | *122,99,85,000* | *94,53,04,460* | *28,46,80,540* |

28. From the above, he noted that the assessee Shri P.Amruth Prasad has benefited by Rs.1,62,09,305/- and M/s. Amsri Builders by Rs.26,84,71,235/- on account of cessation of liability by Smith Group in A.Y.2010-11. However, the assessee has not disclosed any such income for this year. He, therefore issued a show-cause letter dated 02.02.2016 asking the assessee to explain as to why the sum of Rs.1,62,09,305/- should not taxed u/s.41(1) of the Act.

29. The assessee made elaborate submission stating that the provisions of section 28(iv) or 41(1) are not applicable to him. He also relied on the decision in the case of CIT VS. Alchemic Pvt Ltd (130 ITR 168).

30. However, the AO was not satisfied with the arguments advanced by the assessee and made addition of Rs. 1,62,09,305/- by observing as under:-

*" All the above-mentioned contentions of the assessee considered carefully, but the same is not acceptable for the following reasons. Though the assessee has agreed that it has benefitted by way of forgiveness of debt by Smith group of companies, but there is dispute over two issues i.e (i) Year of taxation and (ii) Amount of benefit on account of cessation of liability. In fact, it can be seen from the assessee's submissions the assessee contended that total*

*benefit/income consequent upon settlement agreement is Rs.26,75,04,477/- only that too in the hands of the firm i.e M/s.Amsri Builders and no benefit/ income accrues in the hands of the assessee i.e Shri P.Amruth Prasad. It was also contended by the assessee that the amount pertaining to the assessee of Rs.1,62,09,305/- pertains to withholding of tax, but could not furnished any supporting documentary evidence or reconciliation and hence the contention of assessee is rejected. In the absence of any reasonable explanation for the show cause notice, the amount of Rs.1,62,09,305 is treated as benefit accrued to the assessee as result of settlement agreement entered with Smith Group of companies and hence the total taxable income is enhanced by that amount.*

***Year of Taxation :***

*6.8 It can be seen from the above submissions that the assessee contends that though settlement agreement was entered on 13.01.2010, the significant risks and rewards which arise out of this settlement agreement has been exchanged between the parties during the financial year 2010-2011 only. It is also submitted that the two crucial events were completed during the financial year 2010-2011, one is delivery of security land documents of Kondapur on 30th June 2010 in lieu of forgiveness of advances and the other one is all the promised amounts received by the amsri principals by forgoing their rights in accordance with Thus, the settlement agreements during the financial year 2010-2011. assessee contends that the benefit being cessation of liability arises in A.Y.2011-12 only and thus taxable in A.Y.2011-12.*

*6.9 In this connection, it is stated that as per the Settlement Agreement dated 13.01.2010 it is stated that subject to terms of this Settlement, the Companies and AMSRI Spire agree to waive the dues from the AMSRI Principals and M/s.Amsri Builders. In this connection, it is pertinent to mention here that as per clause 2.3.1, the main condition is that the assessee required to handover the physical share certificates, complete and original books and records of the Companies by 15.01.2010 which reads as under:*

*"2.3.1 The purchase consideration shall be paid to the AMSRI principals, by the purchaser, upon receipt of the following () the duly filled up Form 7B (in respect of which adequate stamp duty shall have been paid), (ii) the physical share certificates from the AMSRI principals (ii) the complete and original books and records of the Companies and (iv) this Agreement executed by the AMSRI principals, subject always to the AMSRI principals continued fulfillment and compliance with this agreement, according to the following schedule hereinafter mentioned:*

*(a) On execution of this Agreement and delivery of the above-mentioned documents, to a designated representative of Spire Realty, on a date not later than January 15, 2010, the aggregate purchase consideration of USD 268,000 shall be paid to the AMSRI Principals as hereunder:*

*USD 100,000 to be paid to AMSRI Principals within 5 business days;*
*USD 42,000 on June 30, 2010*
*USD 42,000 on September 30, 2010*
*USD 42,000 on December 31, 2010*
*USD 42,000 on March 31, 2011.*

*(b) The Companies shall cause the Kondapur land documents in the possession of AMSRI Spire to be released to the AMSRI Principals and shall cause to be delivered to the AMSRI Principals vide Kondapur release letter on June 30,2010".*

*6.10 From the above, it can be seen that the Amsri Principals and M/s.Amsri Builders have foregone their right in Smith Group Companies i.e M/s.Amsri Spire Reality Pvt Ltd., M/s.Amsri Spire Constructions Pvt Ltd and M/s.Amsri Smith Realty PVt Ltd by way of handing over of physical share certificates and also books and other records by 15.01.2010. Thus, the assessee and M/s.Amsri Builders have got the benefit in F.Y.2009-10 itself relevant to A.Y.2010-11 as per the terms of Settlement Agreement. Since the settlement agreement was not disputed, it can be safely concluded that terms of the settlement agreement were executed as such. Therefore, the income is chargeable to tax in A.Y.2010-11 itself. This was further strengthened by the fact that M/s.Veer West Realty India Pvt Ltd vide their letter dated 12.08.2014 has categorically confirmed that the amounts receivable from Amsri group being irrecoverable were written off in A.Y.2010-11 by considering the same as a part of project Cost and included in value of work-in-progress and also filed copies of Balance Sheets of M/s.Ansri Spire Constructions Pvt Ltd., M/s.Amsri Smith Realty Pvt Ltd and M/s.Amsri Spire Realty Pvt Ltd.*

*6.11 In the books of M/s Veer West Realty India Pvt Ltd previously known as M/s Amsri Spire Constructions Pvt. Ltd, the existing amounts shown as receivables during the F.Y. 2008-09 to the extent of Rs 11,61,31,237/- which is inclusive of Rs 7,66,86,593/- apportioned from M/s Arnsri Spire Realty (p) Ltd. has been written-off during the F.Y. 2009-10 and taken to Work in Progress. Similarly, in the books of M/s Veer East Realty India Pvt Ltd (previously known as M/s. Amsri Smith Realty Private Limited), an amount of Rs16,85,49,274/- including Rs.2,92,22,712/- apportioned from M/s Amsri Spire Realty (p) Ltd receivable from Amsri Group has been written-off during the F.Y. 2009-10 and taken to WIP. Thus, the total amount written-off and capitalized in WIP works out to Rs 28,46,80,511/-*

*6.12 It is also essential to understand the context in which the settlement agreement was entered into. Initial clauses of the settlement agreement speaks out clearly the background of the settlement agreement. It is mentioned in the introductory clauses of the settlement agreement that " AMSRI principal accept that they are in breach of their obligations under the Joint Venture Agreements and acknowledge that they and AMSRI Builders have defaulted in repayment of outstanding advances given to them for the projects set out in Annexure I". This*

*agreement whole was entered into by Smith group of companies in order to take over the deal of acquisition of land from the hands of Amsri Principals and at the same time, laying down of obligations of Amsri which still have to be performed. The same is forthcoming from clause "I" which reads "in view of the aforesaid defaults and as a Spire consideration for Spire Realty, Smith Realty, the Companies and AMSRI not its initiating ay legal proceeding against the ASMRI Principal and exercising AMSRI rights and remedies available under JVAS and Call Option Agreements, the AMSRI principals have agreed to sell their entire shareholding in the companies to purchaser.*

*6.13 Another clause L" also reads "AMSRI Principals and Amsri Builders are desirous of settling in totality, all matters relating to defaults in repayment of advances and payments towards land acquisitions, breaches committed by them and other issues relating there to, for the consideration and on terms and Conditions contained in the Agreement". It can be said from the above clause that, the settlement agreement entered between, AMSRI Builders & principals, Smith group of companies and AMSRI Spire Constructions Private Limited, AMSRI Smith Realty Pvt Ltd on 13.01.2010 is the substantial agreement which laid down other events like handing over of shares, cessation of liabilities for AMSRI builders, handing over of kondapur documents etc.*

*6.14 The crucial step was to get possession of all the original documents of Amsrt Smith Realty, Amnsri Spire constructions from the Amsri Principals. This happened before January 2010 as clearly laid down in the para 2.3.1 of settlement agreement. The forgiveness of the debt which is another important aspect was also clearly spelt out in the agreement which was entered in FY 2009-10 itself. Hence, the benefit to assessee in the form of debt forgiveness can be said to have occurred in FY 2009-10 itself. Handing over the land documents was just another event laid down in the settlement agreement and does not in any manner form the crux or core of the settlement agreement. In fact, the sequence of events like share transfer, transfer of original documents, transfer of kondapur land documents, debt forgiveness have their origin in the crucial settlement agreement entered on 13/01/2010. Even though assessee has submitted that he has written off the liabilities in his books in FY 2010-11, the liability already ceased to exist in the FY 2009-10 itself by the virtue of the settlement agreement.*

*6.15 Hence, the benefit of debt forgiveness, that was crystallized as per the settlement agreement should be brought to tax in the year in which the agreement 15 was entered into i.e. AY 2010-11.*

*6.16 In the above circumstances and by virtue of the Settlement agreement dated 13-01-2010, M/s Amsri Bulders and Sri P Amruth Prasad have been benefitted to the extent of Rs.26,84,71,235 and Rs.1,62,09,305/- respectively during the Financial year 2009-10 relevant to the A.Y. 2010-11 and is deemed to be the profits and gains of business which otherwise would not be its or his income. Hence, the*

*value of the benefit of Rs 26,84,71,235/- in the hands of M/s Amsri Builders and Rs 1,62,09,305/- is chargeable to income-tax as income of the previous year of 2009-10 relevant to the A.Y 2010-11 in which year the benefit was obtained by the both the assessees. Amount of benefit obtained:*

*6.17 As can be seen from the submissions of the assessee that the total benefit | cessation of liability is Rs.26,75,04,477/- only that too in the hands of the firm and no benefit arises in the hands of the assessee i.e Shri P.Amruth Prasad. However, the contention of the assessee is not acceptable. As already discussed above, M/s Veer West Realty India Pvt. Limited (previously known as M/s Amsri Spire Constructions Pvt. Limited) had categorically confirmed that amount due from Shri P.Amruth Prasad of Rs.1,62,09,305/- in the books of M/s Spire Advisory Services India Pvt Ltd previously known as M/s Amsri Spire Realty Private Limited was written off. As such, Shri P.Amruth Prasad has got the benefit of Rs.1,62,09,305/- being waiver of dues in A.Y 2010-11.*

*6.18 It is also evidenced from the perusal of agreements and MOUs, that in the course of assessment for the earlier years, the funds have been provided by the investing company for procurement of the lands for the purpose of the different projects as per the MOU. The funds/advances has been_made_available to. the Amsri Principals being resident Directors to meet the purchase consideration of the lands and pay directly to the landowners as per the registered or agreed rate. The assessee SPVs through Amsri Principals have made investments in lands. Part of the amount as quantified in the settlement agreement has not reached the land owners. The liability which was arose due to non-payment of agreed amount has been discharged by the SPVs from the available funds and the part of consideration was converted into loan in the hands of the Amsri Principals as per the MOU dated 24-05-2008 relevant to the A.Y 2009-10. The expenditure of part consideration as well as the loan amount was allowed as deduction in the earlier years in the hands of the respective SPVs. When an assessee ceases to be liable to pay something that he was legally bound to pay, then in effect, he gains the amount that he was bound to pay. Therefore, principal amount together with interest of loan written off was nothing but gain/income in the hands of the assessee in A.Y.2010-11. The benefit of deemed income pursuant to waiver accrued on settlement and that income must be recognized in the period during which settlement took place.*

*6.19 In this connection, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of CIT V. T.V. Sundaram Iyengar & Sons Ltd. (1996) 222 ITR 344 (SC) wherein the Hon'ble Supreme Court has laid down that:*

*"If the amount is received in the course of trading transactions, even though it is not taxable in the year of receipt as being of capital character, the amount changes its character when the amount becomes the assessees own money because of limitation or by any other statutory*

*or contractual right. Where the assessee received deposits in the course of trading transactions, the amount of such credit balances which were barred by limitations and which were written back by the assessee to the P&L account were to be assessed as the assessees income, In view of the above decisions of the apex court and also keeping in view the provisions of section 28(iv) of the Act, we find full justification for making the addition of Rs. 6,86,071. Accordingly, the findings of the learned Commissioner (Appeals) are upheld." The Supreme Court while taking note of the facts observed that the deposits received by the assessee were in the course of business and were originally treated as capital receipts. The question, thus, which was posed was that even though the deposits were of capital in nature at the point of time of receipts of the assessee, could their character change by afflux of time. The Supreme Court answered this question in the affirmative holding that under certain circumstances, the deposits, even if were shown as capital receipts, had attained the character of trading receipts.*

*6.20 Regarding the applicability of section 28(iv) Assessee has raised objections. However, his submissions are contradictory to the actions of assessee as he himself has offered the benefit of debt forgiveness as income( though in a different year). Also, assessee has objected that the benefit of debt forgiveness in the present case is not a non-monetary Benefit and hence cannot be taxed under section 28(iv). Reliance was placed on Cit Vs Alchemic Pvt Ltd the objections of the assessee are baseless due to the following reasons.*

*6.21 Clear reading of 28(iv) which says the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession should be taxed as business income. The only conditions to be met are that they should arise from business. In the present case the benefit of debt forgiveness clearly flows from the business carried out by the assessee. Regarding the other contention of the assessee that, the benefit is not non-monetary, reliance is placed on the Bombay High Court decision in case of Protos Engineer Co. P. Ltd. v. CIT [1995] 211 ITR 0919 in which the Honorable High Court has clearly held that unclaimed credit balances which were subsequently recognizes as income does not represent any cash benefit. Relevant paragraph is reproduced for ready reference.*

*"The only aspect that remains to be considered is whether it is a benefit arising to the assessee in the form of money or it is a benefit which is convertible into money. There is no dispute about the fact that none of these amounts were received by the assessee in the year under Consideration. It represented unclaimed old credit balances which were not claimed by the creditors as according to them they were not due to them. The amounts, therefore, represented amounts payable to the assessee for the services rendered by it to the creditors in course of business or reimbursement of expenses incurred by it in the past on their account in course of business which was not appropriated to the profit and loss account in the year of receipt for one reason or the other. The*

*assessee had appropriated these amounts, which were appearing in its account as amounts due to others, to its own account as profit by crediting the same to its profit and loss account. No benefit in cash as such had arisen to the assessee during the year under consideration. The benefit received by the assessee by appropriation of this amount to its profit and loss account is definitely a benefit convertible into money. Section 28(iv) of the Act will squarely apply to such benefit ."*

*In fact the case laws referred by the assessee in support of his claim were duly addressed in the above mentioned case law from Bombay HC. As clearly mentioned in the above case law, the long pending liabilities when written off definitely benefit the assessee, however, such benefit does not result in actual flow of cash. So one cannot disqualify section 28(iv) on that pretext from bringing such benefit to tax by saying it is a monetary benefit. Hence, the benefit of debt forgiveness which the assessee has benefitted from the settlement agreement is rightly taxed u/s 28(iv). 6.22 In view of the above, the sum of Rs.1,62,09,305/- is taxed u/s. 28(iv) of the Act in the hands of Shri P.Amruth Prasad, as confirmed by the other party for A.Y.2010-11 as under:*

| *S.No* | *Company* | *Name of person/entity to whom advances were made* | *Amount due (Rs.)* |
|---|---|---|---|
| *1* | *M/s. Spire Advisory Services India Pvt. Ltd (previously known as M/s. Amsri Spire Realty Private Ltd)* | *Patnam Amruth Prasad Goud* | *1,62,09,305* |
| | | *Total* | *1,62,09,305* |

31. In appeal, the learned CIT (A), following the decision of the Hon'ble Supreme Court in the case of CIT vs. Mahindra & Mahindra Ltd (Civil Appeal No.6949-6950 of 2004) deleted the addition by observing as under:

> *"5.2 I have considered the asst. order and submissions of the assessee. As brought out in the assessment order, it is seen that the transfer of shares by the assessee is part of settlement agreement dt.13.01.2010. The settlement involved various issues including the transfer of shares to settle/conclude pending issues between them. Since the 'transfer of shares' is part of such settlement, the date of transaction to be reckoned is to be completion of settlement of all the issues dealt with in the settlement. Undisputedly, certain transaction related to the*

*settlement occurred beyond 31.03.2010. Some of the payments related to this share transfer are also made in later years, even upto 18.04.2011. As brought out in para-5.10 of the assessment order, as per the settlement deed dt.13.01.2010, the payments related to transfer of shares were to be made by 31.03.2011 and the 'Kondapur land documents' were to be handed over to the assessee by 30.06.2010. This being the case, it can't be said that the 'transfer' was complete by 31.03.2010 and capital gains is chargeable to tax in A.Y-2010-11. In view of the above, it is held that the capital gains on transfer of shares is not assessable for A.Y-2010-11 and accordingly, the addition made is deleted.*

*6. The ground no.4 for the A.Y:2010-11 is against addition of Rs.1,69,09,305/- on account of income accrued on liability foregone in assessee's favour. The issue was discussed and decided in the case of M/s. Amsri Builders, for the A.Y-2010-11 where similar addition was made. It was decided that:*

*Regarding taxability of such amounts, the Hon'ble Supreme Court in the case of CIT vs. Mahindra & Mahindra Ltd (Civil Appeal No.6949-6950 of 2004) deleted the addition by observing as under:*
*"10) The term "loan" generally refers to borrowing something, especially a sum of cash that is to be paid back along with the interest decided mutually by the parties. In other terms, the debtor is under a liability to pay back the principal amount along with the agreed rate of interest within a stipulated time.*

*11) It is a well-settled principle that creditor or his successor may exercise their "Right of Waiver" unilaterally to absolve the debtor from his liability to repay. After such exercise, the debtor is deemed to be absolved from the liability of repayment of loan subject to the conditions of waiver. The waiver may be a partly waiver i.e., waiver of part of the principal or interest repayable, or a complete waiver of both the loan as well as interest amounts. Hence, waiver of loan by the creditor results in the debtor having extra cash in his hand. It is receipt in the hands of the debtor/assessee. The short but cogent issue in the instant case arises whether waiver of loan by the creditor is taxable as a perquisite under Section 28 (iv) of the IT Act or taxable as a remission of liability under Section 41 (1) of the IT Act.*

*12) The first issue is the applicability of Section 28 (iv) of the IT Act in the present case. Before moving further, we deem it apposite to reproduce the relevant provision herein below:-*

*"28. Profits and gains of business or profession.—The following income shall be chargeable to income-tax under the head "Profits and gains of business profession",-- xxx*

*(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.*

*x x x"*

*13) On a plain reading of Section 28 (iv) of the IT Act, prima facie, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of Section 28 (iv) of the IT Act, the benefit which is received has to be in some other form rather than in the shape of money. In the present case, it is a matter of record that the amount of Rs. 57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of Section 28*

*(iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs 57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act. 14) Another important issue which arises is the applicability of the Section 41 (1) of the IT Act. The said provision is re-produced as under:*

*"41. Profits chargeable to tax.- (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-*

*(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission*

*or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or*

*x x x"*

*15) On a perusal of the said provision, it is evident that it is a sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Then, subsequently, during any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax under Section 41 of the IT Act. The objective behind this Section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability. It is undisputed fact that the Respondent had been paying interest at 6 % per annum to the KJC as per the contract but the assessee never claimed deduction for payment of interest under Section 36 (1) (iii) of the IT Act. In the case at hand, learned CIT (A) relied upon Section 41 (1) of the IT Act and held that the Respondent had received amortization benefit. Amortization is an accounting term that refers to the process of allocating the cost of an asset over a period of time, hence, it is nothing else than depreciation. Depreciation is a reduction in the value of an asset over time, in particular, to wear and tear. Therefore, the deduction claimed by the Respondent in previous assessment years was due to the deprecation of the machine and not on the interest paid by it.*

*16) Moreover, the purchase effected from the Kaiser Jeep Corporation is in respect of plant, machinery and tooling equipments which are capital assets of the Respondent. It is important to note that the said purchase amount had not been debited to the trading account or to the profit or loss account in any of the assessment years. Here, we deem it proper to mention that there is difference between 'trading liability' and 'other liability'. Section 41 (1) of the IT Act particularly*

*deals with the remission of trading liability. Whereas in the instant case, waiver of loan amounts to cessation of liability other than trading liability. Hence, we find no force in the argument of the Revenue that the case of the Respondent would fall under Section 41 (1) of the IT Act.*

*17) To sum up, we are not inclined to interfere with the judgment and order passed by the High court in view of the following reasons:*

*(a) Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money.*
*(b) Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the*
*Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act qua the payment of interest in any previous year."*
*From the facts of the case, it is seen that the amount was received by assessee as advance was in terms of 'money' and not as any non-monetary benefit. Further, the same is not held as cessation of trading liability by the Assessing Officer himself also. In view of the factual position as above, applying the ratio as laid down by the Hon'ble Supreme Court (Supra), it is held that the amount of Rs.26,84,71,235/- forgone as 'debt forgiveness' is not taxable in the hands of the assessee. Accordingly, the addition made is not warranted the same is deleted.*
*6.1 As the facts are similar, following above decision, the addition made is deleted".*

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

33. The learned DR strongly challenged the order of the CIT (A) in deleting the addition of Rs.1,62,09,305/- made by the Assessing Officer on account of debt written off. He submitted that the learned CIT (A) has not given any justification while deleting the additions which is contrary to the facts of the present

case. He accordingly submitted that the order of the learned CIT (A) be reversed and that of the Assessing Officer be restored.

34. The learned Counsel for the assessee on the other hand, filed the following written submissions:

*"2. In the case of Amrit Prasad in the appeal for the AY 2010-11 bearing 1705/H/2018 one of the grounds allowed by the CIT(A) was that a sum of Rs. 1.62 Crs which was foregone I debt forgiveness by M/s. Smith Group. The assessee submitted that the amounts received by the partnership firm of M/s. Amsri Builders was only Rs. 26.75 Crs and not 28.37 Crs. [This included Rs. 1.62 Crs being Tax Deducted at Source which was taken credit in AY 2008-09 of M/s. Amsri Builders].*

*3. This sum of Rs. 1.62 Crs is not reflected in the books of Mr. Amrit Prasad as dues from Mis. Smith Group. Please see Page No. 330 of the Paper Book filed in the case of Mr. P. Amrit Prasad and Mr P. Srinivas Uppu filed on 13/12/2018, nowhere is the outstanding amount of Rs. 1.62 Crs as due from Mis. Smith Group is reflected. Therefore, taxing the sum as received from M/s. Smith Group to be taxed U/s. 28(i) I 28(iv) does not arise.*

*4. The appellant in its written submissions which finds a place at pages 74 & 75 of the paper book and particularly at pages 75 to 77 clearly stated that the amount represented the tax deducted at source for the AY 2008-09 of M/s. Amsri Builders (Firm) which was claimed as TDS by the appellant Mis. Amsri Builders in the FY 2007-08 relevant to the AY 2008-09. A copy of the assessment order and the details of TDS is enclosed to this note.*

*5. The said amount of TDS by Mis. Smith Group is evidenced from the seized material found in Annexure A/AB/POIOFF/02 at pages 57 to 77.*

*6. In view of the above, it is submitted that the TDS amount has been wrongly taxed as income of the appellant and therefore this requires verification by the Assessing Officer as the sum of Rs. 1.62 Crs cannot be taxed in the hands of the appellant as it was the TDS amount of Mis. Amsri Builders partnership firm. The Assessing Officer has not examined this issue nor the CIT(A) has given any finding on the written submissions made by the appellant at pages 74 to 80 of the paper book filed by Mr P. Amrit Prasad and Mr. Srinivas Uppu on 13/12/2018.*

*7. Alternatively, the appellant raises a plea to state that the additional ground raised by the Department stating that the amount falls u/s. 28(i) and not U/s. 28(iv) of the Act is bereft of acceptance as it does not*

*emanate from the assessment order. The AO taxed the amount U/s. 28(iv) of the IT Act, 1961.*

*8. In the assessment order the amount was taxed U/s. 28(iv) of the Income Tax Act, 1961 and the appellant contested by virtue of the decision of the*

*Supreme Court in Mahendra & Mahendra reported in 404 ITR 1 that the amount was not taxable.*

*g. Further. the appellant submits without prejudice to its claim that the amount represented TDS of Mis. Amsri Builders and not income of the appellant. If the income receipt falls U/s. 28(i) or U/s. 28(iv) of the Act, the appellant is entitled to choose either of the two sections to state that income is not taxable. Please refer to the Full Bench decision of the Madras High Court in the case of CIT vs. BOSETTO which supports the plea of the appellant.*

*Therefore, this amount is not taxable as:*

*a) It is a TDS amount and not the amount due to the appellant.*

*b) Mis. Smith Group was wrongly treated as an amount due to Amrit Prasad.*

*10. A perusal of the Balance Sheet and its Annexures of Mr. Amrit Prasad (supra) would clearly bring out the fact that the amount was not due to Mr Amrit Prasad as it is not reflected in the loans and advances schedule of Mr. Amrit Prasad as on 31/3/2010. In the balance sheet at page 324 of the aforesaid paper book clearly shows that no amount is due from M/s. Smith Group to the appellant.*

*11. Therefore, this fact requires verification and the same may be verified by the Assessing Officer."*

35. 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 Assessing Officer in the instant case made addition of Rs.1,62,09,305/- on the ground that the assessee has benefited to this extent during the financial year 2009-10 relevant to the A.Y 2010-11 on account of debt forgiveness. We find the learned

CIT (A) without going through the facts of the case and in a very cryptic order deleted the addition made by the Assessing Officer by simply following the decision of the Hon'ble Supreme Court in the case of CIT vs. Mahindra & Mahindra (Supra). A perusal of the written submission filed by the learned Counsel for the assessee shows that the sum of Rs.1.62 crores is TDS amount and not the amount due to the assessee and M/s. Smith Group was wrongly treated as an amount due to Mr.P. Amruth Prasad. It is also his submission that the amount represents TDS of M/s. Amsri Builders (P) Ltd and not the income of the assessee. Since the order of the learned CIT (A) is contrary to the facts brought on record by the Assessing Officer and since it is the case of the learned Counsel for the assessee that the amount of Rs.1.62 crores is a TDS amount which represent TDS of M/s. Amsri Builders and that M/s. Smith Group was wrongly treated as an amount due to Mr. P. Amruth Prasad, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the details and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Grounds raised by the Revenue including the additional grounds are accordingly allowed statistical purposes.

36. In the result, all the four appeals filed by the assessee as well as the only appeal filed by the Revenue are allowed for statistical purposes.

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

| **Sd/-** | **Sd/-** |
|---|---|
| **(LALIET KUMAR)**<br>**JUDICIAL MEMBER** | **(R.K. PANDA)**<br>**ACCOUNTANT MEMBER** |

Hyderabad, dated 25th May, 2023.
***Vinodan/sps***

Copy to:

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| 4 | Pr. CIT, Central, Hyderabad |
| 5 | DR, ITAT Hyderabad Benches |
| 6 | Guard File |

*By Order*