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

BEFORE

SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER

Sl. No	ITA No	Assessment Year	Appellant / Assessee	Respondent
1&2	637 & 638/Hyd/2022	2018-19 2019-20	Shri Sarat Gopal Boppana R/o. Hyderabad. PAN: AFCPB8083K	The Assistant Central Circle – 2(3) Hyderabad.
3	642/Hyd/2022	2020-21	Smt. Kavya Boppana, Hyderabad. PAN: AIKPB6992L	-do-
4	646/Hyd/2022	2020-21	Shri Tara Chand Boppana, Hyderabad. PAN : AGFPB0348D	-do-
5	690/Hyd/2022	2019-20	The Assistant Central Circle – 2(3) Hyderabad.	Shri Sarat Gopal Boppana R/o. Hyderabad. PAN: AFCPB8083K
6	692/Hyd/2022	2019-20	-do-	Shri Tara Chand Boppana, Hyderabad. PAN : AGFPB0348D
7	694/Hyd/2022	2019-20	-do-	Smt. Jhansi Rani Boppana, Hyderabad. PAN : AEZPB1917Q
8	696/Hyd/2022	2019-20	-do-	Smt. Kavya Boppana, Hyderabad. PAN:AIKPB699L

Appellant by	:	Shri P. Murali Mohan Rao, C.A
Respondent by	:	Ms. TH Vijaya Lakshmi, CIT-DR
Date of Hearing	:	18.06.2024
Date of Pronouncement	:	27.06.2024

O R D E R

PER BENCH :

This bunch of eight appeals, four by different Assessee's and four by the Revenue, are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals) – 12, Hyderabad dated 21.09.2022 and pertains to assessment years 2018-19, 2019-20, and 2020-21. Since, the facts are identical and issues are common and are interrelated, for the sake of convenience, these appeals were heard together and are being disposed of, by this consolidated order.

ITA 637/Hyd/2022 for A.Y. 2018-19 (SARAT GOPAL BOPPANA)

2. The assessee has raised the following grounds of appeal:

"1. The Ld. CIT(A) erred in partly allowing the appeal.

2. The Ld. CIT(A) ought to have appreciated that the order passed by the Assessing Officer under section 153A of the Income Tax Act, 1961 by the Assessing Officer is erroneous both on facts and in law, to the extent the order is prejudicial to the interest of appellant.

3.a) The Ld. CIT(A) erred in dismissing the grounds of appeal on unaccounted cash receipts of Rs. 50,00,000/-.

b). The Ld. CIT(A)ought to have appreciated that the addition made based on the statement recorded u/s 132(4) has no evidentiary value in absence of any further corroborative evidence.

c) The Ld. CIT(A)ought to have appreciated that the Ld. Assessing Officer erred in not making independent enquiries i.e., by taking statement of purchaser or by examining the bank account of the assessee.

d) The Ld. CIT(A) erred in not accepting the clarifications given by the assessee in course of assessee's retraction of statement filed through an affidavit before DDIT.

e) The Ld. CIT(A) ought to have appreciated that the AO erred in making the addition of Rs.50,00,000/- by merely accepting the sale deed and not its contents.

f) The Ld. CIT(A) ought to have appreciated that the AO has made the addition on the basis of so-called seized material which is nothing but an un-authenticated, un-reliable and a dumb material, which does not relate to the to the appellant.

g) The Ld. CIT(A) erred in drawing an inference that the appellant has received the cash portion of Rs. 50,00,000/- from the buyer and only after that, the appellant registered the impugned property for the cheque value.

h) The Ld. CIT(A) has erred in holding that the retraction affidavit filed by the appellant appears to be an afterthought.

4.a) The Ld. CIT(A) erred in partly allowing ground nos. 4 to 4.6 taken before him with regard to the addition of Rs. 21,87,500/-.

b) The Ld. CIT(A) erred in directing the AO to independently verify from banking sources to ascertain whether the initial payment of Rs. 10 lakhs had been received on 09-05-2014.

c) The Ld. CIT(A) erred in directing the AO to obtain the SRO value of the property as on 09-05-2014 and to adopt 1/4th value of the same for the purpose of section 50C of the Act.

d) The Ld. CIT(A) ought to have deleted the addition made of Rs.21,87,500 / - u/s 50C of the Act.

5.a) The Ld. CIT(A) erred in partly allowing ground nos. 4 to 4.6 taken before him with regard to the addition of Rs.3,30,250/-

b) The Ld. CIT(A) erred in directing the AO to independently verify from banking sources to ascertain whether the initial payment of Rs. 10 lakhs had been received on 10-01-2015.

c) The Ld. CIT(A) erred in directing the Assessing Officer to obtain the SRO value of the property as on 10-01-2015 and to adopt 1/4th value of the same for the purpose of section 50C of the Act.

d) The Ld. CIT(A) ought to have deleted the addition made of Rs.3,30,250/- u/s 50C of the Act.

6. a) The Ld. CIT(A) erred in holding that the Assessing Officer is right in bringing tax the commercial space of 19,005 sq. ft. that was sold/transferred during the year of account and not during the year relevant to assessment year 2019-20.

b) The Ld. CIT(A) erred in partly allowing ground nos. 5 to 5.6 taken before him with regard to the addition of Rs. 9,65,20,662/- as Short Term Capital Gains.

c) The Ld. CIT(A) ought to have appreciated that the taxability of capital gains has already occurred in AY 2016-17 and that taxing capital gains again in the year under consideration would amount to double taxation.

d) The Ld. CIT(A) failed to appreciate that there is no transfer of constructed property (built up area) in the year under consideration and hence no Capital gains would arise for the year under consideration.

e) The Ld. CIT(A) ought to have appreciated that the assessee has duly pertaining to the impugned property in the AY 2019-20.

f) The Ld. CIT(A) erred in directing the AO to tax the sale consideration on sale of built up area of 19,005 sq. ft as long term capital gains instead of splitting the capital gains as long term capital gains for land and short term capital gains for transfer of commercial space.

g) The Ld. CIT(A) ought to have deleted the addition made of Rs.3,65,20,662/- towards short term capital gains.

7.a) The Ld. CIT(A) erred in partly allowing ground nos. 5 to 5.6 taken before him with regard to the addition of Rs.3,56,717/- as long term capital gain.

b) The Ld. CIT(A) ought to have appreciated that liability to tax has already occurred in the assessment year, 2010-11 and that taxing the same again in the year under consideration tantamounts to double taxation.

c) The Ld. CIT(A) ought to have appreciated that the assessee has duly admitted capital gains arising on the sale of the impugned property in assessment year 2019-20.

3. The brief facts of the case are that the assessee is an individual and has filed his return of income under Section 139(1) of the Income Tax Act, 1961 on 28.08.2018 declaring total income of Rs.3,34,430/-. A search and seizure operation under Section 132 of the Act, was conducted on the assessee as part of such conducted on M/s. Skill Promoters Pvt Limited Group and others on 22.10.2019. Consequent to the search, notice under Section 153A of the Act dated 02.02.2021 was issued and served on the assessee. In response to the notice issued under Section 153A, the assessee filed return of income on 19.02.2021 declaring total income of

Rs.3,34,430/- which was the total income declared in the return of income filed under Section 139(1) of the Act. The assessment has been completed under Section 143(3) read with Section 153A of the Act on 29.09.2021 and determined the total income at Rs.4,47,29,559/- by making various additions, including addition towards unaccounted cash receipts towards sale of commercial space in Sarat City Capital Mall, capital gain on sale of property, addition towards capital gain by invoking provisions of Section 50C of the Income Tax Act, 1961 etc.

4. The assessee carried the matter in appeal before the first appellate authority and the ld.CIT(A), for the reasons stated in their appellate order dated 21.09.2022, has partly allowed the appeal of the assessee, wherein the ld.CIT(A) sustained additions made towards unaccounted cash receipts from sale of property, however, allowed the appeal of the assessee in respect of addition towards short term capital gain and long term capital gain in respect of sale of property.

5. Aggrieved by the order of ld.CIT(A), the assessee is in appeal before us.

6. The first issue that came up for our consideration from ground nos. 3(a) to 3(h) of assessee's appeal is addition towards unaccounted cash receipts from sale of property in Sarat City Capital Mall. The facts with regard to impugned dispute are that during the course of post search proceedings, a sale deed vide document number 9205/2017 executed on 17.08.2017 by the assessee and others in favour of Shri Vinay Dantapally Kumar for a sale

consideration of Rs.33 lakhs was found, however, the SRO guideline value of the said property as per the stamp valuation was at Rs.46,23,500/-. The AO further noted that a sale agreement in respect of the above property was also found and seized during the course of search and as per the said sale agreement, the consideration was agreed at Rs.83 lakhs and out of which Rs.33 lakhs was paid by cheque and the balance amount of Rs.50 lakhs was paid in 4 instalments in cash. A statement on oath was recorded from the assessee and confronted it with agreement to sale. In response to the specific question, the assessee stated that he has received consideration of Rs.50 lakhs in cash and also admitted as undisclosed income. The AO on the basis of sale agreement between the parties coupled with the statement recorded from the assessee during the course of search, made addition of Rs.50 lakhs towards unaccounted cash receipts from the sale of property.

6.1. The learned Counsel for the assessee, Shri P. Murali Mohan Rao, C.A., submitted that the ld.CIT(A) is erred in sustaining the addition made towards unexplained cash receipts on the basis of agreement of sale dated 07.08.2014, even though the assessee has not received the agreed consideration, as per the agreement which is clearly evident from the sale deed dated 17.08.2017 wherein the consideration of sale of property was specified at Rs.33 lakhs and also paid by cheques. The learned counsel for the assessee further referring to the recitals of sale agreement dated 07.08.2014 submitted that the parties have agreed for a sale consideration of Rs.83 lakhs with certain riders and as per the said agreement, the assessee is supposed to complete and handover the property by June, 2015 and also ensure that the property will get a minimum

rental of Rs.53 per sq.ft per month. However, there is a failure from the assessee to honour the terms and conditions of the sale agreement, the selling price has been reduced to Rs.33 lakhs and the same has been paid through banking channels and these facts have been brought to the notice of the AO as well as the ld.CIT(A). However, both the lower authorities have ignored the details submitted by the assessee and made addition towards purported cash receipts for sale of property.

6.2. The ld. DR Ms. TH Vijaya Lakshmi, CIT, on the other hand, supporting the order of ld.CIT(A) submitted that there is a clear agreement in the form of sale agreement and as per the said sale agreement, agreed consideration was Rs.83 lakhs. Further, the assessee has received Rs.33 lakhs in cheque and the same was part of sale deed. The balance consideration of Rs.50 lakhs was paid in cash in four instalments and the same was not offered by the assessee to tax. The AO on the basis of agreement of sale coupled with sale deed has rightly assessed undisclosed income, which is further supported by statement on oath by the assessee during the course of search.

6.3. We have heard both sides, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that as per sale agreement dated 07.08.2014, the parties have agreed for a consideration of Rs.83 lakhs and also specified the manner in which the consideration has to be paid. Further, as per sale agreement dated 07.08.2014, the consideration for sale of property was shown

at Rs.33 lakhs and paid by cheques. The clause (3) of the agreement specifically states that the balance consideration of Rs.50 lakhs should be paid in four instalments starting from 15.04.2014 to 15.04.2015. The agreement further states that the said consideration should be paid in cash and a proper receipt should be issued by the vendor. The agreement also states that the vendor shall complete building by June, 2015 with a additional 6 months grace period and also ensure that the property should fetch minimum rent of Rs.53/- per sq.ft per month. According to the counsel for the assessee, since there is a failure from assessee to fulfil the terms and conditions of the agreement, the consideration has been reduced to Rs.33 lakh only and no cash has been paid by the purchaser as alleged by the AO.

6.4. We have given our thoughtful consideration to the reasons given by the AO and ld.CIT(A) to make addition towards unexplained cash receipts from sale of property, in light of various averments made by the learned counsel for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for the simple reason that, except agreement to sale, there is no further evidence with the Assessing Officer with regard to the fact that the assessee has received the cash consideration of Rs.50 lakhs, as stated in the agreement. Although, the agreement of sale clearly specifies that the consideration should be paid in cash and proper receipt should be issued, but there is no iota of any evidence that even after search proceedings, the assessee had received cash. Further, the assessee has filed a retraction on 28.12.2019 with an affidavit and explained the reasons for retraction for agreed sale consideration. If we go by the reasons given by the assessee for the

retraction of the statement, in our considered opinion, the said statement is in accordance with the terms of agreement between the parties vide sale agreement dated 07.08.2014 and has rightly claimed by the assessee, as the initial agreed price was not materialised for various reasons, including non-completion of building on or before the agreed date and also the minimum agreed rental income. In our considered opinion, the reasons given by the assessee appears to be reasonable going by the date of the agreement of sale and their terms and conditions, and also the date of the sale of the property. Therefore, we are of the considered opinion that the AO and Ld.CIT(A) erred in making addition towards alleged unaccounted cash receipts for the sale of property only on the basis of the agreement of sale, without thereby any corroborative evidence to prove that the assessee has received the cash. Further, the additions also cannot be made on the basis of admission alone when the assessee has filed a retraction from his statement with necessary evidence and reasons. The ld. CIT(A) without appreciating the facts, simply sustained the addition made by the AO. Thus, we reverse the findings of Ld.CIT(A) on this issue and direct the AO to delete the addition made towards unaccounted cash receipts from the sale of property.

7. The next issue that came up for our consideration from ground numbers 6 and 7 of the assessee's appeal is addition towards short-term capital gain and long-term capital gain from sale of property.

7.1. During the course of assessment proceedings, the AO noticed that the assessee has sold various properties as reported in Form 26AS, however, not admitted any capital gain in the return of income filed for the assessment year 2018-19. The AO called upon the assessee to explain the transactions with necessary details, and in response, the assessee submitted that he has sold various properties during the financial year 2017-18 relevant to assessment year 2018-19, however, admitted capital gain in the year 2019-20 because the construction of the property was completed, and the possession was handed over to the buyers during the financial year 2018-19, relevant to assessment year 2019-20. The Assessing Officer on the basis of details submitted by the assessee, including the copies of relevant sale deeds, observed that the assessee has received sale consideration of Rs.5,45,02,449/- on sale of 19,005 sq.ft property during the financial year 2017-18, relevant to assessment year 2018-19. The AO further observed that capital gain on the sale of land is assessable under the head long-term capital gains because the holding period is more than 3 years, whereas the property being sale of the built-up area was assessable under the head short-term capital gain because the holding period of the asset is less than 3 years. Therefore, the AO called upon the assessee to furnish the computation of capital gain, in respect of the sale of land and the sale of built-up area separately. The assessee has filed separate computation for short term capital gain and long-term capital gain. The AO, on the basis of the revised computation submitted by the assessee, has assessed long-term capital gain of Rs.3,56,717/- in respect of the sale of undivided portion of land and has computed short term capital gain of Rs.3,65,20,662/- towards sale of built-up area.

7.2. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged the assessment of capital gain for assessment year 2018-19, in respect of the area sold during the financial year 2017-18 on the ground that the assessee has already offered capital gain for the assessment year 2019-20, in respect of the total area of land sold, including land sold for the impugned assessment year. The assessee also challenged the reasons given by the AO to assess the consideration received for sale of land as long-term capital gain and the sale of the built-up area as short-term capital gain. The Ld.CIT(A), after considering the submissions of the assessee and also by taking note of the provisions of section 45(5A) of the Act, observed that the said provision does not apply to a case where the capital asset is transferred before the issuance of the occupancy certificate. In the present case, the AO found from 26AS statement that the assessee has sold commercial buildings to the extent of 19,005 sq.ft during the financial year 2017-18 before the issuance of occupancy certificate on 26.07.2018. Therefore, the AO is rightly taxing the capital gain for the assessment year 2018-19, in respect of the area sold by the assessee.

7.3. In so far as computation of long-term capital gain on sale of the land portion and short-term capital gain for built-up area, the ld.CIT(A) has observed that the assessee has entered into joint development agreement in AY 2010-11 and offered short-term capital gain on the portion of land transferred to the builder, in exchange of the built-up area, and the same has been accepted by the department. Although, the Assessing Officer in the subsequent search and assessment proceedings u/s 153A of the Act held that

there was no effective transfer of property for AY 2010-11and further, assessed long term capital gain for the assessment year 2016-17, but while adjudicating the appeal for A.Y. 2016-17, it was held that the capital gain was rightfully brought to tax in the year 2010-11 and the same has been accepted by the Revenue. Since the assessee has received built up area in exchange of transfer of land in A.Y. 2010-11 and sold the said property during the current year 2018-19, the holding period of the asset is beyond three years and thus, any profit or gain received from sale of said property is assessable under the head long term capital gain only. Since the holding period of built-up area is more than three years, the Assessing Officer is directed to assess profit or sale of built up area also under the head long term capital gain.

7.4. Aggrieved by the order of ld.CIT(A), the assessee is now in appeal before us.

7.5. The learned counsel for the assessee submitted that the ld.CIT(A) erred in upholding reasons given by the Assessing Officer to assess capital gain for the assessment year 2018-19, in respect of 19,005 sq.ft property sold by the assessee for the F.Y. 2017-18 relevant to A.Y. 2018-19, even though the assessee has already offered capital gain for A.Y. 2019-20 on the basis of the possession handed over to the buyers. The learned counsel for the assessee further submitted that the ld.CIT(A) failed to appreciate the fact that there is no transfer of constructed property in the year under consideration and hence, the assessee has rightly offered capital gain

for taxation in A.Y. 2019-20 when the construction was completed, and possession was handed over to the buyers.

7.6. The ld.DR, on the other hand, supporting the order of ld.CIT(A) submitted that the evidence brought on record clearly show the transfer of property for the F.Y. 2017-18 relevant to A.Y. 2018-19. The reasons given by the assessee to offer capital gain for the A.Y. 2019-20 is based on merit going by recitals of sale deed and as per the said sale deed, it is clearly evident that the assessee has sold the property which was completed in all respects. Although, the occupancy certificate was obtained in subsequent financial year, but the fact remains that when the assessee has transferred property and received full consideration and the same needs to be taxed in the year of transfer and the consideration received.

7.7. Heard both the parties, perused the materials available on record and have gone through the orders of authorities below. There is no dispute with regard to the fact that the assessee has sold 19,005 sq.ft property in the F.Y. 2017-18 relevant to A.Y. 2018-19. The assessee had also received full amount of sale consideration of Rs.5,45,02,449/- in the F.Y. 2017-18 relevant to A.Y. 2018-19 only. Therefore, transfer as defined under section 24(7) of the Act is completed in the F.Y. 2017-18 relevant to A.Y. 2018-19 and the assessee needs to offer capital gain for tax for the impugned assessment year.

7.8. The argument of the assessee is that as per the provisions of Section 45(5A), capital gain is taxable under the year in which the possession is handed over by the seller to the buyer and this event is happened on 26.07.2018 when the assessee has received occupancy certificate from the authority. We find that the ld.CIT(A) has rightly rejected the contention of the assessee for application of Section 45(5A) because as per the provisions of Section 45(5A), the said section shall not apply when the assessee transfers his share as on the date of issuance of completion certificate and in such case, the capital gain deemed to be the income of the previous year in which such transfer takes place. Therefore, we reject the arguments of the assessee for application of Section 45(5A) and uphold the findings of the ld.CIT(A). To somehow, in our considered opinion, there is no error in the reasons given by the ld.CIT(A) to uphold the findings of the Assessing Officer in assessing the capital gain for A.Y. 2018-19 in respect of 19,005 sq.ft property sold by the assessee and thus, we inclined to uphold the addition made by the ld.CIT(A) and reject the grounds taken by the assessee.

8. Ground nos.4 and 5 of assessee is addition towards capital gain by applying provisions of section 50C of the Income Tax Act, 1961.

8.1. The learned counsel for the assessee at the time of hearing submitted that the assessee does not wish to press ground nos.4 and 5 of assessee challenging the additions made by the Assessing Officer. Therefore, the grounds of appeal filed by the assessee

challenging the addition made towards capital gain by applying provisions of Section 50C of the Act are dismissed as not pressed.

9. In the result, the appeal filed by the assessee is partly allowed.

ITA Nos.638/Hyd/2022 for A.Y. 2019-20 (SARAT GOPAL BOPPANA)

10. The assessee has raised the following grounds of appeal :

"1. The Ld. CIT(A) erred in partly allowing the appeal.

2. The Ld. CIT(A) ought to have appreciated that the order passed by the Assessing Officer under section 153A of the Income Tax Act, 1961 by the Assessing Officer is erroneous both on facts and in law, to the extent the order is prejudicial to the interest of appellant.

3.a) The Ld. CIT(A) erred in partly allowing ground nos.5 to 5.6 taken before him with regard to the addition of Rs.3,79,750/- u/s 50C of the Act.

b). The Ld. CIT(A) erred in directing the Ao to independently verify from banking sources to ascertain whether the initial payment of Rs.42,24,000/- had been received on 15.05.2014.

c) The Ld. CIT(A) erred in directing the AO to obtain the SRO value of the property as on 15.05.2014 and to adopt 1/4th value of the same for the purpose of section 50C of the Act.

d) The Ld. CIT(A) ought to have deleted the addition made of Rs.3,79,750/ - u/s 50C of the Act.

4.a) The Ld. CIT(A) erred in partly allowing ground nos. 5 to 5.6 taken before him with regard to the addition of Rs.10,93,750/-

b) The Ld. CIT(A) erred in directing the Ao to independently verify from banking sources to ascertain whether the initial payment was actually received by the appellant on 09.08.2014.

c) The Ld. CIT(A) erred in directing the Assessing Officer to obtain the SRO value of the property as on 09.08.2014 and to adopt 1/4th value of the same for the purpose of section 50C of the Act.

d) The Ld. CIT(A) ought to have deleted the addition made of Rs.3,30,250/- u/s 50C of the Act.

5. a) The Ld. CIT(A) erred in holding that the Assessing Officer is right in bringing tax the commercial space of 26,148 sq. ft. that was sold/transferred during the year of account and not during the year relevant to assessment year 2019-20.

b) The Ld. CIT(A) erred in partly allowing ground nos.8 to 8.4 taken before him with regard to the addition of Rs.4,50,63,347/- as Short Term Capital Gains.

c) The Ld. CIT(A) ought to have appreciated that the taxability of capital gains has already occurred in AY 2010-11 and that taxing capital gains again in the year under consideration would amount to double taxation.

d) The ld.CIT(A) erred in directing the Assessing Officer to tax the sale consideration on sale of built up area of 26,148 sq.ft as long term capital gains instead of splitting the capital gains as long term capital gains for land and short term capital gains for transfer of commercial space.

e) The Ld. CIT(A) ought to have deleted the addition made of Rs.4,50,63,347/- towards short term capital gains.

6.a) The Ld. CIT(A) erred in partly allowing ground nos.8 to 8.4 taken before him with regard to the addition of Rs.1,49,255/- as long term capital gain.

b) The Ld. CIT(A) ought to have appreciated that liability to tax has already occurred in the assessment year, 2010-11 and that taxing the same again in the year under consideration tantamounts to double taxation.

c) The Ld. CIT(A) ought to have appreciated that the assessee has duly admitted capital gains arising on the sale of the impugned property in assessment year 2019-20."

11. The first issue that came up for our consideration from ground nos.5 and 6 of assessee's appeal is assessment of short term capital gains, in respect of sale of built up area and long term capital gains in respect of land. We find that similar issue has been considered by us in assessee's own case for A.Y. 2018-19 in ITA No.637/Hyd/2022. As the facts are identical but for figures for this year also, the reasons given by us in preceding paragraph nos. 7.7 and 7.8, shall mutatis and mutandis apply to this appeal, as well.

Therefore, for similar reasons, we are inclined to uphold the findings of the ld.CIT(A) and reject the grounds taken by the assessee.

12. The next issue that came up for our consideration from ground nos.3 and 4 of assessee's appeal is addition towards capital gain by applying provision of Section 50C of the Income Tax Act, 1961. The learned counsel for the assessee, at the time of hearing submitted that the assessee does not wish to press ground nos.3 and 4. Therefore, the grounds nos.3 and 4 of assessee's appeal are dismissed, as not pressed.

13. In the result, the appeal of assessee is dismissed.

ITA No.690/Hyd/2022 for A.Y. 2019-20 (SARAT GOPAL BOPPANA)

14. The Revenue has raised the following grounds of appeal :

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

2. The Ld. CIT(A) erred. on facts and in law in allowing relief by not considering the sale consideration of Rs.2,45,00,000/- as mentioned in the agreement of sale entered into between the assessee and the buyer Sri P. Ganeshwar Rao in respect of the commercial space of 4083 sft along with undivided share of land.

3. The Ld. CIT(A) erred on facts and in law in not considering the agreement of sale even though the transaction materialized following the execution of sale deed by the assessee in favour of the purchaser.

4.TheLd.CIT(A) erred on facts and in law by holding that the provisions of Section 115BBE are not applicable to the income admitted towards unaccounted jewellery even though the same was detected during the search operation.

5. The Ld.CIT(A) erred on facts and in law by not considering the applicability of section 28(via) in respect of the unsold inventory treated as capital asset."

15. The first issue that came up for our consideration from ground no.2 is addition towards unexplained cash receipts from sale of property amounting to Rs.1,42,92,500/-. The facts with regard to main dispute are that during the course of search proceedings, certain loose sheets and documents were found and seized at the residential premises of assessee on 22.10.2019. The documents found during the course of search were confronted to the assessee and a statement of oath was recorded on 03.12.2019 and in response to specific question, the assessee stated that the documents pertaining to the sale of property in Sarat City Capital Mall, Kondpaur. The assessee further submitted that he along with two others namely, Sri P. Ganeshwar Rao and Sri N.Srimannarayana jointly purchased a land of Ac.3.29 gts in Kondapur Village vide document No.1063/2018 dt.12.02.2008. Later, the co-owners P. Ganeshwar Rao and N.Srimannarayana executed a Release Deed on deed on 15.01.2013 realizing their rights in property in favour of the assessee. As per the terms of Release Deed, the assessee has to pay an amount of Rs.1,02,07,500/- to P. Ganeswara Rao. Thereafter, an Agreement of Sale cum GPA was executed by the assessee in January, 2013 in favour of P. Ganeswara Rao and agreed to transfer of 4,083 sq.ft of commercial place along with undivided share in land in 3rd floor of Sarat City Capital Mall for a consideration of Rs.2,45,00,000/-. The property was ultimately registered in favour of buyer on 13.12.2018 for a consideration of Rs.1,02,07,500/- as per the agreed terms between the assessee and buyers, in terms of registered sale deed dt.13.12.2018. The Assessing Officer on the

basis of the statement recorded from the assessee coupled with the documents found during the course of search observed that the assessee has sold commercial place of 4083 sqft in Sarat City Capital Mall, Kondapur for a consideration of Rs.2,45,00,000/-. However, later registered the deed for a consideration of Rs.1,02,07,500/-, therefore, opined that the assessee has received balance of Rs.1,42,92,500/- in cash or adjusted against the interest payable to P. Ganeswara Rao. Therefore, assessed double amount of consideration as undisclosed income of the assessee.

15.1. Aggrieved by the assessment order, the assessee preferred appeal before the ld.CIT(A).

15.2. Before the ld.CIT(A), the assessee submitted that although the agreement was entered into by fixing sale agreement at Rs.2.45 lakhs subject to fulfilment of certain conditions, but ultimately, the property has been transferred by way of slae of registration in January, 2013 and a consideration has been received in cash because there is a failure on the part of the assessee to register the property within the time referred in the agreement of sale and to avoid litigation, although, the assessee has agreed to treat difference of amount as undisclosed income in the statement recorded during the course of search, but subsequently, the statement has been retracted by means of affidavit dt.09.01.2020 with valid reasons. Therefore, the Assessing Officer has made addition towards alleged cash receipts towards sale of property. The ld.CIT(A) after considering the relevant facts and also by taking note of various deeds filed by the assessee, deleted the addition made towards

unexplained cash receipts towards sale of property on the ground that unless it is established that cash has been paid over and above the declared consideration, as per registered sale deed, it cannot be presumed that the assessee has received excess consideration in cash. The ld.CIT(A) further held that going by terms of agreement between the parties, it is evident that assessee needs to satisfy certain conditions and further because of non-fulfilment of various conditions, the consideration has been reduced to what was stated in the registered sale deed. Therefore, in the absence of assessee's evidence to the contrary, it is incorrect on part of Assessing Officer to make addition towards alleged cash receipts towards sale of property.

15.3. Aggrieved by the order of ld.CIT(A), the Revenue is in appeal before us.

15.4. The ld.DR submitted that the ld.CIT(A) has erred in deleting the addition made towards difference amount on agreement of sale coupled with statement of record from the assessee without appreciating the facts that the sale agreement was signed by both the parties and also consideration was clearly specified at Rs.2.45 lakhs. The ld.DR further submitted that the ld.CIT(A) failed to appreciate the fact that the agreement of sale was given effect by both the parties by completing the transfer of property, the manner thereby was that the parties have agreed for consideration of Rs.2.45 lakhs whereas registered the property for a consideration of Rs.1,02,07,500/-.

15.5. The learned counsel for the assessee supporting the order of ld.CIT(A) submitted that initially parties were agreed for consideration of Rs.2.45 lakhs with certain terms and conditions. As per the agreement, the assessee should deliver physical possession of the property on or before the agreed date as per the terms of sale agreement. Further, the assessee also failed to satisfy the condition of fetching a minimum rental income, as per the agreement. Therefore, the final consideration has been discussed and reduced to Rs.1,02,07,500/- and the same has paid by cheque, as per the registered sale deed dated 13.12.2018. The Assessing Officer without appreciating the relevant facts, simply on the basis of agreement of sale coupled with statement of record from the assessee, ignoring the fact that the statement was retracted with sworn affidavit, made addition towards alleged cash receipts towards sale of property. The ld.CIT(A) after considering the above facts, has rightly deleted the addition made by the Assessing Officer and the order of Ld.CIT(A) should be upheld.

15.6 We have heard both sides, perused the materials available on record and gone through the orders of authority below. There is no dispute with regard to the fact that as per sale agreement dated 07.08.2014, the parties have agreed for a consideration of Rs.83 lakhs and also specified the manner in which the consideration has to be paid. Further, as per sale deed dated 07.08.2014, the consideration for sale of property was shown at Rs.33 lakhs and paid by cheques. The clause (3) of the agreement specifically states that the balance consideration of Rs.50 lakhs should be paid in four instalments starting from 15.04.2014 to

15.04.2015. The agreement further states that the said consideration should be paid in cash and a proper receipt should be issued by the vendor. The agreement also states that the vendor shall derive completed building by June, 2015 with the additional 6 months grace period and also ensure that the property should fetch minimum rent of Rs.53/- per sq.ft per month. According to the counsel for the assessee, since there is a failure from assessee to fulfil the terms and conditions of the agreement, the consideration has been reduced to Rs.33 lakh only and no cash has been paid by the purchaser as alleged by the AO.

15.7 We have given our thoughtful consideration to the reasons given by the AO and ld.CIT(A) to make addition towards unexplained cash receipts from sale of property, in spite of various agreements submitted by the learned counsel for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for the simple reason that except the agreement to sale, there is no further evidence with the Assessing Officer with regard to the fact that the assessee has received the cash consideration of Rs.50 lakhs, as stated in the agreement. Although, the agreement of sale clearly specifies that the consideration should be paid in cash, proper receipt should be issued, there is no iota of the evidence that even after search proceedings, the assessee had received cash receipts. Further, the assessee has filed a retraction on 28.12.2019 with a sworn affidavit and explained the reasons for retraction in agreed sale consideration. If we go by the reasons given by the assessee for the retraction of the statement, in our considered opinion, the said statement is in accordance with the terms of

agreement between the parties in sale agreement dated 07.08.2014 and has rightly claimed by the assessee, as the initial agreed price was not materialised for various reasons, including non-completion of building on or before the agreed date and also the minimum agreed return of rental income.

15.8 In our considered opinion, the reasons given by the assessee appear to be reasonable going by the date of the agreement of sale and their terms and conditions, and also the date of the sale of the property. Therefore, we are of the considered opinion that the AO and Ld.CIT(A) erred in making addition towards alleged unaccounted cash receipts for the sale of property only on the basis of the agreement of sale, without thereby giving any corroborative evidence to prove that the assessee has received the cash. Further, the additions also cannot be made on the basis of admission alone when the assessee has filed a retraction from his statement with necessary evidence and reasons. Without appreciating these facts, the Ld.CIT(A) simply sustained the addition made by the AO. Thus, we reverse the findings of Ld.CIT(A) on this issue and direct the AO to delete the addition made towards unaccounted cash receipts from the sale of property.

16. The next issue that came up for our consideration from ground no.4 of the Revenue appeal is addition towards undisclosed jewellery found during the course of search and application of provisions of Section 115BBE of the Income Tax Act, 1961.

16.1. During the course of search at the residential premises of the assessee on 22.10.2019 certain loose sheets and bills were found and seized pertaining to purchase of jewellery worth of Rs.3,30,62,687/-. The assessee was asked to explain the documents found during the course of search, for which, the assessee stated that jewellery found during the course of search in his residential premises was given by Shri Syed Mohammed Aslam, Managing Director of M/s. Skill Promoters Pvt. Ltd. towards part of security deposit paid for land development, as per joint development agreement between the parties. Further, the jewellery was returned to Syed Mohammed Aslam and both the parties have agreed to retain the same with assessee family. The assessee further stated that the value of jewellery found during the course of search amounting to Rs.3,30,62,687/- would be offered to tax in the name of himself and his family members. The assessee has filed return, in response to notice u/s 153A of the Act and declared sum of Rs.82,65,672/- as his share of income under the head 'income from other sources'. The Assessing Officer assessed valuation of jewellery u/s 69A of the Act and invoked provisions of Section 115BBE of the Act and that the assessee has not declared the value of jewellery in the books of accounts before the date of search.

16.2. On appeal, the ld.CIT(A) directed the Assessing Officer to assess value of jewellery under normal provisions of the Act, as claimed by the assessee on the ground that the source of purchase of jewellery is explained by the assessee out of security deposits received from Shri Syed Mohammed Aslam, Managing Director of M/s. Skill Promoters Pvt. Ltd for joint development of the property.

16.3. Aggrieved by the order of ld.CIT(A), the Revenue is now in appeal before us.

16.4. The ld.DR, on the other hand, referring to the paper book filed by department submitted that the purchase bill of jewellery to the extent of Rs.1,24,60,000/- is in the name of the assessee. Therefore, the assessee cannot claim that jewellery to the extent of Rs.1,24,60,000/- is received from Shri Syed Mohammed Aslam, Managing Director of M/s. Skill Promoters Pvt. Ltd as security deposit. The remailing three bills were although in the name of Syed Mohammed Aslam, the jewellery was found in the possession of assessee. Although, the assessee claims to have received jewellery as security deposit, but the joint development agreement between the parties does not satisfy the payment of security deposit by way of jewellery. Assessing Officer after considering the facts, has rightly assessed the value of jewellery u/s 69A r.w.s. 115BBE of the Act. The ld.CIT(A) without considering the facts, simply directed the Assessing Officer to assess the income under the normal provisions of the Act.

16.5. The learned counsel for the assessee submitted that there is no dispute with regard to the fact that Shri Syed Mohammed Aslam, Managing Director of M/s. Skill Promoters Pvt. Ltd has admitted in the statement that part of the security deposit was given by way of jewellery. Further, three bills were also in the name of said Syed Mohammed Aslam. Although, the one bill is in the name of the

assessee, but the fact remains that the consideration for purchase of said jewellery was paid by the other party and deposited with the assessee for security deposit, in terms of joint development agreement. Since the source for the jewellery has been explained out of security deposit received from the developer and the same cannot be assessed as unexplained money u/s 69A of the Act and provisions of Section 115BBE of the Act cannot be invoked. The ld.CIT(A) after considering the facts has rightly deleted the addition and hence, the order should be upheld.

16.6. Heard both the parties, perused the materials available on record and have gone through the orders of authorities below. There is no dispute with regard to the fact that during the course of search, certain loose sheets and papers were found pertaining to the jewellery and the value of jewellery was Rs.3,30,62,687/-. The assessee was confronted with those loose sheets and bills and was asked to explain the source of purchase of the said property. In response, the assessee while recording the statement u/s 132(4) of the Act, has clearly stated that the jewellery was given by Syed Mohammed Aslam, Managing Director of M/s. Skill Promoters Pvt. Ltd, as part payment of security deposit towards joint development agreement between the parties. The said statement is confirmed by Syed Mohammed Aslam, Managing Director of M/s. Skill Promoters Pvt. Ltd in his statement recorded during the course of search as well. Therefore, from the above, it is undisputedly proved that the jewellery found during the course of search was received from Syed Mohammed Aslam, as part of security deposit to be paid in pursuant to the joint development agreement between the parties.

Although, there is no reference of payment of security deposit in kind, by way of jewellery, in the joint development agreement, but when the parties have agreed in their statements recorded during the course of search that the jewellery was paid as part of security deposit, in our considered opinion, there cannot be any other view, unless it is supported by further evidences.

16.7. In the present case, the Assessing Officer assessed the value of jewellery as unexplained money u/s 69A of the Act and brought to tax in terms of Section 115BBE of the Act, even though the source of purchase of jewellery has been explained by the assessee. It is well established principle of law by various decisions that provision of Section 69A of the Act cannot be applied once the nature and source of acquisition of any money, bullion, jewellery or any further valuable article is explained to the satisfaction of the Assessing Officer. Since the assessee has explained the possession of jewellery, in our considered opinion, the provisions of Section 45 r.w.s. 115BBE of the Act cannot be applied. The ld.CIT(A) after considering the facts has rightly directed the Assessing Officer to assess the value of jewellery under the head income from other sources as claimed by the assessee. Thus, we are inclined to uphold the findings of the ld.CIT(A) and reject the grounds taken by the Revenue. Thus, ground no.4 of the Revenue is dismissed.

17. The next issue that came for consideration from ground no.5 of Revenue appeal is deletion of addition made towards income on account of unsold inventory list treated as fixed assets amounting to Rs.6,45,35,000/-.

17.1. The facts of the impugned dispute are that the assessee has entered into the joint development agreement in 2009 for development of property and offered relevant capital gain for tax in assessment year 2010-11. The assessee has entered into a sharing agreement dt.02.11.2015 with the developer M/s. Skills Promoters Pvt. Ltd. and has received a total built up area of 4,10,125 sq.ft in different floors. Out of the total built up area of 4,10,125 sft, the assessee family has sold 45,153 sq.ft in different years and has leased out 2,32,144 sq.ft out of the reaming built up area. During the course of assessment proceedings, the Assessing Officer observed that by entering into the joint development agreement with the developer, the assessee has commercially exploited the property by carrying out business activities and has also undertaken inventory risk, credit risk and market risk. Therefore, opined that property received in pursuant to the joint development agreement become inventory of the assessee and thus, as per the provisions of Section 28(via) of the Act, which is applicable from 01.04.2019 relevant to assessment year 2019-20, when inventory is converted into capital asset, then fair market value of the property as on the date of conversion should be treated as profits and gains from business. Therefore, invoked the provisions of Section 28(via) and by applying the fair market value of the property, department value of the property at Rs.25.81 crores and assessed sum of Rs.6,45,35,000/- being 1/4th share of the assessee under the head income from business and profession.

17.2. Being aggrieved by the assessment order, the assessee carried the matter in appeal before the first appellate authority.

17.3. Before the ld.CIT(A), the assessee submitted that the property held by the assessee is purely capital asset and continued to be capital asset even after joint development of the property and thus, provisions of Section 28(via) cannot be applied. The assessee further contended that the said provision is applicable from 01.04.2019 relevant to assessment year 2020-21 and thus, the said provision cannot be applied for the impugned assessment year. The ld.CIT(A) after considering the relevant facts and also taken note of provisions of Section 28(via) of the Act, observed that said provisions do not apply to the facts of the present case, because the assessee has held the property, as investment even before the joint development agreement and after the joint development agreement, the property continued to be a capital asset and income derived from the said property has been offered to tax under the head 'income from house property'. The ld.CIT(A) further held that provisions of section 28(via) apply to a case where inventory / stock-in-trade converted to a capital asset. In the present case, since there is no conversion of inventory into capital asset, application of section 28(via) is incorrect and thus, direct the Assessing Officer to delete the addition made towards profits and gains from business u/s 28(via) of the Act.

17.4. Aggrieved by the order of ld.CIT(A), the assessee is in appeal before us.

17.5. The ld.DR, on the other hand, submitted that the ld.CIT(A) erred in deleting the addition made by the Assessing Officer towards profits and gains from business as conversion of inventory into fixed assets without appreciating the fact that the assessee has entered into joint development agreement and has carried out business activities, which is evident form the terms of joint development agreement between the parties and subsequent activities carried out by the assessee. The ld.DR further submitted that the assessee has received huge extent of developed area in pursuant to joint development agreement, has let out the said property, to various parties, which is in the nature of adventure in the nature of trade and commerce and thus, when the inventory has been converted into fixed assets, provisions of Section 28(via) are applicable and the Assessing Officer has rightly applied the said provisions.

17.6. The learned counsel for the assessee, on the other hand, supporting the order of ld.CIT(A) submitted that the assessee is a land owner, had entered into joint development agreement for development of the property. The assessee has received built up area in the exchange of land in the year 2009 when the joint development agreement was entered into with a developer. The assessee has offered long term capital gain for A.Y. 2010-11, when the joint development agreement was entered into. The subsequent receipt of property in the form of built up area in exchange of land

was also held as 'investment' (fixed assets) and the assessee never treated built up area as inventory. The assessee never carried out any business activity. Therefore, the question of holding constructed built up area, as inventory and subsequent conversion into capital asset does not arise. The Assessing Officer on presumption and on hypothetical basis, applied provisions of section 28(via). The ld.CIT(A) after considering the relevant facts, has rightly deleted the addition made by the Assessing Officer and the order should be upheld.

17.7. Heard both the parties, perused the materials available on record and have gone through the orders of authorities below. There is no dispute with regard to the fact that the assessee and their family members had entered into joint development agreement with M/s. Skills Promoters Pvt. Limited on 11.05.2009. It is also not in dispute that the assessee and their family members had offered capital gain for tax in A.Y. 2010-11 on the basis of date of joint development agreement and paid relevant taxes and the same has been accepted by the Assessing Officer, in pursuant to re-assessment proceedings u/s 147 of the Act. The Assessing Officer assessed the value of the property retained by the assessee and let out to various parties as profits and gains of business and profession in terms of Section 28(via) on the ground that the assessee's activity entering into joint development agreement with the developer and subsequent receipt of developed building is in the nature of trade and commerce and further, the built up area received by the assessee and their family members for exchanging the land becomes inventory of the assessee. The Assessing Officer further

observed that since the assessee has let out the property, the nature of conversion of inventory into capital asset, in terms of Section 28(via) and thus, the fair market value of the inventory, as on the date on which it was completed into, are treated as capital asset should be assessed as income from business.

17.8. We have given our thoughtful consideration to the reasons given by the Assessing Officer to assess fair market value of the property under the head income from business, in terms of section 28(via) and we ourselves do not subscribe the reasons framed by the Assessing Officer. The Assessing Officer made additions purely on assumptions and presumptions, without there being any activity carried out by the assessee, which falls under the provisions of 28(via) of the Act. The assessee, being the land owner, entered into joint development agreement with the developer in the year 2009 and has received built up area in exchange of land to the builder. The land held by the assessee and their family members was a capital asset and this fact has been further strengthened by the acceptance of capital gain by the department in the A.Y. 2010-11. Further, the assessee continued to be held the land as capital asset, which is evident from the property sold by the assessee in different assessment years and resulted capital gain offered to tax and also portions of the property let out by the assessee and their family members and resulted income was offered under the head income from house property.

17.9. From the above, it is undisputedly clear that the property held by the assessee was a capital asset and continued to be capital asset even after joint development agreement and thus, invoking provisions of section 28(via) is misconceived and against the spirit of law. Further, as per the explanatory memorandum to the Finance Bill 2018, the rational behind insertion of 28(via) has been explained and as per the said Memorandum, the provision has been inserted to give similar treatment to provisions of Section 45 of the Act, which provides for capital gain arising from application of capital asset into stock-in-trade. Whereas, in cases, where the stock-in-trade converted into or treated as capital asset, the existing law does not provide for its taxability. In order to provide simple treatment and describe the practice of difference payment of tax by converting into the inventory into fixed assets, provisions of Section 28(via) have been inserted w.e.f. 01.04.2019. If you go by the logic behind for insertion of said provision, it is clear that the said provision is applicable only in a case where inventory of business has been treated or converted into capital asset but not otherwise.

17.10. In the present case, the facts brought on record clearly indicate that the assessee was not into the business and the question of carrying inventory and subsequent application of fixed assets does not arise. It is only the Assessing Officer, who imagined and stated that the assessee carried the inventory of business and subsequently, converted into fixed assets without there being any substance in his observation. These facts clearly show that the assessee is an investor and the property held by the assessee was an investment or capital asset all along and even after receipt of

built up area from the developer. Therefore, in our considered opinion, the Assessing Officer has erred in applying the provisions of Section 28(via) of the Act. The ld.CIT(A) after considering the said facts has rightly deleted the addition made by the Assessing Officer. Thus, we inclined to uphold the findings of ld.CIT(A) and reject the grounds taken by the Revenue.

18. In the result, the appeal filed by the Revenue is dismissed.

ITA 696/Hyd/2022 for A.Y. 2019-20 (Smt. KAVYA BOPPANA)

19. The Revenue has raised the following grounds of appeal :

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

2. The Ld. CIT(A) erred. on facts and in law by holding that the provisions of section 115BBE are not applicable to the income admitted towards unaccounted jewellery even though the same was detected during the search operation.

3. The Ld.CIT(A) erred on facts and in law by not considering the applicability of section 28(via) as the asset was treated as capital asset."

20. The first issue that came up for our consideration is ground no.3 of Revenue appeal is deletion of addition towards unsold inventory being treated as fixed assets amounting to Rs.6,45,35,000/-. A similar issue has been considered by us in the case of Sri Sarat Gopal Boppana in ITA 690/Hyd/2022 for A.Y. 2019-20. In the present case also, facts are identical in nature. Hence, the reasons given by us in preceding paragraph nos. 17.7 to 17.10 in ITA No.690/Hyd/2022 shall mutatis and mutandis apply to this appeal, as well. Therefore, for similar reasons, we are inclined

to uphold the findings of ld.CIT(A) and reject the ground taken by the Revenue.

21. The next issue that came up for our consideration is ground no.2 of Revenue appeal i.e., assessment of value of jewellery found during the course of search u/s 69A r.w.s. 115BBE of the Act. An identical issue has been considered by us in the case of Sarat Gopal Boppana in ITA No.690/Hyd/2022 for A.Y.2019-20, as facts are identical in this case also, the reasons given by us in preceding paragraphs 17.7 to 17.10 shall mutatis and mutandis apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of ld.CIT(A) and reject the ground taken by the Revenue.

22. In the result, the appeal of Revenue is dismissed.

ITA No.642/2022 for A.Y 2020-21 (Smt. KAVYA BOPPANA)

23. The following are the grounds raised by the assessee :

"1. The Learned CIT(A) erred in dismissing the appeal.

2. a. The Learned CIT(A) ought to have appreciated that the order under section 153A of the Act dated 28.09.2021 is invalid ab initio.

b. The Learned CIT(A) ought to have annulled the assessment order under section 153A of the Act dated 28.09.2021.

c. The Learned CIT(A) ought to have appreciated that there was a failure to issue a notice under section 153A of the Act and to pass the assessment order under section 143(3) read with section 153A of the Act for the assessment year under consideration.

d. The Learned CIT(A) ought to have appreciated that in accordance with the provisions of the Act, the issuance of a notice under section 153A of the Act is sine qua non before the completion of the assessment relating to the year in which the search has taken place.

e. The Learned CIT(A) ought to have appreciated that since no notice under section 153A of the Act has been issued to the assessee and since no order under section 143(3) read with section 153A of the Act has been passed for the assessment year under consideration, the order passed under section 147 of the Act dated 28.09.2021 is invalid ab initio.

f. The Learned CIT(A) ought to have appreciated that the search under section 132 of the Act had taken place in the appellant's case on 22.10.2019, the assessment year 2020-21 is relevant to the previous year in which the search had taken place, and that the Assessing Officer is obliged to issue a notice under section 153A of the Act and pass an assessment order under section 143(3) read with section 153A of the Act as per the amended provisions of section 153A of the Act w.e.f 01.04.2017.

g. The Learned CIT(A) ought to have appreciated that the passing of the impugned assessment order after obtaining prior approval of the Addl. CIT, Central Range-2, Hyderabad under section 153D of the Act, clarifies that the assessment is a search assessment which is required to be completed u/s 153A of the Act as against u/s 143(3) of the Act.

3. Without prejudice to ground nos.2(1) to 2(g), the ld.CIT(A) has erred in holding that section 69 of the Act has been rightly invoked by the Assessing Officer and that the Assessing Officer has rightly taxed the amount of Rs.1,23,92,500/- u/s 115BBE of the Act.

4. Without prejudice to ground nos.2(a) to 2(g), the ld.CIT(A) ought to have appreciated that the payment of cash of Rs.1,23,92,500/- would not attract the provisions of section 115BBE of the Act."

24. The first issue that came up for consideration our from ground nos.3 and 4 of assessee's appeal, assessment of cash payments made of Rs.1,23,92,500/- for purchase of property as unexplained investment u/s 69A and application of provisions of Section 115BBE of the Income Tax Act.

24.1. During the course of search on 22.10.2019 at the residential premises of Sri Sarat Gopal Boppana, certain loose sheets and documents were found and seized. The loose sheets found during the course of search reveal that purchase of agricultural land at Mamidipalli Village and cash payments over and above the slae consideration referred to him in sale deeds for purchase of property. A statement on oath u/s 132(4) of the Act was recorded from Shri Sarat Gopal Bapanna and in response to specific question, he has admitted that lands were purchased by his children and cash has been paid by his children over and above the SRO Value. The assessee has filed the return of income for A.Y. 2020-21 on 10.01.2021 declaring total income of Rs.3,02,28,230/- and offered a sum of Rs.1,23,92,500/- income under head the income from other sources. The Assessing Officer assessed income declared under the head income from other sources as an unexplained investment under section 69A of the Act and brought to tax under section 115BBE of the Act on the ground that the cash payment made for purchase of the property was not recorded in the books of accounts of the assessee and also the explanation offered by the assessee about the nature and source of income is not satisfactory.

24.2. Aggrieved by the order of Assessing Officer, assessee carried the matter before ld.CIT(A).

24.3. On appeal, the ld.CIT(A) confirmed the addition made by the Assessing Officer.

24.4. The learned counsel for the assessee submitted that the ld.CIT(A) has erred in sustaining addition made at Rs.1,23,92,500/- u/s 69A r.w.s. 115BBE of the Act without appreciating the fact that the assessee has explained the cash payment made for purchase of the property from other sources of income. The learned counsel for the assessee further submitted that the impugned assessment year is the year of search which is evident from the date of search i.e., 22.10.2019 which falls under the F.Y. 2019-20 relevant to A.Y. 2020-21. The due date for closure books of accounts and filing of return of income was expired when the search took place. Further, the assessee is not engaged in any business activity and is not maintained any books of accounts for any previous year. Therefore, the reasons given by the Assessing Officer to make addition towards income declared under the head income from other sources as unexplained investment u/s 69A r.w.s. 115BBE of the Act is incorrect.

24.5. The ld.DR, on the other hand, supporting the order of ld.CIT(A), submitted that during the course of search, certain incriminating material was seized which revealed cash payment for purchase of the property by the assessee over and above stated consideration as per registered sale deed. Shri Sarat Gopal Boppana admitted in his statement that his children have paid cash over and above the SRO value. The assessee could not explain the source for purchase of the property. Therefore, the Assessing Officer and ld.CIT(A) has rightly assessed income declared from other sources as unexplained income and brought to tax u/s 115BBE of the Act and the order should be upheld.

24.6. Heard both the parties, perused the material available on record and have gone through the orders of authorities below. There is no dispute with regard to the fact that loose sheets found during the course of search revealed cash payment for purchase of the property by the assessee. In fact, Shri Sarat Gopal Boppana, father of assessee has admitted in his statement that cash payment has been made by his children for purchase of property at Mamidipalli Village. It is also an admitted fact that the assessee has declared total income of Rs.3,02,23,230/- which includes sum of Rs.1,23,92,500/- income from other sources for A.Y. 2020-21. The due date for closure of books of accounts or filing of return of income for A.Y. 2020-21 was not due or expired as on the date of search i.e., 22.10.2019. Admittedly, the assessee is deriving income from house property and income from other sources and does not have income from business or profession. Therefore, the income declared by the assessee under the head income from other sources and assessed by the Assessing Officer as unexplained investment u/s 69A of the Act and taxing u/s 115BBE of the Act needs to be examined in light of the above facts. If the assessee is not carrying out any business or specified profession, then the assessee need not to maintain any books of accounts.

24.7. In the present case, the assessee is neither carrying out any business activity nor involved in any specified profession. Therefore, the arguments of the assessee that she needs not to maintain books of accounts for the impugned assessment year is acceptable. Once, the assessee needs not to maintain books of accounts, then the question of recording any investment in books of accounts for any assessment does not arise. Further, when the due

date for filing of return of income was not offered or due, then it cannot be presumed that the assessee would not have disclosed the said income for the purpose of tax. Since the assessee is not required to maintain any books of accounts for the impugned assessment year and further, the due date of return of income was not expired as on the date of search, in our considered opinion, the explanation offered by the assessee regarding source for cash payment for the purchase of the property needs to be accepted. The assessee declared income to an extent of Rs.1,23,92,500/-, in respect of cash payment for purchase of property as income from other sources and paid taxes.

24.8. Therefore, in our considered opinion, the Assessing Officer and ld.CIT(A) are erred in treating income declared under the head 'income from other sources' as unexplained investment u/s 69 and brought it to tax under Section 115BBE of the Act. Further, the provisions of Section 69 can be invoked whether in the financial year, immediately preceding the assessment year, the assessee has made investments, which are not recorded in the books of accounts, if any, maintained by her from any source of income, and the assessee offers no explanation about the nature and source of investment or the explanation offered by the assessee is not satisfactory in the opinion of the Assessing Officer, then the value of the investment may be deemed to be the income of the assessee of such financial year.

24.9. In the present case, the conditions for invoking provisions of section 69 of the Act are not satisfied. Therefore, we have to consider that the Assessing Officer and ld.CIT(A) are erred in invoking the provisions of section 69 r.w.s. 115BBE of the Act, in respect of income declared under the head 'income from other sources'. Thus, we reverse the findings of the ld.CIT(A) and direct the Assessing Officer to assess the income under the head 'income from other sources' as declared by the assessee.

25. In the result, the appeal filed by the assessee is allowed.

ITA No.692/Hyd/2022 for A.Y. 2019-20 (TARA CHAND BOPPANA)

26. The Revenue has raised the following grounds of appeal :

> *"1. The ld.CIT(A) erred both in law and on facts of the case in granting relief to the assessee.*
>
> *2. The ld.CIT(A) erred on facts and in law by holding that the provisions of section 115BBE are not applicable to the income admitted towards unaccounted jewellery even thought he same was detected during the search operation.*
>
> *3. The ld.CIT(A) erred on facts and in law by not considering the applicability of section 28(via) as the asset was treated as capital asset."*

27. The first issue that came up for our consideration from ground no.2 of assessee's appeal is assessment of income declared towards value of jewellery found during the course of search u/s 69A r.w.s. 115BBE of the Act. We find that an identical issue has been considered by us in the case of Shri Sarat Gopal Boppana for A.Y. 2019-20 in ITA No.690/Hyd/2022 for A.Y. 2019-20. In the present

case also, the facts are identical which we had considered in Sarat Gopal Bopanna. Therefore, the reasons given by us in the preceding paragraph nos.16.6 and 16.7 in ITA No. 690/Hyd/2022 for A.Y. 2019-20 shall mutatis and mutandis apply to this appeal, as well. Therefore, for similar reasons, we inclined to uphold the findings of ld.CIT(A) and reject the ground taken by the Revenue.

28. The next issue that came up for our consideration from ground no.3 of assessee's appeal is addition towards value of unsold inventory being treated as fixed assets amounting to Rs.6,45,35,000/-. An identical issue has been considered by us in the case of Sarat Gopal Bopanna in ITA No.690/Hyd/2022 for A.Y. 2019-20. In the present case, the facts are similar to the facts considered in the case of Sri Sarat Gopal Boppana for A.Y. 2019-20. Hence, the reasons given by us in Para no.17.7 to 17.10 in ITA No.690/Hyd/2022 for A.Y. 2019-20 shall apply mutatis and mutandis to this appeal as well. Therefore, for similar reasons we inclined to uphold the findings of ld.CIT(A) and reject the grounds taken by the Revenue.

29. In the result, the appeal of Revenue is dismissed.

ITA No.646/Hyd/2022 for A.Y. 2020-21 (TARA CHAND BOPPANA)

30. The assessee has raised the following grounds of appeal :

"1. The Ld. CIT(A) erred in dismissing the appeal.

2.a The ld.CIT(A) ought to have appreciated that the order passed u/s 143(3) of the Act dt.28.09.201 is invalid abintio.

b. The Ld. CIT(A) ought to have annulled the assessment made u/s 143(3) of the Act dated 28.09.2021.

c. The Ld. CIT(A) ought to have appreciated that the Assessing Officer failed to issue a notice u/s 153A. of the Act and to pass the assessment order u/s 143(3) r.w.s 153A of the Act for the assessment year under consideration.

d. The Ld. CIT(A) ought to have appreciated that in a case of search u/s 132 of the Act, issuance of a notice u/s 153A of the Act is sine qua non before completion of the assessment relating to the year in which the search has taken place.

e. The Ld. CIT(A) ought to have appreciated that since no notice u/s 153A of the Act has been issued to the assessee and since no order u/s 143(3) r.w.s 153A of the Act has been passed for the assessment year under consideration, the order passed u/s 143(3) of the Act dated 28.09.2021 is invalid abintio.

f. The Ld. CIT(A) ought to have appreciated that since the search u/s 132 of the Act had taken place in the appellant's case on 22.10.2019, the assessment year 2020-21 is relevant to the previous year in which the search had taken place and that the Assessing Officer is obliged to issue a notice u/s 153A of the Act and pass an assessment order u/s 143(3) r.w.s 153A of the Act as per the amended provisions of section 153A of the Act w.e.f 01.04.2017.

g. The Ld. CIT(A) ought to have appreciated that the very fact of passing that impugned assessment order after obtaining prior approval of the Addl.CIT, Central Range – 2, Hyderabad u/s 153D of the Act, clarifies that the assessment is a search assessment which is required to be completed u/s 153A of the Act as against u/s 143(3) of the Act.

3. Without prejudice to ground nos. 2(a) to 2(g), the Ld. CIT(A) has erred in holding that section 69 of the Act has been rightly invoked by the Assessing officer and that the Assessing officer has rightly taxed the amount of Rs.1,00,04,000 / - u/ s 115BBEof the Act.

4. Without prejudice to ground nos. 2(a) to 2(g), the Ld. CIT(A) ought to have appreciated that the payment of cash of Rs.1,00,04,000/- would not attract the provisions of section 115BBE of the Act."

31. The solitary issue that came up for our consideration from ground nos.3 and 4 of assessee's appeal is the assessment of cash payment towards purchase of property and declared by the assessee under the head income from other sources as unexplained investment u/s 69 of the Act and invoking provisions of section 115BBE of the Income Tax Act.

32. An identical issue has been considered by us in the case of Smt. Kavya Bopanna for A.Y. 2020-21 in ITA No.642/Hyd/2022. The facts being identical in nature in the present case, the reasons given by us in appeal in ITA No.642/Hyd/2022 for A.Y. 2020-21 in the case of Kavya Bopanna shall apply mutatis and mutandis to this appeal as well. Therefore, for similar reasons, we reverse the findings of ld.CIT(A) and direct the Assessing Officer to assess income declared under the head income from other sources towards cash payment made for purchase of property.

33. In the result, the appeal filed by the assessee is allowed.

ITA 694/Hyd/2022 for A.Y. 2019-20 (Smt. JHANSI RANI BOPPANA)

34. The Revenue has raised the following grounds of appeal:

> *"1. The ld.CIT(A) erred both in law and on facts of the case in granting relief to the assessee.*
>
> *2. The ld.CIT(A) erred on facts and in law by holding that the provisions of section 115BBE are not appplicable to the income admitted towards unaccounted jewellery even thought he same was detected during the search operation.*
>
> *3. The ld.CIT(A) erred on facts and in law by not considering the applicability of section 28(via) as the asset was treated as capital asset."*

35. The first issue that came up for our consideration from ground no.2 of assessee's appeal is assessment of income declared towards value of jewellery found during the course of search u/s 69A r.w.s. 115BBE of the Act. We find that an identical issue has been considered by us in the case of Shri Tara Chand Boppana for A.Y. 2019-20 in ITA No.692/Hyd/2022 for A.Y. 2019-20. In the present case also, the facts are identical which we had considered in Tara Chand Boppana. Therefore, the reasons given by us in the preceding paragraph no. 27 in ITA No.692/Hyd/2022 shall mutatis and mutandis apply to this appeal, as well. Therefore, for similar reasons, we inclined to uphold the findings of ld.CIT(A) and reject the ground taken by the Revenue.

36. The next issue that came up for our consideration from ground no.3 of assessee's appeal is addition towards value of unsold inventory being treated as fixed assets amounting to Rs.6,45,35,000/-. An identical issue has been considered by us in the case of Tara Chand Boppana in ITA No.692/Hyd/2022 for A.Y. 2019-20. In the present case, the facts are similar to the facts considered in the case of Tara Chand Boppana for A.Y. 2019-20. The reasons given by us in Para no.28 in ITA No.692/Hyd/2022 for A.Y. 2019-20 shall apply mutatis and mutandis to this appeal, as well. Therefore, for similar reasons, we inclined to uphold the findings of ld.CIT(A) and reject the ground taken by the Revenue.

37. In the result, the appeal filed by the Revenue is dismissed.

38. In the combined result, the appeals of assesses i.e., ITA Nos.637/Hyd/2022 and 646/Hyd/2022 are partly allowed, ITA No.642/Hyd/2022 is allowed, and the appeal of assessee in ITA No.638/Hyd/2022 and all the appeals of Revenue are dismissed.

Order pronounced in the Open Court on 27th June, 2024.

Sd/-	**Sd/-**
(LALIET KUMAR) **JUDICIAL MEMBER**	**(G. MANJUNATHA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 27th June, 2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Shri Sarat Gopal Boppana, Hyderabad. C/o.P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082.
2	Ms. Kavya Boppana, Hyderabad. C/o.P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082.
3	Shri Tara Chand Boppana, Hyderabad, C/o.P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082.
4	Smt. Jhansi Rani Boppana, Hyderabad, C/o.P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Telangana – 500082.
5	The Assistant Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
6	PCIT, (Central), Hyderabad.
7	DR, ITAT Hyderabad Benches
8	Guard File

By order