आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE

SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

Sl. No	ITA No	Assessment Year	Appellant / Assessee	Respondent
1	40/Hyd/2023	2012-13	Mahesh Reddy Althuri, Hyderabad. PAN No.ABQPA4251N	ACIT, Central Circle – 2(1), Hyderabad.
2	41/Hyd/2023	2012-13	Radhika Reddy Althuri, Hyderabad. PAN No.ADAPA6159M	-do-
3	42/Hyd/2023	2012-13	Girish Reddy Althuri, Hyderabad. PAN No.AAKPA8613P	-do-
4	43/Hyd/2023	2012-13	Latha Reddy Althuri, Hyderabad. PAN No.ADAPA6160A	-do-

Appellant by : Shri DK. Chhablani.

Respondent by : Shri Jeevan Lal Lavidiya

Date of Hearing : 01.08.2023

Date of Pronouncement : 30.08.2023

O R D E R

PER BENCH :

Before us, at the outset, both parties submitted that the issues raised in all the four appeals are identical except one fact i.e., the assessees in appeals i.e., ITA Nos.42 and 43/Hyd/2023 i.e., Sri Girish Reddy Althuri and Latha Reddy Althuri declared their income under Income Declaration Scheme Rules, 2016. The Assessing Officer on Page

1 of the assessment order in ITA Nos.42 and 43/Hyd/2023, respectively, held as under :

> *"1.0 The assessee is an individual. During the year under consideration, the assessee declared his income under Income Declaration Scheme Rules, 2016 for the Assessment Year 2012-13 on 30.09.2016 declaring total income of Rs.1,12,07,723/- from salary, income from house property and income from other sources besides agricultural income of Rs.18,66,273/- after claiming exemption u/s 10(38) to the tune of Rs.8,94,76,600/-. A search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') was conducted in the case of M/s. AMR India Limited and Others on 02.05.2018. As part of the search operations, the case of the assessee was covered u/s 132 of the Act. Subsequently, the case of the assessee was notified to Central Circle – 2(1), Hyderabad vide order of the Pr.Commissioner of Income Tax – 1, Hyderabad in F.No.5/Pr.CIT-1,Hyd/Juris/2018-19, dtd.18.07.2018."*

> *"1.0 The assessee is an individual. During the year under consideration, the assessee declared his income under Income Declaration Scheme Rules, 2016 for the Assessment Year 2012-13 on 30.09.2016 declaring total income of Rs.12,31,808/- from salary, income from house property and income from other sources besides agricultural income of Rs.4,22,260/- after claiming exemption u/s 10(38) to the tune of Rs.5,95,17,606/-. A search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') was conducted in the case of M/s. AMR India Limited and Others on 02.05.2018. As part of the search operations, the case of the assessee was covered u/s 132 of the Act. Subsequently, the case of the assessee was notified to Central Circle – 2(1), Hyderabad vide order of the Pr.Commissioner of Income Tax – 1, Hyderabad in F.No.5/Pr.CIT-1,Hyd/Juris/2018-19, dtd.18.07.2018."*

2. In view of the aforesaid submissions, we, for the sake of convenience, proceed to dispose of all the captioned appeals by a consolidated order but however, refer to the facts in ITA No.40/Hyd/2023.

3. As all the grounds raised by the assessees in all the appeals are identical, ITA No.40/Hyd/2023 for A.Y. 2012-13 is taken as lead case and the grounds raised therein are reproduced below:

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in upholding the notice issued u/s 153A and the consequent assessment order passed u/s 143(3) r.w.s 153A despite the same being illegal, bad in law, barred by limitation or otherwise void for want of jurisdiction.*
>
> *2. On the facts and circumstances of the case and in law, the CIT (A) has erred in sustaining the notice issued by AO under s.153A and the consequent assessment order passed under s. 143(3) of the Act in the absence of incriminating material found in the course of search and thereby being legally barred from revisiting a concluded assessment.*
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> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in relying on the fourth proviso to section 153A for the purpose of holding that notice u/s 153A for the seventh assessment year and consequent assessment order u/s 143(3)*

r.w.s 153A is not barred by limitation and/or illegal within the meaning of first proviso to section 153A.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in relying on the statements of various persons obtained behind the back of the appellant without affording opportunity of cross examining those persons resulting in gross violation of the principles of natural justice.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the AO's action of making addition u/s 68 of the Income Tax Act 1961 in respect of net long term capital gain of Rs. 5,96,11,906/- especially in the absence of any incriminating evidence/material and/or asset found during the course of search."

4. Brief facts of the case are that a search and seizure operation was carried out in the premises of M/s. AMR India Limited & Others on 02.05.2018. In that search, the assessee was also covered. A notice u/s 153A of the Act was issued on 25.06.2019 and in response thereto, the assessee had filed the return of income on 24.07.2019 admitting the total income of Rs.41,810/-, agricultural income of Rs.14,05,376/- and exempt income of Rs.5,96,11,906/- towards long term capital gains. Thereafter, notice was issued u/s 143(2) of the Act on 26.09.2019. In response thereto, assessee filed a letter offering his explanation and the same was reproduced by the Assessing Officer at Paragraph 1.4 of his order, which is to the following effect :

"1.4 In response to the notice u/s. 153 A, the assessee has filed a letter in this office on 25.06.2019 stating as under:

"With reference to the notice, cited above, this is to humbly submit that a Search operation u/s. 132 of Income Tax Act, 1961 ('hereinafter referred to as "the Act") was conducted in my case on 02.05.2018 and, as such A. Y. 2012¬13 falls beyond the period comprising six assessment years prior to the assessment year relevant to the year of search. Further, ***no incriminating material, constituting tangible evidence for any escapement of income from assessment for A. Y. 2012-13, was found during the said search operation.*** *In view of this fact, the assumption of jurisdiction u/s. 153 A of the Act for such year is legally unsustainable, Hence, you are requested to kindly drop the proceedings initiated u/s. 153 A for A. Y. 2012-13. Without prejudice to the above prayer and accordingly reserving the rig/it to appeal against such assumption of jurisdiction u/s. 153 A, the return in response to the notice referred to above was filed on 04.07.2019 vide Acknowledgement No. 559646680040719."*

4.1. It was the case of the assessee before the Assessing Officer that no incriminating material, constituting tangible evidence for escapement of income was found during the course of search conducted on 02.05.2018 for the assessment year 2012-13, which is beyond the period of 6 years. Therefore, no assessment can be made in the hands of assessee. The Assessing Officer mentioned the above said fact at Paragraph 1.4 (supra) of his order and thereafter, analysed the statement of Sri A. Mahesh Reddy, Managing Director of M/s. AMR India Limited and thereafter he mentioned as under :

> *"In his statement, Sri Mahesh Reddy agreed to withdraw exemption claimed in his name and in the name of his family members to the tune of Rs. 32,76,61,066/-and also promised to offer to tax the same as additional income over and above the declared income for A.Y. 2012-13 and accordingly taxes will be paid."*

4.2 Thereafter, at Paragraphs 1.10 and 1.11 of his order, it was concluded by the Assessing Officer as under :

> *"1.10 The relevant provisions of section 153 A of the Act are reproduced as under:*
>
> *"……*
> *Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless*
>
> *(a) <u>The Assessing Officer has in his possession</u> books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years.*
>
> *1.11 In view of the above, it is clear that the Assessing Officer has in his <u>possession</u> certain information / documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment in this case r the Assessment Year 2012-13. Hence, the objection raised by the assessee is not acceptable. The Assessing Officer has rightly issued notice u/s. 153 A of the Act for the Assessment Year 2012-13 and accordingly completed the assessment."*

4.3. Assessing Officer after examining the above said legal issue had examined the merits of the case from Paragraph 2 onwards and thereafter, had made additions in the hands of the assessee for an amount of Rs.5,96,11,906/-. The basis of the addition in the hands of the assessee made by the Assessing Officer was captured in Para 1.5 and 1.6 which is as under :

> *"1.5 The explanation submitted by the assessee is considered. Search operations u/s. 132 / Survey actions u/s 133A of the Act have been conducted by the Directorate of Investigation, Kolkata on various share brokers during which the share brokers accepted their role in the entire scheme of providing accommodation entry of bogus LTCG/STCL. The share brokers have stated in their statements that they have facilitated various paper/bogus entities to trade in the shares of M/s. Twenty First Century India Limited and other penny scrips for providing accommodation entry of bogus LTCG/.STCL. The relevant information is forwarded by the Directorate of Investigation, Kolkata.*
>
> *1.6 Information received from the Directorate of Kolkata, wherein it is found that the directors / family members / promoters of M/s. AMR Jnia Limited have used penny stock to route their undisclosed income by booking Long Term Capital Gains through a company by name M/s. Twenty First Century (India) Limited managed by Sri Anil Kumar Khemka. Subsequently, a Search and Seizure operation u/s 132 of the Act was conducted in the business premises of M/s. AMR India Limited and residential premises of the directors on 02.05.2018. During the course of search operation, a statement was recorded from Sri A. Mahesh Reddy, Managing Director of M/s. AMR India Limited."*

4.4. Besides that, the Assessing Officer also made strong reliance upon the statement of assessee recorded by the officer of the Revenue during the course of search under section 132(4) of the Act.

4.5. On the basis of the above and on the basis of the other information which was collected by the Assessing Officer during the post search enquiry, the additions were made in the hands of the assessee.

5. Feeling aggrieved by the order of Assessing Officer, assessee carried the matter before ld.CIT(A), wherein the assessee has reiterated the legal grounds that no incriminating material was found during the course of search and therefore, no addition can be made in the hands of the assessee and that the same is contrary to the 4th proviso to Section 153A of the Act. For the above said purposes, he has drawn our attention to Paragraph 1.10 of the order of ld.CIT(A), which is to the following effect :

> *"1.10 The relevant provisions of section 153 A of the Act are reproduced as under:*
>
> *"……*
> *Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless*
>
> *(a) The Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years.*

6. Ld.CIT(A) thereafter examined the issue of the assessee on merits and relying upon the decisions of various High Courts had confirmed the addition made by the Assessing Officer. For the above said purposes, the ld.CIT(A) had relied upon the decisions of Hon'ble High Courts in the case of CIT Vs. NR Portfolio Pvt. Ltd. (Delhi High Court), PCIT Vs. Swati Bajaj (Kolkata High Court) etc.

7. Feeling aggrieved by the order of ld.CIT(A), assessee is in appeal before us.

8. Before us, the ld.AR for the assessee has submitted that no addition can be made in the hands of assessee, in the absence of any incriminating material and for the above said purposes, he relied upon the decision of Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd. (Civil Appeal No.6580 of 2021 dt.24.04.2023) and had also relied upon the decision of the Tribunal in the case of Smt. Prerana Agarwal Vs. DCIT in ITA No.458/Hyd/2021 and others decided on 08.06.2023.

8.1. The ld.AR further submitted that the case of the assessee is covered by the decision of Hon'ble Supreme Court and the decision of co-ordinate Bench of the Tribunal that no addition can be made in the hands of assessee as the requirements of the 4th proviso are not fulfilled and for the above said purposes, he has drawn our attention to the order passed by the Mumbai Bench of the Tribunal in the case of Viraj Profiles Limited wherein the Tribunal after discussing about the 4th proviso to section 153A of the Act, has granted the relief to the assessee. It was submitted that the language used in 4th proviso of Section 153A of the Act is parametria similar to the newly inserted section 149(b) of the Act w.e.f. 01.04.2022 whereby the word 'expenditure' and 'entries in the books of accounts" have been added along with others in the definition of 'Asset'.

Prior to Amendment :

Explanation – For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

Post Amendment :

Section 149(b) :

"If three years, but nor more than 10 years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of –

(i) An asset;
(ii) Expenditure in respect of a transaction or in relation to an event or occasion; or
(iii) An entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more."

8.2. It was submitted by the ld.AR that no incriminating material has been found by the Assessing Officer before invoking 4th proviso to section 153A of the Act and therefore, no addition can be made in the hands of assessee. The other submission made by the ld.AR for the assessee is that in the absence of the incriminating material, the addition made by the Assessing Officer and confirmed by the ld.CIT(A) on the basis of the statement of Sri A. Mahesh Reddy (assessee), no addition can be made in the hands of assessee. The assessee has also not admitted to have traded in penny stock. Infact, he had drawn our attention to Page 42 and reply given by the assessee wherein the assessee has not admitted that the shares purchased and sold by the assessee were fictious and they were artificially increasing the premium of shares. It was further submitted that once the assessee had filed the return of income in response to section 153A notice, the assessee had not admitted any amount during the course of alleged statement, thus the assessee has thereby denied admission of any liability. The assessee had submitted that the statement taken by the Revenue from the assessee during the course of search proceedings cannot be relied

upon for the purpose of making the addition. In this regard, the assessee relied upon the Instruction F.No.286/2/2003-IT (INV.II) dt.10.03.2003 to say that the addition should not be merely based on the confession made by the assessee.

8.3. The ld.AR further drawn our attention to the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. Best Infrastructure (India) Pvt. Ltd and also in the case of Andhra Motars of Andhra Pradesh High Court wherein both the courts have held that the statement recorded u/s 132(4) of the Act does not have any evidentiary value for the purposes of making the addition unless the recorded statement is corroborated by the clinching and cogent evidence. It was submitted that the statement recorded by Investigation Wing is not an incriminating evidence and therefore, no addition can be made based on such statement.

8.4. Ld.AR further submitted that on merit, the assessee has traded through the stock exchange after paying the necessary STT charges and the gain arose to the assessee was disclosed by the assessee in the return of income filed by him in the normal tax provision and therefore, no addition can be made in the hands of the assessee. Further, it was submitted that the report referred by the ld.CIT(A) at page 74 of his order i.e., No.PKB/AO-97/2009 and PKB/AO-117/2009 dtt.23.09.2009 was not against M/s. Twenty First Century Private Limited. It was submitted that the whole finding of the ld.CIT(A) is based on the SEBI Report dt. 23.03.2009 wherein some penalty was imposed on the trader to an extent of Rs.3 lakhs. Further, it was submitted that the decision relied upon by the ld.CIT(A) in the case of PCIT Vs. Swati Bajaj (supra) is not applicable to the facts of the present case, as there was no report of SEBI in the case of assessee, scrip of

M/s. Twenty First Century Limited and further, there was no evidence showing the availability of cash with the assessee, for the purposes of earning the long term capital gain, brought on record either by the Assessing Officer or by the ld.CIT(A) to prove that long term capital gain was the money of the assessee which was coming back in shape of long term capital gain.

9. On the other hand, ld.DR relied upon the orders passed by the lower authorities. He had submitted that the Department was well within its right to make the addition for A.Y. 2012-13 despite the fact that search was carried out in the premises of assessee on 02.05.2018. He had also submitted that the assessee has given statement and it was duly considered by the lower authorities, to make addition based on such admission. It was submitted that the statement given by the assessee during the course of search is binding and therefore, the addition was rightly made in the hands of assessee. He had drawn our attention to Para 1.10 of ld.CIT(A) wherein ld.CIT(A) had dealt with the argument of assessee w.r.t "no incriminating material".

10. We have heard the rival submissions and perused the material available on record. It is an admitted fact that there is no reference to any incriminating material either by the Assessing Officer or by the ld.CIT(A) in their orders. The whole addition was made in the hands of the assessee on the basis of the search conducted by the Director of Investigation, Kolkata, in the premises of the Kolkata based share brokers wherein they have admitted that they were allegedly providing accommodation entries to various persons. However, the fact remains that no incriminating material was found during the course of search in the premises of the assessee.

10.1 In Paragraph 1.4 of the assessment order, assessee has categorically mentioned that no incriminating material constituting the tangible assets were found in the premises of the assessee. In our view, in the absence of any incriminating material, no addition can be made in the hands of the assessee. For the above said purposes, we may fruitfully reply upon the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra). The co-ordinate Bench of the Tribunal has an occasion to examine the applicability of the decision in the case of Abhisar Buildwell Pvt. Ltd. (supra) in the case of Preranaa Agarwal ITA 458/Hyd/2021 wherein the co-ordinate Bench of the Tribunal in Para 8.2 to 9.1 had held as under :

"8. We have gone through the record in the light of the submissions made on either side. Insofar as the facts and figures are concerned, there is not much dispute. The return of income filed by the assessee for the assessment year 2013-14 on 27/07/2013 was processed under section 143(1) of the Act and notice under section 143(2) of the Act was never issued. By the date of search on 15/11/2018, four years elapsed after the last date for issuance of notice under section 143(2) of the Act in this case. It is also not the case of the Revenue that any incriminating material was found during the search that was considered by the learned Assessing Officer, but made the assessment. In these circumstances, the question that arises for consideration is whether any interference could be made with the concluded assessments while assessing the income under section 153A of the Act, when no incriminating material was found.

9. As stated earlier, the return of income filed by the assessee for the assessment year 2013-14 on 27/07/2013 was processed under section 143(1) of the Act by 30/09/2014. Neither notice under section 143(2) of the Act was issued nor any proceedings were pending as on the date of search. Though the divergent views taken on this aspect are brought to our notice by both the counsel, the Hon'ble Supreme Court put a quietus to the issue by the decision in the case of PCIT vs. Abhisar Buildwell P. Ltd. (supra). While in complete agreement with the view taken by the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, (2015) 61 taxmann.com 412 (Delhi) and the Hon'ble Gujarat High Court in the case of PCIT Vs. Saumya Construction (2016) 387 ITR 529 and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material, Hon'ble Apex Court concluded that-

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

9.1. This decision applies to the facts of the case on all fours and respectfully following the same, we hold that since no incriminating material found in the case of assessee for the assessment year 2013-14, the concluded assessment cannot be disturbed and the addition made by the learned Assessing Officer and sustained by the learned CIT(A) cannot be upheld. We accordingly allow the appeal of assessee."

11. In the present case, admittedly, no incriminating material was referred to by the Assessing Officer in the assessment order and the same is also in the case of ld.CIT(A). Therefore, in our view, no addition can be made in the hands of the assessee in view of the law laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra).

12. Further, the question that arises is as to whether the information collected by the Director, Investigation from the Brokers in the form of statement etc. form the basis for making the addition in the hands of the assessee or not ? In our view, the answer to that is also No, as no material has been brought to our notice either in the assessment order or in the order of ld.CIT(A) showing that the said brokers in their respective statements have indicated that they had provided the accommodation entries to the assessee. Ironically, the

Assessing Officer in Para 7 of his order referred to the statement of Shri Kailash Prasad Dhyawala and also of Anil Kumar. However, in none of the said statements, the name of the assessee or the firm of AMR is reflected. Further, even if we assume that some information was found during the course of search at the broker's premises at Kolkata showing that the assessee was beneficial with those accommodation entries, then the said material only can form basis for making the addition in the hands of the assessee under section 153C of the Act and not under section 153A. For the purposes of making addition u/s 153A of the Act, it is essential and *sine qua non* that during the course of search, some incriminating material must have been found from the premises of the assessee which shows the escapement of income. In the present case, no incriminating material was found during the course of search. Therefore, no addition can be made in the hands of the assessee. Furthermore, the 4th provision to section 153A reads as under :

> *'(4) Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—*
>
> *(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;*
>
> *(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and*
>
> *(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.*
>
> *Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.*
>
> *Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.'.*

13. The reading of 4th proviso to Section 153A of the Act, make it abundantly clear that the revenue officials shall not issue notice beyond a period of six years unless (1) Assessing Officer is in possession of books of accounts and (2) there are other documents or evidence which reveal that income reflected in the form of assets was escaped from assessment.

14. In the present case, the Assessing Officer was neither in possession of books of accounts nor other documents or evidence, at the time of reassessment which shows any escapement of amount reflected in the assets head. Admittedly, the term 'Asset' was defined under Explanation 2, which include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account. In the present case, the assessee has purchased 5000 shares on 27.10.2009 and 14.12.2009 of M/s. Astha Tradelink Private Limited for Rs.400/- each. Thereafter, those 5000 shares were converted into 1,90,000/- shares of M/s. Twenty First Century Private Limited and the assessee sold part of the shares in A.Y. 2011-12 relevant to A.Y. 2012-13 and earned capital gains of Rs.5,96,11,906/-. Thus, during the assessment year, the column 'Asset' does not show either the investment in the immovable property being land or building or both, shares and securities, loans and advances. In the absence of any asset being in possession of the assessee, the Assessing Officer shall not have issued the notice to the assessee for making the addition u/s 153A of the Act. In view of the above, the addition made in the hands of the assessee is liable to be deleted.

15. There is one more reason to come to the conclusion that the Assessing Officer should have made more efforts to bring on record some tangible material besides the statement of the assessee namely, A. Mahesh Reddy to show that the assessee has agreed to pay the profit during the assessment year under consideration and would be ready to

forego the claim made by the assessee at assessment stage during the course of original assessment proceedings.

16. In our view, the statement given by the assessee or the director of M/s. Twenty First Century Securities Limited, does not bind the assessee unless it is duly supported by the cogent incriminating material and we find merit in the arguments of the ld.AR who had relied on the decision of Hon'ble High Court of Andhra Pradesh in the case of CIT vs. Shri Ramdas Motor Transport Limited reported in (2015) 55 taxmann.com and also the decisions of hon'ble Delhi High Court in the case of PCIT Vs. Best Infrastructure (India) Pvt. Ltd., (supra), and CIT Vs. Harjeev Aggarwal reported in (2016) 70 taxmann.com 95 (Delhi), wherein at Paragraph 21, it was held as under :

> *"21. A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act. However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 158BB(1) read with Section 158B(b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded."*

16.1. In view of the above, all the legal grounds raised by the assessee are decided in favour of the assessee. We further note that we have not adjudicated the other grounds on merit as the assessee gets the relief on legal grounds. Thus, the appeal of the assessee is allowed.

17. In the result, the appeal of the assessee in ITA No.40/Hyd/2023 is allowed.

18. As the facts and issues are identical in all the appeals, therefore, following our decision given in lead appeal ITA 40/Hyd/2023, the remaining captioned appeals i.e. ITA Nos.41 to 43/Hyd/2023 are also allowed.

19. To sum up, all the appeals of assessee are allowed. A copy of this order may be placed in all the respective files.

Order pronounced in the open court on 30th August, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(LALIET KUMAR)**
Vice President	Judicial Member

Hyderabad, Dt. 30.08.2023.

TYNM/SPS

Copy to :

1.	Shri Mahesh Reddy Althuri, Plot Nos. 308 and 309, Road No.25, Jubilee Hills, Hyderabad – 500033.
2.	Ms. Radhika Reddy Althuri, Plot Nos. 308 and 309, Road No.25, Jubilee Hills, Hyderabad – 500033.
3.	Sri Girish Reddy Althuri, Plot Nos. 308 and 309, Road No.25, Jubilee Hills, Hyderabad – 500033.
4	Ms. Latha Reddy Althuri, Plot Nos. 308 and 309, Road No.25, Jubilee Hills, Hyderabad – 500033.
5	The Assessment. Commissioner of Income Tax, Central Circle 2(1), Hyderabad.
6	PCIT, Central, Hyderabad.
7	DR, ITAT, Hyderabad.
8.	Guard File.

By Order