

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

BEFORE

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

Sl. No	ITA No / CO No	Assessment Year	Appellant	Respondent
1	ITA 6/Hyd/2024	2014-15	The Assistant Commissioner of Income Tax, Central Circle – 1(3), Hyderabad.	M/s. Tranquil Properties, Hyderabad. PAN : AAGFT5152N
2	ITA 7/Hyd/2024	2014-15	-do-	M/s. Apurupa Infrastructure Private Limited. Hyderabad. PAN : AACCP1565C.
3	CO 2/Hyd/2024 (arising out of ITA 6/Hyd/2024)	2014-15	M/s. Tranquil Properties, Hyderabad. PAN : AAGFT5152N	The Assistant Commissioner of Income Tax, Central Circle – 1(3), Hyderabad.
4	CO 3/Hyd/2024 (arising out of ITA 7/Hyd/2024)	2014-15	M/s. Apurupa Infrastructure Private Limited. Hyderabad. PAN : AACCP1565C .	-do-

Appellant by	:	Shri Hari Agarwal, C.A
Respondent by	:	Shri Shakeer Ahamed, Sr.AR
Date of Hearing	:	11.07.2024
Date of Pronouncement	:	25.07.2024

ORDER

PER LALIET KUMAR, J.M.:

The captioned appeals and cross objections filed by the Revenue and assessee respectively are directed against the order dated 20.10.2023 of the learned CIT (A)-11, Hyderabad, relating to A.Y.2014-15. Since the facts are identical and issues are common, for the sake of convenience, the appeals filed by the Revenue and the cross objections filed by the assessee were heard together and are being disposed off by this common order.

2. The grounds raised by the Revenue in ITA No.6/Hyd/2024 reads as under:

“1. The Ld. CIT(A) erred on the facts and the circumstances of the case and in law.

2. The Ld. CIT(A) has erred in deleting the addition of cash investment of Rs.1,50,00,000/- by drawing inference that cash investment was made by assessee during the FY 2010-11, which is purely on presumption as the same is not supported by any evidence.

3. The Ld. CIT(A) ought to have appreciated that the AO had correctly added back the investment in the form of cash of Rs. 1,50,00,000/- for the AY 2014-15, in the absence of any concrete evidences.”

2.1 The grounds raised by the Cross Objector / Assessee in C.O.No.2/Hyd/2024 reads as under :

“1. The Hon'ble CIT(A) has passed the order after carefully considering the facts of the case, submissions of the assessee and in accordance with the provisions of the Income Of the Income tax Act, 1961 (“the Act”), 1961. Hence, the same may kindly be upheld.

2. In the facts and circumstances of the assessee's case, since the disputed tax involved does not exceed Rs.50,00,000/- the appeal is not sustainable.

Without prejudice to Ground No.2, the assessee submits the following grounds :

3. The Hon'ble CIT(A) has rightly held that the cash investment of Rs.1,50,00,000/- does not belong to the assessee. Hence, the same may kindly be upheld.

4. Without prejudice to ground no.3 above the Hon'ble CIT (A) has rightly held that the cash investment of Rs.1,50,000/- pertains to A.Y. 2010-11 and does not pertain to A.Y. 2014-15. Hence, the same may kindly be upheld."

3. Similar grounds are raised by the Revenue and assessee in the other appeal and cross-objection, respectively, but for the figures and hence, the same are not reproduced for the sake of brevity.

3.1 Firstly, we take appeal of Revenue in ITA No.6/Hyd/2024 for A.Y. 2014-15 as lead appeal.

4. The brief facts of the case are that assessee firm was incorporated on 10.09.2010 and has not filed Return of Income for the A. Y. 2014-15. Consequent to search and seizure operations in the case of M/s Ravi Foods Pvt Ltd and others, the case was transferred to the Central Circle- 1 (3), Hyderabad and provisions of section 153C were invoked and notice u/ s 153C was issued on 25.01.2021 requiring the assessee to file return of income for the A.Y. 2014-15 and the same was served on the assessee. However, the assessee not filed Return of Income in response to the Notice issued u/ s 153C. In view of the same, a show-cause notice was issued to the assessee on 23.03.2021 requiring the assessee to file

information / explanation on or before 29.03.2021. However, the assessee has not responded even to this show-cause notice. Hence, Assessing Officer completed the assessment u/ s 144 of the Act.

4.1. During the course of search & seizure operation conducted in the case of M/S. Ravi Foods Pvt. Ltd. & Others, certain incriminating material, reflecting investments made by the assessee firm in M/s. Apurupa DT Infra LLP, was found and seized. In the said LLP, assessee firm had invested cash Rs.1.5 Crore. During the post search proceedings, Sri Thati Shyam, Partner of assessee firm was asked to explain the said transactions. In his sworn statement dt. 07.03.2019 and 08.3.2019, Sri Thati Shyam identified the partners, himself and his firm's association with M/s. Apurupa DT Infra LLP along with the investment made by assessee firm through bank. However, he was unable to explain the remaining amount of Rs.1,50,00,000/- reflecting against 'Shyamji Cash' mentioned at Page No. 118 of the Annexure A/ Duke/ off/ 01 and at Page No. 1 of Annexure A/RA/Res/01. Hence, said T. Shyam was asked for explanation why the said amount should not be treated as unexplained investment made by assessee in firm M/s. Apurupa DT Infra LLP during F.Y. 2013-14 relevant to A. Y. 2014-15. However, T. Shyam failed to provide any explanation for the same. Hence, the Assessing Officer concluded that the assessee had no explanation to offer and hence, the investment of Rs.1,50,00,000/- made in M/s Apurupa DT Infra LLP in cash was treated as un-explained investment u/ s 69 of the Act in the hands of assessee. Thereafter, penalty proceedings were initiated separately u/s 271(1)(c) of the Act. Thus, Assessing Officer completed the assessment u/s 144 r.w.s. 153C of the Act and passed assessment order on 16.04.2021.

5. Aggrieved with such assessment order, assessee preferred appeal before the Id.CIT(A), who granted part relief to the assessee.

6. Aggrieved with the order of Id.CIT(A), Revenue has filed the appeal and the assessee filed the cross-objection before us.

7. The Learned Departmental Representative (Ld.DR) before us submitted that the Assessing Officer (AO) had made an addition of Rs.3,00,00,000/- in the hands of the assessee based on the entries recorded in the incriminating document as “Shyam Ji” and Rs.2,08,39,381/- in the case of Apurupa Infrastructure Private Limited. The Ld.DR has drawn our attention to the document which was reproduced by the Ld.CIT(A) at page 21 of the order, which is to the following effect :

fpaL5qtamary			
Receipts	Amount	Paid	Amount
Shyam ji - Bonk	1,50,00,000.00	Owner - Bank Raktable	1,75,00,000.00
Shyam ji - Cash	,50,00,000.00	Owner - "	75,00,000.00
Apnrppa Infra - Bank	56,67,000.00	Excavation - nerd to Owner - Cask	1,47,00,000.00
Aratirupe Infra -Cash	2,08,59,3131.00	Mines & Geology Cash	0,45,000.00
Dukes- Bank	3,45,00,000.00	Expenses- Bank Old Before Dukes	3,87,000.00
Dukes- Cash	55,00,000.00	Expenses- Cash Old before Dukes	23,91,381.00
Apesape to be invested	34,73,619.00	Expenses - Bank Now After Dukes	9 6 ,600.00
		Balance to be Invested	34,73,679.00
		Expenses • Cash New After Dukes	51,28,046.00
		nnou a.Lnm In Apomva	83,14 400.00
		Cashin Hand with fla)nishji	5,71,554.00
Total	10,00,00,000.00	Total	10,00,00,000-00

This seized sheet is dated 31.10.2013. The same is brought out in tabular format as under:

Row No.	Receipts	Amount	Paid	Amount
1	Shyamji- Bank	1,50,00,000	Owner- Bank Refundable	1,75,00,000
2	Shyamji- Cash	1,50,00,000	Owner- Cash Good will	1,75,00,000
3	Apurupa Infra- Bank	56,87,000	Excavation paid to owner	1,47,00,000
4	Apurupa Infra- Cash	2,08,39,381	Mines and Geology- Cash	10,45,000
5	Dukes- Bank	3,45,00,000	Expenses- Bank old before Dukes	33,87,000
6	Dukes- Cash	55,00,000	Expenses- Cash old before Dukes	23,94,381
7	Apurupa- To be invested	34,73,619	Expenses- Bank new after Dukes	59,65,600
8			Balance to be invested	34,73,619
9			Expenses- Cash new after Dukes	51,28,045
10			Bank balance in Apurupa	2,83,34,400
11			Cash in hand with Rajnishji	5,71,954
	Total	10,00,00,000		10,00,00,000

8. On the basis of the above, it was submitted that the seized documents represent the unaccounted and unexplained investment for the assessment year 2014-15 and therefore, the Assessing Officer was right in making the addition. It was submitted by the ld.DR that the LD.CIT(A) has contradicted himself. It was submitted that on the one hand, the LD.CIT(A) has admitted that the document was not a dumb document; however, after holding that, on page 22, the LD.CIT(A) has deleted both the additions. Our attention was drawn to the following observations on pages 23, 24 and 38 of the order of LD.CIT(A).

“.....If one observes the Apurupa Infra bank, Apurupa Infra cash and Apurupato be invested in row no. 3, 4 and 7 of the sheet, the total of Rs. 56,87,000/- + 2,08,39,381 + Rs. 34,73,619 cumulates to Rs. 3,00,00,000/-.

The above thus is a matching contribution by ShyamJi and Apurupa Infra of Rs. 3,00,00,000/-. It is important to note that ShyamJi had enough cheque amount available so it contributed Rs. 1,50,00,000/- and the balance in cash. Apurupa Infra never had the money sufficient in the bank so it contributed Rs. 2,08,39,381/- in cash and less in cheque.

Considering the time lines, it would be fair to presume that Whenever ShyamJi made an investment of Rs.1,50,00,000/- via a cheque, he also concurrently contributed an amount of Rs. 1,50,00,000/- in cash. This interpretation is supported by the fact that the stated sum was transferred to the owner, as recorded on the right-hand side of the above sheet. It would be fair to presume and hold that Apurupa Infra has also invested at least the cash of Rs. 1,50,00,000/- at the same time as ShyamJi. The cheque and the cash is paid together for any purchase to the owner and in this case the buyers are two partners contributing equally a sum of Rs.3,00,00,000/-. The contribution is equal and could be in varied amounts of cheque and cash but it has to be Rs.3,00,00,000/- each. It is also seen that both of them i.e. ShyamJi and Apurupa Infra are equal partners in terms of percentage before the third partner entered and thus, were to contribute equally.

Given that the two partners, ShyamJi and Apurupa Infra, maintain an equal partnership, it is reasonable to infer that their respective contributions or investments in a transaction would also be equal. In the present context, ShyamJi, as the first partner, has contributed Rs.3,00,00,000/- (Rs.1.5 crore through cheque and Rs.1.5 crore in cash) as its share to fulfill the JDA requirem'ents, as elaborated in the previous paragraphs. Consequently, it logically follows that the second partner, Apurupa Infra, would similarly hold an obligation to provide an equal amount towards the JDA, which would be Rs.3,00,00,000/-. However, considering that Apurupa Infra lacked sufficient funds in their bank account, it's reasonable to assume that they brought in the funds in the form of cash.

The above means that up till the sixth row on the right hand side, the expenditure was incurred prior to entry of Dukes as a third member/partner. It is important to note that 'Dukes' contributed Rs. 4,00,00,000/- in the project which comprised of the sum of Rs.3,45,00,000/- in cheque and Rs.55,00,000/- in cash. Thus, Dukes contributed in all of Rs.4,00,00,000/-.

Thus, there were three persons, Shyamji investing Rs. 3,00,00,000/-, Dukes investing Rs. 4,00,00,000/- and Apurupa Infra also to contribute Rs. 3,00,00,000/- out of which Rs. 34,73,619/- was outstanding as on the date of recording of the said sheet.

The above document on the right hand side records that a sum of Rs. 1,75,00,000/- was paid in cheque to the owner through the bank and the sum of Rs! 1,75,00,000/- was paid in cash and Rs. 1,47,00,000/- was paid as excavation to the owner. These quantum of cash as goodwill and excavation would have been paid almost at the same period, at the time signing the agreement and especially the excavation part as the same would have been an essential requirement for the JDA.”

.....

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At page 38 of the order of Id.CIT(A), it was mentioned as under :

“Therefore, to summarize, the investments of Rs.3,00,00,000/- considered and added by the Assessing Officer to have been made by the appellant firm in M/s. Apurupa DT Infra LLP during the present year fail on two counts. Firstly, the investments have been originally made by the individuals, who were partners of the appellant firm and not the appellant firm itself. Secondly, the period of investment in view of the elaborate discussion above, pertains to the AY 2011-12 and not the present year under consideration. Accordingly, the addition made by the Assessing Officer of Rs.3,00,00,000/- is hereby deleted and the appellant gets relief in the ground nos. 9(a) and 10.”

8.1. It was submitted that the LD.CIT(A) has failed to appreciate that the amount was paid by the assessee for entering into a joint development agreement in cash as well as by cheque and deleted the additions made by the Assessing Officer.

9. Per contra, the learned AR for the assessee submitted that the perusal of the seized document clearly shows

- I. that the name of the assessee does not appear in the seized document, and therefore, the assessee is not liable to be taxed on the basis of the seized document, which was recovered from the premises of a third party.
- II. Further, it was submitted that from the seized sheet dated 31-10-2013, it is evident that first entry was an entry of Rs.1.50 crores given by Shyam Ji through the banking channel on 13-10-2010 as advances to M/s. Apurupa Infra (hereinafter referred as "AIPL")
- III. That the said AIPL had entered into the development agreement cum GPA with the parties on 10-10-2010 and was under an obligation to pay the advance security of Rs.1.75 crores to the owners.
- IV. It was submitted that no money was paid in cash during the year by the assessee firm to the AIPL.
- V. The money, if any, was given through the banking channel, which is verifiable from the bank statement.
- VI. The entries in the seized document on the left hand side and on the right hand side, if examined, simultaneously, it clearly shows that no cash transaction took place during the year

under consideration. In fact, the payment for goodwill and excavation charges, should have been made at the time of entering into the development agreement.

10. The learned AR further submitted that admittedly the assessee firm was incorporated on 10-09-2010 and became the partner in the ADIL on 2.9.2013. The learned AR has made submissions in support of the order of the LD.CIT(A).

11. We have heard the rival submissions and perused the material on record. First of all, it is essential to notice that M/s. Apurupa Infrastructures Pvt. Ltd., developer company entered into a Development Agreement cum GPA dated 10.10.2010 with the land owners Mrs. Dega Madhavi, Mr. Dega Vishnu Vardhan Reddy, Mrs. M. Swetha and Mr. Dega Srinivas Reddy for development of land of 8581.67 Sq.Yds located in Sy.No.136, Gachibowli village, Serlilingampally Mandal, Ranga Reddy district into a shopping complex consisting of Ground plus four floors. As per the said agreement, the developer company shall pay an interest free refundable security deposit of Rs.1,75,00,000/- to the land owners. As per the development agreement cum GPA, there was an obligation to pay Rs.1.75 crores as refundable security to the landowners.

11.1. The Assessing Officer has not disputed that an amount of Rs.1.75 crores was paid to the land owners by M/s. Apurupa Infrastructures Pvt. Ltd. The bank statements of M/s. Apurupa Infrastructures Pvt. Ltd placed at page 198 of the paper book, confirm that the cheques were duly cleared on 30.10.2010 for an amount of Rs.37.50 lakhs each given to Mrs. Dega Madhavi, Mr.

Dega Vishnu vardhan Reddy, Mrs. M. Swetha and Mr. Dega Srinivas Reddy. Further, the Id.CIT(A) has brought on record that M/s. Apurupa Infrastructures Pvt. Ltd has given an amount of Rs.25 lakhs on 20.07.2011 as the said company was having insufficient of balance.

11.2 The Assessing Officer had made the addition in the hands of the assessee on the pretext that the seized document shows that an amount of Rs.1.50 crores was paid by the assessee by cheque as an unexplained investment. In fact, during the assessment proceedings, the Assessing Officer had issued notice to the assessee and called upon the assessee to file the return of income by issuing show cause notice on 29.03.2021. Calling upon the assessee in para 2.4 as under :

“2.3 Sri Thati Shyam, Partner of M/s. Tranquil Properties was asked to explain the said transactions. In his sworn statement dt.07 and 08.3.2019 Sri Thati Shyam was unable to explain. T Shyam identified the partners, himself and his firms’ association with M/s. Apurupa DT Infra LLP along with the M/s. Tranquil Properties investment through bank in M/s. Apurupa DT Infra LLP. However, the remaining amount of Rs.1,50,00,000/- against ‘Shyamji Cash’ as mentioned at page no.118 of the annexure A/Duke/off/01 and at page no.1 of Annexure A/RA/Res/01 was not explained by him. In view of the same, Mr Tathi Shyam Kumar, was asked to explain as to why the cash of Rs.1,50,00,000 should not be treated as unexplained investment by M/s. Tranquil Properties for the FY 2013-14 in M/s. Apurupa DT Infra LLP. However, no explanation was provided for the same. Therefore, the amount of Rs.1,50,00,000/- invested in cash in M/s Apurupa DT Infra LLP is required to be treated as unexplained investment for the F.Y 2013-14 relevant to the A.Y. 2014-15 in the hands of Tranquil Properties.

2.4 In view of the above, the assessee is required to show cause why the amount of Rs.1,50,00,000/- invested in cash in M/s Apurupa DT Infra LLP should not be treated as unexplained investment in the hands of Tranquil Properties for the F.Y 2013-14 relevant to the A.Y. 2014-15.

The assessee is required to file explanation in this regard on or before the said time/date mentioned in the notice. If the assessee fail to furnish the explanation, it will be assumed that the assessee has no explanation to offer and the assessment will be completed u/s 144 based on the material available on record.”

11.3 Thereafter, the assessee before us has submitted that the return was filed by the assessee on 06.04.2021 and a reply was given on 07.04.2021. However, on account of technical glitches, the reply was not received on the portal and the Assessing Officer had made addition of Rs.1.50 crores in cash and also made the addition of Rs.1.50 crore given to ADIL (M/s. Apurupa DT Infra LLP) by journal entry.

11.4 The assessee filed the appeal and had also filed evidences / documents before the Id.CIT(A). With respect to the addition made by the Assessing Officer for a sum of Rs.1.50 crores as unexplained investment though investment was made through banking channel, the Ld.CIT(A) has called for the remand report from the Assessing Officer and at page 203 of his paper book, the remand report is placed at pages 7 to 9 are as under :

“7. With regard to the addition made on account of the cash investment in M/ s.Apurupa DT Infra LLP : the appellant denied investment made in cash and further stated that it has accounted all the investments made by properly accounted in the books. Except stating that the seized document is incomplete, the appellant did not deny the contents of the amounts mentioned in the sheet found and seized. The seized sheet contained the details of cash with the description as 'Shyamji cash' at Rs.1,50,00,000/ - & 'Shyamji Bank' at Rs.1,50,00,000/ -. The assessee in its submissions has accepted

that it has made investment of Rs.1,50,00,000/ -, which was accounted in the books of account, which is also matching with the seized document figure mentioned as 'Shyamji bank'. Thus, the assessee accepting bank transaction to be genuine, while denying the cash portion cannot be accepted without there being any other contradicting evidence. The fact of assessee that accepting recorded transaction, which is part of the seized document clearly indicates that the assessee has undertaken such transactions in it involving the cash investment as well. When the seized document contains investment made by way of cash alongside recorded entry of investment made through banking channel, which was accepted by the assessee, it can be safely concluded that the assessee has made investment in cash of Rs.1,50,00,000/ - . Hence, the document is having corroborative evidence, since the contents are proved.

9. *Further, as regards the investment made through banking channels, the appellant produced certain ledgers of 'Tranquil Properties' in the books of Apurupa DT Infra LLP & confirmation letter's of M/ s. Apurupa Infrastructures Pvt. Ltd. that the amount was received during the years 2010-11; 2011-12, which was transferred to M/ s. Apuroupa DT Infra LLP through M/s. Tranquil Properties as per the instructions to that effect, by way of Journal Entry towards unsecured loan. In support of the same, the appellant produced necessary confirmations and Ledger Account copies and Financials of the above concerns, viz., M/ s. Apurupa Infrastructures Pvt. Ltd. & M/ s. Apuroupa DT Infra LLP."*

11.5. In response to the remand report, assessee filed reply to before ld.CIT(A). The ld.CIT(A) had deleted the addition and the finding given by the ld.CIT(A) at pages 32 to 34 is as under :

The above description is recorded in the bank and cannot be disputed along with the fact the development agreement, which was entered on 10.10.2010. The cheques thus got encashed after three days on 13.10.2010.

The source of the said money is as under:

Investment of Tranquil properties in Apurupa DT Infra U.P

AY	Date	Particulars	Capital A/c	Unsecure Loan
2010-11	05-10-2010	<p>Unsecured loan given in individual capacity to Apurupa Infrastructure Pvt. Ltd</p> <p>T.Devi – Rs.50,00,000 (Cq No.166151)</p> <p>T. Shyamkumar – Rs.80,00,000 (Cq. No.879678)</p> <p>T. Shyamkumar Rs.20,00,000 (Cq. No.167026)</p>		1,50,00,000
				1,50,00,000

As it can be seen from the above, T. Devi and T. Shyam Kumar have paid the amounts individually but as they were partners in M/s. Tranquil Properties and ultimately Tranquil Properties was the partner in M/s. Apurupa Infra DT LLP, the Assessing Officer made an addition of Rs. 1,50,00,000/- of cheque and cash each cumulating to Rs. 3,00,00,000/- in the hands of the appellant being M/s. Tranquil Properties. This action of the AO is primarily is incorrect as the interpolation of the cash should have been done with the source which is not Tranquil Properties but are T. Shyam and T. Devi and also the seized document records the amount against "Shyamji". Therefore there is a primary fault on this count of the AO as such. As the appellant firm's involvement came subsequently through journal entries, it is further noted that in the initial agreement, there is no contribution from Tranquil as such and even the notings don't record the name and also the same cannot be inferred directly. However, there is also a matter of determining the assessment year in which such quantum can be taxed.

The partners of the appellant firm have stated to have invested Rs.1.5 crore through banking channel during FY 2010-11 and this fact has been accepted by the Assessing Officer and has not found any adverse inference to the 'appellant's explanation. Therefore, the explanation of the appellant with regard to the investment made in cheque, based on the bank account statement, ledger account copies and which has also been accepted by the Assessing Officer, is considered reasonable. Thus, the investment of Rs.1.5 Crore has been made in the FY 2010-11 relevant to AY 2011-12 and has no relation to the present assessment year under adjudication. Therefore the addition made on account of investment of Rs.1,50,00,000/- through banking channel is here by deleted.

11.6 We have examined the order passed by the Ld.CIT(A) and considered the submissions of ld.DR. In our view, once the amounts were paid through banking channel by Mr. T.Shyam and T. Devi as unsecured loan to the company namely, Apurupa DT Infra and during the assessment year for the year under consideration, the amount has been transferred by way of journal entry in the books of accounts of the AIDL and in our view, the source of investment has been duly explained. Therefore, there is no reason to take a contrary view as taken by the Ld.CIT(A) and accordingly, we dismiss the grounds raised by the Revenue on this count. There is yet another reason to delete the addition as the show cause notice was issued to the assessee on 23.03.2021 only for making the addition with respect to the amount of Rs.1.50 crores invested in cash in AIDL.

11.7 As it is not the case of the Assessing Officer in the show cause notice to make the addition on account of bank transfer as an unexplained investment, therefore, there was no reason to make the addition in the hands of the assessee. For this reason also, the addition made by the Assessing Officer was rightly dismissed by the ld.CIT(A).

12. **Addition of Rs.1.50 crores on account of cash receipts.**

12.1. In this regard, the Ld.CIT(A) had deleted the addition on two counts which are covered by him in summary at pages 38 of the order of ld.CIT(A).

“Therefore, to summarize, the investments of Rs.3,00,00,000/- considered and added by the Assessing Officer to have been made by the appellant firm in M/s. Apurupa DT Infra LLP during the present year fail on two counts. Firstly, the investments have been originally made by the individuals, who were partners of the appellant firm and not the appellant firm itself. Secondly, the period of investment in view of the elaborate discussion above, pertains to the AY 2011-12 and not the present year under consideration. Accordingly, the addition made by the Assessing Officer of Rs.3,00,00,000/- is hereby deleted and the appellant gets relief in the ground nos. 9(a) and 10.”

12.2 Further, the reasoning of the Ld.CIT(A) are available in his order at pages 34 to 37, which is to the following effect :

“The partners of the appellant firm have stated to have invested Rs.1.5 crore through banking channel during FY 2010-11 and this fact has been accepted by the Assessing Officer and has not found any adverse inference to the 'appellant's explanation. Therefore, the explanation of the appellant with regard to the investment made in cheque, based on the bank account statement, ledger account copies and which has also been accepted by the Assessing Officer, is considered reasonable. Thus, the investment of Rs.1.5 Crore has been made in the FY 2010-11 relevant to AY 2011-12 and has no relation to the present assessment year under adjudication. Therefore the addition made on account of investment of Rs.1,50,00,000/- through banking channel is here by deleted.

Regarding the investment in cash of Rs.1,50,00,000/-, the seized document needs to be revisited. The seized document says "Shyamji-Bank" of Rs.1,50,00,000/- and "Shyamji-Cash" of Rs.1,50,00,000/-. The issue of "Shyamji-Bank" has been discussed in the preceding paragraphs and it is concluded that the same pertains to FY 2010-11 and the Assessing Officer, in the remand report has also accepted the same. When the investment labeled as "bank" has indeed been confirmed to have been made by the partners of the appellant firm, substantiated by transactions reflecting in the bank statements, it logically follows that the investment made in cash must have also been undertaken by the partners of the appellant firm especially as it has gone to the land owners. Regarding the period of investment made in cash, it is necessary to understand the utilization of the contribution/investment.

The seized document on the RHS states that the land owners payments of Rs.1.75 Cr and Rs.1.75 Cr mentioned as Owner-bank-refundable and owner-cash-Goodwill and excavation paid to the owner of Rs. 1,47,00,000/-.

These transactions are explained by way of the Development Agreement cum GPA dated 10.10.2010 entered between the land owners Mrs. DegaMadhavi, Mr. Dega Vishnu vardhan Reddy, Mrs. M. Swetha and Mr. DegaSrinivas Reddy and M/s. Apurupa Infrastructures Pvt. Ltd. for the purpose of development of land of 8581.67 Sq.Yds located in 'Sy.No.136, Gachibowli village, SerlilingampallyMandal, Ranga Reddy dist into a shopping complex consisting of Ground+ four floors. The said agreement states that the developer shall pay an interest free refundable security deposit of Rs.1,75,00,000/- to the land owners. The same can be seen from the DAGPA reproduced above.

It is seen from the DAGPA that the said security deposit has been paid from the bank account of M/s. Apurupa Infra Pvt. Ltd. on 13.10.2010 of Rs. 1,50,00,000/-.

Therefore, it is evident that the refundable security deposit paid to the land owners by M/ s. Apurupa Infrastructures Pvt Ltd was out of the funds contributed by the partners of the appellant firm. The investment made in cash by the appellant was not recorded in the books of account and corresponding good will paid to land owners was also not recorded anywhere. The refundable deposit was agreed between the developer and land owners and the same was paid of Rs. 1,50,00,000/- on 13.10.2010.

The matching Rs. 1,50,00,000/- would have been paid on the date of execution of the agreement and also the sum of Rs. 1,47,00,000/- as recorded as excavation paid to the owner would also have taken place either prior to the signing of agreement or on the date of the agreement. The equivalent amount of cash contributed by Shyamji and Apurupa Infra is a fair presumption as both the partners would have contributed the unaccounted part together for the records and also the owner would have been paid accordingly. Thus, the sum of Rs. 1,75,00,000/- as cash good will and the sum of Rs. 1,47,00,000/- paid to owner for excavation would have been paid on or before the date of signing the agreement that is 10.10.2010. The person Shyamji that is T. Shyam Kumar would have contributed Rs. 1,50,00,000/- in cash and Rs. 1,50,00,000/- in cheque, Apurupa Infra would have contributed Rs. 1,47,00,000/- and the other Rs. 25,00,000/- (Rs.1,75,00,000/- as recorded in the seized sheet less contribution of Rs.1,50,00,000/- in cash by T. Shyam Kumar) in cash cumulating to Rs. 1,72,00,000/- in cash on the date of signing of the agreement as Apurupa Infra has not contributed any amount in cheque till that point in time to the owners.

It is also seen that the sum of Rs. 25,00,000/- out of the agreed amount of cheque of Rs. 1,75,00,000/- has not been encashed, as can be seen from the bank account, which reflects that Apurupa Infra never had the money in cheque and only contributed in cash and an understanding of not encashing the cheque amount of the balance sum of Rs. 25,00,000/- would have been made till the party Apurupa Infra has sufficient amount of funds available in the bank account.

It can also be seen that as on 13.10.2010 the amount remaining in the bank account was only Rs. 5,35,548/- and the same continued for the next week with a diminishing balance. The balance sum of Rs. 25,00,000/- was only encashed on 20.07.2011 which was much after the 6 months expiry of the cheque. Thus, it can be inferred fairly and correctly that there was a clear understanding that the sum of Rs. 25,00,000/- was not to be encashed though recorded in the development agreement as Apurupa Infra had no funds available in cheque.

Thus, the sums of Rs. 1,75,00,000/- and Rs. 1,47,00,000/- were paid through the cash contribution of Shyamji and Apurupa Infra on or before 10.10.2010 of which unaccounted cash contribution of Shyamji was Rs. 1,50,00,000/- and Rs. 1,72,00,000/- was pertaining to Apurupa Infra. These transactions thus fairly were conducted in A.Y. 2011-12 and not the present A.Y under consideration. The sheet also records timelines before and after Dukes. Thus, Dukes came in much later though in the relevant A.Y. but the receipt and expenditure have also happened prior to this A.Y as can be established from the bank transactions so recorded to interpolate it to the cash transactions.

Thus, the sum of Rs. 1,50,00,000/- pertaining to Shyamji of cheque and equivalent amount of cash pertains to A.Y. 2010-11 and not the present A.Y. under adjudication and therefore cannot be taxed in this A.Y. and further to tax the same in the hands of the appellant just because the journal entries were passed at the request of "Shyamji" i.e. T. Shyam Kumar would not change the origin of the said cash and bank transactions which pertain to Shyam Kumar and his wife. However, the above observation loses relevance as the same is not pertaining to this year under consideration."

12.3 We have examined the reasoning given by the Ld.CIT(A) and we do not find any flaw in that and therefore, we upheld the reasoning given by the Ld.CIT(A).

12.4. That apart, if we examine the tabulation given in the order of Ld.CIT(A) at page 21, which shows that a sum of Rs.1.50 crores was allegedly given by Shyam Ji in common kitty of the company which was utilized for making the payment to the owners towards the goodwill to the tune of Rs.1.75 crores. Similarly, the AIPL had also made payment of Rs.56.87 lakhs by banking channels and has paid cash of Rs.208,39,381/- and the said amount of cash and cheques were utilized by the AIPL company for making the payment to the owners for excavation. In our view, the seized document is required to be read as a whole and once there is a receipt in cash and then its corresponding entry of expenditure in

the form of payment of goodwill and excavation charges are also required to be accepted.

12.5 In the present case as noted by the Ld.CIT(A) from the contemporaneous document i.e., development agreement cum GPA executed on 10.10.2010, a sum of Rs.1.75 crores was given as refundable security to the owner which was duly reflected in Balance-Sheet of AIPL. The ld.CIT(A) has also considered the other payments i.e., Rs.1.75 crore and 1.47 crores and came to the conclusion on appreciation of the facts that these payments were also made during that period only or immediately or before entering into the development agreement. There cannot be denial on the basis of the seized document that goodwill for an amount of Rs.1.75 crore was paid to the owners and similarly, there was also no denial of paying of Rs. 1.47 crore towards the excavation charges.

12.6. The only question is whether the payments were made immediately or after entering into the development agreement cum GPA. In our view, the view taken by the Ld.CIT(A) is a plausible view and was based on the evidences, facts and circumstances and hence, no interference is required and accordingly, we are of the opinion that the order passed by the Ld.CIT(A) is in accordance with the law.

12.7. The seized documents clearly show that the amount of Rs.1.75 crores as refundable security was given to the land owners by the firm. In our view, the view taken by the LD.CIT(A) clearly shows that the amount was paid only at the time of signing of the agreement to an extent of Rs.1.75 crores. Simultaneously, if we look at the second entry on the seized sheet, it was mentioned that an amount of Rs.1.75 crores was also paid in cash by Shyam Ji.

12.8 Firstly, the addition, if any, is required to be made in the hands of Shyam Ji and should not be in the hands of assessee namely, M/s. Tranquil Properties, as partner and partnership firm are two distinct entities as per Income Tax Act, 1961, and the money paid by the partner cannot be added in the hands of the partnership firm. For the above said proposition, we may fruitfully rely upon the decision of Hon'ble Allahabad High Court in the case of CIT v. Jaiswal Motor Finance [1983] 141 ITR 706 (All), the Hon'ble Allahabad High Court had held that

“if there are cash credit entries in the books of the assessee-firm in which accounts of an individual partner exists, and it is found as a fact that the cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm. The learned counsel for the appellant submits that the aforesaid decision applies with full force to the facts of the case on hand. Noticeably, this was also a case where it was the first year of assessment of the firm.”

12.9 Admittedly, the seized document shows that the amount of Rs.1.50 crores was paid by Shyam Ji to AIPL and the said amount was not paid by the assessee firm to AIPL. The documents seized pertain to the affairs of ADIL and not AIPL. In view of the above, the addition made in the hands of the partnership firm is required to be deleted. Admittedly, the additions u/s 153C can only be made in the hands of the assessee if the seized documents show that there is an escapement of income mentioned in the said document which belongs to the assessee. In the present case, the seized document does not belong to the assessee and therefore, no addition can be made in the hands of the assessee. In the light of the above, the appeal of Revenue is dismissed.

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

C.O.No.2/Hyd/2024

14. In view of our finding in ITA No.6/Hyd/2024, the cross-objection filed by the assessee is also dismissed as infructuous.

ITA No.7/Hyd/2024

14.1 An identical case has been decided by us in the case of M/s. Tranquil Properties in ITA No.6/Hyd/2024 for A.Y. 2014-15. In the present case, the facts are similar to the facts considered in the case of M/s. Tranquil Properties. The reasons given by us from Para no.12.2 onwards in ITA No.6/Hyd/2024 shall apply mutatis and mutandis to this appeal, as well. Therefore, for similar reasons, we inclined to uphold the findings of Id.CIT(A) and reject the grounds taken by the Revenue. Thus, the appeal filed by the Revenue in ITA No.7/Hyd/2024 is dismissed.

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

C.O.3/Hyd/2024

14.3 An identical case has been decided by us in the case of M/s. Tranquil Properties in C.O.No.2/Hyd/2024 for A.Y. 2014-15. In the present case, the facts are similar to the facts considered in the case of M/s. Tranquil Properties. The reasons given by us in Para no.14 in C.O.No.3/Hyd/2024 shall apply mutatis and mutandis to this C.O. as well. Thus, C.O.No.3/Hyd/2024 filed by the assessee is also dismissed.

14.4 In the result, the cross objection filed by the assessee is dismissed as infructuous.

15. In the combined result, both the appeals of Revenue and both the cross objections filed by the assessee are dismissed.

Order pronounced in the Open Court on 25th July, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 25th July, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s. Tranquil Properties, 3-4-174/AF/89, Ambiance Fort, Rajendra Nagar, Hyderabad – 500048.
2	M/s. Apurupa Infrastructure Private Limited, 6-3-345/1/2, Flat No.402, Apurupa Classic, Road No.1, Banjara Hills, Hyderabad – 500034.
3	The Assistant Commissioner of Income Tax, Central Circle – 1(3), Hyderabad.
4	The Pr.CIT(Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	