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

Before Shri Manjunatha, G. Accountant Member
A N D
Shri K. Narasimha Chari, Judicial Member

S.No	ITA Nos.	Appellant	Respondent	A.Y
1	591/Hyd/2022	Shri Ramesh Babu Nimmatoori Hyderabad PAN:ACSPN1659G	ACIT, Central Circle 2(4) Hyderabad	2017-18
2	619/Hyd/2022			2018-19
3	700/Hyd/2022	ACIT, Central Circle 2(4) Hyderabad	Shri Ramesh Babu Nimmatoori Hyderabad PAN:ACSPN1659G	2018-19
4	311/Hyd/2022	Raja Babu Nimmatoori Hyderabad PAN:ACSPN1662R	ACIT, Central Circle 2(4) Hyderabad	2013-14
5	589/Hyd/2022			2016-17
6	590/Hyd/2022			2017-18
7	621/Hyd/2022			2018-19
8	701/Hyd/2022	ACIT, Central Circle 2(4) Hyderabad	Raja Babu Nimmatoori Hyderabad PAN:ACSPN1662R	2018-19
9	337/Hyd/2022	Yashoda Nimmatoori Hyderabad PAN:ACSPN1657J	ACIT, Central Circle 2(4) Hyderabad	2016-17
10	593/Hyd/2022			2017-18
11	618/Hyd/2022			2018-19
12	332/Hyd/2022	Anudeep Nimmattoori Hyderabad PAN:AHBPN2081Q	ACIT, Central Circle 2(4) Hyderabad	2016-17
13	475/Hyd/2022			2017-18
14	476/Hyd/2022			2018-19
15	592/Hyd/2022	Sulochana Nimmattoori PAN:ACSPN1664K	ACIT, Central Circle 2(4) Hyderabad	2017-18
16	620/Hyd/2022			2018-19
17	594/Hyd/2022	Manjusha Nimmatoori Hyderabad PAN:ACSPN1666M	ACIT, Central Circle 2(4) Hyderabad	2018-19

निर्धारिती द्वारा/Assessee by:	Shri P. Murali Mohan Rao, CA
राजस्व द्वारा/Revenue by::	Shri Shakeer Ahmed, DR
सुनवाई की तारीख/Date of hearing:	13/06/2024
घोषणा की तारीख/Pronouncement:	14/08/2024

ORDER

Per Bench:

This bunch of 17 appeals, 15 appeals by 6 different assessee's and 2 appeals by the Revenue are directed against the separate, but identical orders of the learned CIT (A) – 12 Hyderabad dated 29.08.2022 and pertains to Asst. Years 2013-14, 2016-17, 2017-18 and 2018-19. Since, the facts are identical and issues are common and interlinked, these appeals filed by the different assessee's as well as the Revenue are being heard together and are being dispose off by this consolidated order.

2. All six assessee's have more or less raised common grounds of appeal in their respective memorandum of appeals filed for all the A.Ys. From the grounds of appeal filed by the different assessee's, we have identified the following issues to be adjudicated:

i) Unaccounted Sale Proceeds received from Incredible India Projects (P) Ltd (Agriculture Land).

ii) Undisclosed income from Aishwarya Infra Developers

iii) Addition in respect of increase in capital account as per balance sheet.

iv) Unaccounted sale proceeds received from JVJ Structures (P) Ltd (Joint Development Agreement).

v) Long-Term Capital Gain (sold to JVG Structures (P) Ltd – Dev Agreement 5437/2017 (agriculture land).

vi) Section 56(2)(x) on the above (i.e. Excess of SD value over sale consideration).

vii) Section 56(2)(vii)(b) on the above (i.e. Excess of SD value over sale consideration).

viii) Unexplained Investment in Land at Road No.40, Jubilee Hills-69 (difference amount of sale deed and agreement to sale).

ix) Cash seized during search

x) Unexplained Investment in Land at Road No.41, Jubilee Hills-69 (difference between agreement to sale and sale deed).

xi) Unexplained Cash Deposits

xii) Unexplained Investment in land at Edupalle Village.

xiii) Disallowance claimed u/s 57

xiv) Long-Term Capital Gain with 50C

xv) Family Pension Receipts

xvi) Unexplained investment in land at Road No.12, Banjara Hills, Hyderabad 69

3. Since, there are common grounds in all the appeals and further the issues have been identified from the grounds of appeal filed by the assessee, we deem it not necessary to reproduce the grounds of appeal filed by the assessee's.

4. The Revenue has filed cross appeals in the case of S/Shri Ramesh Babu Nimmatoori and Raja Babu Nimmatoori for

the A.Y 2018-19 alone. The Revenue has raised more or less common ground of appeals in both the appeals. We have identified the issues involved in appeals filed by the Revenue. Therefore, we deem it not necessary to reproduce the grounds of appeal filed by the Revenue in both the appeals.

ITA No. 591/Hyd/2022 – Shri Ramesh Babu Nimmatoori

5. The brief facts extracted from ITA No. 591/Hyd/2022 for the A.Y 2017-18, in the case of Shri Ramesh Babu Nimmatoori are that the assessee is an individual and is one of the Trustees of M/s. Aurora Educational Society and group trusts. The assessee has originally filed his return of income for the A.Y 2017-18 on 29.12.2017 admitting total income of Rs.28,08,800/-. A search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted in the case of M/s. Aurora Educational Society and other groups in which the assessee was also covered. Consequent to search operation u/s 132 on 23.3.2018, notice u/s 153A of the I.T. Act, 1961 dated 24.12.2018 was issued and served on the assessee. In response thereto, the assessee filed return of income on 2.4.2019 admitting total income at Rs.28,08,800/-. The assessment has been completed u/s 143(3) r.w.s. 153A of the Act on 21.12.2019 and determined the total income at Rs.4,16,12,360/-, by inter-alia making various additions including the addition made towards unaccounted sale proceeds received from Incredible India Projects (P) Ltd for sale of land, the

addition towards the undisclosed advance received from Aishwarya Infra Developers and addition in respect of unproved increase in capital account. The assessee carried the matter in appeal before the first appellate authority and the learned CIT (A), for the reasons stated in their appellate order dated 29.8.2022, has partly allowed the appeal filed by the assessee, where the learned CIT (A) confirmed the additions made by the Assessing Officer towards unaccounted sale proceeds received from sale of land, undisclosed advance received from Aishwarya Infra Developers and addition towards increase in capital account.

6. Aggrieved by such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

7. The first issue that came up for our consideration from Ground Nos. 3(a) to 3(c) of assessee's appeal is additions towards unaccounted sale proceeds received from M/s Incredible India Projects (P) Ltd towards sale of land. The fact with regard to the impugned dispute are that during the financial year relevant to A.Y 2017-18, the assessee has sold a land admeasuring 4 acres at Raigiri Village through the registered Sale Deed No.8709/2016 dated 3.8.2016 to M/s. Incredible India Projects (P) Ltd for a consideration of Rs.20.00 lakhs @ Rs.5.0 lakh per acre. However, while submitting information in the case of M/s. Ravi Rishi Educational Society, M/s. Taraka Educational Society and M/s. Karshak Vidya Parishad, the assessee has admitted sale proceeds

at Rs.33,75,000/- per acre for sale of 4 acres of agricultural land to M/s. Incredible India Projects (P) Ltd. The assessee has not admitted any capital gain in respect of sale of land in the return of income filed for the A.Y 2017-18. The Assessing Officer called upon the assessee to explain as to why the additions should not be made in respect of consideration received from sale of land. The assessee, vide his reply dated 10.12.2019 has submitted that the land admeasuring 4 acres situated at Raigiri Village is an agricultural land and is situated more than 2 kms from local Bhongir Municipality. Therefore, the question of computing capital gain from sale of land does not arise. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, although the land, in question, was situated beyond 2 kms from Bhongir Municipality but it is situated within the Hyderabad Metropolitan Development Authority notified by the Govt. of A.P vide GO No.570 dated 25.08.2018 and hence, as per the provisions of section 2(14)(iii)(a), the land is a capital asset and the profit derived from sale of land is assessable for capital gain. Therefore, rejected the explanation of the assessee and made addition of Rs.1,35,00,000/- as income from capital gain towards sale of land.

8. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee reiterated his arguments made before the

Assessing Officer and claimed that the impugned land sold by the appellant to M/s. Incredible India Projects (P) Ltd is an agricultural land and is situated beyond 2 kms from local Municipality. The assessee had also filed necessary evidence, including a certificate from local authority to prove that the land, in question, was beyond the specified limit and further the population of Bhongir Village as per 2011 Census is 53,339.

9. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of relevant facts observed that as per provisions of section 2(14)(iii)(a), if any land situated in any area which is comprised within the jurisdiction of a Municipality or a Cantonment Board and which has a population of more than 10,000, but less than 1,00,000, then the said land will be treated as capital asset. Since the land, in question, is situated within 2 kms from the nearest Municipality and is also covered by the HMDA Notification dated 25.08.2008, the impugned land sold by the assessee is falls under the definition of capital asset as defined u/s 2(14) of the I.T. Act, 1961. The learned CIT (A) further held that the Assessing Officer has also brought out clear fact that there is no agricultural activity carried out by the assessee on the land and further the revenue record is not a conclusive proof of the fact that the land is an agricultural land in the absence of evidence that the land is put to agricultural use. Therefore, rejected the explanation

furnished by the assessee and upheld the addition made towards computation of capital gain from sale of land.

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

11. The learned Counsel for the assessee Shri P. Murali Mohan Rao, CA submitted that the learned CIT (A) is erred in sustaining the additions made by the Assessing Officer towards unaccounted sale proceeds received from Incredible India Projects (P) Ltd towards the sale of agricultural land without appreciating the fact that the very same CIT (A) in the case of Raja Babu Nimmatoori while disposing an appeal for the A.Y 2018-19 had considered very similar land and after considering the relevant evidences filed by the assessee, held that the land sold by the appellant is situated beyond 2 kms from local Bhongir Municipality and further the impugned land was recently merged into Bhongir Municipality by Notification No.93 dated 18.04.2018. The learned Counsel for the assessee further submitted that the assessee has carried out agricultural operations and declared agricultural income from the said land. Since the land, in question, was an agricultural land and is situated beyond the specified limit, the Assessing Officer and the learned CIT (A) are erred in computing the capital gain from sale of land.

12. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the land sold by the assessee is a capital asset which is evident from the facts brought on record by the Assessing Officer. Further, the land is situated within the territorial jurisdiction of HMDA vide Govt. Notification dated 25.08.2008. The assessee never used the land for agricultural purposes. The land is situated in a place where lots of developmental activities have taken place. Therefore, the Assessing Officer and the learned CIT (A), after considering the relevant facts has rightly treated the land sold by the assessee as a capital asset and therefore, their orders should be upheld.

13. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant evidence filed by the assessee in light of certain judicial precedents considered by the learned CIT (A) including the decision of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim vs Commissioner of Income-Tax (1993) 204 ITR 631. Agricultural land in India has been defined u/s 2(14) of the I.T. Act, 1961. As per section 2(14) of the Act, agricultural land in India is any land not being land situated in any area which is comprised within the jurisdiction of a Municipality or a Cantonment Board which has a population of not less than 10,000 or in any area within the distance measured aerially not being more than 2 kms from the local limitation of any

Municipality or Cantonment Board and which has a population of more than 10,000 but not exceeding 1,00,000. In other words, any land situated within the jurisdiction of a Municipality or in any area within such distance as specified by the Govt. is treated as capital asset. If any land is situated outside the limits of local Municipality, then such land is treated as agricultural land. Although lot many discussions have been taken place in respect of nature of the land on the basis of carrying out of agricultural operations, the Courts/Tribunals in their decisions have taken a view that once the land is classified as an agricultural land in the revenue record, then merely for not carrying out agricultural operations, the said land cannot be treated as non-agricultural land. In other words, for not carrying agricultural operations, any land cannot be treated as non-agricultural land, if such land is classified as agricultural land as per revenue record and is capable of carrying out agricultural operations. Therefore, in order to decide whether particular land is an agricultural land or a capital asset, it is very important to see the relevant revenue record and the distance of said land from the local limits of a Municipality.

14. In the present case, there is no dispute with regard to the fact that the land, in question, was situated beyond 2 kms from Bhongir Municipality. This fact is further strengthened by the certificate issued by the Tehsildar, Bhongir Mandal and as per the said certificate, the population as per 2011 census of Bhongir

Mandal is 53,339 and further the area in which the said land was situated was recently merged into Bhongir Mandal vide GO 93 dated 18.04.2018 and Gazette Notification No.11 dated 30.03.2008. From the above, it is undisputedly clear that the impugned land sold by the assessee is situated beyond the specified limit of the local Municipality and thus cannot be treated as capital asset. Further, the appellant has also placed necessary evidence to prove that he has carried out agricultural operations and also declared agricultural income in the return of income filed in the earlier A.Ys. Be that as it may be, merely because the agricultural operation was not carried out in land which is otherwise an agricultural land as per revenue record and is also situated beyond the specified limit cannot be treated as capital asset, as long as the said land is capable of carrying out agricultural operations. Therefore, we are of the considered view that the land sold by the assessee to M/s Incredible India Projects (P) Ltd in Sy. No.758, 765, 766, 777, 795 and 796 is an agricultural land and thus, cannot be treated as capital asset in terms of section 2(14) of the I.T. Act, 1961.

15. We further have noted that the learned CIT (A)-12, Hyderabad, while deciding the issue of taxability of sale of land in the case of Shri Raja Babu Nimmattoori for the A.Y 2018-19 has considered the very same land sold by the assessee and after considering the relevant facts including the certificate issued by the Tehsildar and certificate from the Commissioner of Bhongir

Municipality held that the impugned land sold by the assessee is an agricultural land and cannot be treated as capital asset. The relevant findings of the learned CIT (A) in order dated 30.09.22 is reproduced as under:

> *"If the land is situated outside 2 kms of the local municipality limit and population of such municipality is more than 10,000 and less than 1,00,000, then that land will be defined as agricultural land. From the certificates issued by Tehsildar, Bhiongir Mundal, it can be seen that in the present case, the lands in question are situated at a distance of more than 2 kms from the Bhongir Municipality and the population of Bhongir village as per population census 2011 is 53,339. Further the AR produced a certificate from Commissioner, Bhongir Municipality vide ROC No.GU13412021 dated 19,01.2021 stating that the land possessed by the appellant vide Survey umbers 758, 765, 766, 775,795 & 796 have been recently merged into Municipality vide G.O.No.93, dated 18.04.2018 & Gazette No.11, dated 30.03.2018. In other words, the land of the appellant was not within the municipal limits during the current year but was merged into municipality vide G.O.No.93, dated 18.04.2018 & Gazette No.11, dated 30.03.2018. Therefore, the land is to be treated as an agricultural land and not as a capital asset; hence no capital gain will arise from sale of such agricultural lands. Accordingly, the addition of Rs. 1,99,12,500/- is directed to be deleted. Since the increase in capital account during AY 2018-19 is also a result of sale proceeds received from Incredible India Projects Put. Ltd. to the extent of Rs. 1,95,47,729/- and is consequential to the above ground, the addition of Rs.7,95,47,729/- is also directed to be deleted. However, since the above certificates from Tehsildar & Commissioner, Bhongir Municipality were not produced before the AO, the AO is directed to verify the sane before according relief to the assessee".*

16. We further note that the Assessing Officer while passing the order giving effect to the order passed by the learned CIT (A) and as per the directions of the learned CIT (A) verified the relevant evidence filed by the assessee to treat the status of land

as an agricultural land and after verifying the details has accepted the claim of the assessee that the land sold is an agricultural land.

17. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the impugned land sold by the assessee is an agricultural land and is situated beyond 2 kms from the local limitation of Bhongir Municipality and thus cannot be treated as capital asset. The Assessing Officer and the learned CIT (A) without appreciating the relevant facts simply made additions towards capital gain from sale of land. Thus, we set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards unaccounted sale proceeds received from Incredible India Projects (P) Ltd amounting to Rs.1,35,00,000/- from sale of agricultural land.

18. The next issue that came up for our consideration from Ground No.2(a) and 2(b) of the assessee's appeal is addition towards increase in capital account of Rs.1,37,61,200/-. During the course of assessement proceedings, it is seen from the return of income filed by the assessee that there is increase in his capital account to Rs.3,20,93,664/- when compared to closing capital account balance for the immediately preceding financial year at Rs.1,83,32,464/-. The Assessing Officer called upon the assessee to explain the source for the increase in capital account of

Rs.1,37,61,200/-. The assessee in his reply dated 10.12.2019 stated that he had sold 4 acres of land to M/s. Incredible India Projects (P) Ltd for an amount of Rs.1,35,00,000/- and the same has been credited to his capital account. The remaining amount of Rs.2,61,200/- is out of his current year income. The Assessing Officer made an addition towards increase in capital account on the ground that the assessee could not file any evidences to prove the source for increase in capital account.

19. On appeal, the learned CIT (A) confirmed the additions made by the Assessing Officer,

20. The learned Counsel for the assessee submitted that the source for increase in capital account is out of sale proceeds of Rs.1,35,00,000/- received from sale of agricultural land and balance amount is out of current year income. The Assessing Officer made additions without appreciating the relevant evidence filed by the assessee.

21. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the assessee could not file any evidence to prove the source for increase in capital. Therefore, the learned CIT (A) has rightly sustained the addition and their order should be upheld.

22. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the capital account of the assessee has been increased by Rs.1,37,61,200/-. It is also not in dispute that the assessee has filed necessary evidence to prove the source of the increase in capital accounts. As per explanation furnished by the assessee, sum of Rs.1,35,00,000/- is received from M/s. Incredible India Projects (P) Ltd towards sale of 4 acres of agricultural land. The balance amount of Rs.2,61,200/- is out of current year income after withdrawal for personal expenditure. We find that when the assessee is able to explain the increase in capital accounts with necessary evidence, in our considered view the Assessing Officer ought not to have made addition by stating that the assessee is not able to furnish any evidence. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer. Since the appellant has explained increase in capital account with known sources of income and such explanation is supported by necessary evidence, in our considered view, the addition made by the Assessing Officer towards increase in capital account is not sustainable. Thus, we set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards increase in capital account of Rs.1,37,61,200/-.

23. The next issue that came up for our consideration from Ground Nos.4(a) and 4(b) of assessee's appeal is addition towards undisclosed income arises towards amount received from Aishwarya Infra Developers amountingtoRs.79,35,760/-. The fact with regard to the impugned dispute are that during the survey proceedings u/s 133A of the I.T. Act, 1961 in the case of Aishwarya Infra Developers, a signed agreement between M/s Aurora Educational Society and the appellant Mr. N. Ramesh Babu and 3 other family Members namely Shri Raja Babu, Mrs. Yashoda and Mrs. Sulochana was found. As per the document, the appellant and others entered into a sale agreement with Aishwaria Infra Developers for sale of land admeasuring 29 acres and 15 guntas in Survey No.711, 720 and 721 of Bhongir Revenue Village for a consideration of Rs.8,81,25,000/- at the rate of Rs.30 lakhs per acre. As per the agreement of sale, Rs.2.00 crore advance in cash has been paid and also agreed to pay Rs.1.00 crore on or before 30.09.2016. The Department had also found, and seized cash receipts signed by all the sellers in the presence of witnesses. The incriminating documents found during the course of survey were confronted with Mr. M. Durga Prasad M.D of M/s Aishwarya Infra Developers. Under sworn statement recorded u/s 131 of the I.T. Act, 1961 dated 24.03.2018, he has admitted that Rs.5.18 crores in cash have been paid to Shri Ramesh Babu and others. He further stated that M/s. Aishwarya Infra Developers was not able to arrange the total consideration to be paid to the sellers and therefore, he has approached M/s JVG

Structures (P) Ltd to invest remaining amount in the land and accordingly a final development agreement cum GPA was executed vide document No.5437/2017.

24. During the course of assessement proceedings, the Assessing Officer noticed that although the appellant has sold land admeasuring 29 acres and 15 guntas to M/s. JVG Structures (P) Ltd by way of development agreement cum GPA, but no capital gain was admitted. Therefore, called upon the assessee to explain as to why the additions should not be made in respect of cash received from M/s. Aishwarya Infra Developers. The assessee in response vide letter dated 26.11.2019 submitted that the land transferred by the assessee originally to Aishwarya Infra Developers by way of sale agreement and subsequent development agreement with JVG Structures (P) Ltd is an agricultural land and is situated more than 2 kms from Bhongir Municipality The assessee further submitted that it has entered into only an agreement cum GPA and received advance, Therefore, the question of offering capital gain does not arise because the final sale or transfer of property was not taken place. The Assessing Officer, however was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, the land transferred by the assessee is a capital asset as per section 2(14)(iii)(a), because the land is situated within the jurisdiction of HMDA and further no agricultural activity has been carried out in the said land either at the time of its transfer or

prior to the sale. Moreover, the assessee along with others has applied for a layout permission to develop land into plots before the time of its transfer. Therefore, it is very clear that the appellant was intended to commercially exploit the land and thus the said land cannot be considered as agricultural land. The Assessing Officer further noted that the appellant and other sellers have received Rs,.5.18 crores M/s. Aishwarya Infra Developers pursuant to the sale agreement. Since the transfer of property has not taken place because of failed negotiations, the amount received by the appellant from developers become income of the assessee in terms of section 56(2) of the I.T. Act, 1961 and thus made addition of Rs.79,35,760 in the hands of the assessee u/s 56(2)(ix) of the I.T. Act, 1961.

25. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee has reiterated its arguments made before the Assessing Officer and submitted that the impugned land, in question, is an agricultural land and is situated beyond 2 kms from the local Municipality. Further, the appellant has entered into an agreement with Developers and received advance amount of Rs.5.18 crores. M/s. Aishwarya Infra Developers could not complete the sale transactions and because of this a tripartite agreement was entered into with M/s. Aishwarya Infra Developers and appellant and other sellers with M/s. JVG Structures Ltd for development of land and accordingly the development agreement

cum GPA was executed in favour of M/s JVG Structures Ltd. Since the appellant has only received advance from the transaction, he has not offered any capital gain.

26. The CIT (A) after considering the relevant facts and also, by following certain judicial precedents, held that the lands transferred by the appellant and other co-owners by way of agreement to sale dated 14/09/2016 is not an agricultural land but a capital asset as defined u/s 2(14) of the Act. Further, the appellant has not carried out any agricultural operations to say that said land is agricultural land. Therefore, rejected the arguments of the assessee. As regards assessment of advance received from M/s. Aishwarya Infra Developers, it is a matter on record that the appellant and other co-owners have received a sum of Rs.5,18,00,000/- in pursuant to the said agreement and on cancellation of the agreement, the advance received from the Developers has not been repaid. Therefore, the amount retained by the assessee on cancellation of the agreement partakes the nature of income within the meaning of section 56(2)(ix) of the Income Tax Act, 1961. Therefore, rejected the arguments of the assessee and sustained the additions made by the AO.

27. The ld. Counsel for the assessee Shri P Murali Mohan Rao, CA submitted that the ld. CIT (A) is erred in not appreciating the fact that the agreement of sale dated 14.09.2016 is cancelled by way of subsequent joint development agreement cum GPA

between the appellants, M/s. Aishwarya Infra Developers (P) Ltd and M/s. JVG Structures (P) Ltd. As per the agreement dated 30.06.2017, all the 3 parties including the appellant and M/s. Aishwarya Infra Developers have entered into a Development Agreement and agreed to share the built-up area. The advance received from M/s. Aishwarya Infra Developers has been treated as advance paid in pursuant to JDA agreement and thus, the AO and the CIT (A) is erred in assuming that the appellant has cancelled the agreement and forfeited the advance, even though, the subsequent agreement is very clearly specified that earlier advance has been subsequently referred to in the JD agreement.

28. The ld. DR, on the other hand, supporting the order of the ld CIT (A) submitted that there is no dispute that the agreement of sale dated 14.09.2016 is cancelled. Further, the appellant has forfeited advance paid by M/s. Aishwarya Infra Developers. Therefore, if a person receives any amount in pursuant of an agreement of sale and subsequently on cancellation of said agreement, the advance received is forfeited, then said forfeiture of advance is taxable as income u/s 56(2)(ix) of the Act. The CIT (A) after considering the relevant facts has rightly upheld the addition made by the AO and their order should be upheld.

29. We have heard both the parties, perused the material available on record and gone through the orders of the authorities

below. There is no dispute with regard to the fact that the assessee and other co-owners have entered into an agreement of sale with M/s. Aishwaria Infra Developers for the sale of agricultural land at Bhongir Village to the extent of 29.15 acres on 14.09.2016. It is also not in dispute that the appellant has received an advance amount of Rs.5.18 crores from M/s. Aishwarya Infra Developers. This fact is confirmed by the Managing Partner of M/s. Aishwarya Infra Developers. It is also an admitted fact that Aishwarya Infra Developers was not able to pay the balance amount of consideration. Therefore, a tripartite agreement was entered into with the appellant, M/s. Aishwarya Infra Developers and M/s. JVG Structures (P) Ltd and accordingly a final development agreement cum GPA was executed in the year 2017. As per the recital of development agreement cum GPA, the share of each landowner has been specified and also cash received towards advance from the developers was also specified. The Assessing Officer on the basis of above sale agreement cum development agreement coupled with GPA opined that the amount received by M/s. Aishwarya Infra Developers is assessable as per the provisions of section 56(2)(ix) of the I.T. Act, 1961, because the assessee has received advance in the course of negotiation of a transfer of a capital asset and such transfer is cancelled and advance is forfeited because, negotiations do not result any transfer of capital asset.

30. We have given our thoughtful consideration to the reasons given by the Assessing Officer to make addition u/s 56(2)(ix) of the I.T. Act, 1961 and the reasons given by the learned CIT (A) to confirm addition made by the Assessing Officer in the light of various averments made by the learned Counsel for the assessee and we ourselves do not subscribe the reasons given by the Assessing Officer for the simple reason that first of all, the transfer of property has not taken place in terms of section 2(47) r.w.s. 53A of transfer of property Act 1882. The appellant has originally entered into a sale agreement with M/s. Aishwarya Infra Developers and received advance. M/s. Aishwarya Infra Developers could not complete sale transaction because of insufficient funds. Therefore, they had approached JVG Structures (P) Ltd and finally entered into development agreement cum GPA for development of property. As per the development agreement, the share of individual landowners has been specified and also the share of each land owners and advance received from Aishwarya Infra Developers was also specified. The Assessing Officer never disputed the fact that the appellant has received only advance but final transfer has not taken place. Further, there is no cancellation or failed negotiations between the appellant and M/s. Aishwarya Infra Developers to invoke the provisions of section 56(2)(ix) of the I.T. Act, 1961 which is evident from the statement given by Shri M. Durga Prasad, the Managing Partner of Aishwarya Infra Developers on 24.03.2018 where he has clearly admitted that he himself has cancelled the sale

agreement and has entered into development agreement with M/s. JVG Structures (P) Ltd along with land owners. In the said development agreement cum GPA M/s. Aishwarya Infra Developers is also one of the parties. Therefore, from the above, it is undisputedly clear that the amount received by the appellant from M/s. Aishwarya Infra Developers in terms of agreement of sale is finally treated as advance received by the appellant in pursuant to development agreement cum GPA dated 30.06.2017. Since it is compromising agreement between the appellant M/s. Aishwarya Infra Developers and M/s. JVG Structures (P) Ltd, in our considered view, the said arrangements cannot be brought within the ambit of section 56(2)(ix) of the I.T. Act, 1961, because the advance received from Aishwarya Infra Developers is not forfeited and further the negotiations between the parties was not failed. As we have already noted in previous part of this paragraph, M/s. Aishwarya Infra Developers is also one of the parties to the development agreement cum GPA and thus, the advance paid by M/s. Aishwarya Infra Developers has been treated as advance paid to landlord in pursuant to development agreement cum GPA. Therefore, the provisions of section 56(2)(ix) cannot be invoked.

31. Be that as it may, the fact remains that the impugned land given by the appellant for joint development to M/s. JVG Structures (P) Ltd is an agricultural land and is situated beyond 2 kms from local Bhongir Municipality which is evident from the

certificate issued by the Tehsildar and confirmed by the Commissioner of Bhongir Municipality. This fact has been accepted by the learned CIT (A) in his order dated 30.09.2022 in the case of Raja Babu for A.Y 2018-19. Therefore, when advance is received towards sale of agricultural land, then same cannot be treated as forfeiter of advance in terms of section 56(2)(ix) of the I.T. Act, 1961 because the said provision is applicable only to a capital asset but not to agricultural land. Therefore, on this count also, the addition made by the Assessing Officer towards the advance received from the developers as income of the assessee cannot be sustained.

32. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the ld. CIT(A) is erred in confirming addition made by the Assessing Officer towards the advance received from M/s. Aishwarya Infra Developers as income of the assessee u/s 56(2)(ix) of the I.T. Act, 1961, even though having observed that the impugned land is an agricultural land in the case of another co-owner while deciding the appeal for the A.Y 2018-19. Thus, we set aside the order passed by the learned CIT (A) on this issue and direct the Assessing Officer to delete the additions made towards undisclosed income received from M/s. Aishwarya Infra Developers u/s 56(2)(ix) of the I.T. Act, 1961.

33. In the result, appeal filed by the assessee in ITA No.591/Hyd/2022 for A.Y 2017-18 is allowed.

ITA No.619/Hyd/2022 A.Y 2018-19

34. The brief facts of the case are that the assessee is an individual and is one of the Trustees of M/s. Aurora Educational Society and group trusts. The assessee has filed his return of income for the A.Y 2018-19 on 26.10.2019 admitting total income of Rs.41,70,800/-. A search & seizure operation u/s 132 of the I.T. Act, 1961 was conducted in the case of M/s. Aurora Educational Society and other groups in which the assessee was also covered. Consequent to search operation u/s 132 on 23.3.2018, the case has been taken up for scrutiny assessment. The assessment has been completed u/s 143(3) r.w.s. 153A of the Act on 28.12.2019 and determined the total income at Rs.9,03,96,302/- by making various additions including the addition made towards unaccounted sale proceeds received from JVG Structures (P) Ltd for sale of land. The addition towards the undisclosed Long-term capital gain from JDA, addition towards difference between sale consideration as per sale deed and guideline value of the property, unexplained investment in land and addition on cash seized during search. The assessee carried the matter in appeal before the first appellate authority and the learned CIT (A) for the reasons stated in their appellate order dated 30.09.2022 partly allowed the appeal filed by the assessee

where the learned CIT (A) confirmed the additions made by the Assessing Officer towards unaccounted sale proceeds received from sale of land, undisclosed LTCG, addition u/s 56(2)(ix) and the addition towards cash found during search.

35. The first issue that came up for our consideration from Ground 5(a) to 5(d) of assessee's appeal is additions towards unaccounted sale proceeds received from JGV Structures (P) Ltd and consequent enhancement of assessment by the learned CIT (A). The facts with regard to the impugned dispute are that the assessee along with M/s. Aurora Educational Society, Mr. N. Raja Babu, Mrs. N Yashoda, Mrs. N Sulochana and M/s. Aishwarya Infra Developers had entered into a development agreement cum GPA with M/s JGV Structures Pvt. Ltd vide document No.5437/2017 dated 30.06.2017. As per the JD agreement, the vendors have intention to develop the land admeasuring 30 acres 15 guntas at Sy No.711, 720, 721 and 724 into residential plots and accordingly applied for layout approval from HMDA on 25.11.2016 and the same has been approved on 30.04.2017. The present market value of the said land as per the registered JDA was at Rs.14,70,15,000/-@ Rs.48,40,000/- per acre. The Assessing Officer noticed that the assessee has not offered any capital gain on the said transaction. Therefore, the Assessing Officer called upon the assessee to explain as to why the capital gain arises in pursuant to the JDA cum GPA on 30.06.2017 shall not be assessed under the head capital gain. The assessee, vide

his reply dated 26.11.2019 had submitted that the land in consideration is an agricultural land, which is situated at Bommalapally Village which is more than 2 kms from Bhongir Municipality and thus, the consideration received from sale of said land cannot be assessed under the head capital gain. The assessee further submitted that he has entered into only JDA along with GPA dated 30.06.2017 and allowed the developer to take the possession of the land for the purpose of development and thus in view of the provisions of section 45(5A) of the I.T. Act, 1961 capital gain, if any, is chargeable to tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Since the developer has not completed the work and has not obtained the completion certificate from the competent authority, the question of computation of capital gain for the impugned A.Y does not arise. The Assessing Officer did not accept the explanation of the assessee and according to the Assessing Officer, the land held by the appellant and other persons is a capital asset within the meaning of section 2(14)(iii)(a) of the Act, because the said land is situated within the jurisdiction of HMDA region and further it is situated within 2 kms from the limits of Bhongir Municipality. Further, no agricultural activity has been carried out in the said land either at the time of its transfer or prior to its transfer. Moreover, the assessee and other co-owners have applied for a layout permission to develop the land into plots before its transfer and thus from the intention of the assessee, it is very clear that

the assessee want to commercially exploit the land as an organized business activity and thus the consideration received for transfer of land is assessable to tax under the head "income from capital gain". Thus, worked out capital gain and made addition of Rs. 3,12,58,220/- in the hands of the assessee.

36. The assessee carried the matter in appeal before the first appellate authority and reiterated its arguments taken before the Assessing Officer. The assessee further contended that as per provisions of section 45(5A) of the act, capital gain, if any, chargeable from transfer of capital asset being land or building or both under a specified agreement, shall be chargeable to income-tax in the previous year in which the certificate of completion on the own or part of the project is issued by the competent authority. Since the developer has not obtained a completion certificate, capital gain is not chargeable for the impugned A.Y.

37. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of the relevant facts including the market value of the property as per the registered JDA-cum-GPA dated 30.06.2017 and cash consideration claimed to have been paid by the Developers amounting to Rs.95.00 lakhs as per their statement recorded u/s 132(4), observed that the impugned land transferred by the appellant through JDA-cum-GPA is a capital asset as per section 2(14)(iii)(a) of the Act, because the said land is situated within 2

kms from Bhongir Municipality and also intended to be used for commercial purposes. The learned CIT (A) further observed that the assessee never used the land for agricultural operations and further before its transfer applied for layout plan from the competent authority to convert the land into residential plots and from the above it is undisputedly clear that the land held by the assessee is not meant for agricultural operations but for commercial exploitation. Therefore, by taking into relevant facts upheld the additions made by the Assessing Officer towards computation of capital gain and further enhanced the assessment by taking into the fair market value of the property as per document No.5437/2017 dated 30.06.2017 amounting to Rs.14,70,15,000/- and enhanced the assessment to the tune of Rs.43,51,644/- being 14.8% of the appellant's share in developed area.

38. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in upholding the additions made by the Assessing Officer towards computation of Long-Term Capital Gain in pursuant to JDA with M/s. JVG Structures (P) Ltd without appreciating the fact that as per the provisions of section 45(5A), in case where the land owner entered into JDA, capital gain arising on transfer of an asset shall be chargeable to tax in the year in which completion certificate is issued by the competent authority but not in the year in which the JDA is entered. Since the appellant only entered into JDA for the

impugned A.Y and the project is not completed in all respect and further the developer has not obtained completion certificate from the competent authority, the question of computation of capital gain for the impugned A.Y does not arise.

39. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the facts brought on record by the Assessing Officer clearly indicate the intention of the assessee to commercially exploit the land by entering into JDA on 30.06.2017. The appellant had also obtained plan sanction from the competent authority on 13.04.2017. Since the land in question are converted into residential plots, capital gain will arise from the transfer of said non-agricultural land and thus, the Assessing Officer and the learned CIT (A) have rightly computed the capital gain, and their order should be upheld.

40. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant reasons given by the Assessing Officer to make additions and relevant findings of the learned CIT (A) to enhance the assessment in terms of section 251(1) of the I.T. Act, 1961 and in respect of the alleged consideration received towards transfer of land in pursuant to JDA-cum-GPA on 30.06.2017. Admittedly, the appellant had entered JDA on 30.06.2017 with M/s. JVG Structures (P) Ltd for development of 30.17 acres of land. As per

the JDA with the Developer, the appellant has handed over the possession of the land for the limited purpose of development of land into residential plots after obtaining necessary permission from the concerned revenue authorities. The appellant had also applied for conversion of land into residential plots to HMDA on 25.11.2016 and the HMDA has given permission to develop the land into residential plots vide letter dated 13.04.2017. From the facts brought on record by the Assessing Officer, it is undisputedly clear that the appellant along with the co-owners had entered into only JDA with the Builders for development of the property in the impugned A.Y. Further, as per the approval given by the HMDA, the authority has given permission to developer to convert the land into residential plots and develop, but it does not say the project is complete in all respects and the completion certificate has been issued on 13.04.2017. Therefore, it is necessary to examine the taxability of capital gain in pursuant to JDA entered on 30.06.2017 in light of above facts with reference to the provisions of section 45(5A) of the I.T. Act, 1961.

41. The provisions of section 45(5A) of the Act deal with computation of capital gain under specified agreement. As per the said provisions, where the capital gain arises to the assessee being an individual or HUF from the transfer of a capital asset being land or building or both under a specified agreement, the capital gain shall be chargeable to income-tax as income of the

previous year in which the said certificate of completion for the whole or part of the project is issued by the competent authority, and for the purpose of section 48, the stamp duty value on the date of issue of the said certificate as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. From a plain reading of section 45(5A) of the act, it is undoubtedly clear that the capital gain, if any, is chargeable to tax in terms of specified agreement shall be levied for the previous year in which certificate of completion is issued by the competent authority. In the present case, there is no dispute with regard to the fact that the Developer has not completed the project in all respects and has not obtained a completion certificate from the competent authority. In fact, it was not a case of the Assessing Officer and the learned CIT (A) that the assessee has obtained completion certificate and even after obtaining completion certificate, capital gain was not offered to tax. Unless the Assessing Officer and the learned CIT (A) proves that the conditions prescribed for u/s 45(5A) of the Act is satisfied, the question of computation of capital gain for the impugned A.Y does not arise. Therefore, we are of the considered opinion that the Assessing Officer completely erred in making addition towards capital gain in pursuant to the JDA on 30.06.2017, contrary to the provisions of section 45(5A) of the Act. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer and

further enhanced the assessment on the very same issue. Thus, we set aside the order passed by the learned CIT (A) and direct the Assessing Officer to delete the addition made towards computation of capital gain in terms of development agreement with JVG Structures (P) Ltd.

42. The next issue that came up for our consideration from Ground No.6(a) to 6(c) of assessee's appeal is addition of Rs.23,89,016/- towards Long-Term Capital Gain from transfer of property to JVG Structures (P) Ltd. The learned Counsel for the assessee at the time of hearing submitted that the assessee does not wish to press the grounds taken challenging the additions made by the Assessing Officer towards computation of Long-Term Capital Gain from sale of property to M/s JVG Structures (P) Ltd. Therefore, grounds 6(a) to 6(c) of assessee's appeal is dismissed as not pressed.

43. The next issue that came up for our consideration grom Ground No.7 of assesse's appeal is towards the addition of Rs.24,07,600/- being 1/5th share of appellant out of excess consideration of Rs.1,20,38,000/- u/s 56(2)(x) of the I.T. Act, 1961.

44. The fact with regard to the impugned disputes are that the appellant along with Shri N Raja Babu, Smt. N. Sulochana, Smt. N. Yashoda and Shri Anudeep Aurora together have

purchased 1000 sq. yard of land at Road No.12, Banjara Hills, vide document No.5815/2017 on 19/08/2017 for a consideration of Rs.3.0 crores. The market value of the property as on the date of registration was Rs. 4,20,38,000/-. Thus, there is a difference of Rs.1,20,38,000/-. Therefore, the AO called upon the assessee to explain the source for purchase of property and also explain the difference between consideration and guideline value of the property as on the date of registration. Since the appellant could not provide relevant details, the AO made addition towards sale consideration as unexplained investment and also made addition for difference in sale consideration and guideline value of the property u/s 56(2)(x) of the I.T. Act, 1961.

45. On appeal, the learned CIT (A) after considering the relevant evidence filed by the assessee deleted the additions made by the AO towards consideration as per registered document by holding that the assessee has furnished source of income for consideration of Rs.3.00 crores paid for purchase of property. However, sustained additions made u/s 56(2)(x) of the Act for Rs.24,07,600/- on the ground that when there is difference between SRO value of the property and consideration paid as per registered sale deed, then the difference is taxable as income of the appellant u/s 56(2)(x) of the Act.

46. The learned Counsel for the assessee submitted that the agreement for purchase of property was entered into on

23.7.2017 and cash consideration of Rs.1.00 crore has been paid from 2007 to 2015. The registration of the property was postponed due to certain litigations and in this regard, a resolution regarding the transaction to be registered in the name of M/s. Aurora Educational Society was passed on 6.8.2017 and a memorandum of understanding was also entered into between the society and members on 19.08.2017. Since the agreement was entered into in the year 2007 and part of the consideration was also paid, the market value of the property as on the date of agreement to be considered. Further, when a registered sale deed clearly shows consideration paid through cheque, then the addition cannot be made towards the different in stamp duty value and consideration as per sale deed u/s 56(2)(x) of the I.T. Act, 1961. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer, therefore, requested to delete the addition made by the Assessing Officer.

47. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that there is no dispute with regard to the fact that there is a difference between stamp duty value and consideration as per registered document. Although the assessee claims to have entered into agreement in the year 2007 but the said agreement was unsigned and further consideration claims to have been paid by cash. Therefore, the evidentiary value of said agreement is in doubt. The Assessing

Officer and the learned CIT (A) after considering the relevant facts has rightly made the addition towards the difference in stamp duty value and consideration in terms of section 56(2)(x) of the I.T. Act, 1961 and therefore, their orders should be upheld.

48. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the consideration as per the registered document No.5815/2017 dated 19.08.2017 is at Rs.3.00 crores, whereas the fair market value of the property as on the date of registration is at Rs.4,20,38,000/-. Thus, there is a difference of Rs.1,20,38,000/-. As per the provisions of section 56(2)(x) of the Act, where any person receives, in any previous year, from any person or persons on or after 1.4.2017, any immovable property for a consideration, the stamp duty value of the said property has exceeded such consideration, if the amount of such excess is more than Rs.50000 or equal to 5% of the consideration, then such difference shall be treated as income of the assessee u/s 56(2)(x) of the Act. In the present case, there is a difference between the stamp duty value and consideration paid for purchase of the property and thus the provisions of section 56(2)(x) is applicable and the difference is to be treated as income of the assessee. Although the assessee claims to have entered into an agreement in the year 2007 and also paid part of consideration, but sale agreement was not registered and also advance has been paid by

cash and thus, as per provisions of section 56(2)(x) and proviso as provided therein, the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein has been paid by way of an account payee cheque on or before the date of agreement for transfer of such immovable property. Since the appellant claims to have entered into agreement in the year 2007 and also paid the consideration in cash, the provisions of 1st proviso and consideration as on the date of the agreement cannot be applied. Therefore, we are of the considered opinion that there is no error in the reasons given by the learned CIT (A) to sustain the addition made by the Assessing Officer for an amount of Rs.24,07,600/-, being the difference between the stamp duty value and consideration paid for purchase of property u/s 56(2)(x) of the I.T. Act, 1961. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee.

49. The next issue that came up for our consideration from Ground No.8 of assessee's appeal is addition towards unexplained investment for purchase of land at Road No.40, Jubilee Hills, u/s 69 of the I.T. Act, 1961. The assessee along with Shri N Raja Babu, Smt. N. Yashoda, Smt. Sulochana, Smt Manjusha and N Anudeep have purchased a land and building at Road No.40, Jubilee Bills vide document No.4404/2017 dated 19.07.2017. The total consideration was agreed at Rs.5,68,00,000 and a sum of Rs.78.00 lakhs was already paid as on the date of

the agreement. The assessee was not able to explain the source for purchase of property, therefore, the Assessing Officer has made the addition of Rs.94,66,666/- in the hands of the assessee.

50. In appeal, the learned CIT (A) deleted the consideration paid through cheques as per registered sale deed dated 19.7.2017 amounting to Rs.81,66,666/- being 1/6th share of the assessee, however, sustained sum of Rs.13.00 lakhs being 1/6th share of the appellant's consideration paid in cash as per sale agreement dated 5.5.2017.

51. The learned Counsel for the assessee submitted that the learned CIT (A) erred in sustaining the addition of Rs.13.00 lakhs without appreciating the fact that the agreement of sale was in the name of Shri Raja Babu Nimmatoori and the assessee is not a part to the agreement of sale. Further, Shri Raja Babu has paid consideration of Rs.78.00 lakhs from his account and also recorded in the books of account maintained by him. Therefore, the Assessing Officer and the learned CIT (A) erred in making addition in the hands of the assessee for Rs.13.00 lakhs being 1/6th share of the assessee.

52. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that as per agreement of sale dated 5.5.2017, consideration was agreed at Rs.5.68 crores and also sum of Rs.78.00 lakhs were paid. The assessee could not

explain the source for balance amount of Rs.78.00 lakhs although he is able to furnish evidence towards consideration as per registered document. The learned CIT (A), after considering the relevant facts, has rightly sustained the addition of Rs.13.00 lakhs and their order should be upheld.

53. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that as per the registered sale deed 19.7.2017, consideration stood at Rs.4.90 crores, whereas as per the agreement of sale dated 5.5.2017, the consideration stood at Rs.5.68 crores. It is also not in dispute that the sum of Rs.78.00 lakhs was already paid as on the date of agreement. The assessee has explained the source for sale consideration of Rs.4.90 crores and the learned CIT (A) has accepted. In so far as the balance consideration of Rs.78.00 lakhs as per the agreement of sale, it was the argument of the assessee that Shri Raja Babu has paid the entire consideration of Rs.78.00 lakhs by cheque and the same has been accounted in his books of account maintained for the relevant A.Y. In this regard, the assessee has filed a relevant ledger extract to prove that the money has been paid from his account. We find that although the Assessing Officer has made addition towards the difference amount, there is no reference as to how the said payment was made in terms of the agreement of sale dated 5.5.2017 i.e whether it is by cheque or by cash. In absence of any finding as to cash

payment, then it is difficult to accept the reasons given by the Assessing Officer to make additions in the hands of the assessee, more so when the other party claims that the entire consideration has been paid from his account and the source has been explained. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer. Thus, we are inclined to reverse the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the differential consideration of Rs.13.00 lakhs in the hands of the assessee.

54. The next issue that came up for our consideration from Ground No.9(a) to 9(c) of assessee's appeal is the addition towards the cash found and seized during the course of search. During the course of search proceedings in the residential premises of the assessee, cash of Rs.28,06,200/- was found. The assessee was called upon to explain the source of the cash found during the course of the search. In response, the assessee submitted that the cash found during the course of search is out of his declared income of A.Y 2016-17 to 2018-19. The assessee further contended that he has declared more than Rs.80.00 lakhs income for the A.Y 2016-17 to 2018-19 and out of the declared income, cash found during the course of search is explained. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee. According to the Assessing Officer, the assessee could not explain the source for cash found

during the course of search. Therefore, by taking note of relevant statement recorded during the course of search and also the explanation given by the assessee made addition of Rs.28,06,200/- u/s 69A of the I.T. Act, 1961 as unexplained money etc.,

55. In appeal, the learned CIT (A) sustained the addition made by the Assessing Officer.

56. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining the addition towards the cash found during the course of search for Rs.28,06,200/- without appreciating the fact that the assessee is having sufficient income to explain the source for the cash found during the source of search. The learned Counsel for the assessee further submitted that as per the revised balance sheet as on 31.3.2017 filed before the learned CIT (A), the cash and bank balance stood at Rs.46,25,710/- in the hands of the assessee and Rs.42,35,300/- in the hands of Shri Raja Babu. If we consider the cash in hand available on 31.3.2017, the cash found during the course of search is stands explained. The learned CIT (A) without considering the relevant facts sustained the addition made by the Assessing Officer.

57. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that although the

appellant claims to have sufficient cash in hand to explain cash found during the course of search, but on perusal of the details filed by the assessee, it is noticed that the assessee could not produce any documentary evidence to substantiate its claim. Therefore, merely stating that the source for cash is from past savings and accumulation is not sufficient. Therefore, by considering the reasons given by the assessee, the Assessing Officer and in light of statement recorded from the assessee during the course of search, the CIT(A) sustained the addition made by the Assessing Officer and their order should be upheld.

58. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant has disclosed more than Rs.80.00 lakhs income for the last 3 A.Ys including for the impugned A.Y. The appellant had also filed the revised cash flow statement as on 31.3.2017 and as per the said cash flow statement, cash balance was at Rs.46,25,710/-. If we go by the balance sheet and cash flow statement filed by the assessee, it appears that there is sufficient cash in hand as on 31.3.2017 to explain the cash found during the course of search on 23.3.2018. Further, the appellant has also returned Rs.41,79,800/- as income for the A.Y 2018-19. Therefore, from the income returned by the assessee for the last 3 A.Ys, it seems that the explanation of the assessee with regard to the source of cash found during the course of search appears to

be reasonable and bona-fide. But the fact remains that, at the time of search while recording the statement, the assessee gave a different version to explain the cash found during the course of search. From the explanation furnished by the assessee, it appears that the assessee claims to have received cash from his society for the purpose of some expenditure. Since there are contradictory explanation, one at the stage of search proceedings and another at the stage of assessment proceedings, it is difficult to accept the explanation of the assessee with regard to the source of cash found during the course of search. At the same time, it is also difficult to reject the explanation of the assessee in light of income declared by the assessee for the last 3 A.Ys. Since the appellant is not required to maintain regular cash book for his income and further as per the revised balance sheet as on 31.3.2017, sufficient cash balance is available to explain cash found during the course of search, in our considered view, a reasonable amount of cash found during the course of search can be attributable to cash in hand available with the assessee before the date of search. Therefore, by taking into account the overall facts of the case, we direct the Assessing Officer to accept the explanation of the assessee with regard to the source for cash found during the course of search to the extent of Rs.20.00 lakhs. In other words, the assessee gets relief to the extent of Rs.2.00 lakhs out of additions made by the Assessing Officer at Rs.28,06,200/-. The balance amount of Rs.8,06,200/- is hereby confirmed.

59. In the result, appeal filed by the assessee in ITA No.619/Hyd/2022 for the A.Y 2018-19 is partly allowed.

ITA No.700/Hyd/2022 (Revenue) - A.Y 2018-19

60. The first issue that came up for our consideration from Ground No.2 of Revenue's appeal is addition made towards unexplained cash deposit of Rs.2,07,000/- u/s 69A of the I.T. Act, 1961. During assessment proceedings, the Assessing Officer noticed that the assessee has made a cash deposit of Rs.2,07,000/- in his UCO Bank account. The Assessing Officer called upon the assessee to explain the nature and source of credit in bank account to which the assessee vide letter dated 10.12.2019 stated that he has advanced loan to M/s. Aurora Educational Society out of loan borrowed from the Bank and the society has returned a sum of Rs.2,07,000/- during the financial year 2017-18 relevant to A.Y 2018-19. The assessee has deposited the amount received from the Aurora Educational Society to repay the loan borrowed from the Bank. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee could not file any evidence to justify the explanation given for source of income to explain cash deposits into bank account, therefore, made addition u/s 69A of the I.T. Act, 1961.

61. The assessee carried the matter in appeal before the learned CIT (A). Before the learned CIT (A), the assessee reiterated his arguments taken before the Assessing Officer and explained that the source for cash deposit into UCO Bank account is out of repayment of loan received from Aurora Educational Society. The assessee further contended that alternatively the appellant is having sufficient declared income which is more than cash deposit into Bank account therefore, submitted that the question of making addition towards cash deposits does not arise. The CIT (A) after considering the submission of the assessee and also taken note of the fact that the addition made by the Assessing Officer towards cash deposits is out of amount received from Society deleted the addition by holding that the appellant has granted a loan of Rs.4,45,00,000 to M/s. Aurora Educational Society on 14.02.2007 and the Society has returned a sum of Rs.2,07,000/- in the financial year relevant to A.Y 2018-19 which is the source for cash deposits. The learned CIT (A) further held that the appellant had also shown income from business and house property of Rs.53,30,800/- for the A.Y 2018-19 which exceeds the cash deposit amount of Rs.2,07,000/- into bank account. Therefore, the additions made by the Assessing Officer towards cash deposits is subsumed in the income declared for the relevant A.Y and the appellant is entitled to the benefit of telescoping of the unexplained cash credit. Thus, deleted the addition made by the Assessing Officer.

62. The learned CIT(DR) Smt. TH Vijaya Lakshmi submitted that the learned CIT (A) has erred in deleting the addition made towards cash deposits u/s 69A of the Act without appreciating the fact that the assessee could not explain the source for cash deposits with necessary evidence. The learned DR further submitted that the learned CIT (A) is erred in accepting the explanation of the assessee that the cash deposits are made from loan received from his society is already included in the surplus income declared in ITR Form, even though the assessee offered income from other services but no evidence was filed to prove that this amount of cash deposits was included in the income declared by the assessee.

63. The learned Counsel for the assessee, on the other hand, supporting the order of the learned CIT (A) submitted that the appellant has declared total income of Rs.53,30,800/- for the A.Y 2018-19 and if we consider the income declared by the assessee, the cash deposit of Rs.2,07,000/- into the UCO Bank is explained out of known source of income. The learned CIT (A), after considering the relevant facts, has rightly deleted the addition made by the Assessing Officer and their order should be upheld.

64. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The learned CIT (A) recorded a categorical finding that the

appellant has received Rs.2,07,000/- from M/s. Aurora Educational Society on various dates towards the part repayment of loan of Rs.4,45,00,000/- given by the appellant to the Society on 14.2.2007. The learned CIT (A) further noticed that even otherwise the income declared by the assessee for the current financial year relevant to A.Y 2018-19 is much more than the amount of cash deposit of Rs.2,07,000/- into UCO Bank Account and the appellant is entitled to the benefit of telescoping the income to the additions made u/s 69A of the I.T. Act, 1961. The findings of the facts recorded by the learned CIT (A) are not controverted with any evidence. Therefore, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds taken by the Revenue.

65. The next issue that came up for our consideration from Grounds of appeal No.3 to 5 of the Revenue's appeal is addition towards unsecured loan of Rs.2,43,50,000/-. During the course of assessement proceedings, the Assessing Officer noticed that the appellant has shown unsecured loans of Rs.2,43,50,000/-, however, has not provided any details of the loans. A show-cause notice dated 19.11.2019 was issued to the assessee and called upon the assessee to explain why the amount of Rs.2,43,50,000/- should not be treated as unexplained credit in the books of account and added to his returned income. The assessee vide letter dated 10.12.2019 stated that the amount of Rs.2,43,50,000/- was advance received for sale of their house

property located at Chikadapally and further claimed that the amount is not in the nature of income and is only an advance received. The Assessing Officer did not accept the explanation submitted by the assessee and according to the Assessing Officer, the appellant could not file any evidences including any agreement of sale to prove the claim of advance received for sale of property. Therefore, made addition of Rs.2,43,50,000/- u/s 68 of the I.T. Act, 1961.

66. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the appellant submitted a revised statement of affairs, balance sheet and capital account for the year ending 31.3.2018 and claimed that while filing the balance sheet at the time of assessement proceedings, a clerical mistake was made towards various liabilities shown in the books of account as unsecured loan, but in fact there is no unsecured loan as claimed by the assessee. The learned CIT (A) after considering the relevant revised statement of affairs and the balance sheet for the financial year 2017-18 observed that there is no unsecured loan appearing in the revised balance sheet and further the appellant proved that there was a clerical error in the original financial statement and the same has been rectified in the revised balance sheet, therefore, directed the Assessing Officer to deleted the addition made towards unsecured loan of Rs.2,43,50,000/-.

67. The learned DR submitted that the learned CIT (A) erred in deleting the additions made by the Assessing Officer towards unsecured loan by accepting the explanation of the assessee in light of revised financial statement, even though the assessee has taken altogether a different argument at the time of assessement proceedings and claimed that the unsecured loan shown in the balance sheet represent the funds received for sale of a property at Chikadapally. The learned DR further submitted that the learned CIT (A) is erred in accepting the revised balance sheet without appreciating the fact that the assessee has filed revised financial statements and without providing any opportunity to the Assessing Officer to verify the said revised balance sheet, deleted the addition himself contrary to the provisions of Rule 46A of the I.T Rules, 1962. Therefore, she submitted that this issue may be set aside to the file of the Assessing Officer for verification.

68. The learned Counsel for the assessee, on the other hand, supporting the order of the learned CIT (A) submitted that the appellant has filed revised balance sheet and statement of affairs for the financial year 2017-18 and corrected earlier errors committed while filing the financial statements. The assessee had also explained that there is no unsecured loan as claimed in the balance sheet filed before the Assessing Officer. The learned CIT (A), after considering the relevant findings deleted the addition made by the Assessing Officer and their order should be upheld.

69. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The appellant has filed an original statement of affairs during the assessment proceedings and revised the statement of affairs before the learned CIT (A) for the year ending 31.3.2018. As per the revised statement of affairs filed by the assessee, there is no difference in assets shown in either of the balance sheet, whereas there is a change in capital account and loan and liabilities. On perusal of the statement of affairs, we find that there is no unsecured loan as claimed by the Assessing Officer but there is a credit under loan liability from UCO Bank. From the details filed by the assessee, it appears that there is no unsecured loan amounting to Rs.2,43,50,000/- as claimed by the Assessing Officer. Although the appellant himself has shown unsecured loan of Rs.2,43,50,000/- in the statement of affairs filed during the assessement proceedings but fact remains that the assessee has explained the mistake committed while preparing the earlier financial statements and as per explanation furnished by the assessee, there was an error and the same has been rectified by filing the correct financial statements. The learned CIT (A), after considering the relevant evidence has rightly deleted the additions made by the Assessing Officer. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds taken by the Revenue.

70. In the result, appeal filed by the Revenue in ITA No.700/Hyd/2022 for the A.Y 2018-19 is dismissed.

ITA No.311/Hyd/2022 – A.Y 2013-14(Shr. N. Raja Babu)

71. The only issue that came up for our consideration from Ground No.5 of assessee's appeal is additions towards the disallowance of interest paid on housing loan u/s 24(b) of the I.T. Act, 1961 amounting to Rs.11,95,500/-. The learned counsel for the assessee, at the time of hearing submitted that the assessee does not wish to press the ground taken challenging the findings given by the learned CIT (A) directing the Assessing Officer to verify the interest payment certificate from the Bank produced by the assessee and allow deduction claimed u/s 24(b) of the I.T. Act, 1961, since the appellant has got relief from the Assessing Officer in consequential assessment proceedings. Thus, the grounds of appeal filed by the assessee challenging the addition made towards disallowance of interest has been dismissed as not pressed.

72. In the result, appeal filed by the assessee in ITA No.311/Hyd/2022 for the A.Y 2013-14 is dismissed.

ITA No.589/Hyd/2022 – A.Y 2016-17 (Shri N. Raja Babu)

73. The brief facts of the case are that the assessee is an individual and is one of the Trustees of M/s. Aurora Educational Society and group trusts. The assessee has originally filed his return of income for the A.Y 2016-17 on 14/03/2017 admitting total income of Rs.19,83,320/-. A search & seizure operation u/s 132 of the I.T. Act, 1961 was conducted in the case of M/s. Aurora Educational Society and other groups in which the ass was also covered. Consequent to search operation u/s 132 on 23.3.2018, notice u/s 153A of the I.T. Act, 1961 dated 24.12.2018 was issued and served on the assessee. In response thereto, the assessee filed return of income on 2.4.2019 admitting total income at Rs.19,83,320/-. The assessment has been completed u/s 143(3) r.w.s. 153A of the Act on 21.12.2019 and determined the total income at Rs.9,30,78,347/- by making various additions, including the addition made towards unaccounted sale proceeds received from Incredible India Projects (P) Ltd for sale of land. The additions towards unproved increase in capital account, addition u/s 56(2)(vii)(b) and additions towards unexplained cash deposits. The assessee carried the matter in appeal before the first appellate authority and the learned CIT (A) for the reasons stated in their appellate order dated 29.8.2022 partly allowed the appeal filed by the assessee where the learned CIT (A) confirmed the additions made by the Assessing Officer towards unaccounted sale proceeds received from sale of land, addition towards increase in capital

account and addition towards unexplained cash deposits and also addition u/s 56(2)(vii)(b) of the Act.

74. The first issue that came up for our consideration from grounds No.3(a) to 3(i) of assessee's appeal is the additions made towards unexplained cash deposit of Rs.4,25,15,000/- u/s 69A of the I.T. Act, 1961. The facts with regard to the impugned dispute are that during the financial year 2015-16 relevant to A.Y 2016-17, the assessee has made cash deposit of Rs.3,99,00,000 in UCO Bank and Rs.26,15,000/- in SBI Bank Account. The Assessing Officer listed out the bank accounts maintained by the assessee with UCO and SBI bank in Para 6.1 of his assessment order. The Assessing Officer called upon the assessee to explain the nature and source of cash credit into bank accounts. In response, the assessee vide letter dated 09.12.2019 submitted that the above bank accounts are loan accounts borrowed from UCO and SBI Bank. The appellant has availed loans from UCO and SBI Banks and the funds have been given to the Societies for the purpose of the activities of the Societies. The cash deposits found in Bank Account is nothing, but amount received from society towards repayment of loan given by the appellant. In so far as the cash deposits into SBI are concerned, the appellant stated that the source for cash deposits is out of previous withdrawals from same bank accounts and also amount received from society. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee has not provided any details to

prove that the funds have been received from the society to repay the existing loans. Further, in respect of cash deposits in SBI Bank Account, the assessee simply stated that the cash deposits amounts are from his previous withdrawals but did not provide any details of such withdrawals. Therefore, rejected the explanation of the assessee and made additions of Rs.4,25,15,000/- u/s 69A of the I.T. Act, 1961 as unexplained money.

75. The assessee carried the matter in appeal before the learned CIT (A). Before the learned CIT (A), the assessee stated that he had borrowed loan from UCO Bank and has advanced to Church Educational Society in the year 2009. The appellant has received cash from society on various dates towards repayment of their loan borrowed from the assessee and in turn, the assessee has repaid the loan to bank by depositing cash into bank account. To support his argument, the assessee has filed certificate from the society and the ledger copies. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of various facts observed that although the appellant claims to have received cash from M/s. Church Educational Society and M/s. Aurora Educational Society, but no evidence has been filed including the bank statements to prove that the appellant has transferred money to Aurora Educational Society in the financial year 2006-07 and 2009. Further, the appellant has not submitted any cash book from Society for receiving of money

from Incredible India Projects (P) Ltd, therefore, the learned CIT (A) opined that it is difficult to believe that the appellant has borrowed money from Bank in the year 2009 and has transferred Rs.4.0 crores to the Aurora Educational Society. No year-wise loan account of the society has been produced. No proof has been filed to prove that the interest, if any, has been paid. Therefore, opined that the assessee could not be able to explain the source for cash deposits into the bank account and thus, rejected the explanation offered by the assessee and sustained the addition made by the Assessing Officer.

76. The learned Counsel for the assessee submitted that the learned CIT (A) erred in confirming the additions made u/s 69A of the I.T. Act, 1961 for Rs.4,25,15,000/- without appreciating the fact that the assessee has borrowed loan of Rs.5.00 crores from UCO Bank on 23.3.2009 and that the entire amount has been given to Church Educational Society for the objectives of the society. The learned Counsel for the assessee further submitted that the assessee has filed all evidence including the relevant loan statement, ledger copies of the Church Educational Society and also certificate from the Society stating that the same has been transferred and utilized by the society. The appellant has also filed a loan account statement giving detailed account statement of loan from M/s. Aurora Educational Society which clearly shows that the loan given by the appellant to the society and subsequent repayment of loan. Although the

appellant has filed all evidence, the learned CIT (A) simply rejected the explanation furnished by the assessee and sustained the addition made by the Assessing Officer. The learned Counsel for the further submitted that the very same CIT (A)-12 Hyderabad in the case of the appellant for the A.Y 2013-14 have accepted the explanation furnished by the assessee with regard to the source for cash deposits into Bank Account for repayment of loans from the society. However, for the present A.Y without there being changes in facts has taken a different view. Therefore, he submitted that the addition made by the Assessing Officer and confirmed by the learned CIT (A) should be deleted.

77. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the explanation of the assessee that he had borrowed loan from UCO Bank and transferred to Church Educational Society is vague and not supported by any evidence. The appellant has also failed to file any proof, including relevant bank statement for the financial year 2006-07 and 2009 to prove that the loan borrowed from UCO Bank has been transferred to the Society. In absence of any evidence, it is difficult to accept the argument of the assessee that the cash deposited into bank account is out of repayment of loan from the society. The learned CIT (A), after considering the relevant facts has rightly sustained the addition made by the Assessing Officer and their order should be upheld.

78. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant bank loan statement of UCO Bank, certificate issued by M/s. Aurora Educational Society and M/s. Church Educational Society. From the bank account statements of UCO Bank, we find that the appellant has borrowed term loan of Rs.5.00 crores on 23.03.2009. Although there is no direct evidence of transfer of sum of Rs.5.00 crores to M/s. Church Educational Society, but the other evidence filed by the assessee, including the certificate from Church Educational Society dated 23.3.2009, it is noticed that the educational society has acknowledged receipt of Rs.5.00 crores from appellant through cheque and cash. This is further supported by the ledger account copy of the appellant in the books of Church Educational Society where the opening balance of loan account as on 1.4.2015 was at Rs.3,33,79,828/-. We further note that Aurora Education Society has further stated that it has repaid a sum of Rs.3,45,32,000/- starting from 31.10,2015 to 21.11.2015 to the appellant towards full and final settlement of loan account with UCO Bank and the Society further stated that the source for repayment of loan is out of cash received from Incredible India Projects (P) Ltd. Similarly, the appellant has availed a loan of Rs.50.00 lakhs from UCO bank on 16.12.2006 and the same has been transferred to Aurora Educational Society on 16.12.2006 itself. This is evident from the acknowledgement of debt by Aurora Educational Society. This is further strengthened

by the ledger account of the appellant in the books of Aurora Educational Society where the society has repaid the loan in cash to the appellant for the financial year 2015-16 relevant to A.Y 2016-17. From the details filed by the assessee, it is undisputedly proved that the assessee has borrowed loan from UCO Bank and has given the said loan to the society for the objectives and further the society has repaid the loan to the appellant in cash and the same has been deposited into loan account to repay the loan borrowed from the Banks. Therefore, we must consider that the assessee is able to explain the source for the cash deposits into UCO Bank Account out of cash received from Aurora Educational Society and Church Educational Society. The relevant evidences are placed in the Paper Book pages Nos. 44s to 483. The appellant claims that this evidence were also filed before the learned CIT (A) during the appellate proceedings. In fact, the learned CIT (A) records that the appellant has filed relevant certificate and ledger account from the societies, but rejected the explanation of the assessee on the ground that the initial transfer of loan funds to society was not provided. In our considered view when the society has accepted the liability of loan by filing a confirmation letter, then nothing more is required to prove that the assessee has paid the entire loan borrowed from UCO Bank to the Society in the year 2006 and 2009. Therefore, we are of the considered opinion that the learned CIT (A) erred in rejecting the explanation of the assessee with regard to the source for cash deposits to UCO Bank. Thus, we reverse the findings of the

learned CIT (A) on this issue and direct the Assessing Officer to delete the addition of Rs.3,99,00,000 towards cash deposits into UCO Bank.

79. Coming back to the cash deposit of Rs. 26,15,000/- into SBI Bank Account. The appellant, except stating that the source for cash deposit is out of past withdrawal from the very same bank account, but no evidence has been filed including the relevant bank statement to substantiate its claim. In the absence of any evidence with regard to the claim of the assessee that there are past withdrawn from same bank account, in our considered view the explanation of the assessee cannot be accepted. Thus, we sustain the addition made by the Assessing Officer towards cash deposits of Rs.26,15,000/- into SBI Bank Account.

80. The next issue that came up for our consideration from Ground Nos 4(a) to 4(c) of assessee's appeal is the addition in respect of increase in capital account as per the balance sheet amounting to Rs.3,58,63,000/-.

81. During the course of assessment proceedings, it is seen from the return of income filed by the assessee that there is increase in his capital account to Rs.4,58,87,868/- when compared to closing capital account balance for the immediately preceding financial year at Rs.95,24,046/-. The Assessing Officer called upon the assessee to explain the source for the increase in

capital account of Rs.3,63,63,822/-. The assessee was called upon to explain the source for the increase in capital accounts. The assessee neither responded nor filed any details. Therefore, the Assessing Officer made an addition of Rs. 3,63,63,822/- towards increase in capital account on the grounds that the assessee could not file any evidence to prove the source for increase in capital account.

82. On appeal, the learned CIT (A) confirmed the additions made by the Assessing Officer,

83. The learned Counsel for the assessee submitted that the source for increase in capital account is out of sale proceeds of Rs.3,41,04,000/- received from sale of agricultural land and balance amount is out of current year income. The Assessing Officer made additions without appreciating the relevant evidence filed by the assessee.

84. The learned DR, on the other hand, supporting the order of the learned CIT (A), submitted that the assessee could not file any evidence to prove the source for increase in capital. Therefore, the learned CIT (A) has rightly sustained the addition, and their order should be upheld.

85. We have heard both the parties, perused the material available on record and gone through the orders of the authorities

below. There is no dispute with regard to the fact that the capital account of the assessee has been increased by Rs.3,63,63822/-. It is also not in dispute that the assessee has filed necessary evidence to prove the source of the increase in capital accounts. As per explanation furnished by the assessee, sum of Rs.3,41,04,000/- is received from M/s. Incredible India Projects (P) Ltd towards sale of 4 acres of agricultural land. The balance amount is out of current year income after withdrawal for personal expenditure. We find that when the assessee is able to explain the increase in capital accounts with necessary evidence, in our considered view the Assessing Officer ought not to have made addition by stating that the assessee is not able to furnish any evidence. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer. Since the appellant has explained increase in capital account with known sources of income and such explanation is supported by necessary evidence, in our considered view, the addition made by the Assessing Officer towards increase in capital account is not sustainable. Thus, we set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards increase in capital account of Rs.3,58,63,822/-.

86. The next issue that came up for our consideration from Ground No.5 of assessee's appeal is addition towards the differential amount of consideration paid for purchase of property

u/s 56(2)(vii)(b) of the I.T. Act, 1961. During the financial year relevant to A.Y 2016-17, the appellant has purchased a property vide document No.543/2016 dated 12.2.2016 for a consideration of Rs.27,14,000/-. The fair market value of the property as per the registered document was Rs.32,94,000/-. The Assessing Officer made the addition of Rs.2,90,000/- being 50% of the share of the assessee on difference amount of Rs.5,80,000/- (Rs.32,94,000 – Rs.27,14,000) u/s 56(2)(vii)(b) of the I.T. Act, 1961.

87. In appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer.

88. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining the addition without appreciating the fact that the property belongs to the society because of an internal memorandum of understanding between the members of the Society. The Society has explained the source in the books of account of the society, and thus, the addition cannot be made in the hands of the assessee. He further submitted that the property purchased is very old and the same is located nearby the slum area and therefore, based on the guidelines value, provisions of section 56(2)(vii)(b) cannot be invoked.

89. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that there is a clear difference between the consideration and the guideline value and thus, the difference has been rightly brought to tax u/s 56(20(vii)(b) of the I.T. Act, 1961 and therefore, the order of the learned CIT (A) should be upheld.

90. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the consideration of Rs.27,14,000/- as per the registered sale deed dated 12.2.2016 has been explained out of amount received from Aurora Educational Society which is evident from the recitals of the sale deed where the money has been directly paid by the society to the seller Smt. Swaroopa Reddy and duly accounted for in the books of account of the Society. Therefore, the learned CIT (A) has rightly held the addition made to the extent of Rs.13,57,000/- as per the registered sale deed cannot be sustained. In so far as the differential amount of consideration as per sale deed and guidelines value, the consideration as per the registered sale deed was at Rs.27,14,000/- whereas the guideline value of the property as on the date of registration was Rs.32,94,000/-. Thus, there is an excess amount of Rs.5,18,000/- when compared to the guidelines value and the same falls under the provisions of 56(2)(vii)(b) of the I.T. Act, 1961. Although the appellant claims to have not paid any excess

amount and the amount stated in the registered sale deed is the correct fair market value of the property, but there is no denial of the fact that the difference between the guidelines value and sale consideration. Since there is a difference between the guidelines value and sale consideration, the excess consideration should be treated as income of the assessee u/s 56(2)(vii)(b) of the I.T. Act, 1961. Therefore, we are of the considered opinion that there is no error in the order of the learned CIT (A) in sustaining the addition made by the Assessing Officer and thus, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds taken by the assessee.

91. The next issue that came up for our consideration from Ground No.6(a) to 6(f) of assessee appeal is the addition towards unaccounted sale proceeds received from Incredible India Projects (P) Ltd towards sale of land for Rs.23,25,000/-..

92. The fact with regard to the impugned dispute are that during the financial year relevant to A.Y 2017-18, the assessee has sold a land admeasuring 4 acres at Raigiri Village through the registered Sale Deed No.8709/2016 dated 3.8.2016 to M/s. Incredible India Projects (P) Ltd for a consideration of Rs.20.00 lakhs @ Rs.5.0 lakh per acre. However, while submitting information in the case of M/s. Ravi Rishi Educational Society, M/s. Taraka Educational Society and M/s. Karshak Vidy7a Parishad, the assessee has admitted sale proceeds at

Rs.33,75,000/- per acre for sale of 4 acres of agricultural land to M/s. Incredible India Projects (P) Ltd. The assessee has not admitted any capital gain in respect of sale of land in the return of income filed for the A.Y 2017-18. The Assessing Officer called upon the assessee to explain as to why the additions should not be made in respect of consideration received from sale of land. The assessee, vide his reply dated 10.12.2019 has submitted that the land admeasuring 4 acres situated at Raigiri Village is an agricultural land and is situated more than 2 kms from local Bhongir Municipality. Therefore, the question of computing capital gain from sale of land does not arise. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, although the land, in question, was situated beyond 2 kms from Bhongir Municipality but it is situated within the Hyderabad Metropolitan Development Authority notified by the Govt. of A.P vide GO No.570 dated 25.08.2018 and hence, as per the provisions of section 2(14)(iii)(a), the land is a capital asset and the profit derived from sale of land is assessable for capital gain. Therefore, rejected the explanation of the assessee and made addition of Rs.33,75,000/- as income from capital gain towards sale of land.

93. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that similar issue has been considered by us in

the case of Sri. Ramesh Babu Nimmootari in ITA No. 591/Hyd/2023 for Asst. Year 2017-18. But for figures, the facts and issue is identical. The relevant findings of the Tribunal in paragraph. No 13 to 17 are reproduced as under.

> *13. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant evidence filed by the assessee in light of certain judicial precedents considered by the learned CIT (A) including the decision of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim vs Commissioner of Income-Tax (1993) 204 ITR 631. Agricultural land in India has been defined u/s 2(14) of the I.T. Act, 1961. As per section 2(14) of the Act, agricultural land in India is any land not being land situated in any area which is comprised within the jurisdiction of a Municipality or a Cantonment Board which has a population of not less than 10,000 or in any area within the distance measured aerially not being more than 2 kms from the local limitation of any Municipality or Cantonment Board and which has a population of more than 10,000 but not exceeding 1,00,000. In other words, any land situated within the jurisdiction of a Municipality or in any area within such distance as specified by the Govt. is treated as capital asset. If any land is situated outside the limits of local Municipality, then such land is treated as agricultural land. Although lot many discussions have been taken place in respect of nature of the land on the basis of carrying out of agricultural operations, the Courts/Tribunals in their decisions have taken a view that once the land is classified as an agricultural land in the revenue record, then merely for not carrying out agricultural operations, the said land cannot be treated as non-agricultural land. In other words, for not carrying agricultural operations, any land cannot be treated as non-agricultural land, if such land is classified as agricultural land as per revenue record and is capable of carrying out agricultural operations. Therefore, in order to decide whether particular land is an agricultural land or a capital asset, it is very important to see the relevant revenue record and the distance of said land from the local limits of a Municipality.*
>
> *14. In the present case, there is no dispute with regard to the fact that the land, in question, was situated*

beyond 2 kms from Bhongir Municipality. This fact is further strengthened by the certificate issued by the Tehsildar, Bhongir Mandal and as per the said certificate, the population as per 2011 census of Bhongir Mandal is 53,339 and further the area in which the said land was situated was recently merged into Bhongir Mandal vide GO 93 dated 18.04.2018 and Gazette Notification No.11 dated 30.03.2008. From the above, it is undisputedly clear that the impugned land sold by the assessee is situated beyond the specified limit of the local Municipality and thus cannot be treated as capital asset. Further, the appellant has also placed necessary evidence to prove that he has carried out agricultural operations and also declared agricultural income in the return of income filed in the earlier A.Ys. Be that as it may be, merely because the agricultural operation was not carried out in land which is otherwise an agricultural land as per revenue record and is also situated beyond the specified limit cannot be treated as capital asset, as long as the said land is capable of carrying out agricultural operations. Therefore, we are of the considered view that the land sold by the assessee to M/s Incredible India Projects (P) Ltd in Sy. No.758, 765, 766, 777, 795 and 796 is an agricultural land and thus, cannot be treated as capital asset in terms of section 2(14) of the I.T. Act, 1961.

15. We further have noted that the learned CIT (A)-12, Hyderabad, while deciding the issue of taxability of sale of land in the case of Shri Raja Babu Nimmattoori for the A.Y 2018-19 has considered the very same land sold by the assessee and after considering the relevant facts including the certificate issued by the Tehsildar and certificate from the Commissioner of Bhongir Municipality held that the impugned land sold by the assessee is an agricultural land and cannot be treated as capital asset. The relevant findings of the learned CIT (A) in order dated 30.09.22 is reproduced as under:

> *"If the land is situated outside 2 kms of the local municipality limit and population of such municipality is more than 10,000 and less than 1,00,000, then that land will be defined as agricultural land. From the certificates issued by Tehsildar, Bhiongir Mundal, it can be seen that in the present case, the lands in question are situated at a distance of more than 2 kms from the Bhongir Municipality and the population of Bhongir village as per population census 2011 is 53,339. Further the AR produced a certificate from Commissioner, Bhongir Municipality vide*

ROC No.GU13412021 dated 19,01.2021 stating that the land possessed by the appellant vide Survey umbers 758, 765, 766, 775,795 & 796 have been recently merged into Municipality vide G.O.No.93, dated 18.04.2018 & Gazette No.11, dated 30.03.2018. In other words, the land of the appellant was not within the municipal limits during the current year but was merged into municipality vide G.O.No.93, dated 18.04.2018 & Gazette No.11, dated 30.03.2018. Therefore, the land is to be treated as an agricultural land and not as a capital asset; hence no capital gain will arise from sale of such agricultural lands. Accordingly, the addition of Rs. 1,99,12,500/- is directed to be deleted. Since the increase in capital account during AY 2018-19 is also a result of sale proceeds received from Incredible India Projects Put. Ltd. to the extent of Rs. 1,95,47,729/- and is consequential to the above ground, the addition of Rs.7,95,47,729/- is also directed to be deleted. However, since the above certificates from Tehsildar & Commissioner, Bhongir Municipality were not produced before the AO, the AO is directed to verify the sane before according relief to the assessee".

16. We further note that the Assessing Officer while passing the order giving effect to the order passed by the learned CIT (A) and as per the directions of the learned CIT (A) verified the relevant evidence filed by the assessee to treat the status of land as an agricultural land and after verifying the details has accepted the claim of the assessee that the land sold is an agricultural land.

17. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the impugned land sold by the assessee is an agricultural land and is situated beyond 2 kms from the local limitation of Bhongir Municipality and thus cannot be treated as capital asset. The Assessing Officer and the learned CIT (A) without appreciating the relevant facts simply made additions towards capital gain from sale of land. Thus, we set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards unaccounted sale proceeds received from Incredible India

Projects (P) Ltd amounting to Rs.1,35,00,000/- from sale of agricultural land.

94. In this view of the matter and by following the decisions of co-ordinate bench in the case of Sri. Ramesh Babu Nimmatoori for the AY 2016-17 in ITA No. 591/Hyd/2022, we direct the AO to delete addition made towards amount received from Incredible Projects India Pvt Ltd for Rs.33,75,000/-as unexplained income of the assessee.

95. In the result, appeal filed by the assessee in ITA No.589/Hyd/2022 is partly allowed.

ITA No.590/Hyd/2022

96. The first issue that came up for our consideration from Ground Nos. 3(a) to 3(f) of assessee's appeal is the addition towards unexplained cash deposits into Bank Account amounting to Rs.68,85,000/-.

97. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us in the case of Sri. Raja Babu Nimmatoori, in ITA No 589/Hyd/2022 for Asst. Year 2018-19. But for figures, the facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 74 to 78** shall mutatis mutandis apply to this,

appeal as well. Therefore, for similar reasons, we direct the AO to delete additions made towards cash deposits in to bank account for Rs. 68,85,000/- under section 69A of the Act, as unexplained investments.

98. The next issue that came up for our consideration from ground No.4(a) to 4(f) of assessee's appeal is the addition towards undisclosed advance received from M/s Aishwarya Developers amounting to Rs.79,35,760/-.

99. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 591/Hyd/2022 for Asst. Year 2017-18. The facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 23 to 32** shall mutatis mutandis apply to this, appeal as well. Therefore, for similar reasons, we direct the AO to delete addition made towards undisclosed advance received from M/s Aishwarya Developers amounting to Rs.79,35,760/- u/s 56(2)(ix) of the I.T. Act, 1961.

100. In the result, appeal filed by the assessee in ITA No.590/Hyd/2022 is allowed.

ITA No.621/Hyd/2022 – A.Y 2018-19 Shri N Raja Babu

101. The first issue that came up for our consideration from Ground No 6(a) to 6(d) of assessee's appeal is addition towards unaccounted sale proceeds received from JVG Structures (P) Ltd in pursuant to joint development agreement cum GPA for Rs.2,17,58,220/-.

102. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. But for figures, the facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 35 to 41** shall mutatis mutandis apply to this, appeal as well. Therefore, for similar reasons, we set aside the order passed by the learned CIT (A) on this issue, and direct the Assessing Officer to delete the addition made towards computation of capital gain in terms of development agreement cum GPA with JVG Structures (P) Ltd.

103. The next issue that came up for our consideration from ground No 7(a) to 7(c) of assessee's appeal is addition made towards Long-Term Capital Gain derived from sale of property to JVG Structures (P) Ltd. The learned Counsel for the assessee, at the time of hearing submitted that the assessee does not wish to

press the grounds taken challenging the additions made by the Assessing Officer towards computation of Long-Term Capital Gain from sale of property to M/s JVG Structures (P) Ltd. Therefore, grounds 7(a) to 7(c) of assessee's appeal is dismissed as not pressed.

104. The next issue that came up for our consideration grom Ground No.8 of assessee's appeal is addition made towards unexplained investment in land at Edupally Village, R.R. District. The brief facts with regard to the impugned dispute are that the assessee has purchased land admeasuring 2 acres 23 guntas at Edupally village of R.R. District vide document No.2842/2017 dated 21.04.2017 for a sale consideration of Rs.14,17,000/-. Further, during the course of search and seizure u/s 132 of the Act, a receipt dated 21.4.2017 was seized and as per the said document, the property has been purchased at a price of Rs.43,77,500/- and out of which Rs.14,17,000/- was paid by cheque and balance of Rs.29,60,500/- was paid in cash. The Assessing Officer called upon the assessee to explain the source for consideration paid over and above what was stated in the registered sale deed. In response, the assessee submitted that he has paid only Rs.14,17,000/- as per the registered sale deed by cheque and not paid any consideration over and above the registered sale deed value. The so called cash receipt cannot be considered as evidence to allege that the appellant has paid excess amount when the guideline value of the property is equal

to the amount of consideration referred to in the sale deed. The Assessing Officer however, was not satisfied with the explanation of the assessee and according to the Assessing Officer, as per the cash receipt, the vendors have sold property for a consideration of Rs.43,77,500/- and received part of consideration in cash. Further, the cheque payments referred to in the receipt is also matched with the sale deed, therefore, opined that the assessee has paid consideration in excess of what was stated in the sale deed and thus, made addition of Rs.43,77,500/- as unexplained investment u/s 69 of the I.T. Act, 1961.

105. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee submitted that there is no evidence other than the document being sale receipt to allege that the assessee had paid excess consideration as per the said sale receipt. The Assessing Officer has also not cross examined the document with the assessee and also not provided the appellant an opportunity to cross examine the parties. Unless there is a proof to say that the appellant has paid excess amount, no addition can be made on the basis of unsigned receipt. The learned CIT (A) after considering the submissions of the assessee and also taken note of relevant facts observed that as per the cash receipt, the vendors have signed and stated that they have received total consideration of Rs.43,77,500/- and out of which Rs.14,17,000/- was paid by

cheques. The balance amount of Rs.29,60,500/- was paid by cash. Therefore, confirmed addition of Rs. 29,60,500/-.

106. The learned Counsel for the assessee submitted that the learned CIT (A) erred in sustaining the addition on the basis of unsigned sale receipt which does not contain signature of the recipient and also of the witnesses. Further, the Assessing Officer has not provided an opportunity of cross examination of the sellers with respect to the said cash receipt. Therefore, the addition made by the Assessing Officer cannot be sustained. The learned Counsel for the assessee further submitted that the assessee has declared income of more than Rs.60.00 lakhs in the last 3 A.Ys and cash and bank balance as on 31.3.2017 as per revised balance sheet is at Rs.42,35,300/- which is sufficient to explain the excess consideration paid of Rs.29,60,500/-. Therefore, the addition made by the Assessing Officer should be deleted.

107. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the addition has been made on the basis of sale receipt which was signed by the vendors. The contents of cash receipt matched with the registered document. Therefore, it cannot be said that it is a dumb document and not having evidentiary value. The assessee could not explain the source for excess consideration. Therefore, the

Assessing Officer has rightly made addition and their order should be upheld.

108. We have heard both the parties and considered the relevant documents found during the course of search coupled with the sale deed dated 21.04.2017. There is no dispute with regard to the fact that as per the cash receipt, total consideration paid for purchase of property was at Rs.43,77,500/- whereas as per the registered sale deed, consideration has been shown at Rs.14,17,000/- and paid by cheque. The assessee could not explain the source for excess consideration paid over and above the registered sale deed. Although the appellant claims to have explained the source out of opening cash and bank balance available as on 31.3.2017, but the revised statement of affairs filed by the assessee does not include additional consideration of Rs.29,60,500/- paid as per cash receipt. In so far as the argument of the assessee that the Assessing Officer has not confronted with the seized document and also not provided for cross examination of the vendors, in our considered view when the document found during the course of search clearly shows the signature of the vendors and further the contents also matched with the registered sale deed, then the question of providing cross examination of the vendors does not arise. We therefore, are of the view that the assessee could not explain the source for excess consideration paid over and above the consideration as per the registered sale document and thus, the Assessing Officer and the

learned CIT (A) are rightly sustained the addition towards the consideration paid for purchase of property as per cash receipt for Rs.29,60,500/-. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds of appeal taken by the assessee.

109. The next issue that came up for our consideration from Ground No.9 of assessee's appeal is the addition made towards differential value of consideration paid for purchase of property as per registered sale deed and guideline value of the property as on the date of registered sale deed for an amount of Rs.24,07,600/-.

110. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 43 to 48** shall mutatis mutandis apply to this, appeal as well. Therefore, for similar reasons, we are of the considered opinion that there is no error in the reasons given by the learned CIT (A) to sustain the addition made by the Assessing Officer for an amount of Rs.24,07,600/- being the difference between the stamp duty value and consideration of purchase of property u/s 56(2)(x)

of the I.T. Act, 1961. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee.

111. The next issue that came up for our consideration from Ground No.10 of assessee's appeal is addition made towards unexplained investment in purchase of land at Road No.41, Jubilee Hills for Rs.52,33,333/-. The assessee along with Smt. N Yashoda, Smt. N. Manjusha have purchased 1441 sq. yard of land with built up area of 4200 sq.ft at Road No.41, Jubilee Hills vide document No.2053/2018 dated 19.3.2018 for a total consideration of Rs.10.00 crores. However, during the course of search and seizure operation, a document was found and as per the said document, an agreement of sale dated 30.10.2016 was entered into for purchase of property for a consideration of Rs.11,57,00,000/- and also paid a sum of Rs.1,57,00,000/- on the date of agreement. The Assessing Officer called upon the assessee to explain the source for purchase of property. In response, the assessee vide letter dated 26.11.2019 submitted that said property was purchased by M/s Church Educational Society, in the names of members of the society and has been utilized for the purpose of aims and objects of the society. The payment made for purchase of property has been accounted in the books of account of the society. Since the property does not belong to the members, it cannot be said that the investment were made by the members to bring into tax the said investment as unexplained investment. The Assessing Officer, however, was not

satisfied with the explanation furnished by the assessee and according to the Assessing Officer, the assessee except making an oral claim that the land was purchased by the society, but no evidence has been filed to prove that the property was purchased by the society and consideration was also paid from the books of account of the society. No cash flow and fund flow statement or the bank statement or cash book etc., have been submitted. Therefore, opined that the assessee could not be able to explain the source for purchase of property and accordingly made addition of Rs.3,85,66,666/- being 1/3rd share of the assessee u/s 69 of the I.T. Act, 1961.

112. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee reiterated his argument and submitted that the property was purchased by M/s Church Educational Society in the name of the members and also resolution was passed on 9.3.2018. There is a memorandum of understanding between the members and the society by virtue of said resolution and registered MOU, it was agreed that the land was purchased by the society, however, because of certain restrictions; the property has been finally registered in the names of the members. The learned CIT (A) after considering the relevant submissions of the assessee and also taken note of various evidences including the MOU between the society and the members, resolution passed in their meeting, observed that the MOU between the parties is not a

registered document and is only an understanding between the society and members. All the Trustees are family members who are vendees of the property. Therefore, the evidentiary value of the MOU is not reliable. Therefore, rejected the argument of the assessee, that the property is purchased by the Church Educational Society. However, he further observed that as per the details of bank statement furnished by the appellant, payment for the purchase of the property was made by the Aurora Education Society and Shri N. Raja Babu and others. This payment shows that the Aurora Education Society has not paid the entire purchase consideration for the property. Moreover, the society name was not mentioned in the sale deed and ownership of the property cannot be transferred through an internal unregistered MOU. Therefore, opined that the appellant and other 2 co-owners have purchased the property. However, by taking note of the fact that the source for purchase of the property to the extent of Rs.10.00 crores has been paid through proper banking channel and also the source for the payment has been explained, deleted the addition to the extent of Rs.10.00 crores and consequent 1/3rd addition made in the hands of the assessee. However, in respect of balance consideration of Rs.1.57 crores as per agreement for sale, the source was not explained. Therefore, sustained addition of Rs.52,33,333/-, being 1/3rd share of the assessee out of differential consideration paid amounting to Rs.1.57 crores.

113. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

114. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining the addition of Rs.52,33,333/- being 1/3rd share of Rs.1.57 crores alleged to have been paid for purchase of property as per supplementary agreement dated 31.12.2016 without appreciating the fact that the said agreement was unsigned. Further, there is no proof of payment of differential consideration as alleged by the Assessing Officer. The learned Counsel for the assessee further submitted that the alleged supplementary agreement dated 31.12.2016 is not pertains to the present A.Ys. Assuming for a moment, the appellant have paid excess consideration of Rs.1.57 crores as per the said agreement, the source for investment needs to be explained for A.Y 2017-18, but not for the A.Y 2018-19. Therefore, based on the said agreement the additions cannot be made. He further submitted that as per the final sale deed, the consideration was shown at Rs.10.00 crores and the same has been accepted by the stamp duty authorities. When there is no difference between the guideline value and consideration as per document, it cannot be alleged that the assessee has paid excess consideration in absence of any evidences. The learned CIT (A) without considering the relevant facts simply sustained the addition made by the Assessing Officer to the extent of Rs.52,33,333/- and the same needs to be deleted.

115. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that there is no dispute with regard to the fact that there is difference between the supplementary agreement dated 31.12.2016 and registered document dated 19.3.2018. The assessee could not explain the source for differential consideration of Rs.1.57 crores. Therefore, the ld CIT(A) has rightly sustained the addition and their order should be upheld.

116. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. A document called supplementary agreement dated 31.12.2016 was found and seized during the course of search and as per the said agreement, the agreed consideration for purchase of the property at Road No.41, Jubilee Hills was Rs.11.57 crores. The supplementary agreement stated that the sum of Rs.1,57,00,000/- has been paid, but as per said agreement it was not stated how said payment is made, i.e whether it by way of cash or cheque. Further, the so called supplementary agreement is not signed by the appellant and other 2 parties. Therefore, the evidentiary value of said supplementary agreements needs to be checked in light of the subsequent sale deed dated 19.03.2018, where the consideration has been paid at Rs.10.00 crores and said consideration has been paid by cheque and other banking channels. Further, as per the registered document, there is no difference between the agreed sale consideration and

consideration paid as per the document and guidelines value of the property. In the absence of any difference in value as per the document and guidelines value for the stamp duty purpose, it is difficult to accept the reasons given by the Assessing Officer and the learned CIT (A) to make addition towards extra consideration of Rs.1.57 crores as unexplained investment of the assessee u/s 69 of the I.T. Act, 1961. Further, the supplementary agreement dated 31.12.2016 pertains to A.Y 2017-18 and as per the said agreement, the Assessing Officer himself stated that Rs.1.57 crores has been paid as on the date of agreement. If the claim of the Assessing Officer is correct, then the additions, if any, to be made towards the differential consideration should be made for the AY 2017-18 and further the assessee needs to explain the source for said investment for the A.Y 2017-18 only. In the present case, the Assessing Officer has made addition towards differential consideration as per the registered document for the A.Y 2018-19, even though it was alleged that Rs.1.57 crore was paid for the A.Y 2017-18. On this count itself, the additions sustained by the learned CIT (A) cannot be upheld.

117. Be that as it may be, the appellant has also filed copies of bank statement of Shri N Raja Babu and others and claimed that even the balance consideration of Rs.1.57 crores have been paid through proper banking channels and accounted in the books of account for the relevant A.Y and copies of bank statement of Shri N. Raja Babu was available in pages 408 to 410

of the paper book filed by the assessee. From the details filed by the assessee, it appears that even the additional consideration of Rs.1.57 crores has been paid through proper banking channels and once it is proved that the payments are gone from bank accounts, it appears that the source for the said payment is already explained by the appellant. Therefore, on this count also the additions sustained by the learned CIT (A) cannot be upheld. Therefore, for the above reasons, we reverse the findings of the learned CIT (A) and direct the Assessing Officer to delete the additions sustained by the learned CIT (A) for Rs.52,33,333/- towards extra consideration alleged to have been paid for purchase of the property.

118.. The next issue that came up for our consideration from Ground No.11 of assessee's appeal is addition towards unexplained investment in purchase of land at Road No.40, Jubilee Hills, amounting to Rs.13.00 lakhs.

119. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 49 to 53** shall mutatis mutandis apply to this, appeal as well. Therefore, for similar reasons, we are inclined to reverse the

findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards differential consideration of Rs.13.00 lakhs in the hands of the assessee.

120. The next issue that came up for our consideration from Ground No.12(a) to 12 (c) of assessee's appeal is addition towards cash found and seized during the course of search amounting to Rs.8,10,000/- u/s 69A of the I.T. Act, 1961.

121. The next issue that came up for our consideration from Ground No.12(a) to 12(c) of assessee's appeal is the addition towards the cash found and seized during the course of search. During the course of search proceedings in the residential premises of the assessee, cash of Rs.8,10,000/- was found. The assessee was called upon to explain the source for cash found during the course of search. In response, the assessee submitted that the cash found during the course of search is out of his declared income of A.Y 2016-17 to 2018-19. The assessee further contended that he has declared more than Rs.80.00 lakhs income for the A.Y 2016-17 to 2018-19 and out of the declared income, cash found during the course of search is explained. The Assessing Officer however, was not convinced with the explanation furnished by the assessee. According to the Assessing Officer, the assessee could not explain the source for cash found during the course of search. Therefore, by taking note of relevant statement recorded during the course of search and also the

explanation given by the assessee made addition of Rs.8,10,000/- u/s 69A of the I.T. Act, 1961 as unexplained money etc.,

122. In appeal, the learned CIT (A) sustained the addition made by the Assessing Officer.

123. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining the addition towards the cash found during the course of search for Rs.8,10,000/- without appreciating the fact that the assessee is having sufficient income to explain the source for the cash found during the course of search. The learned Counsel for the assessee further submitted that as per cash book, cash balance as on 31.3.2017 as per the revised balance sheet filed before the learned CIT (A), Rs.42,35,300/-. If we consider the cash in hand available on 31.3.2017, the cash found during the course of search is stands explained. The learned CIT (A) without considering the relevant facts sustained the addition made by the Assessing Officer.

124. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that although the appellant claims to have sufficient cash in hand to explain cash found during the course of search, but on perusal of the details filed by the assessee, it is noticed that the assessee could not produce any documentary evidence to substantiate its claim. Therefore, merely stating that the source for cash is from past

saving and accumulation is not sufficient. Therefore, the CIT(A), by considering the reasons given by the Assessing Officer in light of statement recorded from the assessee during the course of search sustained the addition and their order should be upheld.

125. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant has disclosed more than Rs.80.00 lakhs income for the last 3 A.Ys including for the impugned A.Y. The appellant had also filed the revised cash flow statement as on 31.3.2017 and as per the said cash flow statement, cash balance was at Rs. 42,35,300/-. If we go by the balance sheet and cash flow statement filed by the assessee, it appears that there is sufficient cash in hand as on 31.3.2017 to explain the cash found during the course of search on 23.3.2018. Further, the appellant has also declared Rs.41,79,800/- as income for the A.Y 2018-19. Therefore, from the income returned by the assessee for the last 3 A.Ys, it seems that the explanation of the assessee with regard to the source of cash found during the course of search appears to be reasonable and bonafide. But, the fact remains that at the time of search while recording the statement, the assessee gave a different version to explain the cash found during the course of search. From the explanation furnished by the assessee, it appears that the assessee claims to have received cash from his society for the purpose of some expenditure. Since there are

contradictory explanation, one at the stage of search proceedings and another at the stage of assessment proceedings, it is difficult to accept the explanation of the assessee with regard to the source of cash found during the course of search in toto. At the same time, it is also difficult to reject the explanation of the assessee in light of income declared by the assessee for the last 3 A.Ys. Since the appellant is not required to maintain regular cash book for his income and further, as per the revised balance sheet as on 31.3.2017, sufficient cash balance is available to explain cash found during the course of search, in our considered view, a reasonable amount of cash found during the course of search can be attributable to cash in hand available with the assessee before the date of search. Therefore, by taking into account the overall facts of the case, we direct the Assessing Officer to accept the explanation of the assessee with regard to the source for cash found during the course of search to the extent of Rs.5.00 lakhs. In other words, the assessee gets relief to the extent of Rs. 5.00 lakhs out of additions made by the Assessing Officer at Rs.8,10,000/-. The balance amount of Rs.3,10,000/- is hereby confirmed.

126. In the result, appeal filed by the assessee in ITA No.621/Hyd/2022 is partly allowed.

ITA No.701/Hyd/2022 – A.Y 2018-19 (Revenue)

127. The first issue that came up for our consideration from Ground No.2 of Revenue's appeal is deletion of addition towards unexplained cash deposits of Rs.18,37,500/- u/s 69A of the I.T. Act, 1961. The Assessing Officer noticed that as per bank statement of the assessee, the assessee has made cash deposit of Rs.16,33,500/- into SBI Bank Account and Rs.2,04,000/- into UCO Bank Account. The Assessing Officer called upon the assessee to explain the source for cash deposits and in response to which the assessee submitted that, the above cash deposit is out of amount received from sale of land to Incredible India Projects (P) Ltd. The Assessing Officer did not accept the explanation of the assessee and according to the Assessing Officer, no documentary evidence has been filed to substantiate the claim of the source for cash deposit into bank account.

128. The assessee carried the matter in appeal before the first appellate authority. Before the learned CIT (A), the assessee submitted that he has earned total income of Rs.48,40,600/- for the A.Y 2018-19 and the income declared for the year is sufficient to explain source for cash deposit into bank account. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of the fact that the appellant has disclosed sufficient income which can take care of cash deposit into bank

account has deleted the addition made by the Assessing Officer amounting to Rs.18,37,500/- u/s 69A of the I.T. Act, 1961.

129. The learned DR submitted that the learned CIT (A) is erred in deleting the addition made towards the cash deposit into bank account only on the basis of income tax return filed by the assessee disclosing income without appreciating the fact that the assessee could not file any cash flow statement or cash book to substantiate his claim that the said cash deposit is considered as income from business for the impugned A.Y.

130. The learned Counsel for the assessee, on the other hand, referring to income tax returns filed by the assessee for the A.Y 2015-16 to 2017-18 submitted that the assessee has declared more than Rs.56.00 lakhs income for the last 3 financial years. The cash and bank balance as on 31.3.2017 as per the revised balance sheet was at Rs.43,35,300/-. If we consider the cash balance, the cash deposit into bank account is easily telescoped and the learned CIT (A) after considering the relevant fact has rightly deleted the addition made by the Assessing Officer and their order should be upheld.

131. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The learned CIT (A) recorded a categorical finding that the appellant has sufficient income to explain cash deposits into bank

account. The learned CIT (A) further noticed that even otherwise the income declared by the assessee for the current financial year relevant to A.Y 2018-19 is much more than the amount of cash deposit of Rs.18,37,500/- into SBI and UCO Bank Account and the appellant is entitled to the benefit of telescoping the income to the additions made u/s 69A of the I.T. Act, 1961. The finding of the facts recorded by the learned CIT (A) is not controverted with any evidences. Therefore, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds taken by the Revenue.

132. The next issue that came up for our consideration from Grounds No.4 of the Revenue's appeal is addition towards unsecured loan of Rs.2,92,50,000/-. During the course of assessement proceedings, the Assessing Officer noticed that the appellant has shown unsecured loan of Rs.2,92,50,000/-, however, could not provided any details of the loans. A show-cause notice dated 19.11.2019 was issued to the to the assessee and called upon the assessee to explain as to why the amount of Rs.2,92,50,000/- should not be treated as unexplained credit in the books of account and added to his returned income. The assessee vide letter dated 10.12.2019 stated that the amount of Rs.2,92,50,000/- was advance received for sale of their house property located at Chikadapally and further claimed that the amount is not in the nature of income and is only an advance received. The Assessing Officer did not accept the explanation submitted by the assessee and according to the Assessing Officer,

the appellant could not file any evidences including any agreement of sale to prove the claim of advance received for sale of property. Therefore, made addition of Rs.2,92,50,000/- u/s 68 of the I.T. Act, 1961.

133. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the appellant submitted a revised statement of affairs, balance sheet and capital account for the year ending 31.3.2018 and claimed that, while filing the balance sheet at the time of assessement proceedings, a clerical mistake was made towards various liabilities shown in the books of account as unsecured loan, but in fact there is no unsecured loan as claimed by the assessee. The learned CIT (A) after considering the relevant revised statement of affairs and the balance sheet for the financial year 2017-18, observed that there is no unsecured loan appearing in the revised balance sheet and further the appellant proved that there was a clerical error in the original financial statement and the same has been rectified in the revised balance sheet, therefore, directed the Assessing Officer to deleted the addition made towards unsecured loan of Rs.2,92,50,000/-.

134. The learned DR submitted that the learned CIT (A) erred in deleting the additions made by the Assessing Officer towards unsecured loan by accepting the explanation of the assessee in light of revised financial statement, even though the

assessee has taken altogether a different argument at the time of assessement proceedings and claimed that the unsecured loan shown in the balance sheet represent the funds received for sale of a property at Chikadapally. The learned DR further submitted that the learned CIT (A) is erred in accepting the revised balance sheet without appreciating the fact that the assessee has filed revised financial statements and without providing any opportunity to the Assessing Officer to verify the said revised balance sheet, deleted the addition himself contrary to the provisions of Rule 46A of the I.T Rules, 1962. Therefore, she submitted that this issue may be set aside to the file of the Assessing Officer for verification.

135. The learned Counsel for the assessee, on the other hand, supporting the order of the learned CIT (A) submitted that the appellant has filed revised balance sheet and statement of affairs for the financial year 2017-18 and corrected earlier errors committed while filing the financial statements. The assessee had also explained that there is no unsecured loan as claimed in the balance sheet filed before the Assessing Officer. The learned CIT (A) after considering the relevant facts deleted the addition made by the Assessing Officer and their order should be upheld.

136. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. As per the statement of affairs filed during the assessment

proceedings, the assessee has shown unsecured loan. In the revised statement of affairs filed before the learned CIT (A) for the year ending 31.3.2018, there is no unsecured loan. As per the original and revised statement of affairs filed by the assessee, there is no difference in assets shown in both the balance sheet, whereas there is a change in capital account and loan and liabilities. On perusal of the statement of affairs, we find that there is no unsecured loan as claimed by the Assessing Officer but there is a credit under loan liability from UCO Bank. From the details filed by the assessee, it appears that there is no unsecured loan amounting to Rs.2,92,50,000/- claimed by the Assessing Officer. Although the appellant himself has shown unsecured loan of Rs.2,92,50,000/- in the statement of affairs filed during the assessment proceedings, but fact remains that the assessee has explained the mistake committed while preparing the earlier financial statements and as per explanation furnished by the assessee, there was an error and the same has been rectified by filing the correct financial statements. The learned CIT (A) after considering the relevant evidences has rightly deleted the additions made by the Assessing Officer. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds taken by the Revenue.

137. The next issue that came up for our consideration from Ground No.3 of Revenue's appeal is the deletion of addition towards unexplained credits in bank account of Rs.18.00 lakhs.

The Assessing Officer noticed that there are several credits in his bank account amounting to Rs.18.00 lakhs in SBI Account. The Assessing Officer called upon the assessee to explain the nature and source of credit in bank account. The assessee submitted that the said credits are pertains to sale proceeds received from Incredible India Projects (P) Ltd for sale of land. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and accordingly, has made addition of Rs.18.00 lakhs as unexplained credits.

138. The assessee carried the matter in appeal before the learned CIT (A) and argued that the appellant has declared Rs.48,40,600/- income for the current year and credits found in Bank Account relates to income offered for the current year. The learned CIT (A) after considering the relevant submission of the assessee and also taking note of income declared by the assessee directed the Assessing Officer to delete the addition made towards credits found in Bank account.

139. The learned DR, submitted that the learned CIT (A) is erred in deleting the addition made towards credits found in Bank Account even though the appellant failed to explain the said credits with necessary evidences. Further the learned CIT (A) erred in accepting the argument of the assessee that the income declared for the current year takes care credits found in the bank

account even though the appellant fails to file necessary cash flow statement or books of account to explain credits in bank account.

140. The learned Counsel for the assessee submitted that the income declared by the assessee covers credits found in bank account and therefore, the learned CIT (A) by taking note of relevant facts has rightly deleted the addition made by the Assessing Officer and their order should be upheld.

141. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the reasons given by the learned CIT (A) to delete the addition made towards credits found in bank account amounting to Rs.18.00 lakhs. There is no dispute with regard to the fact that all credits in Bank Accounts are through cheques or bank transfers and there are no cash deposits. The assessee explained that the said credits relates to the amount received towards sale of property. The appellant further claims that he has declared income from business and profession of Rs.50,40,600/- and income from house property of Rs.7,36,000/- in the ITR filed for A.Y 2018-19 and if we consider the total income declared by the assessee of Rs.57,76,600/-, which exceeds the credit in bank account to the extent of Rs.18.00 lakhs. In our considered view, when the appellant is having sufficient income in excess of credits found in the bank account, then credits in bank account can be very well explained

out of income declared in ITR. Therefore, the AO is erred in making separate addition. The learned CIT (A) after considering the relevant facts has rightly deleted the addition made by the Assessing Officer and thus, we are inclined to uphold the findings of ld. CIT(A) and reject ground taken by the Revenue.

142. The next issue that came up for our consideration from Ground No.5 of Revenue's appeal is deletion of addition made towards unaccounted sale proceeds of Rs.1,99,12,500/- received from Incredible India Projects (P) Ltd.

143. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 591/Hyd/2022 for Asst. Year 2017-18. But for figures, the facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 7 to 17** shall mutatis mutandis apply to this, appeal as well. Therefore, for similar reasons, we are inclined to uphold the order of the CIT(A) on this issue and we, direct the AO to delete additions made towards undisclosed unaccounted sale proceeds received from Incredible India Projects (P) Ltd amounting to Rs.1,99,12,500/- from sale of agricultural land.

144. In the result, appeal filed by the revenue in ITA No.701/Hyd/2022 is dismissed.

ITA No.337/Hyd/2022 – A.Y 2016-17 Smt. N. Yashoda

145. The first issue that came up for our consideration from Ground No.6(a) and 6(b) of assessee's appeal is addition of Rs.7,36,89,000/- towards Long-Term Capital Gain from sale of property. The fact with regard to the impugned dispute are that the assessee has sold 3 acres 3 guntas land at Bandlaguda, Rajendra Nagar vide document No.8521/2015 dated 19.10.2015 to WIIZ Realtors LLP for a consideration of Rs.1,92,38,000/-, whereas the stamp duty value of the property as per the registered document was at Rs.5,95,32,000/-. The appellant had also sold 39 guntas of land at Bandlaguda, Rajendra Nagar to M/s. WIIZ Realtors LLP for a consideration of Rs.61,00,000, whereas the stamp duty value of the property was at Rs.1,41,57,000/-. As per the return of income filed for the A.Y 2016-17, the assessee has not admitted any capital gain on sale of land. Therefore, the Assessing Officer issued show-cause notice and called upon the assessee to explain as to why the capital gain derived from sale of land shall not be computed. In response, the assessee vide letter dated 26.11.2018 submitted that the impugned agricultural land sold to M/s. WIIZ Realtors LLP in Survey Nos 130, 131, 136 and 140 belongs to M/s Ravi Rishi Education Society and the consideration for sale of land has been received by Rishi Education Society and accounted in their books of account. Although, the appellant is a party to the sale deed, but the property has already been transferred in the name of Ravi

Rishi Education Society vide proceedings of the Revenue Division Officer dated 19.06.2018 (copy of sale agreement and Mutation Proceedings for land) and thus, the question of admission of capital gain in the hands of the assessee does not arise. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the land is owned by the appellant, which is evident from sale deed executed for transfer of land. Further, mutation proceedings of Govt.is only for the purpose of ownership and possession of land, but it does not create right and title in the land. The mutation effect will take place only when land is registered in the name of the owner. Therefore, when land is owned by the assessee, the question of mutation recorded in the name of Ravi Rishi Educational Society does not arise. Since the appellant has transferred the land by registered sale deed dated 19.10.2015 and also received consideration, the assessee is liable to pay capital gain tax. Therefore, rejected the argument of the assessee and computed the capital gain of Rs.7,36,89,000/- and added back to the total income.

146. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the appellant submitted that she had signed a sale deed in her capacity being the principal trustee, otherwise the land is owned by Ravi Rishi Educational Society and also consideration received by the Society. The assessee further submitted that, she

had transferred the land by way of agreement of sale dated 8.1.2007 and 15.12.2010 and also got transfer of title in the land in favour of M/s. Ravi Rishi Educational Society which is evident from the proceedings of Divisional Revenue Officer dated 19.06.2008. The society has received the entire amount of consideration. Therefore, once the society is the owner of the land and also received the consideration and accounted in the books of account, the assessee cannot offer capital gain in respect of transfer of the said land in her individual capacity. The learned CIT (A) after considering the relevant submissions of the assessee and also taken note of relevant evidences opined that, although the appellant had entered into agreement of sale dated 8.1.2007 for transfer of 39 guntas of land in survey Nos.130, 131 and 132 and 3 acres and 3 guntas in Survey No.140 to Ravi Rishi Educational Society and also effected mutation in the name of the society by way of an order dated 19.06.2008 from the revenue authorities, but on perusal of the said agreement, none of the 2 agreement for sale were registered document. In absence of registration of agreement, it cannot be said that the title in the land has been passed on to Ravi Rishi Educational Society. Further, the mutation proceedings were also not acted upon and the appellant continued to be the owner of the land. The appellant had also sold the land in her individual capacity to M/s. WIIZ Realtors LLP by way of 2 sale deed dated 19.10.2015 and also received consideration. Therefore, the argument of the assessee that Ravi Rishi Educational Society is actually owner of the land

and further consideration has been received by Ravi Rishi Educational Society cannot be accepted. Therefore, rejected the argument of the assessee and upheld the addition made by the Assessing Officer towards computation of capital gain from sale of land.

147. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

148. The learned Counsel for the assessee referring to the copy of agreement of sale dated 8.1.2007 and 15.12.2010 and relevant mutation proceedings dated 19.06.2008 submitted that the land has been sold to Ravi Rishi Educational Society and also revenue record has been changed in the name of the society. The society has paid full consideration for purchase of property in the year 2007 and 2010. The proper was accounted in the books of account of the society. Although the sale deed was executed by the appellant, but said sale deed has been executed in her capacity as a trustee of the education society and the entire sale consideration has been received by the society which is evident from the ledger account in the books of account of the Ravi Roshi Educational Society for all the 3 A.Ys. Once the society has sold the land and also received the consideration, the question of assessee offering capital gain on transfer of said land does not arise. The Assessing Officer and the learned CIT (A) without

considering the relevant facts simply made addition in the hands of the assessee.

149. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the sale deed clearly shows appellant is the absolute owner of the land. Further, as per said sale deed, the appellant has received consideration. Therefore, the argument of the assessee in the light of certain agreement of sale and mutation records that the Ravi Rishi Educational Society is the owner of the land and the society has sold the land to WIIZ Realtors LLP is incorrect. Further, the so-called agreement of sale is unregistered and further agreement does not show how consideration was paid whether it is through banking channel or cash. Although, mutation was executed in the name of Ravi Rishi Educational Society but the said mutation was not given effect which is evident from the sale deed executed by the assessee. The Assessing Officer and the learned CIT (A) after considering the relevant evidences has rightly assessed the capital gain in the hands of the assessee and therefore, their order should be upheld.

150. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The Assessing Officer made addition of Rs.7,36,89,000/- towards Long-Term Capital Gain derived from transfer of agricultural land to M/s. WIIZ Realtors LLP. As per the registered

sale deed dated 19.10.2015, the appellant is the vendor of the land. But, if we go by the agreement of sale dated 8.1.2007 and 15.12.2010 coupled with proceedings of the Revenue Divisional Officer, Hyderabad dated 19.6.2008, it is undisputedly proved that the appellant has sold the land to M/s. Ravi Rishi Educational Society in the year 2007 and 2010 and also revenue record has been transferred in the name of the education society. Further, the entire sale consideration received for sale of land is directly paid to M/s. Ravi Rishi Educational Society which is evident from the books of account maintained by the Society. The copies of agreement of sale dated 8.1.2007 and 15.12.2010 is available in Page Nos.559 to 564 of the paper book filed by the assessee. The ledger account of the buyer M/s. WIIZ Realtors LLP in the books of account of the Ravi Rishi Educational Society for the financial year 2015-16, 2016-17 and 2019-20 is also available in page Nos 565 to 569 of the paper book filed by the assessee. From the above evidence, there is no dispute whatsoever with regard to the fact that the real owner of the impugned land sold to WIIZ Realtors LLP is M/s. Ravi Rishi Educational Society. Since the society has sold the land and received the sale consideration and also accounted in their books of account, the liability towards capital gain on transfer of said land cannot be fastened in the hands of the assessee merely because, the assessee is signatory to the sale deed. In so far as the findings of the ld. CIT(A) with regard to registration of sale agreement, in our considered view, for non-registration of sale agreement alone it cannot be held that M/s.

Ravi Rishi Educational Society is not the owner of the land more particularly when other evidences like mutation recorded is in the name of the Society and further the society has received full consideration towards sale of land. Further, the society has also accounted purchase of land in their books of account right from A.Y 2007-08 onwards and also paid consideration to the assessee in the year of purchase i.e. 2007 and 2010. From the evidences filed by the assessee, it is undisputedly clear that the appellant is not the owner of the land and thus, capital gain on transfer of land to M/s WIIZ Realtors LLP cannot be treated as income of the assessee. The Assessing Officer and the learned CIT (A) without appreciating the relevant facts had made addition in the hands of the assessee. Thus, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the addition made towards Long-Term Capital Gain from transfer of land to M/s. WIIZ Realtors LLP.

151. The next issue that came up for our consideration from Ground No.5 of assessee's appeal is disallowance of deduction claimed u/s 57 of the Act, for Rs. 15,000/- against the income from other sources. The learned Counsel for the assessee submitted that the assessee does not wish to press the ground and thus, Ground of appeal No.5 is dismissed as not pressed.

152. In the result, appeal filed by the assessee in ITA 337/Hyd/2022 is partly allowed.

ITA No 593/Hyd/2022 Smt. N Yashoda – A.Y 2017-18

153. The first issue that came up for our consideration from Ground No.2 of assessee's appeal is disallowance of deduction claimed u/s 57 of the I.T. Act, 1961 under the head income from other sources for Rs.15,000/-. The learned Counsel for the assessee submitted that the assessee does not wish to press the ground and thus, Ground of appeal No.2 is dismissed as not pressed.

154. The next issue that came up for our consideration from Ground Nos. 3(a) to 3(c) of assessee's appeal is addition in respect of family pension receipts of Rs.5,40,000/-. The Assessing Officer noticed that the assessee has admitted income from family pension of Rs.6,60,000/- for the A.Y 2016-17. However, in the return of income filed for A.Y 2017-18, she had shown family pension under the head "income from other sources" at Rs.1,20,000/-. The Assessing Officer called upon the assessee to explain the reduction of income from family pension. In her reply dated 9.12.2018, the assessee has submitted that for earlier A.Ys, she has received family pension arrears amounting to Rs.6,60,000/-. The Assessing Officer however, was not convinced with the explanation of the assessee and according to the Assessing Officer, the assessee could not submit any evidences including relevant bank account statement to support her

argument. Therefore, the difference between the family pension income offered for earlier A.Y and family pension income offered for the current A.Y of Rs.5,40,000/- has been added back to the total income of the assessee.

155. In appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer.

156. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

157. The learned Counsel for the assessee submitted that the learned CIT (A) erred in upholding the addition of Rs.5,40,000/- by not accepting the argument of the assessee that she has not earned family pension of Rs.5,40,000/- without even considering the fact that as per the bank statement of the assessee, the assessee has received only family pension of Rs.1,20,000/- for the impugned A.Y. Therefore, he submitted that the addition made by the Assessing Officer should be deleted.

158. The learned DR, on the other hand, submitted that the assessee could not substantiate her claim with the relevant evidences including the relevant bank statement to prove that she has received only family pension of Rs.1,20,000/- for the current A.Y. Therefore, the Assessing Officer and learned CIT (A) has

rightly made addition towards the differential amount of family pension and their order should be upheld.

159. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The Assessing Officer made addition towards family pension income of Rs.5,40,000/- on the basis of family pension income declared by the assessee for A.Y 2016-17 and family pension declared for the A.Y 2017-18. According to the Assessing Officer, the assessee has admitted Rs.6,60,000/- for the A.Y 2016-17, whereas she has admitted only Rs.1,20,000/- for the impugned A.Y. Except this reason, the Assessing Officer has not brought on record any other evidences to justify his reason that the appellant has received Rs.5,40,000/- family pension for the financial year 2016-17. On the other hand, the assessee has filed relevant bank statement of the assessee from 1/4/2016 to 31/03/2018 which is available in Page 699 to 702 of the Paper Book filed by the assessee and as per the said bank statement, the appellant has only received family pension of Rs.1,20,000/- and the same has been disclosed in her return of income filed for the impugned A.Y. Therefore, we are of the considered view that when the appellant has received only Rs.1,20,000/- income of family pension, it is incorrect on the part of the Assessing Officer and the learned CIT (A) to assume that the assessee has received Rs.6,60,000/- income from family pension without there being any evidences to prove this finding, more particularly when the

assessee claims that for earlier A.Ys she has received arrears from family pension. Thus, we set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards income from family pension.

160. The next issue that came up for our consideration from Ground No.4(a) to 4(d) of assessee's appeal is addition towards undisclosed income received from M/s Aishwarya Infra Developers amounting to Rs. 1,62,70,380/-

161. We have heard both parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, ITA No. 591/Hyd/2022 for Asst. Year 2017-18. But for figures, the facts and issue are identical. The assessee is one of the co-owners of Property which has been initially sold to M/s Aishwarya Infra Developers and subsequently, converted into Joint Development Agreement cum General Power Attorney with M/s JVG Structures Pvt. Ltd. We have examined facts, considered arguments of both sides and given our findings on the issue in ITA. No. 591/Hyd/2022 for Asst. Year 2017-18 in the case of Sri. Ramesh Babu Nimmatoori. The reasons given by us in the preceding paragraphs No. 23 to 32 shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, with we are of the considered view that the Assessing Officer is erred in making

addition towards the advance received from M/s. Aishwarya Infra Developers as income of the assessee u/s 56(2)(ix) of the I.T. Act, 1961 having observed that the impugned land is an agricultural land in the case of another co-owner while deciding the appeal for the A.Y 2018-19. Thus, we set aside the order passed by the learned CIT (A) on this issue and direct the Assessing Officer to delete the additions made towards undisclosed advance received from M/s. Aishwarya Infra Developers u/s 56(2)(ix) of the I.T. Act, 1961.

162. In the result, appeal filed by the assessee in **ITA No. 593/Hyd/2022** is partly allowed.

ITA No.618/Hyd/2022 – A.Y 2018-19 (Smt. N. Yashoda)

163. The first issue that came up for our consideration from Ground No.4 of assessee's appeal is disallowance of deduction claimed u/s 57 of the I.T. Act, 1961 for Rs.15,000/-. The learned Counsel for the assessee submitted that the assessee does not wish to press this ground and thus, Ground of appeal No.4 is dismissed as not pressed.

164. The next issue that came up for our consideration from Ground No. 5(a) to 5(c) of assessee's appeal is the addition made for Rs.5,40,000/- towards family pension receipts.

165. We have heard both parties, perused materials on record and gone through orders of the authorities below. We find that an identical issue has been considered by us, in appellant own case for Asst. Year 2017-18 in ITA No. 593/Hyd/2022. But for figures, the facts and issue are identical. The reasons given by us in preceding paragraph No. 154 to 159 shall mutatis mutandis apply to this appeal as well. Therefore, for similar reasons, we direct the AO to delete addition made towards income from family pension under the head income from other sources.

166. The next issue that came up for our consideration from Grounds 6(a) to 6(d) of assessee's appeal is unaccounted sale proceeds received from M/s JVG Structures (P) Ltd in pursuant to Joint Development Agreement cum GPA amounting to Rs. 4,46,92,560/-.

167. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in upholding the additions made by the Assessing Officer towards computation of Long-Term Capital Gain in pursuant to JDA with M/s. JVG Structures (P) Ltd without appreciating the fact that as per the provisions of section 45(5A), in case where the land owner entered into JDA, capital gain arising on transfer of an asset shall be chargeable to tax in the year in which completion certificate is issued by the competent authority, but not in the year in which the JDA is entered. Since the appellant only entered into JDA for the

impugned A.Y and the project is not completed in all respect and further the developer has not obtained completion certificate from the competent authority, the question of computation of capital gain for the impugned A.Y does not arise.

168. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the facts brought on record by the Assessing Officer clearly indicate the intention of the assessee to commercially exploit the land by entering into JDA on 30.06.2017. The appellant had also obtained plan sanction from the competent authority on 13.04.2017. Since the land in question is converted into residential plots, capital gain will arise from the transfer of said non-agricultural land and thus, the Assessing Officer and the learned CIT (A) have rightly computed the capital gain, and their order should be upheld.

169. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant reasons given by the Assessing Officer to make additions and relevant findings of the learned CIT (A) to enhance the assessment in terms of section 251(1) of the I.T. Act, 1961, in respect of the alleged consideration received towards transfer of land in pursuant to JDA-cum-GPA on 30.06.2017. Admittedly, the appellant had entered into JDA on 30.06.2017 with M/s. JVG Structures (P) Ltd for development of 30.17 acres of land. As per

the JDA with the Developer, the appellant has handed over the possession of the land for the limited purpose of development of land into residential plots after obtaining necessary permission from the concerned revenue authorities. The appellant had also applied for conversion of land into residential plots to HMDA on 25.11.2016 and the HMDA has given permission to develop the land into residential plots vide letter dated 13.04.2017. From the facts brought on record by the Assessing Officer, it is undisputedly clear that the appellant along with the co-owners had entered into only JDA with the Builders for development of the property in the impugned A.Y. Further, as per the approval given by the HMDA, the authority has given permission to developer to convert the land into residential plots and develop, but it does not say that the project is completed in all respects, and the completion certificate has been issued on 13.04.2017. Therefore, it is necessary to examine the taxability of capital gain in pursuant to JDA entered on 30.06.2017 in light of above facts with reference to the provisions of section 45(5A) of the I.T. Act, 1961.

170. The provisions of section 45(5A) of the Act, deals with computation of capital gain under specified agreement. As per the said provisions, where the capital gain arises to the assessee being an individual or HUF from the transfer of a capital asset being land or building or both under a specified agreement, the capital gain shall be chargeable to income-tax as income of the

previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority and for the purpose of section 48, the stamp duty value on the date of issue of the said certificate has increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. From a plain reading of section 45(5A) of the act, it is undoubtedly clear that the capital gain, if any, is chargeable to tax in terms of specified agreement shall be levied for the previous year in which certificate of completion is issued by the competent authority. In the present case, there is no dispute with regard to the fact that the Developer has not completed the project in all respects and has not obtained completion certificate from the competent authority. In fact, it was not a case of the Assessing Officer and the learned CIT (A) that the assessee has obtained completion certificate and even after obtaining completion certificate, capital gain was not offered to tax. Unless the Assessing Officer and the learned CIT (A) proves that the conditions prescribed u/s 45(5A) of the Act is specified, the question of computation of capital gain for the impugned A.Y is incorrect. Therefore, we are of the considered opinion that the Assessing Officer is completely erred in making addition towards capital gain in pursuant to the JDA dated 30.06.2017, contrary to the provisions of section 45(5A) of the Act. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer and further enhanced the

assessment on the very same issue. Thus, we set aside the order passed by the learned CIT (A) on this issue, and direct the Assessing Officer to delete the addition made towards computation of capital gain in terms of development agreement with JVG Structures (P) Ltd.

171. The next issue that came up for our consideration from Ground No.7(a) to 7(c) of assessee's appeal is addition of Rs.49,07,168/- under the head "Capital Gain" in respect of sale of land to JVG Structures (P) Ltd. The learned Counsel for the assessee submitted that the assessee does not wish to press the ground challenging the addition. Thus, ground Nos. 7(a) to 7(c) of assessee's appeal is dismissed as not pressed.

172. The next issue that came up for our consideration from Ground 8 of assessee's appeal is addition of Rs.24,07,600/- u/s 56(2)(x) of the I.T. Act, 1961 towards excess consideration as per sale deed and guidelines value of the property from the registered document.

173. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue are identical. The reasons given by us in proceeding **paragraphs No.**

43 to 48 shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, we are of the considered opinion that there is no error in the reasons given by the learned CIT (A) to sustain the addition made by the Assessing Officer for an amount of Rs.24,07,600/- being the difference between the stamp duty value and consideration of purchase of property u/s 56(2)(x) of the I.T. Act, 1961. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee.

174. The next issue that came up for our consideration from Ground No.9 of assessee's appeal is addition of Rs.52,33,333/- as unexplained investment towards purchase of land at Road No.41 of Jubilee Hills.

175. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that an identical issue has been considered by us, in the case of Sri. Raja Babu Nimmatoori, in ITA No 621/Hyd/2022 for Asst. Year 2018-19. The facts and issue are identical. The reasons given by us in proceeding **paragraphs No. 111 to 117** shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, for the above reasons, we reverse the findings of the learned CIT (A) and direct the Assessing Officer to delete the additions sustained by the learned CIT (A) for Rs.52,33,333/- towards extra consideration alleged to have been paid for purchase of the property.

176. The next issue that came up for our consideration from Gr. No. 10 of assessee appeal is addition towards unexplained investment in purchase of property at Road No. 40, Jubilee Hills, u/s 69 of the Act, for Rs. 13,00,000/-.

177. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 49 to 53** shall mutatis mutandis apply to this, appeal as well. Therefore, for similar reasons, we are inclined to reverse the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards differential consideration of Rs.13.00 lakhs in the hands of the assessee.

178. In the result, appeal filed by the assessee in ITA No.618/Hyd/2022 is partly allowed.

ITA No.592/Hyd/2022 – A.Y 2017-18 Smt. N. Sulochana

179. The only solitary issue that came up for our consideration from Ground 2(a) to 2(d) of assessee's appeal is addition of Rs.90,80,540/- towards undisclosed advanced from M/s Aishwarya Infra Developers.

180. We have heard both parties, perused materials available on record and gone through orders of the authorities below. We, find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, ITA No. 591/Hyd/2022 for Asst. Year 2017-18. But for figures, the facts and issue are identical. The assessee is one of the co-owners of Property which has been initially sold to M/s Aishwarya Infra Developers and subsequently, converted into Joint Development Agreement cum General Power Attorney with M/s JVG Structures Pvt. Ltd. We have examined facts, considered arguments of both sides and given our findings on the issue in ITA. No. 591/Hyd/2022 for Asst. Year 2017-18 in the case of Sri. Ramesh Babu Nimmatoori. The reasons given by us in the preceding paragraphs No. 23 to 32 shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, with we are of the considered view that the Assessing Officer is erred in making addition towards the advance received from M/s. Aishwarya Infra Developers as income of the assessee u/s 56(2)(ix) of the I.T. Act, 1961 having observed that the impugned land is an agricultural land in the case of another co-owner while deciding the appeal for the A.Y 2018-19. Thus, we set aside the order passed by the learned CIT (A) on this issue and direct the Assessing Officer to delete the additions made towards undisclosed advance received from M/s. Aishwarya Infra Developers u/s 56(2)(ix) of the I.T. Act, 1961.

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

ITA No.620/Hyd/2022 – A.Y 2018-19- Smt. N. Sulochana

182. The first issue that came up for our consideration from Ground Nos 4(a) to 4(d) of assessee's appeal is the addition made towards unaccounted sale proceeds received from sale of land to JVG Structures (P) Ltd amounting to Rs.2,48,45,535/-.

183. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. But for figures, the facts and issue are identical. The reasons given by us in proceeding **paragraphs No. 35 to 41** shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, we set aside the order passed by the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards computation of capital gain in terms of development agreement with JVG Structures (P) Ltd for Rs. 2,48,45,535/-.

184. The next issue that came up for our consideration from Ground No.5(a) to 5(c) of assessee's appeal is addition of Rs.27,27,998/- towards Long-Term Capital Gain derived from sale

of property to JVG Structures (P) Ltd. The learned Counsel for the assessee submitted that the assessee does not wish to press the grounds challenging the addition made towards Long-Term Capital Gain. Thus, the grounds of appeal 5(a) to 5(c) of assessee's appeal is dismissed as not pressed.

185. The next issue that came up for our consideration from Ground Nos 6(a) to 6(b) of assessee's appeal is addition of Rs.24,07,600/- u/s 56(2)(x) of the I.T. Act, 1961 towards excess consideration sale deed value and guideline value as per the registered sale deed.

186. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue are identical. The reasons given by us in proceeding **paragraphs No. 43 to 48** shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, we are of the considered opinion that there is no error in the reasons given by the learned CIT (A) to sustain the addition made by the Assessing Officer for an amount of Rs.24,07,600/- being the difference between the stamp duty value and consideration of purchase of property u/s 56(2)(x) of the I.T. Act, 1961. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee.

187. The next issue that came up for our consideration from Ground No.7 of assessee's appeal is addition towards unexplained investment in purchase of land at Road No.40, Jubilee Hills for Rs.13,00,000/-.

188. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 49 to 53** shall mutatis mutandis apply to this, appeal as well. Therefore, for similar reasons, we are inclined to reverse the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards differential consideration of Rs.13.00 lakhs in the hands of the assessee.

189. In the result, appeal filed by the assessee in ITA No.620/Hyd/2022 is partly allowed.

ITA No.594/Hyd/2022 – A.Y 2018-19 Smt. N. Manjusha

190. The first issue that came up for our consideration from Ground No.6(a) and 6(b) of assessee's appeal is addition of Rs.52,33,333/- towards unexplained investment in property purchased at Road No.41, Jubilee Hills.

191. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that an identical issue has been considered by us, in the case of Sri. Raja Babu Nimmatoori, in ITA No 621/Hyd/2022 for Asst. Year 2018-19. The facts and issue are identical. The reasons given by us in proceeding **paragraphs No. 111 to 117** shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, for the above reasons, we reverse the findings of the learned CIT (A) and direct the Assessing Officer to delete the additions sustained by the learned CIT (A) for Rs.52,33,333/- towards extra consideration alleged to have been paid for purchase of the property.

192. The next issue that came up for our consideration from Grounds 7(a) and 7(b) of assessee's appeal is addition of Rs.13,00,000/- lakhs towards unexplained investment in purchase of property at Road No.40, Jubilee Hills.

193. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We, find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue is identical. The reasons given by us in proceeding **paragraphs No. 49 to 53** shall mutatis mutandis apply to this, appeal as well.

Therefore, for similar reasons, we are inclined to reverse the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards differential consideration of Rs.13.00 lakhs in the hands of the assessee.

194. The next issue that came up for our consideration from Ground No.8 of assessee's appeal is addition of Rs.1.00 crore towards unexplained investment in land at Road No.12, Banjara Hills.

195. The assessee has purchased a land admeasuring 870 sq. yards along with 300 sq. ft built up area at Lallaguda, Secunderabad vide registered document No.3231/2017 dated 21.11.2017 for a total consideration of Rs.1,20,00,000/-. The Assessing Officer called upon the assessee to explain the source for the purchase of the property. The assessee neither filed any evidence, nor explained the source for purchase of property. Therefore, the Assessing Officer made the addition of Rs.1,20,00,000/- u/s 69A of the I.T. Act, 1961. The AO further, noted that the market value of the property as per registered document is Rs.2,45,70,000/-. Therefore, the Assessing Officer invoked the provisions of section 56(2)(x) of the I.T. Act, 1961 and made addition of Rs.1,25,70,000/-.

196. The assessee carried the matter in appeal before the first appellate authority. Before the learned CIT (A), the assessee

submitted that the appellant purchased property for a consideration of Rs.1,20,00,000/- and agreed to pay the amount in instalments. The appellant has paid the amount of Rs.18,50,000/- through RTGS and Rs.1,50,000/- as on the date of registration. The balance amount of Rs.1,20,00,000/- has not been paid so far, because there was a dispute over the property and a case was filed before the Hon'ble Telangana High Court on 10.11.2005. Therefore, the Assessing Officer erred in making addition towards balance consideration of Rs.1,20,00,000/- and invoked the provisions of section 56(2)(x) of the I.T. Act, 1961. The learned CIT (A) after considering the relevant submission of the assessee and taken note of various evidence observed that the appellant is able to explain the source for payment of Rs.20.00 lakhs being Rs.18.00 lakhs paid through RTGS and Rs.2.00 lakhs paid at the time of registration. Therefore, deleted the addition made to the extent of Rs.20.00 lakhs. As regards the balance consideration of Rs.1.00 crore, the learned CIT (A) observed that although the appellant claims to have not paid the balance consideration because of pending litigation before the Hon'ble Telangana High Court, but fact remains that the AR refers to the litigation pending since 2002, that means the assessee is aware of the litigation at the time of purchase of the property. Therefore, the argument of the assessee that it has not paid balance of Rs.1.00 crore because of pending litigation cannot be accepted. Thus, directed the Assessing Officer to sustain the addition of Rs.1.00 crore. The learned CIT (A) also sustained the addition

made u/s 56(2)(x) of the I.T. Act, 1961 on the ground that there is a difference between the consideration as per the sale deed and SRO value of the property and thus, the difference between the consideration and SRO value to be treated as income of the assessee u/s 56(2)(x) of the I.T. Act, 1961. Thus, sustained the addition of Rs.1,25,70,000 u/s 56(2)(x) of the I.T. Act, 1961.

197. The learned Counsel for the assessee submitted that the learned CIT (A) erred in not appreciating the fact that the assessee has not paid balance consideration of Rs.1.00 crore till today because of pending dispute in the Hon'ble High Court. The learned Counsel for the assessee further submitted that when the title in the property is in dispute, the question of making payment as per sale deed does not arise. Therefore, requested to delete the addition made by the Assessing Officer towards consideration paid for purchase of property and also, the addition made u/s 56(2)(x) of the I.T. Act, 1961.

198. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the assessee could not explain how balance consideration was not paid to the seller when the sale deed shows payment of consideration in full at the time of registration. Further, the litigation refers to by the learned Counsel for the assessee has been pending since 2002 and the assessee is aware of the litigation at the time of purchase of the property. Therefore, it cannot be said that because of pending

litigation, the assessee has not paid the balance consideration. The Assessing Officer and the learned CIT (A) after considering the relevant facts has rightly made addition and their order should be upheld.

199. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. It is the argument of the learned Counsel for the assessee that because of pending litigation before the Hon'ble High Court of Telangana over title in the property, the assessee did not pay balance consideration of Rs.1.00 crore as per registered sale deed document. We find that there is pending litigation before the Hon'ble High Court of Telangana regarding the title and interest in property by way of Writ Petition dated 10.11.2005 which is available in Page 235 to 236 of the Paper Book filed by the assessee. Further, the assessee claims that except Rs.20.00 lakhs paid at the time of registration, balance consideration was not paid till now and in this regard filed necessary bank statement which is available in Page 717 to 731 of the Paper Book filed by the assessee. From the details furnished by the assessee, it appears that there is pending litigation in respect of title and interest in the property before the Court of Law. When there is a dispute in the property and pending litigation, unless the litigation is resolved in the Court of law, the title and interest in the property will not be passed on to the buyer. If we go by the above fact, it appears that the argument of the assessee that he

has not paid the balance consideration appears to be reasonable. Therefore, we are of the considered view that the mater needs to be examined by the Assessing Officer in the light of argument of the assessee that, he has not paid balance consideration because of pending litigation in High Court in light of relevant evidence that may be filed by the assessee including copy of petition filed before the Hon'ble High Court. Thus, we set aside the order of the learned CIT (A) on this issue and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to re-examine the case of the assessee in light of evidence that may be filed by the assessee to justify her claim. In so far as application of provisions of section 56(2)(x) of the Act, and addition of Rs. 1,25,70,000/-, when the main issue is set aside to AO for fresh consideration, the consequential addition towards difference amount u/s 56(2)(x) also needs to go back to AO. Thus, we set this issue also to the file of the AO and direct the AO to consider the issue afresh in light of our findings given herein above.

200. In the result, appeal filed by the assessee in ITA No.594/Hyd/2022 is partly allowed for statistical purposes.

ITA No.332/Hyd/2022 – A.Y 2016-17 Anudeep Nimmatoori

201. The only issue that came up for our consideration from Ground 5(a) and 5(b) of assessee's appeal is the addition of Rs.2,90,000/- u/s 56(2)(x) of the I.T. Act, 1961 towards excess of

sale deed value and guideline value of the property as on the date of registration.

202. During the financial year relevant to A.Y 2016-17, the appellant has purchased a property vide document No.543/2016 dated 12.2.2016 for a consideration of Rs.27,14,000/-. The fair market value of the property as per the registered document was Rs.32,94,000/-. The Assessing Officer made the addition of Rs.2,90,000/- being 50% of the share of the assessee on difference amount of Rs.5,80,000/- (Rs.32,94,000 – Rs.27,14,000) u/s 56(2)(vii)(b) of the I.T. Act, 1961.

203. In appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer.

204. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining the addition without appreciating the fact that the property belongs to the society because of an internal memorandum of understanding between the members of the Society and thus, when the source of has been explained in the books of account of the society, the addition cannot be made in the hands of the assessee. He further submitted that the property purchased is very old and the same is located nearby the slum area and therefore, based on the guidelines value, provisions of section 56(2)(vii)(b) cannot be invoked.

205. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that there is a clear difference between the consideration and the guideline value and thus, the difference has been rightly brought to tax u/s 56(20(vii)(b) of the I.T. Act, 1961 and therefore, the order of the learned CIT (A) should be upheld.

206. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that consideration paid for purchase of property as per the registered sale deed dated 12.2.2016 of Rs.27,14,000/- has been explained out of amount received from Aurora Educational Society which is evident from the recitals of the sale deed where the money has been directly paid by the society to the seller Smt. Swaroopa Reddy and duly accounted for in the books of account of the Society. Therefore, the learned CIT (A) has rightly held that the addition made to the extent of Rs.13,57,000/- as per the registered sale deed cannot be sustained. In so far as the differential amount of consideration as per sale deed and guidelines value, the consideration as per the registered sale deed was at Rs.27,14,000/- whereas the guideline value of the property as on the date of registration was Rs.32,94,000/-. Thus, there is an excess amount of Rs.5,18,000/- when compared to the guidelines value and the same falls under the provisions of 56(2)(vii)(b) of the I.T. Act, 1961. Although, the appellant claims to

have not paid any excess amount and the amount stated in the registered sale deed is the correct fair market value of the property, but there is no denial of the fact that there is a difference between the guidelines value and sale consideration. Since there is a difference between the guidelines value and sale consideration, the excess consideration should be treated as income of the assessee u/s 56(2)(vii)(b) of the I.T. Act, 1961. Therefore, we are of the considered opinion that there is no error in the order of the learned CIT (A) in sustaining the addition of Rs. 2,90,000/-made by the Assessing Officer and thus, we are inclined to uphold the findings of the learned CIT (A) and reject the grounds taken by the assessee.

207 In the result, appeal filed by the assessee in ITA No.332/Hyd/2022 is dismissed.

ITA No.475/Hyd/2022 -A.Y 2017-18 Anudeep Nimmattoori

208. The only issue that came up for our consideration from Ground No.2 of assessee's appeal is confirming the addition of Rs.2,41,500/- made towards unexplained and undisclosed income from salary. During the course of assessement proceedings, the Assessing Officer noticed that there are several credits in the bank account of the assessee maintained with ICICI Bank with narration by salary totaling to Rs.2,41,500/-. However, the assessee has not admitted any income from the head income

from salary. The Assessing Officer called upon the assessee to explain the credit found in his bank account. The assessee has not responded, therefore, the Assessing Officer made addition of Rs.2,41,500/- under the head “income from other sources”.

209. In appeal, the learned CIT (A) confirmed the addition made by the Assessing Officer.

210. Being aggrieved, the assessee is in appeal before the Tribunal.

211. The learned Counsel for the assessee submitted that the assessee has disclosed income from business and profession of Rs.25,35,600/- for the A.Y under consideration and credits found in the Bank account to the tune of Rs.2,41,500/- is included in the income disclosed by the assessee. Therefore, the Assessing Officer erred in making a separate addition.

212. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that the assessee could not explain the credits even though the said credits pertaining to income from salary. Although the assessee claims to have included salary credits appearing in the bank account in the income declared for A.Y, no evidence has been filed. The learned CIT (A), after considering the relevant facts, has rightly sustained

the addition made by the Assessing Officer and their order should be upheld.

213. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that all credits found in the bank account of the assessee are not income. There may be credits pertaining to various transactions. Unless the Assessing Officer proves that the credits in the bank account are income of the assessee, addition cannot be made. In the present case, it was the argument of the assessee that he has disclosed total income of Rs.25,35,600/- under the head income from business for the A.Y 2017-18 and said income includes credits found in ICICI Bank to the extent of Rs.2,41,500/-. In our considered opinion, when the appellant has disclosed income from business of Rs.25,35,600/-, then the credits found in the bank account to the tune of Rs.2,41,500/- would subsume in the income declared by the assessee. The Assessing Officer and the learned CIT (A), without appreciating the relevant facts, made separate additions on the basis of credits found in the bank account. Thus, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the addition made towards credits found in ICICI Bank of Rs.2,41,500/-.

214. In the result, appeal filed by the assessee in ITA No.475/Hyd/2022 is allowed.

ITA No.476/Hyd/2022 – A.Y 2018-19, Anudeep Nimmatoori

215. The first that came up for our consideration from Ground No.4(a) of assessee's appeal is addition of Rs.24,07,600/- u/s 56(2)(x) of the I.T. Act, 1961 towards excess consideration as per sale deed and guideline value of the property as on the date of registration.

216. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue are identical. The reasons given by us in proceeding **paragraphs No. 43 to 48** shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, we are of the considered opinion that there is no error in the reasons given by the learned CIT (A) to sustain the addition made by the Assessing Officer for an amount of Rs.24,07,600/- being the difference between the stamp duty value and consideration of purchase of property u/s 56(2)(x) of the I.T. Act, 1961. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the assessee.

217. The next issue that came up for our consideration from Ground No.5(a) to 5(c) of assessee's appeal is the addition of

Rs.13.00 lakhs towards unexplained investment in purchase of property at Road No.40, Jubilee Hills.

218. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We find that an identical issue has been considered by us, in the case of Sri. Ramesh Babu Nimmatoori, in ITA No 619/Hyd/2022 for Asst. Year 2018-19. The facts and issue are identical. The reasons given by us in proceeding **paragraphs No. 49 to 53** shall mutatis mutandis apply to this appeal, as well. Therefore, for similar reasons, we are inclined to reverse the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards differential consideration of Rs.13.00 lakhs in the hands of the assessee.

219. In the result, appeal filed by the assessee in ITA No.476/Hyd/2022 is partly allowed.

220. As a result, appeals in ITA No.591/Hyd/2022 for A.Y 2017-18 is allowed, ITA No.619/Hyd/2022 for A.Y 2018-19 is partly allowed, ITA No.700/Hyd/2022 (Revenue) for A.Y 2018-19 is dismissed, ITA No.311/Hyd/2022 for A.Y 2013-14 is dismissed, ITA No.589/Hyd/2022 for A.Y 2016-17 is partly allowed, ITA No.590/Hyd/2022 for A.Y 2017-18 is allowed, ITA No.621/Hyd/2022 for A.Y 2018-19 is partly allowed, ITA No.701/Hyd/2022 (Revenue) for A.Y 2018-19 is dismissed, ITA

No.337/Hyd/2022 for A.Y 2016-17 is partly allowed, ITA No.593/Hyd/2022 for A.Y 2017-18 is partly allowed, ITA No.618/Hyd/2022 for A.Y 2018-19 is partly allowed, ITA No.592/Hyd/2022 for A.Y 2017-18 is allowed, ITA No.620/Hyd/2022 for A.Y 2018-19 is partly allowed, ITA No.594/Hyd/2022 for A.Y 2018-19 is partly allowed, ITA No.332/Hyd/2022 for A.Y 2016-17 is dismissed, ITA No.475/Hyd/2022 for A.Y 2017-18 is allowed and ITA No.476/Hyd/2022 for A.Y 2018-19 is partly allowed.

Order pronounced in the Open Court on 14th August, 2024.

Sd/-	Sd/-
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 14th August, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	S/Shri Ramesh Babu Nimmatoori, Raja Babu Nimmatoori, Smt. Yashoda Nimmatoori, Smt. Sulochana, Shri Anudeep Nimmatoori and Smt. Manjusha, C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	ACIT Central Circle 2(4) Hyderabad
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order