

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

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

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| ITA No.3/Hyd/2020 | | |
| Assessment Year: 2012-13 | | |
| Dy. C. I.T. Central Circle 2(3) Hyderabad | Vs. | Jaya Balajee Real Media P Ltd, Hyderabad PAN:AAECB3005 F |
| (Appellant) | | (Respondent) |
| C.O No.3/Hyd/2020 (Arising out of ITA No.3/Hyd/2020) | | |
| Assessment Year: 2012-13 | | |
| Jaya Balajee Real Media P Ltd, Hyderabad PAN:AAECB3005 F | Vs. | Dy. C. I.T. Central Circle 2(3) Hyderabad |
| (Appellant) | | (Respondent) |
| Assessee by: | Shri M.V. Prasad, CA | |
| Revenue by: | Shri Jeeval Lal Lavidiya, CIT (DR) | |
| Date of hearing: | 25/07/2023 | |
| Date of pronouncement: | 31/08/2023 | |

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the Revenue is directed against the order dated 2.10.2019 of the learned CIT (A)-12, Hyderabad, relating to A.Y.2012-13. The assessee has also filed a C.O No.3/Hyd/2020 against the appeal filed by the Revenue. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of production of motion pictures. It has its registered office at Chennai and a branch office at Hyderabad. It filed its original return of income for the A.Y 2012-13 on 29.6.2013 declaring total income of Rs.12,58,220/- before the Income Tax Officer Corporate Ward 2(3) Chennai. This return was selected for scrutiny under CASS and the assessment was completed u/s 144 of the Act on 27.03.2015 by making disallowance of Rs.48,63,606/- on account of operational expenses. The case was reopened u/s 147 of the Act on 22.9.2015 to bring the unexplained share application money of Rs.4,26,39,845/- to tax. Since the assessee did not appear before the Assessing Officer during the re-opening proceedings u/s 147 of the I.T. Act, the Assessing Officer passed order on 31.12.2016 by making the additions/disallowances to the extent of Rs.16,48,18,519/- towards unexplained cash credit u/s 68 of the I.T. Act, 1961 and disallowance of expenditure u/s 40(a)(ia) of Rs.12,21,78,674/-.

3. Subsequently, a search and seizure operation u/s 132 of the Act was conducted in the case of the assessee on 31.12.2016. In response to notice u/s 153A, the assessee filed its return of income on 16.8.2017 declaring total income of Rs.4,32,07,624/-. The Assessing Officer issued statutory notices u/s 143(2) and 142(1) of the I.T. Act which were duly served on the assessee. After considering the submissions of the assessee from time to time the Assessing Officer completed the assessment u/s 143(3) r.w.s. 153A of the Act on 31.12.2018 determined the total income at Rs.16,94,40,639/-wherein he made the following additions/disallowances:

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| A) | Disallowance u/s 40(a)(ia) | Rs.7,87,07,668 |
| B) | Addition u/s 68 on account Of share application money | Rs. 4,26,39,844 |
| C) | Disallowance of operational cost | Rs. 48,85,500 |

4. Before the learned CIT (A), the assessee apart from challenging the addition on merit challenged the validity of the additions in absence of any incriminating material found during the course of search. However, the learned CIT (A) upheld the action of the Assessing Officer by making the addition u/s 153A of the I.T. Act. So far as the additions are concerned, the learned CIT (A) on the basis of the submissions made before him called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and rejoinder of the assessee to such remand report, he deleted the addition of Rs.4,79,24,501/- out of the addition of Rs.7,87,07,668/- disallowed by the Assessing Officer u/s 40(a)(ia). Similarly, out of the addition of Rs.4,26,39,844/- made by the Assessing Officer on account of share application money u/s 68, he confirmed the addition of Rs.2,28,00,000/- and deleted the remaining amount. So far as the addition of Rs.48,85,500/-disallowed by the Assessing Officer out of the operational cost is considered, although the assessee has taken a ground before the CIT (A), however, she has not adjudicated the same. Since the assessee has not raised any ground before the Tribunal, hence we are not concerned with the same.

5. Aggrieved with such order of the learned CIT (A) granting part relief to the assessee, the Revenue is in appeal before the Tribunal by raising the following grounds:

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

2. Whether on the facts and circumstances of the case, the Id.CIT(A) is justified in giving relief in respect of disallowance u/s.40(a) (ia) ignoring the second proviso to section 40(a) (ia) of the Act which was inserted by the Finance Act. 2012 w.e.f 01.04.2013 (i.e., applicable for the AY 2013-14 onwards).

3. Whether on the facts and circumstance of the case, the Id.CIT(A) is justified in giving relief ignoring the fact that the assessee company has disallowed an amount of Rs.4,79,25,000/- u/s.40(a) (ia) of the Act voluntarily in its computation of income filed, along with the return of income.

4. Whether on the facts and circumstance of the case, the Id.CIT(A) is justified in giving relief when it is a fact on record that the assessee failed to deduct tax on payments whereupon tax is deductible at source under Chapter XVII-B, thus contravening the provisions of section 40(a) (ia) of the Act as applicable for the AY 2012-13.

5. Whether on the facts and circumstance of the case, the Id.CIT(A) is justified in giving relief in respect of share application money, though the assessee has not furnished the computation of income, profit & loss account and balance sheet proving the creditworthiness of the party.

6. Whether on the facts and circumstance of the case, the Id.CIT(A) is justified in giving relief in respect of the share application money received from Gopuram Films, Selvi Films, Varatharaja Pictures and Surya Movies etc., without examining the authority of the person who has given confirmation to such confirmation on behalf of these entities.

7. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”

6. The assessee has also filed a Cross Objection basically in support of the learned CIT (A) by making the following grounds:

“1. The learned CIT (A)-12 Hyderabad is justified both in law and on facts of the case in allowing relief to the assessee.

2. On the facts and circumstances of the case, the learned CIT (A) is justified in giving relief in respect of the disallowance u/s 40(a)(ia) based on judicial pronouncements submitted during the course of appellate proceedings.

3. On the facts and circumstances of the case, the learned CIT (A) is justified in giving relief in respect of share

application money, based on remand report and other evidences submitted during the course of appellate proceedings.

4. Any other ground of cross-objection that may be raised at the time of hearing”.

7. Grounds 1 and 7 filed by the Revenue being general in nature are dismissed.

8. Grounds of appeal No.2 to 4 by the Revenue relate to the order of the learned CIT (A) in deleting an amount of Rs.4,79,24,000/- out of the addition of Rs.7,87,07,668/- made by the Assessing Officer u/s 40(a)(ia).

9. Facts of the case, in brief, are that during the course of assesment proceedings, the assessee filed a letter explaining the details of expenditure incurred on which the TDS has not been deducted during the financial year 2011-12. It was submitted that out of the total expenditure of Rs.12,66,32,668/- the assessee company has disallowed an amount of Rs.4,79,24,000/- u/s 40(a)(ia) voluntarily in their computation of income filed along with the return of income in response to notice u/s 153A. It was submitted that an amount of Rs.6,51,74,501/- was not taken into consideration for disallowing the expenditure u/s 40(a)(ia) since the said expenditure was offered by the deductees in their return of income for the relevant A.Ys. The assessee company also furnished certificate of the C.A in Form 26A along with copies of the deductees' IT Returns. It was accordingly requested to allow the expenditure on which TDS has been deducted but the same was offered for taxation in the case of the recipients in the relevant A.Ys. The second proviso to section 40(a)(ia) was also brought to the notice of the Assessing Officer.

10. However, the Assessing Officer did not accept the contention of the assessee on the ground that such proviso was inserted by the Finance Act 2012 w.e.f. 1.4.2013 which implies that the said proviso is only applicable from A.Y 2013-14 onwards. Therefore, the entire expenditure of Rs. 12,66,32,668/- accounted for in the books of account of the company has to be disallowed. Since the assessee has already disallowed the above expenditure to the extent of Rs. 4,79,24,000/- u/s 40(a)(ia) voluntarily in their computation of income filed in response to the notice u/s 153A, the Assessing Officer disallowed the balance expenditure of Rs.7,87,07,668/- and added the same to the total income of the assessee.

11. In appeal, the learned CIT (A) on the basis of the submissions and the additional evidences filed before him called for a remand report from the Assessing Officer. After considering the comments of the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) deleted an amount of Rs. 4,79,24,000/- out of the addition of Rs.7,87,07,668/- by observing as under:

“5.7 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR, as well as the comments of the Assessing Officer thereon. It can be seen from the Assessment Order and the Remand Report of the AO reproduced in para 5.1 and 5.5 above that the appellant company produced Form 26A to the extent of Rs. 6,51,74,501/- during assessment proceedings, and to the extent of Rs. 4,06,75,000/- during appellate proceedings, which have duly been verified by the AO, The AO's only objection on the issue is that the proviso to Section 40(a)(ia) was introduced w.e.f 01/04/2013, and therefore, not applicable to the case in hand, being AY 2012-13, and on this ground, the AO has made the disallowance. However, various benches of the Tribunal have held the proviso to be clarificatory in nature and applicable retrospectively. The Hon'ble ITAT, Hyderabad in its recent judgement dated 27.04.2018 in the case of Country Club Hospitality

& Holdings Ltd Vs Addl CIT, Range-1, Hyderabad (ITA No 1504 & 1654 of 2012), held as under :

"12. Having regard to the rival contentions and the material on record, we find that the Hon'ble Delhi High Court in the case of CIT Vs Ansal Land Mark Township (Supra) has considered the applicability of the second proviso to Section 40a(ia) and has held to be declaratory and curative and to have retrospective effect from 01.04.2005. The assessment order before us is the A.Y 2008-09. The relevant provision is reproduced hereunder for ready reference:

"Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section(1) of section 139, (thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:)] [Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the ITA Nos.1504 and 1654 of 2012.

Provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.]"

In view of the above provision and since the assessee has not been treated as an "assessee in default" u/s 201(1) of the Act, we hold that no disallowance u/s 40a(ia) can be made. The assessee's additional ground of appeal No. 10 is accordingly treated as allowed for statistical purposes".

Respectfully following this decision of the jurisdictional ITAT, the assessee cannot be considered as an 'assessee in default to the extent of Rs. 10,58,49,501/-, in respect of which Form 26A have been produced. The addition to this extent is therefore ordered to be deleted. The grounds related to this issue are PARTLY ALLOWED."

12. The learned DR, strongly objected to the order of the learned CIT (A) in deleting the addition of Rs.4,79,24,501/-. He submitted that since the 2nd proviso to section 40(a)(ia) was inserted by the Finance Act 2012 w.e.f. 1.4.2013 i.e. for the A.Y 2013-14 and onwards, therefore, the CIT (A) was not justified in deleting the addition to the extent of Rs.4,79,24,501/-.

13. The learned Counsel for the assessee, on the other hand, referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd in ITA Nos.160 & 161/2015 order dated 26.10.2015 and the decision of the Hon'ble Bombay High Court in the case of Pr.CIT vs. Perfect Circle India (P) Ltd vide ITA No.707 of 2016 order dated 7th January, 2019 and various other decisions submitted that the issue squarely stands covered in favour of the assessee. Since the learned CIT (A) while upholding the disallowance has followed the decision of the Coordinate Bench of the Tribunal in the case of Country Club Hospitality and Holdings Ltd vs. Addl. CIT-1, in ITA Nos.1504 and 1654 of 2012 which is in conformity with the decisions of the Hon'ble Delhi and Bombay High Courts, therefore, the same should be upheld and the grounds raised by the Revenue should be dismissed.

14. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made disallowance of Rs. 7,87,07,668/- u/s 40(a)(ia) on the ground that out of the total expenditure of Rs.12,66,32,668/- on which TDS has not been deducted, the assessee has voluntarily disallowed Rs.4,79,25,000/- u/s 40(a)(ia) in the computation of income and the balance amount of Rs.7,87,07,668/- was not disallowed. So far as the submission of the assessee that the deductees' have offered the amount for taxation in their respective returns in the relevant A.Ys, therefore, in view of the 2nd proviso to section 40(a)(ia), no disallowance is called for is concerned, the Assessing Officer held that the said proviso was inserted by the Finance Act,

2012 which is applicable w.e.f 1.4.2013 which implies that the said proviso is applicable from A.Y 2013-14 onwards. We find the learned CIT (A) deleted the disallowance to the extent of Rs.4,79,24,501/-, the reasons of which have already been reproduced in the preceding paragraph.

15. We do not find any infirmity in the order of the learned CIT (A) on this issue. We find the Hon'ble Bombay High Court in the case of Pr.CIT vs. Perfect Circle India (P) Ltd (Supra) following the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd (Supra) has dismissed the appeal filed by the Revenue by observing as under:

1. This appeal is filed by the Revenue challenging the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short) dated 27.3.2015. Following question is presented for our consideration:-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in rejecting the disallowance of Rs. 1,44,78,000/- made by the AO u/S. 40(a)(ia) of the Act by holding that the amendment to the proviso of the said section was retrospective in nature without appreciating that the Act specifically provides that the said proviso comes into operation w.e.f. 1.4.2013 and is prospective in nature and cannot be applied retrospectively?"

2. It is not necessary to record background facts since the question of law raised by the Revenue is whether the second proviso to Section 40(a)(ia) of the Income Tax Act, 1961 ("the Act" for short) would have retrospective effect. We may notice that the said proviso was inserted w.e.f 1.4.2013 and in essence, it provides that where an assessee fails to deduct whole or any part of the tax at source but is not deemed to be an assessee in default under the first proviso to Section 201(1), then for the purpose of clause 40(a)(ia), it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee. The Revenue would content that the benefit of this proviso would be available to the assessee only prospectively w.e.f. 1.4.2013. Various Courts, however, have seen this proviso as beneficial to the assessee and curative in nature. The leading judgment on this point was of the Division Bench of Delhi Court in the case of CIT Vs. Ansal Land Mark Township P Ltd1 . The Court held that Section 40(a)(ia) is not a penalty and insertion of second proviso is declaratory and curative in nature and would have retrospective effect from the date from the main proviso 40(a)(ia) itself was inserted. Several High Courts have adopted

the same lines. We may also note that the Supreme Court in the case of Hindustan Coca Cola Beverages P Ltd Vs. CIT2 even in absence of second proviso to Section 40(a)(ia) had noticed that the payee had already paid the tax. Under such circumstances, the Court held that the payer/deductor can at best be asked to pay the interest on delay in depositing tax.

3. Under such circumstances, no question of law arises. Tax appeal is dismissed."

16. Since the order of the learned CIT (A) is in conformity with the order of the Hon'ble Bombay & Delhi High Courts, therefore, in absence of any contrary material brought to our notice by the Revenue on this issue, we do not find any infirmity in the order of the learned CIT (A) on this issue. Accordingly, the same is upheld and the grounds raised by the Revenue is dismissed.

17. Ground of appeal Nos.5 & 6 by the Revenue relate to the order of the CIT(A) in giving part relief by sustaining an amount of Rs. 2,28,00,000/-. Out of the addition of Rs.4,26,39,844/- made by the Assessing Officer u/s 68 of the I.T. Act on account of share application money.

18. Facts of the case, in brief, are that during the course of assesment proceedings, the Assessing Officer noted that the assessee has received an amount of Rs.4,26,39,844/- as share application money. When asked about the details of the same, it was submitted that Shri Tandra Ramesh and Smt. Tandra Kartheeka have obtained hand loans from their friends and have given the same as share application money to the assessee company. It was argued that the entire money has come to the company's bank accounts through bank transfer. However, when the assessee was asked to furnish the confirmation from the

above two parties, the A.R could not furnish the confirmation from the 2 parties. In view of the same the Assessing Officer has held that the assessee failed to substantiate the identity, genuineness and creditworthiness of the parties and accordingly made addition of Rs.4,26,39,844/- by invoking the provisions of section 68 of the I.T. Act.

19. Before the learned CIT (A), the assessee filed certain additional evidences based on which he called for a remand report from the Assessing Officer. After considering the remand report from the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) deleted the amount of Rs3,70,04,156/- and confirmed the balance amount by observing as under:

6.7 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR, as well as the comments of the Assessing Officer thereon, which can be summarized as under:

| S No | NAME OF THE PARTY | AMOUNT IN Rs | EVIDENCE FURNISHED BY THE ASSESSEE | ASSESSING OFFICER'S COMMENT |
|------|-------------------|--------------|--|---|
| 1 | Viridhi | 75,00,000 | Confirmation letter for Rs. 75,00,000/- ,copy of bank account statement | ITR-V and ITRs copies filed, no computation sheets were furnished ✓ |
| 2 | A.P.International | 50,00,000 | Confirmation letter for Rs. 50,00,000/- ,copy of bank account statement | An amount of Rs.25,00,000/- was through RTGS and rest of the amounts were through cheques. The total amount reflected in bank accounts amount Rs. 49,80,000/- only and not Rs. 50,00,000 |
| 3 | Sanjay A.Wadwha | 55,22,000 | Confirmation letter for Rs.55,22,000/- , copy of bank account statement | ITR-V and ITRs copies filed, no computation sheets were furnished |
| 4 | Selvi Films | 23,00,000 | A common Confirmation letter for Rs.1,68,00,000/- for Selvi Films and Surya movies, copy of bank account statement | Confirmation letter were filed. It is observed that assessee advanced under various banners such as Gopuram Films, Selvi Films, Varatharja Pictures and Surya Movies etc. The status of these entities whether proprietorship concern or partnership firm etc is not clear. Further, it is noted that the credit of Rs. 25,00,000/- on 22.06.2011 was shown as Rs. 23,87,500/- in the bank statement. |

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|----|--------------------------|--------------------|--|---|
| 5 | Sri Surya Movies | 1,45,00,000 | A common Confirmation letter for Rs.1,68,00,000/- for Selvi Films and Surya movies, copy of bank account statement | Confirmation letter were filed. It is observed that assessee advanced under various banners such as Gopuram Films, Selvi Films, Varatharja Pictures and Surya Movies etc. The status of these entities whether proprietorship concern or partnership firm etc is not clear. Further, it is noted that the credit of Rs. 25,00,000/- on 22.06.2011 was shown as Rs. 23,87,500/- in the bank statement. |
| 6 | Sri Monica Jewellery | 1,00,00,000 | Confirmation letter for Rs.1,00,00,000/-, copy of bank account statement | ITR-V and ITRs copies filed, no computation sheets were furnished |
| 7 | V.Neelakandan | 24,00,000 | Confirmation letter for Rs.24,00,000/-, copy of bank account statement | No discrepancies pointed out by AO |
| 8 | D.Muthukumar | 10,00,000 | Confirmation letter for Rs.10,00,000/-, copy of bank account statement | No discrepancies pointed out by AO |
| 9 | Redak Arts | 5,00,000 | Confirmation letter for Rs.5,00,000/- copy of bank account statement | ITR-V and ITRs copies filed, no computation sheets were furnished |
| 10 | Ch.Balu | 10,00,000 | Confirmation letter for Rs.10,00,000/-, copy of bank account statement | No discrepancies pointed out by AO |
| 11 | Gattupalli Srinivasa Rao | 5,00,000 | Confirmation letter for Rs.5,00,000/- copy of bank account statement | It is observed that there is a cash deposit of Rs.5,00,000/- on the same day of transfer and the claim of the assessee is liable for rejection |
| 12 | Mahesh Kumar Damarla | 5,00,000 | Confirmation letter for Rs.5,00,000/- copy of bank account statement | It is observed that there is a cash deposit of Rs.5,00,000/- on the same day of transfer and the claim of the assessee is liable for rejection |
| 13 | Potential Investment | 5,00,000 | Confirmation letter for Rs.5,00,000/- copy of bank account statement | ITR-V and ITRs copies filed, no computation sheets were furnished |
| 14 | Balaji Studios | (85,82,156) | Confirmation letter for Rs. 85,82,156/-, copy of bank account statement | ITR-V and ITRs copies filed, no computation sheets were furnished |
| | | 4,26,39,844 | | |

6.7.1 Regarding the loans received from parties at Sr.Nos. 1,3,6,9,13 and 14, the only discrepancy pointed out by the AO is that no computation sheets have been furnished. It is seen that the AO has himself stated in the Remand Report that ITR V and ITR copies have been filed. Confirmation letters and copy of bank account statements have also been filed, in which, no discrepancy has been pointed out by the AO. The assessee has therefore sufficiently discharged the onus of proving the identity, genuineness and creditworthiness of these parties. The additions made to this extent are therefore ordered to be **DELETED**.



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~~6.7.2~~ Regarding the entries at Sr Nos. 7,8 and 10, the evidence filed by the assessee has been verified, and no discrepancies have been pointed out by the AO. These additions are therefore ordered to be **DELETED**.

6.7.3 Regarding the parties at Sr Nos. 11 & 12, from whom loans of Rs. 5,00,000/- each have been received, it is observed by the AO that there is a cash deposit of the same amount on the same day. The appellant's AR has not furnished any evidence or argument to counter these observations of the AO. The appellant has therefore not been able to prove the creditworthiness of these parties, and the additions made are **CONFIRMED**.

6.7.4 Regarding the entries at Sr.Nos 4 & 5, confirmation letters and bank account statements have been filed. The observation of the AO that the status of the entities is not clear, is, therefore, not relevant. However, the AO has pointed out that credit of Rs.25,00,000/- on 22-06-2011 is shown as Rs.23,87,500/- in the bank statement. This has not been controverted by the assessee's AR. Addition to this extent is therefore **CONFIRMED**.

6.7.5 Regarding entry at Sr.No.2, AO has pointed out that credits in bank account are Rs.49,80,000/- as against Rs.50,00,000/- claimed. The AO is therefore directed to delete the addition to the extent of the bank deposits, and the balance addition is **CONFIRMED**.

6.8 The grounds related to this issue are therefore **PARTLY ALLOWED**.

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

21. The learned DR strongly objected to the order of the learned CIT (A) in deleting the addition to the tune of Rs.3,70,04,156/- made by the Assessing Officer u/s 68 of the I.T. Act. He submitted that when the Assessing Officer has categorically pointed out the inability of the assessee to substantiate with evidence to his satisfaction regarding the

creditworthiness of the persons who have given the share application money, the learned CIT (A) is not justified in deleting the same. Referring to various decisions including the decision of the Hon'ble Supreme Court in the case of Pr. CIT vs. NRA Iron & Steel Pvt. Ltd (2019) 412 ITR 161 (S.C) and the decision of the Coordinate Bench of the Tribunal in the case of Dy. CIT vs.M/s Rasun Exports (P) Ltd vide ITA No.1185/Hyd/2009 dated 30th April, 2010, he submitted that the CIT (A) was not justified in partly deleting the addition made by the Assessing Officer u/s 68 of the I.T. Act.

22. The learned Counsel for the assessee, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that the assessee during the course of appeal proceedings have filed various details in shape of additional evidences such as confirmation letters, bank statement of the investors, copies of their ITR etc., and the learned CIT (A) has obtained a remand report from the Assessing Officer and after considering the same has deleted the addition. Therefore, the order of the learned CIT (A) should be upheld and the grounds raised by the Revenue should be dismissed.

23. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs. Rs.4,26,39,845/- u/s 68 of the I.T. Act on the ground that the assessee company has received share application money to this extent and could not furnish the confirmation from the parties such as identity and creditworthiness of the persons and the

genuineness of the transactions from whom Shri Tandra Ramesh and Smt. Tandra Kartheeka have obtained hand loans and invested in the company. We find before the learned CIT (A) the assessee filed certain details in shape of additional evidences based on which the learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and rejoinder of the assessee to such remand report, he sustained an amount of Rs.2,28,00,000/- and deleted the balance amount. While doing so the learned CIT (A) sustained the additions wherever there was cash deposit on the same day of transfer or in the previous day or wherever common confirmation letter was filed which does not show the status of the entities. We find the learned CIT (A) has gone through the various individual confirmation letters along with their I.T Returns and copy of bank statement etc., and after being satisfied only gave part relief to the assessee which in our opinion, is just and proper under the facts and circumstances of the case. It is the settled proposition of law that for claiming any cash credit as genuine, the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and creditworthiness of the loan creditor and genuineness of the transaction. In the instant case although the assessee had not filed the requisite details before the Assessing Officer, however, the assessee had filed the various details in shape of additional evidence before the CIT (A) and the learned CIT (A) after giving due opportunity of being heard to the Assessing Officer by calling for a remand report has partly given relief to the assessee where the assessee proved beyond doubt by proving the creditworthiness of the persons by filing their copy of I.T.Rs, confirmation letters and bank statements etc. It is also an admitted fact that the learned CIT (A) has sustained the addition wherever there was immediate

cash deposit preceding the transfer. Under these circumstances, we do not find any infirmity in the order of the learned CIT (A) giving part relief to the assessee on the basis of appreciation of the various documents filed before her and after obtaining a remand report from the Assessing Officer. The order of the learned CIT (A) being a reasoned one is upheld and the grounds raised by the Revenue are dismissed.

24. So far as the grounds of appeal in the Cross Objection filed by the assessee are concerned, the same are merely in support of the order of the learned CIT (A). Since the grounds raised by the Revenue have been dismissed, the grounds raised by the assessee in the C.O become infructuous and accordingly the same are dismissed.

25. In the result, appeal filed by the Revenue as well as the C.O filed by the assessee are dismissed.

Order pronounced in the Open Court on 31st August, 2023.

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| Sd/- (LALIET KUMAR) JUDICIAL MEMBER | Sd/- (R.K. PANDA) VICE-PRESIDENT |
|--|---|

Hyderabad, dated 31st August, 2023.

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|--|
| 1 | Dy.CIT, Central Circle 2(3) Room No.613, 6 th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad |
| 2 | M/s. Jaya Balajee Real Media (P) Ltd., B-208, Western Plaza, OU Campus, Hyderabad 500060 |
| 3 | Pr. CIT, Central, Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order