

ITA No.1111/Bang/2022
Smt. Reddy Sangeetha, Bangalore
ITA Nos.1112 & 1113/Bang/2022 &
ITA Nos.1145 & 1146/Bang/2022
Shri Reddy Veeranna, Bangalore

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.1145/Bang/2022, 1112/Bang/2022, ITA No.1113/Bang/2022 & 1146/Bang/2022
Assessment Years: 2010-11, 2012-13, 2014-15 and 2015-16 respectively

Shri Reddy Veeranna #9/1, 2 nd Floor, Classic Court Richmond Road Bengaluru 560 025 PAN NO : AASPV4626M	Vs.	DCIT Central Circle-1(3) Bengaluru
APPELLANT		RESPONDENT

ITA Nos.1111/Bang/2022
Assessment Years: 2015-16

Smt. Reddy Sangeetha #9/1, 2 nd Floor, Classic Court Richmond Road Bengaluru 560 025 PAN NO : BBNPS5550A	Vs.	DCIT Central Circle-1(3) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, A.R.
Respondent by	:	Shri Nischal B., D.R.

Date of Hearing	:	13.10.2023
Date of Pronouncement	:	30.11.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals by two different assesseees emanated from different orders of CIT(A) passed on different dates in the assessment years 2010-11, 2012-13, 2014-15 & 2015-16. Since the issues are common in all these appeals, these are clubbed

together, heard together and disposed of by this common order for the sake of convenience.

1.1 First, we will take up the appeals relating to Shri Reddy Veeranna.

ITA Nos.1145/Bang/2022 (AY 2010-11);

ITA No.1112/Bang/2022 (AY 2012-13);

& ITA No.1113/Bang/2022 (AY 2014-15) (Shri Reddy Veeranna):

2. The common ground in ITA No.1145/Bang/2022 for the assessment year 2010-11, ITA No.1112/Bang/2022 for the AY 2012-13 & ITA No.1113/Bang/2022 for the AY 2014-15 in the case of Shri Reddy Veeranna is with regard to framing assessment order u/s 143(3) r.w.s. 153A of the Act is bad in law and void-ab-initio, since there was no valid search conducted in the premises of assessee.

3. Facts narrated in the case of Shri Reddy Veeranna in assessment year 2010-11 are as follows:

3.1 There was a search action u/ 132 of the Act conducted in the case of Shri Reddy Veeranna at No.109, 10th Main, 7th Cross, RME Extension, 2nd Stage, Bangalore on 7.1.2015 in connection with search proceedings in the group cases of M/s. Reddy Veeranna Constructions Pvt. Ltd. Consequent to this search action, notice u/s 153A of the Act was issued to the assessee on 17.11.2015 to file a return of income within 30 days from the date of receipt of notice. The assessee has filed a letter dated 28.12.2015 stating that the return was filed originally on 31.11.2011 to be treated as income declared u/s 153A of the Act. However, the assessee has not paid self-assessment tax on the income declared in it at Rs.8,72,94,285/-. Therefore, notice has been issued to the assessee on 15.11.2016 to pay the tax within 5 days from the date

of receipt of the notice. However, the assessee has not paid the tax. Hence, the return filed by assessee u/s 139 of the Act on 28.12.2015 has been treated as defective and the assessment order was passed u/s 144 of the Act in the case of Reddy Veeranna for the assessment year 2010-11. Similar is the position in the assessment year 2012-13 & 2014-15. Now the contention of the ld. A.R. is that assessment was passed u/s 143(3) r.w.s. 153A of the Income-tax Act,1961 ['the Act' for short] is bad in law and void-ab-initio since there was valid search conducted in the premises of the assessee. Consequently, the provisions of section 153A of the Act have no application and therefore, the assessment order passed deserve to be cancelled. The ld. A.R. also submitted before us that there was no justification to issue the warrant to search the premises of the assessee as the conditions specified in terms of section 132(1) of the Act did not exist and therefore, the search action is illegal and consequently the impugned assessment order deserves to be quashed. In our opinion, this ground has no merit since validity of search cannot be questioned before this Tribunal in view of the insertion of Explanation to section 132(1) of the Act/Finance Act, 2017 with retrospective effect from 1.4.1962. For the purpose of clarity we reproduce the said explanation:-

“Explanation: For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the Income Tax authority under this sub-section shall not be disclosed to any person or any authority or the Appellate Authority.”

3.2 This view was also fortified by the judgement of jurisdictional High Court in the case of Prathibha Jewellery House Vs. CIT (88 taxmann.com 94) (Karn.), wherein held as under:

"10. Having heard the learned counsels for the parties, this Court is satisfied that the present writ petitions deserve to be dismissed for the following reasons:—

(i) That the decision of this Court in the case of C. Ramaiah Reddy (supra), which allowed the Appellate Authority to go into the question of validity of Search is a subject-matter of pending appeal before the Hon'ble Supreme Court and therefore, not only the Authorities of the Department, but even this Court should await the decision of Hon'ble Supreme Court on the said issue and cannot direct the Appellate Authorities like (CIT(Appeal) below by way of a writ of mandamus to go into the question of validity of search under Section 132 of the Act and it would be incongruous and not in deference to the pendency of aforesaid Civil Appeal No.2734/2013 before the Hon'ble Supreme Court.

(ii) That even the law has been amended by insertion of the aforesaid Explanation by Parliament in Section 132 of the Act by the Finance Act, 2017 with retrospective effect from 1.4.1962. That Explanation also prohibits the Appellate Authorities to go into the reasons recorded by the concerned Income Tax Authority for directing Search against the assessee or tax payer.

(iii) That this Amendment came after both, ITAT passed the order in the present case on 21.11.2014 as also the learned CIT(A) passed the impugned order aji 11.2.2015. Nonetheless, retrospective effect of the said amendment, will have its effect on the present case as well so long that the said Amendment holds the field Therefore, the Appellate Authorities of the Department cannot be expected to go into the said question. It is only for the Constitutional Courts to examine the vires and validity of such Amendment and for that, a separate writ petition is already said to be pending. However, no such challenge to the Amendment has been made in the present case.

11. In these circumstances, the impugned order Annexure-A dated 11.2.2015 passed by the learned CIT(A) cannot be faulted and it stands to the reason for the learned CIT(A) to have followed the Chattisgarh High Court's decision and refused to do so."

3.3 Being so, in our opinion, there is no merit in the argument of ld. A.R. regarding validity of search carried out by the department u/s 132 of the Act and consequently framing of assessment cannot be questioned on this reason. Hence, this common ground in all these three appeals are dismissed.

4. Next common in ground nos.3, 4 & 5 in ITA No.1145/Bang/2022 for the AY 2010-11 and ITA No.1112/Bang/2022 for the AY 2012-13 (Two appeals only) in the case of Shri Reddy Veeranna and in ITA No.1111/Bang/2022 for the AY 2015-16 in the case of Smt. Reddy Sangeetha is with regard to treating the return of income filed by assessee in response to notice issued u/s 153A of the Act as defective return. Thereafter, completing the assessment u/s 144 of the Act is not in accordance with law.

4.1 The ld. A.R. submitted that the learned AO was not correct in treating the return of income filed in response to the notice issued under section 153A of the Act as a defective return and therefore completing the assessment u/s. 144 of the Act is not in accordance with law. The basic details of the returns filed by the appellant for these 2 assessment years are as under:

Assessee	Assessment Year	Date of filing the return	Processing of return u/s. 143[1]	Notice u/s. 153A	Date of filing return in response to 153A Notice
Reddy Veeranna	2010-11	30/11/2011	20/12/2011	17/11/2015	28/12/2015
	2012-13	16/05/2013	30/05/2013	17/11/2015	28/12/2015
Reddy Sangeetha	2015-16	25/08/2016	--	NA	NA

4.2 He submitted that the undisputed facts are that the assessee had filed valid regular returns of income u/s. 139 of the Act and the same has been processed u/s. 143[1] of the Act. These regular returns of income are not considered as defective returns.

4.3 He further submitted that there was a search conducted in the case of the assessee on 07/01/2015 and

thereafter notice u/s. 153A of the Act was issued on 17/11/2015 calling for the return of income within 30 days from the date of receipt of the notice. The said notices were received on 02/02/2016 and the assessee has filed the letter requesting to treat the original return filed as a return in response to notice u/s. 153A of the Act, on 28/12/2015. Thus, the assessee has filed the return of income within the time allowed by the A.O. in the notice issued.

4.4 Further, he submitted that the aforesaid assessment years i.e., 2010-11 & 2012-13 are unabated assessments, as on the date of initiation of search, there were no assessment proceedings pending and time limit for issuance of notice u/s 143[2] of the Act had also expired. Thus, the scope of these unabated assessments is restricted to making any additions solely based upon incriminating material found at the time of search.

4.5 He submitted that as can be seen from the assessment orders passed, there are no additions made to the income declared by the assessee as per the original return of income filed u/s. 139 of the Act, which income has been retained in the return filed in response to notice u/s. 153A of the Act.

4.6 Consequently, there is no dispute that the assessment order passed u/s. 153A r.w.s. 143[3] has to be in consonance with the intimation passed u/s. 143[1] of the Act and there cannot be any variation either in the total income assessed or tax and interest to be discharged by the assessee.

4.7 He further submitted that the learned AO for the above said two AY's has treated the return filed by the assessee in response to the notice issued u/s. 153A of the Act as defective return u/s. 139[9] of the Act, by holding that the assessee has not paid complete taxes before filing the return of income in response to notice u/s. 153A of the Act and consequently, the return of income filed is defective as per clause [aa] to Explanation to sub-section [9] of section 139 of the Act. The said clause reads as under:-

"(aa) the tax together with interest, if any, payable in accordance with the provisions of section 140A, has been paid on or before the date of furnishing of the return;
Inserted clause (aa) by Finance Act, 2013 w.e.f. 1.6.2013 and clause (aa) Omitted by the Finance Act, 2016 w.e.f 1.4.2017"

4.8 He submitted that the above clause [aa] of section 139[9] of the Act came to be inserted by Finance Act, 2013 with effect from 01/06/2013 and later, the Finance Act, 2016 with effect from 01/04/2017 has omitted the said clause.

4.9 He submitted that the first contention is that there is an omission of the aforesaid clause [aa] to Explanation to sub-section [9] of section 139 of the Act, by the Finance Act 2016, w.e.f. 01/04/2017, without any saving clause for any actions taken during the period the said provision was in force. Thus, the aforesaid omission of the said clause would mean that the omitted provision had never existed to be considered as a law from the date on which it was inserted in the statute. For this proposition the reliance is placed on the decision of the Hon'ble Jurisdictional High Court of Karnataka in the matter

of PCIT Anr Vs. Texport Overseas [P] Ltd., [2020] 186 DTR 50 [Kar], wherein the Hon'ble Court in the context of effect of omission of clause [i] of section 92BA which was omitted by the Finance Act 2017, w.e.f. 01/07/2017 from the statute, held as under:

"5. Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (i) of Section 92BA of the Act came to be omitted w.e.f. 01.04.2019 by Finance Act, 2014. As to whether omission would save the acts is an issue which is no more res-intigra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of KOHLAPUR CANESUGAR WORKS LTD. v. UNION OF INDIA reported in [TS-5120-SC-2000-0] whereunder Apex Court has examined the effect of repeal of a statute visa-vis deletion/addition of a provision in an enactment and its effect thereof. The import of Section 6 of General Clauses Act has also been examined and it came to be held:

"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it" cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."

6. *In fact, Coordinate Bench under similar circumstances had examined the effect of omission of sub-section (9) to Section 108 of the Act w.e.f. 01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of Section 108. In the matter of GENERAL FINANCE CO. vs. ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of Section 92BA(i) of the Act. Thus, when clause (1) of Section 92BA having been omitted by the Finance Act, 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of Section 9281 and reference made to the order of Transfer Pricing Officer TOP under Section 92CA could be invalid and bad in law.*

7. *It is for this precise reason, tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Canesugar Works Ltd referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of M/s. GE Thermometrias India Private Ltd., stated supra. As such we are of the considered view that first substantial question of law raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res Integra.”*

4.10 He submitted that the aforesaid contention is also supported by reasons / objects for which the said clause [aa] to Explanation to sub-section [9] of section 139 of the Act has been omitted. From the Explanatory Notes to the provisions of the Finance Act, 2016, it is clear that the said provisions have been omitted with an object of rationalizing the time allowed to file the return of income and realization of revenue without undue compliance burden on the tax payer. Consequently, the omission of the said clause that cast an undue burden on the tax payer was a measure taken to alleviate hardship caused to the taxpayer. It is in the nature of a beneficial legislation to provide relief to the taxpayer. Such provisions enacted

with an object of rationalizing a provision or to remove hardships and give relief to the tax-payer has to be given effect retrospectively.

4.11 He placed reliance on the decision of the Hon'ble Supreme court in the case of CIT Vs. Calcutta Export Company, [2018] 404 ITR 654 [SC], for the proposition that any provision which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section, is required to be read into the section to give the section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole. As per the Explanatory Notes to the Finance Act, 2016, the object for omitting the clause [aa] to Explanation to sub-section [9] of section 139 of the Act is to rationalize the provisions, as per the various decisions of the supreme court that any provision with an intention to rationalize and remove any ambiguity or hardship to the assessee, then such provision has to be given retrospective effect and is applicable retrospectively. Since the said clause [aa] to Explanation to sub-section [9] of section 139 of the Act was omitted w.e.f. 01/04/2017, "the said effect of omission of clause [aa] to explanation to sub-section [9] of section 139 has to be given retrospectively and it has to be held that there was no requirement for complying the said clause [aa] of section 139[9] of the Act and therefore, the return of income filed by the assessee is to be treated as a valid return.

4.12 He further submitted that the third point to be stressed is that the original return filed by the assessee under section 139[1] of the Act was processed and regularized under section

143[1] of the Act and the original return of income was a valid return though the appellant had not made payment of taxes as declared in the return, since in those years there was no requirement for making the full payment of self-assessment tax for it to be a Valid return. The said act of the A.O. in treating the return of income filed u/s. 153A of the Act as defective is not as per law, for the reason that the reliance placed by the AO on clause [aa] to Explanation to sub-section [9] of section 139 of the Act, which was brought into the statute in the Finance Act 2013, w.e.f. 01/06/2013 is not applicable to the A.Y's 2010-11 & 2012-13.

4.13 Finally, the provisions of section 153A of the Act which starts with a non-obstante clause that over-rides the provisions of section 139 of the Act meaning thereby that the provisions of section 153A of the Act will prevail over the provisions of section 139. Thus, the return of income to be filed in response to the notice u/s. 153A of the Act is not controlled by the provisions of section 139 that deals with regular returns to be filed within time limits prescribed under the said section. However, the provisions of section 139 of the Act have been made applicable by use of the phrase "so far as may be" in section 153A of the Act in the later part of the section. This means to the extent applicable or required, the provisions of section 139 of the Act have been made applicable to the return of income to be filed in response to notice u/s. 153A of the Act and not the entire provisions of section 139, which has been specifically over-ridden in the first part of the section. At this juncture, the scope of the assessment to be made u/s. 153A of the Act is relevant. These are special

provisions for making an assessment or reassessment as a result of search. As already pointed out, the assessment for the AY 2010-11 and 2012-13 are unabated assessments.

4.14 He submitted that the scope of the assessment is only to make additions if any on the basis of the incriminating material found in course of search. Thus, the necessary implication that arises is that the reference to the provisions of section 139 "so far as may be" in the provisions of section 153A of the Act is only to make applicable, the nature of the form to be filed, the manner of verification and other particulars to be furnished in the return of income to be filed u/s. 153A. Merely because of the phrase "so far as may be" employed in section 153A of the Act, the operation of the entire section 139, including the provisions of section 139[9] of the Act cannot be presumed. In other words, provisions of section 139[9] would have no application to the return required to be filed u/s. 153A since these provisions are relevant only for regular returns of income to be filed u/s. 139 of the Act and not the return to be filed in response to notice u/s. 153A of the Act.

5. The Id. D.R. submitted that the argument of the appellant that clause (aa) of the Section 139(9) of the Act was inserted vide Finance Act, 2013 w.e.f. 01.07.2013 and thus not applicable for AY 2010-11 is devoid of any merit. This is for the reason that clause (aa) of the Section 139(9) of the Act was applicable as on 28.12.2015, the date when the appellant filed a letter with a request that his earlier return filed on 30.11.2011 may be considered as a return filed in response to

the notice dt. 17.11.2015 issued under Section 153A of the Act. The applicable law is thus one which existed as on 28.12.2015.

5.1 He further submitted that the other argument of the appellant that clause (aa) of the Section 139(9) of the Act had been omitted by the Finance Act, 2016 w.e.f. 01.04.2017, also does not have any merit. The law, as discussed supra, needs to be seen as on the date of filing of return. For this reason, the assessment year for which return is being filed, would also not be relevant.

5.2 He submitted that when the original return of income was filed, since clause (aa) of Section 139(9) of the Act was not there, so return was not treated as defective. But now, the return was required to be filed again in response to the notice under Section 153A of the Act, and such return would be required to comply with the provisions of law existing at this point of time. Since clause (aa) was applicable, so the AO has rightly invoked the same. So non-treating of the original return as defective would not be material for deciding the defective status of return filed in response to the notice under Section 153A of the Act.

5.3 Further, he submitted that the demand raised under Section 143(1) of the Act in relation to the original return of income would also not change the position as that was as per law existing at that point of time. Non availability of funds or partial nonpayment of interest are also not exceptions provided for not treating the return as defective. So these arguments also do not help the appellant.

5.4 The ld. D.R. further argued that as regards non-applicability of Section 139 of the Act for the returns filed in response to notice under Section 153A of the Act, this argument of the appellant is also totally misplaced. The applicability of Section 139 of the Act is there as soon as a notice is issued under Section 153A of the Act

and the same is clearly provided in this Section. He submitted that considering above the action of the AO was upheld by the Id. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. The contention of the Id. A.R. is that the returns of the assessee for these assessment years i.e. 2010-11 & 2012-13 in case of Shri Reddy Veeranna and Assessment year 2015-16 in case of Smt. Reddy Sangeetha as a defective return by placing reliance as per clause (aa) to Explanation to sub-section (9) of section 139 of the Act, which has been inserted in the Finance Act, 2013 w.e.f. 1.6.2013. However, this clause (aa) to explanation to section 139(9) of the Act was omitted by the Finance Act, 2016 w.e.f. 1.4.2017 and the contention of the Id. A.R. is that the effect of refilling a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute considered as law that never existed. For this purpose, he relied on the judgement of coordinate bench in the case of Texport Overseas Pvt. Ltd. cited (supra). According to the Id. A.R. that the view was expressed by jurisdictional High Court to be applicable to the assessee's case since the circumstances are the same. Accordingly, he submitted that the return filed by the assessee in response to notice issued u/s 153A of the Act cannot be treated as defective by applying the above deleted provisions of the Act. It has to be noted that the coordinate bench of Bangalore in the case of Cauvery Aqua Pvt. Ltd. in IT(TP)A No.2021/Bang/2019 vide order dated 17.2.2021, wherein the decision referred by the Hon'ble Karnataka High Court in case of Texport Overseas Pvt. Ltd. cited (supra) were followed. For the sake of convenience, we extract below the decision of Cauvery Aqua Pvt. Ltd. cited (supra) by the coordinate bench as follows:

“7. We heard the rival contentions and perused the record. We notice that the decision rendered by the coordinate bench of Bengaluru Tribunal in the case of *Texport Overseas Pvt. Ltd. (supra)* has since been upheld by the High Court of Karnataka with the following observations:-

“5. Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (i) of Section 92BA of the Act came to be omitted w.e.f. 01.04,2019 by Finance Act, 2014. As to whether omission would save the acts is an issue which is no more res-intigra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of **KOBLAPUR CANESUGAR WORKS LTD. v. UNION OF INDIA** reported in **AIR 2000 SC 811** whereunder Apex Court has examined the effect of repeal of a statute visa-vis deletion/addition of a provision in an enactment and its effect thereof. The import of Section 6 of General Clauses Act has also been examined and it came to be held:

“37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1), If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision.”

6. In fact coordinate bench under similar circumstances had examined the effect of omission of sub-section (9) to Section 10B of the Act w.e.f. 01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of Section 10B. In the matter of **GENERAL FINANCE CO. vs. ACIT**, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of Section 92BA(i) of the Act. Thus, when clause (i) of Section 92BA having been omitted by the Finance Act, 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of Section 92BI and reference made to the order of Transfer Pricing Officer-TOP under Section 92CA could be invalid and bad in law.

7. *It is for this precise reason, Tribunal has rightly held that order passed by the TPO and. DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in **Kolhapur Canosugar Works Ltd** referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of **M/s.GE Thermometrias India Private Ltd.**, stated supra. As such we are of the considered view that first substantial question of law raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res Integra.”*
8. *Since the decision rendered by the Hon'ble High Court of Karnataka is binding on this bench of Tribunal sitting in Bengaluru, we follow the same. Accordingly, we hold that the reference to the TPO in respect of specified domestic transactions mentioned in clause (i) of sec.92BA is not valid, as the said provision has been omitted. Accordingly, we direct the AO to delete the addition relating to specified domestic transactions made u/s 92CA of the Act.*
9. *We notice that the co-ordinate bench has restored the matter to the file of the A.O. with the direction to examine the claim of expenditure in accordance with the provisions of section 40A(2) of the Act. Following the same, we restore this issue to the file of the AO with the direction to examine the claim of expenditure mentioned above in terms of the provisions of section 40A(2) of the Act.*
10. *In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.*

6.1 Later this decision has been followed by the coordinate bench of Bangalore in case of M/s. Shobha City in ITA No.2936/Bang/2018 dated 22.4.2021, wherein the Bench observed that the transfer pricing adjustment has been made in pursuance of provisions of clause (i) of section 92BA of the Act, which reads as under:

“(i) Any expenditure in respect of which payment has been made or is to be made to a person referred in clause (b) of said section 2 of section 40A”.

6.2 Section 92BA of the Act was inserted by Finance Act, 2012 w.e.f. 1.4.2013. However, clause (i) referred above was omitted by

Finance Act, 2017 w.e.f. 1.4.2017. As such reference to the TPO in respect of specified domestic transactions mentioned in clause (i) of section 92BA of the Act is not valid as the said provision has been omitted and deleted the addition relating to the specified domestic transaction made u/s 92CA of the Act. While coming to this conclusion, the coordinate bench also taken note of the order of the Tribunal Mumbai Bench in case of Fire Menich Aromatics India Pvt. Ltd. Vs. ACIT in ITA No.348/Mum/2014 dated 15.7.2020, wherein held as under:

“13. We have heard the submissions of the learned authorised representative (ld AR) for the assessee and the learned Departmental Representative (ld. DR) for the revenue and deliberated on the case laws relied on behalf of the assessee. It is an admitted position that the assessee has neither filed Cross Objection for objecting the maintainability of the appeal filed by the revenue. However, the ld. AR for the assessee has raised legal objection, which goes to the root of amenability of the appeal filed by the revenue. Therefore, we admit the objection of the assessee on the maintainability of revenue’s appeal. For appreciation of various legal aspects and effect of ‘repeal’ or ‘omission’, we have gone through the various sections 6, 6A and 24 of General Clauses Act. The section(s) 6, 6A and 24 of General Clauses Act are read as under;

6. Effect of repeal.-Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or

punishment may be imposed as if the repealing Act or Regulation had not been passed.

6-A. Repeal of Act making textual amendment in Act or Regulation:—

Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

24. Continuation of orders, etc., issued under enactments repealed and reenacted,.

Where any (Central Act) or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any (appointment notification,) order, scheme, rule, form or bye-law, (made or) issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been (made or) issued under the provisions so re-enacted, unless and until it is superseded by any (appointment, notification,) order, scheme, rule, form or bye-law, (made or) issued under the provisions so re-enacted (and when any (Central Act) or Regulation, which, by a notification under Section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof the provisions of such Act or Regulations shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this Section).

14. *A careful reading of section 6 of General Clauses Act (this Act) makes it clear that made after the commencement of General Clauses Act, any Central Act or Regulation repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not effect affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.*
15. *Further a careful reading of section 6A this Act make it clear that where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.*

16. *The Hon'ble Supreme Court in Bhagat Ram Sharma Vs Union of India (AIR 1988 SC 740) held that it is a matter of legislative practice to provide while enacting an amending law that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'. As per the commentary on Principles of Statutory interpretation by Justice G.P. Singh, "the legislative practice in India shows that 'omission' of a provision is treated as 'amendment'." (page 675, Chapter; "Express Repeal"). Further Hon'ble Supreme Court in Ekambrarappa Vs EPTO (AIR 1967 1541), held that amending Act which limits the area of operation of existing Act by modifying the extent clause, result in partial repeal of the Act in respect of the area which its operation is excluded (emphasis and under lines are added by us).*
17. *Further, the Hon'ble Supreme Court in the matter of Fibre Boards P. Ltd dated 11.08.2015 reported vide [(2015) 52 taxmann.com 135] /(2015) 10 SCC 333, as well as in the matter of M/s. Shree Bhagwati Steel Rolling Mills [CA No.4280 of 2007, dt.24.11.2015], reported vide (2016) 3 SCC 643, wherein the Hon'ble Supreme Court in these two cases elaborately discussed the issue of repeal /omission/ amendment etc, and held that 'omission' would amount to 'repeal'. It is also held that there is no real distinction between an amendment and that "amendment" is in fact a wider term which includes deletion of the provision in an existing statute.*
18. *The Hon'ble Court in M/s. Shree Bhagwati Steel Rolling Mills (supra) in a later decision, while referring its order in Fibre Board Private Ltd (supra) held that omission would amount to repeal. "On the argument of the contesting parties that the omitted provision being treated as it never existed as per section 6 of General clauses Act would not apply to allow the previous operation of the provisions is omitted or anything done or suffered thereunder. Nor may a legal proceeding in respect of any rights and liability acquired or incurred under the enactment so omitted." The Hon'ble Apex Court took a view that in majority of the cases, this would cause great public mischief, and that the decision in Fibre Board case was therefore clearly delivered by their lordship for the public good, being, at the least reasonably possible view and that no aspect of the question at their hand was remained unnoticed in Fibre Board Case.(emphasis added by us)*
19. *With the aforesaid legal back ground and with utmost regard to the decision of coordinate bench the coordinate bench relied by Id AR for the assessee in Texport Overseas (supra), we have noted that the bench was not having the benefit of the latest judgment of the Hon'ble Supreme Court in the matter of Fibre Boards P. Ltd [(2015) 52 taxmann.com 135] as well as in the matter of*

M/s. Shree Bhagwati Steel Rolling Mills [CANo.4280 of 2007, dt.24.11.2015] which were not brought to the notice of the bench by either of the parties.

- 20. The Hon'ble Supreme Court in these two matters had elaborately discussed the issue of repeal /omission and after relying upon the decision of the coordinate bench had decided the issue that omission will also be repealed and therefore by virtue of section 6 and 6A the action taken pursuant to the valid legislation during its life time before omission will be saved and will not come to end. The decision in the case of Texport Overseas Private Ltd (supra) was rendered without considering the decisions of the Hon'ble Apex Court in the cases of (i) M/s. Fibre Boards Pvt. Ltd and (ii) M/s Shree Bhagwati Steel Rolling vs. Commissioner of Central excise & another and also the statutory provision contained in section 6A of General clauses Act and hence, lacks any binding or persuasive value.*
- 16. The Hon'ble Apex court in the case of Fibre Boards Pvt. Ltd and M/s. Shree Bhagwati Steel Rolling has doubted and disapproved its earlier decisions rendered in the case of Rayala Corporation (P) Ltd Vs Enforcement (1969) 2 SCR 412 and Kolhapur Cane Sugar Works Ltd Vs Union of India (2000) 2SCC536 and in the case of General Finance Company Vs CIT (2002) 7 SCC 1. Further, the Hon'ble Supreme Court in the case of Fibre Boards (I) Ltd, after referring to the provisions of Section 6A of the General Clauses Act held that "a repeal can be by way of an express "omission" and that even an implied repeal of a statute would fall within the expression "repeal" in section 6 of the General clauses Act. Repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in section 6 of General clauses Act. Considering the latest decision of Hon'ble Supreme Court in Fibre Board and Bhagwati Steel, the earlier decisions rendered by the Constitution Bench in Rayala Corporation (P) Ltd and Kolhapur Cansugar Works cannot be said to have laid down any ratio decidendi on an interpretation of the word "repeal" an "omission" would not be included. Their observations are in the nature of obiter dicta as held by the Supreme Court in Fibre Boards. It is also held that the earlier decisions have not referred to Section 6A of the General clauses Act and they lose their binding effect on an application of the "per incuriam" principle, as held by the Supreme Court in the case of Fibre Boards Private Limited. Thus, in our view the decision rendered in Royala Corporation Pvt. Ltd lacks binding value for the reasons discussed by the Apex Court in Fibre Boards Pvt. Ltd, the decision rendered in the case of Kolhapur Cane Sugar Works Ltd as also in the case of General Finance Company following the decision in Royala Corporation Ltd, loses its binding value.*
- 17. As we have already noted that the Hon'ble Supreme Court in the case of Shree Bhagwati Steel Rolling Mills again reiterated that repeal would include*

repeal by way of an express omission. The Supreme Court further held that the decision in Fibre Boards Private Limited clarifies the law in holding that an omission would amount to repeal. As a result, the provisions of Sec. 6 of the General Clauses Act would apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder, and such a view is reasonable and for the public good.

18. *At the coast of repetition we may note that the Hon'ble Supreme Court in the matter of Fibre Board (supra) and Bhagwati Steel Rolling (supra) had elaborately reproduced the paragraphs of General Finance Co., (supra) and also the earlier two judgments relied in General Finance Co., (supra), namely Rayala Corporation P. Ltd and Kolhapur Cane Sugar Works Ltd, and observed that even the court has not referred the matter to the larger bench. The Hon'ble Supreme Court in Fibre Board (supra) and Bhagwati Steel Rolling (supra) had also discussed the provision of law including the General Clauses Act, Section 6A and 24 and thereafter held that the repeal, omission and deletion are interchangeable and thereafter had held that 'omission' will have an effect of 'repeal' and 'repeal' will have an effect of 'omission'. The distinction carved out in Rayala Corporation (supra) was not correct and further the reference to the Constitution bench has not considered in view of a binding judgment of the Constitution bench in the matter of M.A.Tulloch & Co as well as the provisions of Section 6A of the General Clauses Act and thereafter the Court had held that the decision, in the matter of Rayala Corporation (supra) was per incurium.*
19. *In our humble view the Hon'ble Supreme Court in Fibre Board (supra) and Bhagwati Steel Rolling (supra) have declared that the law in Rayala Corporation is per in curium, on the basis of which General Finance Co., (supra) was passed. Thus, the later judgments in Fibre Board (supra) and Bhagwati Steel Rolling (supra) shall have a binding precedent on all Courts in India including this Tribunal.*
20. *We may mention that the decision of the Hon'ble Apex Court is declaration of law as per Article 141 of the Constitution of India. The law declared by Hon'ble Apex Court in Fibre Boards (P) Ltd (supra) dated 11.08.2015, was available when the decisions was rendered by Bangalore Tribunal Textport Overseas Pvt Limited Vs DCIT (supra), however, the same was not brought to the notice of the bench. The coordinate bench while rendering the decision relied on the decision of Hon'ble Apex Court in General Finance Co. Vs ACIT (supra), which was already declared as per-in curium. Similarly, the decision in General Finance Co (supra) is based on Rayala Corporation P. Ltd Vs Director of Enforcement (supra) and Kolhapur Canesugar Works Ltd Vs Union of India (supra). Considering the aforesaid legal position and the dates of various judgments of the Hon'ble Apex Court, we are of the view*

that the ld. AR for the assessee has referred and relied on the decisions of General Finance Company Vs ACIT (supra) which have been declared as per-in curium by Hon'ble Apex Court.

21. *We are conscious of the facts that the latest law declared by Hon'ble Apex Court in various cases (supra) was not confronted with the ld. AR for the assessee; however, it is always presumed that the law declared by the Court is in the knowledge of the legal practitioner. We instead of going in further discussions are of the view that in view of the decision of Hon'ble Apex Court in Fibre Boards (P) Ltd (supra), the word 'repeal' includes 'omission'. Thus, we do not find any merit in the objection raised by the ld. AR for the assessee which we are rejecting, being without any merit and held that appeal filed by the revenue with in currency of the sub-section 2A of Section 253 of the Act, is valid."*

6.3 Thereafter, observed that decision rendered by coordinate bench of Bangalore Tribunal as well as upheld by the Hon'ble Karnataka High Court in case of Texport Overseas Pvt. Ltd. cited (supra) to be followed. Further, the clause [aa] of section 139[9] of the Act came to be inserted by Finance Act, 2013 with effect from 01/06/2013 and later, the Finance Act, 2016 with effect from 01/04/2017 has omitted the said clause.

6.4 We note that there is an omission of the aforesaid clause [aa] to Explanation to sub-section [9] of section 139 of the Act, by the Finance Act 2016, w.e.f. 01/04/2017, without any saving clause for any actions taken during the period the said provision was in force. Thus, the aforesaid omission of the said clause would mean that the omitted provision had never existed to be considered as a law from the date on which it was inserted in the statute. Being so, we have no hesitation in following the order of the Tribunal in case of M/s. Shobha City cited (supra) and to hold that return filed by the assessee for these assessment years cannot be considered as defective return by

invoking the clause (aa) to explanation to sub-section (9) of section 139 of the Act since the assessee has not paid the complete tax before filing the return of income in response to notice issued u/s 143 of the Act.

6.5 Without prejudice to the above findings, we are of the opinion that once original return for the assessment years 2010-11 & 2012-13 in case of Shri Reddy Veeranna is processed u/s 143(1) of the Act, and thereafter assessee in response to notice u/s 153A of the Act to file the return of income, it has been stated that the return filed u/s 139(1) of the Act is to be treated as return filed in response to notice issued u/s 153A of the Act and when the original return is a valid return though the assessee has not made payment of tax as declared in the return, the return filed in response to section 153A of the Act cannot be treated as defective return.

6.6 In view of this, we are of the opinion that the return for the assessment years 2010-11 & 2012-13 in case of Shri Reddy Veeranna and for the AY 2015-16 in case of Smt. Reddy Sangeetha cannot be treated as a defective return by invoking the deleted clause (aa) to explanation to sub-section (9) of section 139 of the Act. This ground of the assessee is allowed.

7. Next common ground No.6 in the three appeals i.e. ITA No.1145/Bang/2022 for the AY 2010-11 & ITA No.1112/Bang/2022 for the AY 2012-13 in the case of Shri Reddy Veeranna and in ITA No.1111/Bang/2022 for the AY 2015-16 in the case of Smt. Reddy Sangeetha is with regard to levy of interest u/s 234A of the Act from the date of filing return of income till the

date of passing assessment order i.e. from 31.1.2011 to 27.12.2016 in assessment year 2010-11 and from 16.5.2013 to 27.12.2016 for the assessment year 2012-13 and in the assessment year 2015-16, the ld. AO is not justified in levying the interest u/s 234A of the Act till the date of passing assessment order i.e. 26.12.2016 without appreciating that assessee had filed her return of income on 25.8.2016 itself.

8. We have heard both the parties and perused the materials available on record. These grounds are not emanated from the order of the ld. CIT(A). As seen from the impugned orders of the CIT(A) in these two cases in these three assessment years i.e. 2010-11, 2012-13 & 2015-16, there was no ground on this issue by assessees before CIT(A). Hence, we are refrained to adjudicate these grounds as it is not emanated from the impugned orders of ld. CIT(A). These grounds of appeal in both assesses' cases are dismissed.

9. Next common ground in these two appeals i.e. ITA No.1145/Bang/2022 for the AY 2010-11 & ITA No.1112/Bang/2022 for the AY 2012-13 in the case of Shri Reddy Veeranna is that the ld. AO has erred in computing the interest u/s 234B of the Act without appreciating that the interest u/s 234B(1) of the Act has been already levied till the date of processing the return u/s 143(1) of the Act and in the impugned order, interest u/s 234B(3) of the Act is to be attracted on enhanced taxation determined in the reassessment. From the date of processing u/s 143(1) of the Act till the date of passing the assessment order having regard to the provisions of section 234B of the Act as it stood at the relevant point of time.

10. We have heard both the parties and perused the materials available on record. This ground is not emanated from the order of the Id. CIT(A). As seen from the impugned orders of the CIT(A) in these two cases, there was no ground on this issue by assessee before CIT(A). Hence, we are refrained to adjudicate this ground as it is not emanated from the impugned orders of Id. CIT(A). This ground of appeal in both assesses' cases is dismissed.

11. Ground No.4 in ITA No.1111/Bang/2022 for the AY 2015-16 is with regard to upholding the disallowance of Rs.39,03,991/- u/s 36(1)(iii) of the Act without appreciating that the assessee is having sufficient own funds.

11.1 This issue came for consideration before this Bench in ITA No.1110/Bang/2022 in assessment year 2013-14, wherein the Bench has held as under:

“9. We have heard the rival submissions and perused the materials available on record. In the present case, assessee's balance sheet reads as follows as on 31.3.2013:-

R. SANGEETHA BALANCE SHEET AS ON 31.03.2015			
LIABILITIES	AMOUNT	ASSETS	AMOUNT
Capital being excess of Assets	5,92,78,562	Fixed Assets:	
Over Liabilities		Motor Car	33,17,600
		Less: Depreciation	4,97,640
			28,19,960
		Site at Manyata Nagar	34,72,280
Car Loan From ICICI	8,43,604		
Vysya Cooperative bank Term loan	3,08,55,019	Gold Jewellery & Diamonds	58,69,966
Loan for Singapore Property	4,03,96,224		
Adviram	2,30,000	Investments:	
Current Liabilities		Suzlon Energy Ltd	67,954
Radical Jewellers Pvt Ltd	1,49,000	Blue Hill Informatics Pvt Ltd- Shares	1,00,000
Audit Fees Payable	80,157	Dyuti Infrastructure Pvt Ltd-Shares	60,000
Service tax payable(2012-13)	42,71,616	Manyata Developers Pvt Ltd-Shares	2,75,40,000
Service tax payable(2011-12)	4,77,375	Navya Infrastructure Pvt Ltd-Shares	90,000
Service tax payable(2010-11)	21,13,575	Reddy Veeranna Investments Pvt Ltd-Shares	54,000
Service tax payable(2009-10)	14,91,025	Talisa Infrastructure Pvt Ltd-Shares	90,000
Service tax payable(2008-09)	17,97,322		
TDS Payable	17,730	Deposits:	
Vysya Cooperative bank - OD	30,70,778	-ICICI Fixed Deposit	30,00,000
		Add: Interest Accrued	4,92,069
			34,92,069
		Vysya Cooperative bank FD - 4545	10,76,377
		Vysya Cooperative bank FD - 4590	16,85,527
		Vysya Cooperative bank FD -4591	16,85,527
		Current Assets, Loans & Advances:	
		Embassy Services Pvt Ltd	1,52,01,028
		Manyata Developers Pvt Ltd	1,14,40,700
		Reddy Veeranna	1,01,71,920
		R Snehalatha	50,000
		Gowtham	7,00,000
		Sundry advances	-44,97,882
		Property at Singapore	5,03,99,047
		TDS Receivable (AY 2013-14)	
		- Professional Charges	38,83,162
		- FD Interest	30,341
		Cash & Bank Balances:	
		- Cash on Hand	1,50,000
		- Axis Bank-5340	70,511
		- ING VBL-4931	3,66,344
		- ING VBL-14484	8,093
	14,50,71,987		14,50,71,987

9.1 As seen from the above, assessee has used the money borrowed for acquisition of property at Singapore. However, there was another term loan availed from Vysya Co-operative Bank on which assessee paid the interest in this assessment year under consideration. The assessee is not able to explain the purpose of borrowing that term loan.

9.2 On the other hand, assessee made interest free advance to various parties, namely M/s. Embassy Services Pvt. Ltd., Manyata Developer Pvt. Ltd., Reddy Veeranna, Reddy Snehalata and Sundry advances. The assessee is not able to explain the sources to make interest free advance to these parties. Hence, it should be considered that assessee has used the borrowed funds from Vysya Co-operative Bank to advance these parties on which assessee claimed interest in its profit &

loss account in the assessment year under consideration at Rs.34,80,353/-, which cannot be allowed u/s 36(1)(iii) of the Act, since the loan has been borrowed for the purpose of business and not satisfy the conditions laid down in section 36(1)(iii) of the Act. Accordingly, the disallowance made by the lower authorities is justified. This ground of appeal of the assessee is dismissed.”

11.2 Accordingly, this ground is dismissed.

12. In ITA No.1111/Bang/2022 for the AY 2015-16 in the case of Smt. Reddy Sangeetha, the assessee has raised one more ground that the ld. AO has erred in computing the interest u/s 234B of the Act without giving credit to the self-assessment tax paid by the assessee on 24.12.2015.

12.1 After hearing both the parties, we direct the ld. AO to give credit to the self-assessment tax paid, if any on 24.12.2015 while computing the interest u/s 234B of the Act.

13. In the result, the appeal of the assessee in ITA No.1111/Bang/2022 for the AY 2015-16 in the case of Smt. Reddy Sangeetha is partly allowed.

14. Next ground in ITA No.1113/Bang/2022 for the AY 2014-15 in the case of Shri Reddy Veeranna is with regard to disallowance of loss of Rs.8,62,27,931/- made by ld. AO being the business loss incurred by the assessee holding that the same was merely a paper loss.

14.1 Facts of the case are that during assessment proceedings it was observed by the AO that the assessee had set off his income of Rs 9,19,66,584/- from profession against business loss of Rs 8,62,27,931/-. The said business loss was stated to be on account

of sale and purchase rights on certain land. The AO noted that the assessee was neither seller nor purchaser in the transaction and he was only a confirming party to the transaction. The issue has been discussed in detail by the AO in paras 6 and 7 of the assessment order. The AO treated the loss as sham paper loss and held that it was merely an afterthought.

14.2 The Id. CIT(A) observed that M/s Embassy Real Estate Properties & Holdings (P) Ltd [EREPHPL]. had invested in M/s Sapphire Infrastructure Development (P) Ltd [SIDPL] vide a Memorandum, of Understanding dt. 31.03.2005, for acquiring shareholding in that company. SIDPL was in process of acquiring approximately 1150 acres of land and take up its development. EREPHPL made the investment to gain benefits of such development. The assessee is a Director in SIDPL. Subsequently the assessee had entered into an assignment agreement dt. 26.07.2012 with EREPHPL for taking over its rights and interests in SIDPL. The assessee agreed to pay Rs 247,51,89,062/- to EREPHPL in lieu of its giving up its rights in SIDPL. The payment was subject to certain conditions which included payment to be made within a period of 2 years starting from 06.08.2014 and that the payment would be made only after SIDPL procured land to the extent of 200 acres and transferred the same to the assessee. Since SIDPL failed to do so, the amount was renegotiated to Rs 213,00,00,000/- vide another settlement agreement dt. 16.01.2015. This was further negotiated vide a supplementary settlement agreement dt. 15.09.2015 and the payment was spread to FY 2016-17. As per the assessee SIDPL could not complete the process of executing sale

deeds for 200 acres and as on 31.03.2014 it had completed formalities in respect of 44.58 acres of land. The assessee had nominated M/s Manyata Developers (P) Ltd [MDPL] for the purchase of this land from SIDPL. The assessee is a Director in MDPL also. The transactions took place in Dec 2013/ January, 2014. The assessee never filed any income tax return for AY 2014-15. The reason for the same was stated at the time of search to be financial crunch leading to his inability to pay self-assessment tax of Rs 1,72,42,542/-. However, after the search the assessee claimed a loss of Rs 8,62,27,931/-, as business loss to him arising out of sale of land to MDPL by SIDPL. For this he worked out the cost of this land as Rs 55,18,27,931/- being based on total cost of land of 200 acres estimated at Rs 247,51,89,062/- (so average cost per acre at Rs 1,05,15,385/-). The land was sold by SIDPL to MDPL for Rs 46,56,00,000/-. As such the assessee worked out his own loss at Rs 8,62,27,931/-.

14.3 In this regard, the ld. CIT(A) observed that the assessee had only taken over the rights and interests of EREPHPL in SIDPL. So he had just substituted himself in the books of SIDPL against EREPHPL, which was earlier lender to SIDPL. As regards the sale of land, the transaction was between SIDPL (a separate legal entity) and MDPL; and any profit or loss arising out of that transaction could that be of SIDPL and not that of the assessee. So he decided that the ld. AO is correct in holding that the assessee has just created a paper loss in his books of account with the purpose of evading the tax due from him. As an investor in SIDPL, by way of substituting EREPHPL, the assessee could have been eligible for interest on his

investments, if so provided by the terms and conditions of loan, or dividend if the investment was by way of procurement of shares but not the losses or profits of the said company as such. Without prejudice to above, the working of cost for determining loss to the SIDPL on the basis of amount proposed to be paid to EREPHPL is also incorrect. The cost could be only the actual cost paid by SIDPL for purchase of the said land by it. The amount to be paid to EREPHPL was contingent upon certain conditions and this can also be seen that the same was later revised downwards substantially. So the same could not have formed the basis of the of the land sold to MDPL. Considering above, the ld. CIT(A) upheld the action of the AO in disallowing the loss and ground of appeal was dismissed.

14.4. The ld. A.R. submitted that in 2005, M/s. Embassy Real Estate Properties & Holdings Pvt. Ltd. (For short "EREPHPL") and M/s. Sapphire Infrastructure Development Pvt. Ltd. (For short "SIDPL") entered into a Memorandum of Understanding. As per the MoU, EREPHPL had advanced Rs.50 crores to SIDPL for identification of lands for purchase. This MoU was signed by Mr. Reddy Veeranna on behalf of SIDPL being Director of the Company. Since SIDPL would not fulfill its obligations towards EREPHPL, the rights with lands held by SIDPL were transferred by EREPHPL to Shri Reddy Veeranna based on an assignment agreement dated 26.7.2012. The contention of the ld. A.R. is that Mr. Reddy Veeranna incurred this loss on account of contractual obligation. As Mr. Reddy Veeranna was the agreement holder for 200 acres in the tripartite agreement entered between Mr. Reddy Veeranna, the Embassy group and SIDPL. Mr. Reddy Veeranna needs to pay a

sum of Rs.247 Crores to Embassy Group towards 200 acres. M/s. SIDPL has not completed the process of executing sale deed for 200 acres. They could complete the formalities in respect of only 44.58 acres of land by 31.3.2014. Mr. Reddy Veeranna nominated M/s. Manyata Developers Pvt. Ltd. (For short "MDPL") as the purchaser for the said land. The land transferred under this transaction is located at the end of the site of the project. M/s. MDPL was not willing to pay more than the market value as they are not sure of SIDPL fulfilling their promise to registering remaining 200 acres of contiguous land. In fact as on 31.3.2015, the position of registration is the same as on 31.3.2014. In view of this reason, the cost of land to Mr. Reddy Veeranna on an average is higher than the market value of the land acquired by MDPL. Mr. Reddy Veeranna has incurred loss on this count. Further, he submitted that the AO agreed that there was a contractual obligation, which forced Mr. Reddy Veeranna to buy the land held by SIDPL and he observed that this is a genuine loss on the face of it. However, he observed that there was no reason to Mr. Reddy Veeranna to nominate MDPL as buyer on his behalf and incurred a loss. According to Id. A.R., the AO cannot justifiably claim to put himself in the arm chair of the business man and assume the role to decide too much is reasonably the act of assessee so as to maximize income of the assessee from business.

15. The Id. D.R. relied on the order of the lower authorities.

16. We have heard the rival submissions and perused the materials available on record. The contention of the assessee's counsel is that assessee has been in Real Estate business and

involved in buying and selling of properties and he was the confirming party to sale deed between SIDPL & MDPL. In 2005, EREPHPL & SIDPL entered into an MoU. As per this MoU, EREPHPL had advanced Rs.54 crores to SIDPL for identification of loss for purchase. Shri Reddy Veeranna signed as a Director of SIDPL of the said MoU. Since SIDPL could not fulfill its obligation towards EREPHPL, the rights on the land held by SIDPL were transferred by EREPHPL to Shri Reddy Veeranna based on an assignment agreement dated 26.7.2012 due to contractual obligation which forced Shri Reddy Veeranna, the present assessee to buy the land held by SIDPL and thereafter he nominated M/s. Manyata Developers Pvt. Ltd. to buy the land on his behalf and the MDPL bought the land measuring 44.59 acres for a consideration of Rs.46.56 crores. Thus, there was a loss of Rs.8.62 crores in this transaction, which was borne by Shri Reddy Veeranna i.e. present assessee and claimed a deduction. According to the Id. AO, this is a contractual obligation though the present assessee required to be performed. However, it was executed by MDPL on behalf of the present assessee Shri Reddy Veeranna. The Id. AO agreed in his order at para 6.4 that this is a genuine contractual obligation imposed on the assessee and as such loss suffered in this transaction cannot be considered as a fictitious or paper loss in the hands of assessee. It is also an admitted fact that average purchase price of Rs.44.59 crores was Rs.55.18 crores while buying the 200 acres of land at Rs.247,51,89,062/- by considering the average cost of the same and it is also not disputed that the said land was sold for a consideration of Rs.46.56 crores and that was the sub-registrar value of sale of the same and there is no dispute regarding the registration value of this property. Once the Id. AO

observed that this was the genuine contractual obligation imposed on assessee and there was no doubt with regard to registration value of the property with the sub-registrar, the ld. AO thereafter cannot hold that the loss of Rs.8.62 crores is only the paper transaction or bogus. The ld. AO must not look at the matter from his point of view but that of a prudent business man. This is the contractual obligation imposed on the assessee and he has to discharge the same in the interest of his business. No business man can be compelled to maximize his profit. The revenue authorities must put themselves in the shoes of the assessee and see how a prudent business man would act. The assessee, being a prudent business man to keep up his promise, he incurred this liability. As he is able to find out a new party i.e. MDPL the sale was at the value fixed by State Government for the purpose of payment of stamp duty in respect of that impugned property and in that course of action, the loss suffered by the assessee to be allowed as a genuine business loss and accordingly, we direct the ld. AO to allow this loss while computing the income of the assessee. This ground of assessee is allowed.

17. Next ground in ITA No.1146/Bang/2022 for the AY 2015-16 is with regard to addition of Rs.2,76,31,482/- u/s 28(iv) of the Act.

17.1 Facts of the case relate to the common issue of the action of the AO in making an addition of Rs. 2,76,31,482/-. In brief, it was observed by the AO that during search in the case of M/s Reddy Veeranna Construction (P) Ltd (RVCPL), wherein the assessee was a Managing Director, physical cash balance of Rs 1,63,370/- only was found whereas the books of account reflected cash in hand at

Rs 17,27,94,852.12/-. No explanation to the above said discrepancy was provided during search either by the assessee or General Manager or Director of the said company. During assessment proceedings RVCPL claimed that it had placed the differential amount of Rs 17,26,31,482/- at the disposal of its MD (the assessee) for the purpose of identifying land for a project and it had accordingly reduced an amount of Rs 14.5 crores from outstanding amount due towards him. As regards the balance amount of Rs 2,76,31,482/-, neither RVCPL nor the assessee furnished any explanation. The AO noted that the books of account of the assessee also reflected the amount of Rs 14.50 crore as RVCPL imprest A/c. As regards the balance amount of Rs.2,76,31,482/-, there was no entry in his books of account. So the AO concluded that the said amount as given by the RVCPL to the assessee was for the benefit to its MD. Accordingly he proceeded ahead to treat the same as perquisite received by him from RVCPL or alternatively his income from other sources.

17.2 The Id. CIT(A) observed that the main argument of the assessee is that the amount was given by RVCPL to its various employees at the project sites to meet the expenditure of the company. The assessee has argued before him that entries relating to the same were not made in the books of account and that had led to discrepancy found during search. The assessee has argued that many of the employees left the company without rendering proper accounts. However, he observed that these arguments of the assessee are mere assertions and totally unsubstantiated. So, the same need to be rejected. In addition to above, the assessee has also argued that the addition could not

have been made in his hands by invoking provisions of Section 28(iv) of the Act. In this regard, he observed that it is important to observe that any money paid by a company in any form or by any name to a director for services rendered by him will amount to 'remuneration' and any benefit provided by company to a director will amount to 'remuneration' and monetary equivalent will have to be included in remuneration of the directors. The remuneration received by a Director can either be treated as 'Salaries' in the company's account or as 'fees for professional or technical Services' in the company's account. So, in either case the assessee has benefitted by an amount of Rs.2,76,31,482/- as the preponderance of probability is that the amount could not have been given by RVCPL to its employees without keeping a proper record of the same and that all such employees could not have left the job without rendering proper accounts. So, he observed that in actual the assessee, who was in full control of the affairs of the company, had drawn money for his own benefit and the same would amount to income in his hand either as salary or as business/profession income. For the above reasons, the Id. CIT(A) upheld the action of the AO in making an addition of Rs.2,76,31,482/- and dismissed the grounds.

18. We have heard the rival submissions and perused the materials available on record. In this case, there was search in the case of Mr. Reddy Veeranna u/s 132 of the Act wherein cash balance was found as per cash book of RVCPL at Rs.17,26,31,482/-. The investigating authority questioned the General Manager, Director and the Managing Director of the RVCPL. Similarly, there was search in the case of Reddy Veeranna Constructions Pvt. Ltd.

and they stated that a sum of Rs.14.5 crores has been handed over to Mr. Reddy Veeranna for the purpose of venturing of the land for only Solar Energy, thus, there was a difference of Rs.2,76,31,482/-. This amount has been considered by the ld. AO as income u/s 28(iv) of the AO in the hands of assessee. Alternatively, he also observed that it may be considered as income from other sources in the hands of the assessee as present assessee derived benefit of that amount to that extent of an amount of Rs.2,76,31,482/-.

18.1 At this time, it is appropriate to refer the section 28(iv) of the Act, which reads as follows:

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

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

***Provided** that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted.”*

18.2 The Hon'ble Supreme Court in the case of CIT Vs. Mahindra & Mahindra (93 taxmann.com 32) (SC) held that “in order to invoke provisions of section 28(iv), the benefit which is received has to be in some other form rather than in the shape of money.” The relevant extract is reproduced herein below:

“26. The Hon'ble Supreme Court in the case of Commissioner vs. Mahindra And Mahindra Ltd. [(2018) 93 [taxmann.com](https://www.taxmann.com) 32 (SC)]. In the said case, it has been categorically held by the Supreme Court that in order to invoke the provision of section 28(iv), the benefit which is received has to be in some other form rather than in the shape of money. Relevant extracts of the judgment is reproduced below:

"11 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....."

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."

18.3 Similar view has also been laid down in the following judgments:

(i) CIT vs. Santogen Silk Mills Ltd. [(2015) 57 [taxmann.com](#) 208 (Bombay HC)]

(ii) CIT vs. Xylon Holdings (P.) Ltd. [(2012) 26 [taxmann.com](#) 333 (Bombay HC)]

(iii) Ravinder Singh vs. CIT [(1993) 71 Taxman 336 (Delhi HC)]

(iv) Mahindra & Mahindra Ltd. vs. CIT [(2003) 128 Taxman 394 (Bombay HC)]

(v) DCIT vs. Tosha International Ltd. [(2008) 116 TIT 941 (Delhi 'Tribunal)]"

18.4 Being so, the physical cash shortage found in the hands of the custodian of that cash belong to a company cannot be treated as income of that person who kept the cash i.e. the present

assessee and also it cannot be considered as income from other sources in his hands as the assessee has an obligation to make good this loss to the company whose cash assessee is holding as a trustee and it cannot be brought to tax in the hands of assessee as an income. This ground of appeal of the assessee is allowed.

19. Next ground in ITA No.1145/Bang/2022 for the AY 2010-11, ITA No.1112/Bang/2022 for the AY 2012-13 & in ITA No.1113/Bang/2022 for the AY 2014-15 in the case of Shri Reddy Veeranna is with regard to passing of ex-parte order u/s 144 of the Act.

19.1 There was a fair opportunity of hearing has been given to the assessee by ld. CIT(A) to the assessee and assessee cannot have any grievance at this count as the power of the ld. CIT(A) is co-terminus with the power of ld. AO. Accordingly, this ground of appeal of the assessee is dismissed.

20. In the result, the appeals of the assessee in ITA No.1145/Bang/2022, ITA No.1112/Bang/2022, ITA No.1113/Bang/2022 & ITA No.1111/Bang/2022 are partly allowed and appeal of the assessee in ITA No.1146/Bang/2022 is allowed.

Order pronounced in the open court on 30th Nov, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 30th Nov, 2023.
VG/SPS

ITA No.1111/Bang/2022
Smt. Reddy Sangeetha, Bangalore
ITA Nos.1112 & 1113/Bang/2022 &
ITA Nos.1145 & 1146/Bang/2022
Shri Reddy Veeranna, Bangalore

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**