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

BEFORE

SHRI MANJUNATHA G.
HON'BLE ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY
HON'BLE JUDICIAL MEMBER

ITA No.674/Hyd/2024		
Assessment Year – 2017-18		
Jaya Balaji Real Media Pvt Limited, Hyderabad. PAN : AAECB3005F	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri M.V. Prasad, C.A.	
Revenue by:	Ms. TH Vijaya Lakshmi, CIT-DR	
Date of hearing:	19.08.2024	
Date of pronouncement:	01.10.2024	

O R D E R

PER MANJUNATHA G. A.M.

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) – 12, Hyderabad passed on 10.07.2024 for the assessment year 2017-18.

2. The grounds raised by the assessee read as under :

"1. The ld. CIT(A) is erred in facts and law while passing the order.

2. The ld.CIT(A) is not justified in confirming the addition made of Rs.20,03,60,000/- u/s 68 of the Income Tax Act.

3) On the acts and circumstances of the case, the ld.CIT(A) is not justified in confirming he addition made by the Assessing Officer by invoking the deeming provisions of Section 68 of the I.T. Act with respect to deposits in the Bank account. The ld.CIT(A) ought to have appreciated that the deposits in the Bank account are duly reflected in the Books of accounts and as such part of the Audited Balance Sheet.

4. On the facts and circumstances of the case, the ld.CIT(A) erred in upholding the additions made by the Assessing Officer in respect of the amounts advanced by N. Sanker, M. Satya Gopal, Y. Chenna Krishna Reddy and others and also Shanmukha Trading Company, Shivani Cotton Industries Pvt. Ltd., Vijaya Sai Lakshmi Srinivasa Cotton Mills, Ambica Dall Mill amounting to Rs.15,40,50,000/- even though such entities have filed its return of income and confirmed such advances in the sworn statements recorded and supported by an agreement.

5. On the facts and circumstances of the case, the ld.CIT(A) ought to have appreciated that the amounts advanced by various entities were infact pertains to the Assessment Year 2016-17 but not during the assessment year 2017-18 and therefore, would have deleted the addition made.

6. On the facts and circumstances of the case, the ld.CIT(A) out to have appreciated that mere non filing of the return in time does not bar the creditor to advance the money to the appellant company. Further, the ld.CIT(A) also ought to have observed that the Assessing Officer has recorded the sworn statements wherein which all the creditors have confirmed that they advanced the money for better profits and as such there is no inconsistency in the replies given by the creditors in the sworn statements record by the Assessing Officer because all have cited the reasons for not filing ROIs and also informed the reasons for advancing money.

7. On the facts and circumstances of the case, the ld.CIT(A) ought to have appreciated that there is a cash balance of Rs.18,70,85,058/- as on 31.03.2016 and duly reflected in the audit balance sheet and return of income filed for the assessment year 2016-17 and therefore, would have treated the same as one of the sources for the cash deposits made into the bank account during the demonetization period.

8. The ld.CIT(A) is not justified in dismissing the appeal relying on the human probability theory which can be applied when there is inconsistency in the documents submitted. But in the present case direct evidence i.e., statement was also recorded from the creditors. Hence, the Human Probability theory cannot be applied.

9. On the facts and circumstances of the case, the ld.CIT(A) is not justified in not confirming the addition made by the Assessing Officer by treating the bank deposits as unexplained ignoring the fact that bank account was considered while filing the return of income and it is a part of audited Balance-Sheet.

10. On the facts and circumstances of the case, the ld.CIT(A) erred in not appreciating that the sources of cash deposited during the demonetization period of Rs.4,63,10,000/- represent the cash withdrawals and accumulations of cash balances over a period of years which is evident form the cash balances in the books of accounts."

3. The appellant company, M/s. Jaya Balajee Real Media Pvt. Ltd., is engaged in the business of film production and distribution. A search and seizure operation under Section 132 of the Income Tax Act 1961, was conducted in the case of the appellant and its group concerns on 31-12-2016. The search and seizure operation was conducted on the assessee on the basis of credible information with the department that an amount of Rs. 40.036 crores was deposited in the bank account of the appellant in the old demonetized high denomination notes during the demonetization period. During the course of search, a sworn statement under Section 132(4) of the Act was recorded from the Director of appellant company Shri Tandra Ramesh on 02-01-2017, wherein he had come forward to declare Rs.40 crores under Pradhan Mantri Gareeb Kalyan Yojana (hereinafter referred as "PMGKY") - 2016. Further, statements were recorded from the

director of the appellant company on 03-01-2017, 17-02-2017, and on 24-02-2017. Later, the director of the appellant company filed an affidavit on 03-03-2017 declaring Rs.20.036 crores under PMGKY and also filed written submissions on 17-03-2017 before ADIT (Investigation) Unit and explained source for cash deposits of Rs.20 crores and claimed that the appellant company has received Rs.15.405 crores from various persons as advances and balance amount of Rs.4.63 crores was out of cash balance available with the appellant and said cash balance is out of cash withdrawals from the bank during the earlier period. The investigation department has recorded the statement from all the persons from whom the appellant has claimed to have received advances, and they have confirmed that they had given advances in the financial year 2015-16 relevant to assessment year 2016-17.

4. The case was selected for scrutiny, and during the course of assessment proceedings, the AO called upon the assessee to file necessary evidence, including the names and addresses of the persons from whom the advances have been received, purpose of the advances, confirmation letters from the parties, and also relevant financial statements of the creditors. The appellant has filed all the details, including confirmation letters from the parties, their income tax returns for the relevant assessment year, along with the financial statements and also explained the nature of

advances received by the appellant. The AO, after considering the submissions of the assessee and also considering relevant statements recorded from various persons, observed that although the creditors, who had given advances to the appellant has admitted the fact in their statements recorded during the course of post-search investigation, but the fact remains that all of them have filed returns of income for AY 2016-17 i.e., after the appellant has filed a letter before the ADIT(Investigation) Unit, retracting from his earlier statement recorded during the course of search. Therefore, the Assessing Officer observed that the claim of the appellant regarding receipt of advances from various persons is an afterthought and cannot be accepted. The AO had also discussed the advances received from each and every person in light of income tax returns filed by them along with the financial statements, and come to a conclusion that the persons, who alleged to have paid the advances are having no means to explain such a huge advance given to the appellant. Therefore, the Assessing Officer by applying the theory of human probability, rejected the explanation given by the assessee with regard to advances received from various persons, amounting to Rs.15.405 crores and also cash balance available as per books of accounts, amounting to Rs.4.63 crores and thus, has made addition of Rs. 20 crores under section 68 of the Income Tax Act 1961.

5. Being aggrieved by the assessment order, the assessee preferred appeal before the ld.CIT(A). Before the ld.CIT(A), the assessee has filed detailed written submissions on the issue, which has been extracted in paragraph 5 on pages 57-112 of ld.CIT(A) order. The main contentions of the appellant before the ld.CIT(A) are that the appellant has explained the source of cash deposits out of the advances received from various persons during the course of search proceedings itself. Although, the appellant has admitted for disclosure of the unexplained cash credits towards entire cash deposit in the bank account, but subsequently, able to explain source of Rs.20 crores, out of advances received from 7 persons, amounting to Rs. 15.405 crores and a cash balance available as per books of accounts for Rs.4.63 crores, and therefore, filed a retraction statement along with an affidavit and admitted Rs.20.036 crores under PMGKY, 2016 and balance amount of Rs.20 crores is explained out of known source of income. The AO, having accepted the advances received from parties in the assessment passed under section 143(3) of the Act for A.Y. 2016-17, has erred in rejecting the source for the cash deposit, even though, the closing cash balance as per books of accounts for the year ended 31-03-2016 was sufficient to explain the cash deposit during the demonetization period. The appellant had also filed certain additional evidence before the ld.CIT(A) and the same has been forwarded to the AO for his comments and the remand report. The AO vide remand report dated 22-10-2019, commented on the additional evidence filed by the assessee and

their admissibility. The appellant has also made counter-arguments vide letter dated 31-10-2019, and argued that the AO has rejected the evidence filed by the assessee to explain advances received from various persons in the earlier financial year only on the ground that the appellant has not furnished the names and addresses of the persons during the search proceedings, and further, all the creditors have filed their income tax returns only after the appellant has furnished his retraction statement in the month of March, 2017, ignoring the fact that the parties admitted in their statements recorded under Section 131 of the Act that they had given advances to the appellant.

6. The ld.CIT(A) after considering relevant submissions of the appellant and taken note of the remand report submitted by the AO on additional evidence filed by the assessee, rejected the explanation of the assessee with regard to the source of cash deposit to the tune of Rs. 15,40,50,000/- out of the advances received from seven parties on the ground that the documents seized during the course of search do not indicate any transactions between the appellant and any of the alleged seven creditors / lenders. The alleged creditors have filed the returns of income for AY 2016-17 only in March 2017 i.e., after the affidavit filed by Shri T. Ramesh, which corroborated the findings of the AO that all the creditors are only the name lenders, and it is a make-believable story. The ld.CIT(A) has discussed the issue in light of

advances received from each creditor in light of their financial statements and observed that none of the parties have creditworthiness to explain advances given to the appellant, which is evident from the nature of their business and the financial statements filed for the relevant assessment year. Therefore, by following certain judicial precedents, including the decision of Hon'ble Supreme Court in the case of Sumathi Dayal Vs. CIT reported in (1995) 80 Taxmann.com 89 (SC) and CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC) observed that the explanation of the assessee with regard to source of cash deposits out of the advances from seven parties is contrary to the theory of human probabilities and therefore, based on the evidence found during the course of search and surrounding circumstances, the AO has rightly made additions towards cash deposits under section 68 of the Income Tax Act and thus, upheld the additions made by the AO.

7. As regarding the explanation of the assessee with regard to source of Rs.4.603 crores out of withdrawal from bank accounts during earlier occasions, the ld.CIT(A) observed that the appellant has not filed any returns of income for AY 2013-14 to AY 2016-17 under Section 139(1) of the Act, and for the first time, the appellant has filed return of income, in response to notice issued under Section 153A of the Act, after the date of search. Although, the appellant claimed to have substantial income to be declared,

but no return of income has been filed nor get its accounts audited. Therefore, the claim of cash balance in books of accounts is not with sufficient supporting documents. Therefore, the ld.CIT(A) rejected the arguments of the assessee and upheld the additions made by the AO towards source of cash deposits of Rs.4.63 crores.

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

9. The learned counsel for the assessee, Shri M.V. Prasad, C.A. submitted that, the ld.CIT(A) has erred in sustaining the additions made by the AO towards source for cash deposit under Section 68 of the Income Tax Act 1961, without appreciating the fact that books of accounts, as defined in Section 2(12A) of the Act, do not include bank account, and therefore, based on credits in bank account, additions cannot be made under Section 68 of the Income Tax Act 1961. The learned counsel for the assessee further submitted that the assessment for the impugned assessment year is the year of search and further, the assessment year 2016-17 is also an abated assessment. Once the assessment is abated, then the return filed in response to notice under Section 153A becomes return filed originally under Section 139 of the Act and the appellant can make all claims, including deductions towards any expenditure, etc. Therefore, the allegation of the AO that the

appellant had filed return of income after the date of search and the books of accounts prepared after the date of search cannot be relied upon is based on suspicion and surmises, but not on facts and evidence. In this regard, he relied upon the decision of Bombay High Court in the case of CIT Vs. Bhaichand N. Gandhi (1982) 11, Taxman 59 (Bom).

10. The learned counsel for the assessee further, referring to the additions made by the AO and sustained by the ld.CIT(A) towards advances from seven creditors, submitted that, as per Section 68 of the Act, additions shall be made towards an unexplained credit in the year, in which the credit is made in the books of accounts. In the present case, the appellant has received advances from various parties in the financial year relevant to AY 2016-17, and the same has been accepted by the AO while completing the assessment for the assessment year 2016-17. Therefore, the AO, after having accepted the advances received in the earlier assessment year and explaining cash balance available as per books, cannot reject the opening cash balance available as per books, solely based on the ground that credits are not explained and if at all the credits are unexplained, the same can be treated as unexplained for the assessment year 2016-17, but not for the impugned assessment year. The learned counsel for the assessee further submitted that, although, the appellant has filed all the evidence to justify advances received from various

parties, but the AO rejected the explanation of the assessee only on the allegation that the appellant has dressed up the books of accounts, subsequent to search operation. But fact remains that, the AO has passed the assessment order for all these assessment years under Section 153A of the Act, based on the return of income filed, and other information submitted along with financial statements. The AO neither pointed out any discrepancy in the books of accounts for any of the assessment years nor made out a case for dressing up the books of accounts. Therefore, the allegation of the Assessing Officer that the appellant has dressed up the books of accounts, subsequent to search operation is not justified. The learned counsel for the assessee further referring to the decision of the Hon'ble High Court of Karnataka in the case of PCIT Vs. Basetteppa B. Badami (2018) 93 taxman.com-66 (Karnataka) submitted that when closing balance of cash in hand for the preceding assessment year is sufficient to cover the cash deposits in the subsequent year, no addition can be made towards cash deposit as an unexplained money under section 68 of the Act. The AO has accepted the return of income filed by the appellant for AY 2016-17 and as per the said return of income, there is a closing cash balance of Rs. 18.71 crores, which is sufficient to explain cash deposits into bank account during the impugned assessment year. Therefore, when the Assessing Officer, having accepted the cash balance, cannot reject the source only on the ground that the credits are not explained to the satisfaction of the AO.

11. The learned counsel for the assessee further submitted that the allegation of the AO that none of the creditors have filed their income tax returns before the due date under section 139(1) is also devoid of merit for the simple reason that when the statute has given time to file the return belatedly and such returns filed by the creditors are as per the provisions of Section 139(4), then there is no reason for the AO to reject the explanation offered by the assessee with regard to the source of cash deposits, more particularly, when the creditors have filed confirmations and also admitted in their statements recorded under section 131 of the Act. The learned counsel for the assessee further referring to the decision in the case of P. Chandrasekhar Vs. DCIT (2018) 91-taxman.com 229, submitted that the theory of human probability can be applied when there is an inconsistency in the documents submitted. In order to invoke the theory of human probability theory, inconsistency in the evidence is the key. Therefore, when the evidence filed by the appellant clearly establishes the genuineness of the transactions between the appellant and the creditors, then the evidence filed by the appellant cannot be disregarded by applying the theory of human probability. Therefore, he submitted that the ld.CIT(A) is erred in sustaining the addition made towards unexplained cash credit under Section 68 of the Income Tax Act. Therefore, he submitted that the addition made by the AO should be deleted.

12. Ms. TH Vijaya Lakshmi, CIT-DR, on the other hand, supporting the order of ld.CIT(A) submitted that there is no dispute with regard to the fact that during the course of search proceedings, the appellant could not give names and addresses of the seven parties from whom it has received advances. Although, the appellant stated that it has received advances from various persons for film distribution, but no evidence was submitted during the course of search operation. Further, even during the course of post-search investigation, the appellant has admitted cash deposits into bank account as undisclosed income and also agreed to offer income under PMGKY. However, only in the month of March 2017, the appellant has filed an affidavit and stated that it could be able to explain the source to the extent of Rs.20.063 crores out of known source of income, and the balance amount of Rs.20 crores was offered under PMGKY. If we go by the conduct of the assessee during the search proceedings and subsequent post-search investigation, the appellant has come out with a make-believe theory in light of certain advances claimed to have received from various parties as source of income for cash deposited into bank account. Although all seven parties have confirmed advances given to the appellant, but fact remains that none of the creditors have any source of income to explain huge advances given to the appellant and further, all of them have filed return of income after the appellant has filed written retraction in the month of March 2017. Therefore, the AO, after considering all the relevant facts, has rightly disbelieved the theory brought out

by the appellant as an afterthought to circumvent advances towards cash deposit. The ld.CIT(A) after considering the relevant evidence, has rightly sustained the addition made by the AO and their order should be upheld. In this regard, ld.DR relied upon the decision of ITAT in the case of Vaishnavi Bullion Pvt. Ltd. in ITA No.1561/Hyd/2020 order dated 28-11-2022.

12.1 We have heard both the parties, perused the material on record, and gone through the orders of the authorities below. We have also carefully considered various case laws referred to by the learned counsel for the assessee in support of his arguments, and also, case laws considered by the AO and ld.CIT(A) in support of their reasoning to reject the explanation of the assessee with regard to source of the cash deposits. The facts borne out from the record indicate that a search and seizer action under Section 132 of the Act, in the case of the appellant was triggered on the basis of credible information with the Department that an amount of Rs. 40.036 crore was deposited in a bank account in Special Bank Notes during the demonetization period. During the course of search, a statement on oath was recorded from T. Ramesh on 02-01-2017, wherein he had come forward to declare of Rs.40 crores under PMGKY, 2016. The director of the appellant company has confirmed this declaration under PMGKY in the subsequent statements recorded on 03-01-2017, 17-01-2017 and 24-02-2017. However, he has filed a written retraction along with an

affidavit on 03-03-2017 and declared Rs. 20 crores under PMGKY, 2016 and the balance amount of cash deposit of Rs.20.036 crores has been explained out of known source of income, including advances received from various persons in financial year 2015-16 relevant to assessment year 2016-17 and also out of cash balance available as per books of accounts. The ADIT, (Inv) has summoned all seven parties from whom the appellant has claimed to have received advances during the course of post search investigation and recorded the statements under Section 131(1) of the Act, 1961 and all seven parties have admitted before the ADIT, (Investigation) and filed relevant details and also admitted in the statements recorded under Section 131 that they have given advances to the appellant company. The AO never disputed the fact that the appellant submitted all the details of seven creditors, including their identity and documents to prove transactions with the appellant. However, Assessing Officer disbelieved the explanation of the assessee only on the ground that this fact has not been disclosed during the course of search and only after post search investigation, the appellant has come up with a make-believe story and therefore, observed that it is an afterthought to circumvent additions towards cash deposit during the demonetization period. Therefore, it is necessary to adjudicate the issue in light of the statement recorded from the director of appellant company, statements recorded from creditors / lenders, and the evidence filed by the assessee to prove the advances received from seven parties.

13. The appellant has argued the issue on multiple propositions. The first and foremost proposition canvassed by the appellant is whether Section 68 can be invoked for deposits found in bank account or not. The main contention of the assessee is bank passbook is not a book as per section 2(12A) of the Act, and thus, the provisions of Section 68 of the Act cannot be invoked to cash deposits into bank account as unexplained cash deposit. According to the assessee, unexplained cash deposits in a bank account can be considered as unexplained money under Section 69A of the Act, but the same cannot be treated as unexplained credits as per Section 68, because the said deposit is not a credit as per books of accounts, but only out of cash balance available in the books of accounts. We do not subscribe to the arguments of the counsel for the assessee for the simple reason that, merely for the reason of choosing wrong head or incorrect section, the addition itself cannot be nullified or held to be void. But what is to be seen is the context of discussion and substance of the issue and if, the discussion points to an issue, then in our considered view the issue needs to be considered. Therefore, we reject the arguments of the assessee along with relevant case laws cited in support of this proposition.

14. Coming back to the explanation with regard to source of cash deposit. There is no dispute with regard to the fact that the appellant has received Rs.14,59,50,000/- from 6 parties as advances in the financial year 2015-16, relevant to assessment year 2016-17, and these advances are recorded in the books of accounts of the assessee for the financial year ended 31-03-2016. The appellant had also, received Rs. 81,00,000/- from one party for the FY 2016-17 relevant to AY 2017-18. Admittedly, the assessment for A.Y 2016-17 is abated as on the date of search. As per 2nd Proviso to Section 153A of the Act, once the assessment is abated as on the date of search, then it is as good as a fresh assessment for all the purposes, including for the purpose of invoking Section 139(1) of the Act, as has been clearly brought out under Section 153A(1)(a) of the Act, where it has been clearly stated that return filed in response to a notice under Section 153A shall be treated as if, the said return were required to be furnished under Section 139(1) of the Act 1961. Once the assessment is abated and for the first time, the AO is assessing the income of the assessee for that assessment year, in our considered view, it is open for the assessee to make a true and correct return of income for that assessment year and further, the appellant can make any claims, including deductions towards any expenditures etc. Similarly, it is open for the AO to assess the total income of the assessee as per the return of income filed by the assessee and any other income based on the incriminating material found as a result of search. Therefore, when an assessment is abated, then

the appellant can file the return of income by making all the claims, including claims towards any loans, expenditure etc. In the present case, the assessment for A.Y. 2016-17 is abated and the assessee has filed the return of income for the first time under Section 153A and such return of income is supported by books of accounts maintained under Section 44AA of the Act and also audited and approved under the Companies Act, 2013, as well as under the provisions of 44AB of Income Tax Act 1961. Further, the AO has completed the assessment for AY 2016-17 under Section 143(3) read with Section 153A and in the said assessment, the AO has not raised any issues about the advances received from seven parties, amounting to Rs. 14.60 crores, along with corresponding cash balance available as on 31-03-2016 at Rs.18.70 crores. Once the AO accepted the advances as genuine in the earlier assessment year, then in our considered view, the AO cannot question the advances received by the appellant in the present assessment year as non-genuine while examining the source of cash deposits into the bank account. This legal principle is supported by the decision of Hon'ble High Court of Karnataka in the case of PCIT Vs. Basetteppa B. Badami (supra), wherein it has been clearly held that when closing balance of cash in hand for the preceding assessment year is sufficient to cover the expenditures in the subsequent year, no addition can be made towards cash deposit as unexplained money. Therefore, in our considered view, the addition made by the AO u/s 68 of the Act, cannot be sustained.

15. Coming back to another aspect of the issue. Admittedly, the appellant has filed all the evidence, including confirmation letters from the creditors, their financial statements and other relevant evidence to explain advances received from the parties. In fact, the AO and ld.CIT(A) have never disputed the fact that the appellant has furnished all the evidence and also the parties have confirmed advances given to the appellant in the statements recorded under Section 131 of the Act. However, the AO rejected the evidence filed by the assessee to explain the advances received from seven parties only on the ground that the documents seized during the course of search do not indicate any transactions between the appellant and alleged seven parties. In our considered view, the reasons given by the AO to reject the advances received from seven parties are incorrect for the simple reason that, at the first instance itself, in the statement recorded under Section 132(4) of the Act, T. Ramesh, Director of the appellant company has claimed that he has received advances from various parties. Although, he could not specify the names of the persons from whom he has received advances during search, but during subsequent post search investigation, he has filed complete details of names of the persons from whom he has received the advances. The appellant has also filed additional evidence, including the confirmation letters from the parties. Therefore, once the appellant has filed all the evidence, and the AO did not dispute the fact that the parties have confirmed the transactions with the appellant, then merely for the reason that the parties have filed belated return of income

is not a reason to reject the evidence submitted by the appellant to prove the advances received from various parties. In our considered view, the statute itself has given time to file the return of income belatedly up to 31-03-2017 for assessment year 2016-17. Although, the parties may not have filed return of income due to various reasons, but non-filing of return of income does not bar the creditors to advance the money to the appellant company. Further, it is to be examined in the broader perspective whether the creditors are having sufficient funds to give advances or not. The AO has recorded the statements wherein all the creditors have confirmed that they have advanced the money for better profits. Since there is no inconsistency in the evidence filed by the appellant and the documents submitted by the creditors, in our considered view, the reasons given by the AO to make additions towards cash deposit is not justified. Therefore, in our considered view, the Assessing Officer having noticed the fact that the parties have admitted in their statements made under Section 131, the AO ought to have accepted the explanation of the assessee.

16. Insofar as the theory of human probability applied by the AO, in our view, the theory of human probability can be applied when there is inconsistency in the documents submitted by the assessee. In case, there is no inconsistency in the documents submitted by the assessee, then theory of human probability cannot be applied universally to all cases. Therefore, in our

considered view, when the basic document itself is established the fact of advances received from various parties, then applying the theory of human probability to reject the advances received from various parties is contrary to law and settled legal principles. In this regard, the appellant has relied upon the decision in the case of P. Chandrasekhar Vs. DCIT (supra) which supports the case of the assessee.

17. Coming back to the case laws relied upon by the ld.CIT-DR. The ld.CIT-DR relied upon the order of ITAT, Hyderabad B Bench in the case of Vaishnavi Bullion Pvt. Ltd. Vs. ACIT in ITA No.561/Hyd/2020 order dt.28.11.2022 and claimed that facts are exactly similar to the present case and therefore, by following the above case, the additions made by the Assessing Officer should be sustained. We have gone through the order of the co-ordinate Bench in the above case and find that the facts of the present case and facts before the Tribunal in the above case are entirely different. In the above case, the assessee claims to have received huge advances from customers for sale of gold during the demonetization period and on examination, it was found that advances claimed to have been received from customers are non-genuine and further, there is a clear finding from the Tribunal that the assessee had no / negligible stock-in-trade as on 08.11.2016 and further, the purchase of gold has been made after deposit of cash into bank account. Under those facts, it was held that the

appellant is not able to explain advances received from customers with relevant evidence. In the present case, there is no dispute with regard to the fact that advances received from seven persons has been explained with relevant documents and also the parties have confirmed the transactions. Therefore, we have to consider that the facts are entirely different in the present case when compared to the case laws relied upon by the ld.CIT-DR and thus, we reject the arguments of the ld.CIT-DR.

18. To sum up, in respect of advances received from 6 parties to the tune of Rs.14.60 crores, the appellant has established the transactions with all evidence, including the confirmation from the parties. Therefore, in our considered view, the appellant is able to explain the source of cash of Rs.14.60 crores towards cash deposit to bank account out of advances received from 6 parties in earlier financial year and the corresponding cash balance available as per books of accounts, and thus, we direct the AO to delete the addition made to the extent of Rs.14.60 crores. In so far as remaining cash deposit of Rs. 81 laces, out of advance received from one person in the FY 2016-17 relevant to AY 2017-18, all though the appellant filed all details, but failed to prove credit worthiness of the person and thus, in our considered view advance received from Sri. M Satya Gopal for Rs. 81 laces cannot be considered as source for cash deposit and thus, we confirm the addition to the tune of Rs. 81,00,000/-.

19. Coming back to source for cash deposits out of cash withdrawals from the bank account, in the earlier financial year amounting to Rs.4.63 crores. Admittedly, the appellant has filed return of income up to assessment year 2012-13 under Section 139 of the Income Tax Act, 1961. From the assessment year 2013-14 to 2016-17, the appellant has not filed any return under Section 139 of the Act, however, for the first time, the return of income has been filed for all these assessment years under Section 153A of the Act. The AO has assessed the income of the appellant for all these assessment years, as per the return of income filed by the assessee under Section 153A of the Act and such return of income has been supported by the books of accounts maintained by the assessee under Section 44AA of the Income Tax Act, 1961. As per the said books of accounts, the appellant is having cash withdrawals of Rs.4.63 crores from bank account right from A.Y 2013-14 and up to A.Y. 2016-17 and said cash balance is available as per the books of accounts of assessee. In fact, the AO and ld.CIT(A) have not disputed the fact that the assessee is having cash balance out of cash withdrawals from the very same bank account, but the AO rejected the explanation of the assessee only on the ground that the appellant has prepared books of accounts after date of search and there is a possibility of dressing up the books of accounts to cover up the source of cash deposits. In our considered view, the reasons given by the AO is fallacious for the simple reason that, unless AO proves with necessary findings that the cash balance available in the books of accounts is not backed

by any evidence, including withdrawals from the bank account or the said cash in hand has been utilized or appropriated for any other purposes, the cash balance available as per books of accounts cannot be denied merely for the reason that the said books of accounts has been audited or prepared after the date of search. Further, as we have already noted in earlier paragraphs of this order, the assessment for the assessment year in question is the year of search and also the assessment for the assessment for A.Y. 2016-17 is also abated as on the date of search, in our considered view, the appellant can file a true and correct return of income for the said assessment year, which may be prepared after the date of search. Therefore, merely for the reason that the book of accounts has been prepared and audited after the date of search, the books of accounts cannot be rejected by the AO, unless the AO points out that the books of accounts are not verifiable or there is a discrepancy in supporting evidence maintained by the assessee in respect of said books of accounts. In the present case, the AO neither made out a case of incorrectness in books nor pointed out any inconsistencies or discrepancies in the books of accounts maintained by the appellant. Therefore, in our considered view, once the AO having noted the fact that the cash balance to the extent of Rs.4.63 crores is out of past withdrawals from very same bank account, then he should not have rejected the assessee's explanation with regard to source for cash deposits. The ld.CIT(A), without considering the said fact, simply sustained the additions made by the AO towards cash deposits on a flimsy

ground that the appellant's line of business there would be substantial cash expenditure and that the withdrawals from bank account should have been utilized for cash payments. In our considered view, the said observation of ld.CIT(A) is not based on any evidence, but purely on suspicion and without any valid evidence. Therefore, we reject the findings of ld.CIT(A) and direct the AO to delete the additions made to the tune of Rs 4.63 crores under Section 68 of the Income Tax Act, 1961.

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

Order pronounced in the Open Court on 1st October, 2024.

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

Hyderabad, dated 01.10.2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Jaya Balajee Real Media Pvt. Limited, Corporate Office, Flat No.B-208, Western Plaza, O.U. Colony, Manikonda, Hyderabad – 500089.
2	The Deputy Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
3	Pr.CIT – (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order