

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.227/VIZ/2020
(निर्धारण वर्ष/ Assessment Year: 2014-15)**

M/s. Linton Projects Private Limited D.No. 16-5-23 Yelugubantivari Veedhi Near M.R. College Vizianagaram - 535002 [PAN: AABCL6461E]	v.	Income Tax Officer- Ward – 1 Vizianagaram - 535002
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

**आयकर अपीलसं./I.T.A.No.117/VIZ/2021
(निर्धारण वर्ष/ Assessment Year: 2014-15)**

The Dy. Commissioner of Income Tax Central Circle – 2 Prathyakshakar Bhavan, Sector – 8 MVP Double Road Visakhapatnam - 530017	v.	Smt. Poosarla Satyavathi D.No. 16-5-23 Yelugubanti Street Near M.R. College Vizianagaram - 535002 [PAN: AHAPP1584H]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

सी.ओ सं. / C.O. No. 13/VIZ/2023
[आयक अपीलसं. से उत्पन्न / ARISING OUT OF I.T.A. No. 117/VIZ/2021]

Smt. Poosarla Satyavathi D.No. 16-5-23 Yelugubanti Street Near M.R. College Vizianagaram - 535002 [PAN: AHAPP1584H] (अपीलार्थी/ Appellant)	v.	The Dy. Commissioner of Income Tax Central Circle – 2 Prathyakshakar Bhavan, Sector – 8 MVP Double Road Visakhapatnam - 530017 (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	01.10.2024
घोषणाकीतारीख/Date of Pronouncement	:	30.10.2024

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. The above captioned appeals and cross objections are relating to assessees of same group / family, therefore for the sake of convenience all these appeals are clubbed, heard together and disposed off by this consolidated order. Further, since the issues raised in all above appeals are different, therefore we proceed to dispose of each appeal separately.

ITA No. 227/VIZ/2020 (A.Y. 2014-15)

2. This appeal is filed by the assessee against order of the Ld. Commissioner of Income-Tax (Appeals)-1, Visakhapatnam [hereinafter in short "Ld. CIT(A)"]

in ITA No. 10494/2016-17/CIT(A)-1/VSP/2020-21 dated 18.09.2020 arising out of the order passed under section 143(3) of Income Tax Act, 1961 [hereinafter in short “the Act”] for the A.Y. 2014-15.

3. Brief facts of the case are, assessee company is engaged in the business of Real Estate development, filed its return of income for the A.Y. 2014-15 admitting a total income of Rs.8,696/-. The return was summarily processed under section 143(1) by Centralized Processing Center, Bangalore. Subsequently the case was selected for scrutiny under CASS and accordingly, notices under section 143(2) dated 03.09.2015 was issued and served on the assessee. Subsequently, fresh notice under section 143(2) dated 08.12.2016 was issued since the case was transferred to Income Tax Officer, Ward-1, Vizianagaram. Thereafter, notice under section 142(1) along with questionnaire dated 08.12.2016 was issued and served on the assessee. In response, authorized representative of the assessee appeared from time to time and produced the information as called for during the assessment proceedings. After verification of the information furnished by the authorized representative, Assessing Officer framed the assessment by making an addition of Rs.3,11,30,000/- as unexplained cash credit and Rs. 4,60,12,500/- under section 56(2)(viib) of the Act.

4. Being aggrieved by the order of the Ld.AO, assessee filed an appeal before the Ld. CIT(A). Before Ld. CIT(A), authorized representative of the assessee made similar submissions. Considering the submissions made by the authorized representative and perusing the material available on record, Ld.CIT(A) enhanced the assessment by adding Rs.1,02,25,000/- by treating the share capital subscribed by five members as unexplained under section 68 of the Act. Thus, Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of the Assessing Officer on other issues.

5. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds in its appeal: - :

“1. The order passed u/s 143(3) of the I.T. Act is contrary to the facts and also the law applicable to the facts of the case.

2. The learned CIT(A) is not justified in treating the investment of RS. 1,02,25,000/- & Rs.56,60,000/- made by the 34 shareholders in the appellant company as unexplained cash credit in the books of the appellant company u/s 68 of Income tax Act 1961, taxable at the rate of 30% u/s 115 BBE.

3. The learned CIT(A) ought to have consider the sources for the investment made by the 34 shareholders since all of them have submitted the copies of their individual returns along with copies of their bank accounts and many of them have appeared in response to the summons and have given the sworn statements.

4. The learned CIT(A) erred in treating the share premium of Rs.4,60,12,500/- & Rs.2,54,70,000/- received by the appellant company as income from other sources u/s 56(2) (viib) of the Income tax Act 1961, ignoring the method of valuation prescribed under the law.

5. The learned CIT(A) failed to set off the unabsorbed loses of previous years carry forward in the assessment.

6. *The appellant may be permitted to submit the further information at the time of hearing of the case.*

7. *The order of the CIT (Appeals -1) is not justified in confirming the order of the Assessing officer.”*

6. Assessee has raised the following 8th ground which is reproduced below:-

“8. The Ld. CIT (Appeals) is not correct in giving direction to the Assessing Officer to enhance the assessed income by making further addition u/s 68 of the IT Act, since such direction runs counter to the provisions of law, therefore, the same is liable to be deleted.”

7. At the time of hearing, Ld. Authorized Representative of the assessee [in short “Ld.AR”] conceded that Ground No. 8 is not pressed. Accordingly, the same is dismissed as not pressed.

8. Ground Nos. 1, 5, 6 and 7 are general in nature and needs no adjudication.

9. The other grounds relate to the addition made by the Revenue Authorities by disallowing the investment made by the various shareholders in the share capital and share premium of the assessee company as unexplained under section 68 of the Act. On this issue, Ld. AR submitted that during the impugned assessment year 34 shareholders have invested in the assessee company by acquiring the equity shares on the face value of Rs 10/- each for a premium of Rs.45/- per share. Ld. AR further submitted that, out of 34

shareholders 4 shareholders are relatives of Directors and one shareholder being Private company namely Sri Bhagawan Estates Private Limited, in which the above Directors are interested. He further explained that balance 29 shareholders are relatives and friends of the Directors who have invested in the company. Ld.AR further conceded that the Ld.AO has issued summons under section 131 of the Act, to all the shareholders to examine the sources of investments and the reasons for payment of high share premium. In response to the summons Ld.AR submitted that eight shareholders have not appeared before the Ld.AO for recording the sworn statement. Out of the balance 21 shareholders, Ld.AR submitted that 6 shareholders have not accepted the share capital invested while recording the sworn statements and 4 shareholders has accepted the amount given as loan and not as investment or share capital in the assessee company. The remaining shareholders accepted the investment in the company. He therefore pleaded that the confirmation letters from the various investors were also provided before the revenue authorities along with the source for such investment in the assessee company. Therefore, he prayed that addition made by the revenue authorities be deleted. He also further submitted that all the amounts invested are through banking channels.

10. Per contra, Ld. DR submitted that various shareholders have invested in the company by depositing cash into the respective bank accounts and then

transferring it to the assessee company as investment in share capital. He therefore stated that the sources remained unexplained and hence the addition made by the Ld. CIT(A) be sustained.

11. We have heard the rival contentions and perused the material available on record. From the submissions made by the Ld.AR, we find from the summary of sworn statements the following shareholders has accepted the share capital investment in the company.

TABLE-1

S.NO	NAME OF THE PERSON	SHARE CAPITAL	SHARE PREMIUM	TOTAL	MODE OF INVESTMENT	STATEMENT RECORDED	INCOME TAX ASSESSEE OR NOT	WHETHER RETURN OF INCOME FILED FOR A.Y. 2014-	SWORN STATEMENTS BOOK PAGE NO'S	WHETHER SHARE INVT ACCEPTED IN SWORN STATEMENT
1	GOPISETTY SUBBARAO	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	45-47	Accepted Share Capital Investment
2	GOPISETTY SRINIVASARAO	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	40-44	Accepted Share Capital Investment
3	GOPISETTY SRIDEVI	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	35-39	Accepted Share Capital Investment
4	PBS BHARATHI	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	54-55	Accepted Share Capital Investment
5	PBS VENKATESWARARAO	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	56-57	Accepted Share Capital Investment
6	POOSARLA ARUNA	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	60-61	Accepted Share Capital Investment
7	PURUSHOTTAM ANURADHA	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	69-70	Accepted Share Capital Investment

S.NO	NAME OF THE PERSON	SHARE CAPITAL	SHARE PREMIUM	TOTAL	MODE OF INVESTMENT	STATEMENT RECORDED	INCOME TAX ASSESSEE OR NOT	WHETHER RETURN OF INCOME FILED FOR A.Y. 2014-	SWORN STATEMENTS BOOK PAGE NO'S	WHETHER SHARE INVT ACCEPTED IN SWORN STATEMENT
8	PURUSHOTTAM RAKESH ROY	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	71-72	Accepted Share Capital Investment
9	GOPISETTY NAGAMANI	5,50,000	24,75,000	30,25,000	Through Bankers Cheque	Yes	Yes	Yes	30-34	Accepted Share Capital Investment
10	PURUSHOTTAM ANAND	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes		Accepted as Share Capital invested
11	POOSARLA NARAYANA RAO	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	27-29	Deceased/ Legal heir Appeared/accepted
	Total			1,30,90,000						

12. Further confirmation letters also been provided by the Ld. AR is placed in the Paper Book against the investment made by the individual shareholders listed above. The Ld.AO on the examination of the return of income explaining the sources of investment had observed that they have generated income from various business sources as mentioned in their sworn statements will be sufficient for the day-to-day sustenance, therefore, these shareholders does not have sufficient resources to make such huge investments and therefore has not accepted the source of investment made by the above investors. All the shareholders have in their sworn statements while explaining the source of income have stated that the investment made in the company is out of their savings made during the earlier years, however, the Ld.CIT(A) in Page No. 14

of his order has found that a pattern of proto-type accounting followed without providing any documentary evidence with respect to the period in which the shareholders are engaged in such business, thereby accumulating funds for the purpose of investment in the assessee company during the impugned assessment year. Further, on perusal of the confirmation statements submitted by the Ld.AR, we find that some of the shareholders who have not accepted in the investment in the assessee-company while recording the sworn statements have also confirmed the investment by way of confirmation letters which is stereo typed for all the shareholders. We therefore do not rely on the contradicting and stereo typed confirmation letters and hence could not accept the investments made by the shareholders in the assessee-company. Further, the Ld.AO has also in Para No. 11 observed as follows: -

“11. From an analysis of the above investors, the following issues emerge:

All the investors are family members and relatives of the Directors of the company with meagre sources of income in the range of Rs.2 lakhs to Rs.2.5 lakhs. Almost all are doing petty businesses like bakery, sweets, money lending, commission business. These returns have been filed just to justify their investment in the assessee company and they have no real sources of income. Presuming that they really generate income from the said businesses, these incomes are sufficient only for their day to day sustenance. They do not have the means and sources to invest amounts of Rs.10 lakhs approx. The bank accounts copies produced by some of them have very less transactions with low balance except on the dates when investment was made. The investments were made immediately on deposit of identical amounts. Almost all of them have mentioned their phone number as 9440146969 in their returns of income and Email ID as "poosarlaasn.yahoo.com" in their returns of income and almost all of

them have uploaded their returns of income from the same IP address i.e. 103.245.198.122.

Further, a prudent person would think twice before he invests. There are better alternatives available for investment. When a person invests and that too in the range of Rs. 10 lakhs, he searches for the best return yield and not in a company which has no business model, no past track of generating profits, no sale/gross receipts recorded by it since inception, no dividend/ return yield till date, no good leadership, no income visibility, no income returned since inception, no realisable asset value as per balance sheet.

13. We also find that the following shareholders have not accepted the share capital investment.

TABLE - 2

S.NO	NAME OF THE PERSON	SHARE CAPITAL	SHARE PREMIUM	TOTAL	MODE OF INVESTMENT	STATEMENT RECORDED	INCOME TAX ASSESSEE OR NOT	WHETHER RETURN OF INCOME FILED FOR A.Y. 2014-	SWORN STATEMENTS BOOK PAGE NO'S	WHETHER SHARE INVT ACCEPTED IN SWORN STATEMENT
1	PASUPULETI SATYAVATHI	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	58-59	Not Accepted Share Capital Investment
2	POOSARLA NIRMALA	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	62-63	Not Accepted Share Capital Investment
3	POOSARLA VARA I-AXMI	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	66-68	Not Accepted Share Capital Investment

S.NO	NAME OF THE PERSON	SHARE CAPITAL	SHARE PREMIUM	TOTAL	MODE OF INVESTMENT	STATEMENT RECORDED	INCOME TAX ASSESSEE OR NOT	WHETHER RETURN OF INCOME FILED FOR A.Y. 2014-	SWORN STATEMENTS BOOK PAGE NO'S	WHETHER SHARE INVT ACCEPTED IN SWORN STATEMENT
4	POOSARLA DURGA RAO	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	73-74	Not Accepted Share Capital Investment
5	SIRIPURAPU PARVATHI	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	77-78	Not Accepted Share Capital Investment
6	SIRIPURAPU PAIDI RAJU	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	Yes	Yes	Yes	79-80	Not Accepted Share Capital Investment
	TOTAL			60,22,500/-						

14. Since the share-holders listed in Table-2 have not accepted the share capital investment in the assessee company while recording the sworn statement, the Ld.AO has rightly not considered that these investments made by the above shareholders and therefore we find no infirmity in the order of the revenue authorities on these investments. We hereby confirm the addition of Rs.60,22,500/- made by the revenue authorities.

15. Further we also find that the following shareholders has invested in the company as by loans to the assessee company, which is reproduced below:-

TABLE – 3

S.NO	NAME OF THE PERSON	SHARE CAPITAL	SHARE PREMIUM	TOTAL	MODE OF INVESTMENT	STATEMENT RECORDED	INCOME TAX ASSESSEE OR NOT	WHETHER RETURN OF INCOME FILED FOR A.Y. 2014-	SWORN STATEMENTS BOOK PAGE NO'S	WHETHER SHARE INVT ACCEPTED IN SWORN STATEMENT
1	POOSARLA RAVI KUMAR	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	64-65	Accepted as Loan given
2	POOSARLA SUSHILA	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	75-76	Accepted as Loan given
3	TIRANDI UMA SANKARA RAO	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	81-82	Accepted as Loan given
4	TIRANDI ANNAPURNA	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	Yes	Yes	Yes	83-84	Accepted as Loan given
	TOTAL			39,60,000						

16. Since the above shareholders listed in Table-3 above, have not confirmed about their investment share capital and share premium, but has confirmed that it has been given as loan to the assessee company. Therefore, in the absence of any substantiating evidences stating that the loans can be considered as investment in the share capital of the assessee company, we are inclined to uphold the addition of Rs.39,60,000/- made by the revenue authorities.

17. Further, the following shareholders have not responded to the summons neither not appeared before the Assessing Officer.

TABLE – 4

S.NO	NAME OF THE PERSON	SHARE CAPITAL	SHARE PREMIUM	TOTAL	MODE OF INVESTMENT	STATEMENT RECORDED	INCOME TAX ASSESSEE OR NOT	WHETHER RETURN OF INCOME FILED FOR A.Y. 2014-	SWORN STATEMENTS BOOK PAGE NO'S	WHETHER SHARE INVT ACCEPTED IN SWORN STATEMENT
1	CHAU-A KIRAN KUMAR	1,95,000	1,95,000	10,72,500	Through Bankers Cheque	No	Yes	Yes		Not Appeared
2	CHALLA GANGA RAJU	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	No	Yes	Yes		Not Appeared
3	CHALLA MADHAVI	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	No	Yes	Yes		Not Appeared
4	CHALLA SOMA SEKHAR	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	No	Yes	Yes		Not Appeared
5	GOPISETTY VIJAYA	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	No	Yes	Yes		Not Appeared
6	JAYANTHI SULOCHANA	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	No	Yes	Yes		Not Appeared
7	PBS HEMANTH KUMAR	1,80,000	8,10,000	9,90,000	Through Bankers Cheque	No	Yes	Yes		Not Appeared
8	POOSARLA DEVI	1,85,000	8,32,500	10,17,500	Through Bankers Cheque	No	Yes	Yes		Not Appeared
	TOTAL			80,57,500						

18. It was the plea of the Ld.AR to provide one more opportunity for the above listed shareholders in Table No. 4, to substantiate their investment in the assessee-company and therefore the issue with respect to the above shareholders to be remitted back to the file of the Ld.AO. Considering the plea of the Ld.AR, we remit the matter back to the file of the Assessing Officer to examine the

above shareholders listed in Table-4 above, to examine the sources for the investments made in the assessee-company, and decide the case on merits by providing one more opportunity to the assessee.

19. With respect to the four shareholders who are promoters and directors of the assessee company, it was explained that they have invested in the assessee company by selling the shares held by them in Sri Bhagwan Builders Private Limited and Sri Bhagwan Niketan Limited. Ld.AR explanation was that these investments in the above companies have been sold by the respective shareholders by disclosing the capital gains while filing the return of income during the impugned assessment year. He therefore pleaded that since the source of investments made by the four shareholders are explained, no addition can be made under section 68 of the Act.

20. Per contra, it was the submission of the Ld. DR that the sale prices of the shares of the Sri Bhagwan Builders Private Limited and Shri Bhagwan Niketan Limited are abnormal and the assessee used it as the devise to explain the sources for the investment in the assessee company. He therefore pleaded that the order of the revenue authorities be upheld.

21. We find from the submissions of the rival parties that the assessee has diluted the investments in Sri Bhagawan Builders Private Limited and

Sri Bhawan Niketan Limited at a high price. The Ld.AR has also not filed details of the financial statements of the companies. The observation of the Ld.CIT(A) is that the assessee has followed the same pattern apparently to build up the capital of the four individuals by way of cash gifts from relatives and friends and thereby utilize the amount for investment in the share application money of the assessee-company. We also find that four shareholders have not satisfactorily explained the sources of investment in the assessee company. It was not explained by the Ld.AR purpose of diluting the shares in Sri Bhagawan Builders Private Limited and Sri Bhagawan Niketan Limited and making the investment in the assessee company. The Ld.CIT(A) has in a similar fashion for all the share holders namely P. Satyavathi, P. Siddhartha, P. Jaya Prakash and P. Satyanarayana has held that the pattern followed by the family is similar to build up the capital by way of cash gifts from relatives and friends and finally pumped into the assessee company in order to give the impression that apparent is real. The Ld. CIT(A) while deciding on the entire operation of acquisition of shares raising in the name of the relatives, considered the Shri P. Satyanarayana a chief architect for the entire operation and has observed as follows: -

“The AR has filed the details of their accounts which were not signed / authenticated. All the cases are apparently capital building cases to safeguard the investment of appellant company. It is seen that all the 4 family members have used the cashgifts to buy immovable properties in Golden Heights and other properties. As a quid proco, the shares are offered. It appears that the sources of funds doesn't really belongs to the investors as they have nowhere with all the invest in loss making company.

The circular transactions under taken by the AR and appellant is only top acquire the two immovable properties purchased by the appellant. My observations in the above 3 individuals will hold equally good in the case of Poosarla Satyanarayana. Accordingly, the Assessing officer is directed to consider the share investment of Rs. 10,00,000/- u/s. 68 of the Act as not explained.

22. Even before us, Ld. AR has not furnished any documentary evidences regarding the sources of cash gifts received by the four members of the family for the purpose of investment in the assessee company. Therefore, we are of the considered view that the investment by the four individual shareholders has not been satisfactorily explained even before us and hence we are inclined to uphold the addition made by the revenue authorities. We therefore find no infirmity in the order of the Ld. CIT(A) on this issue.

23. Further, with respect to the investments by Sri Bhagawan Estates Private Limited, which is a Kolkata based company, the Ld.CIT(A) while examining the submissions made before him has observed that the company has received a premium of Rs.46,97,000/- from the four individuals as discussed in the aforesaid paragraphs. We find that the Ld.CIT(A) while not considering the cash gifts of the aforesaid four individuals has observed that the all the four individuals has brought in Rs. 40 lakhs from their capital accounts to Sri Bhagawan Estates Private Limited for purchasing 622500 equity shares in M/s.Linton projects at a premium of Rs.45/- per share. We have taken a view in the earlier paragraphs that the investment made by the four individuals being

not satisfactorily explained, even before us. We are therefore inclined to confirm the addition made the Ld.CIT(A) with respect to investment by M/s.Bhagawan Estates Private Limited in the assessee-company, as these are funded by the four individuals wherein the sources remained unexplained. We therefore find no infirmity in the order of the Ld.CIT(A) on this issue and the ground raised by the assessee is dismissed.

24. In the result, appeal of the assessee is partly allowed for statistical purposes.

**ITA No. 117/VIZ/2021 (A.Y. 2014 -15) (Revenue Appeal) &
C.O. No. 13/VIZ/2023 (A.Y. 2014-15)(Assessee Appeal)**

25. This appeal and cross objection are filed by revenue and assessee respectively, against order of the Ld. Commissioner of Income Tax (Appeals)–3, Visakhapatnam [hereinafter in short “Ld. CIT(A)”] in Appeal No. 765/10435/2019-20/CIT(A)-3/VSP/2020-21 dated 18.03.2021 arising out of the order passed under section 143(3) r.w.s. 153A of Income Tax Act, 1961 (in short ‘Act’) for the A.Y. 2014-15.

26. Brief facts of the case are that, assessee is a Director in M/s. Bhagavan Estates Pvt Limited and M/s. Linton Projects Pvt Ltd had filed her return of income originally under section 139(4) for the A.Y. 2014-15 on 28-09-2014

admitting a total income of Rs. 2,56,940/-. A search and seizure operation under section 132 of the Act was conducted on 15-09-2017 by the Deputy Director of Income tax (Inv.), Unit-III (1), Visakhapatnam at the premises of M/s. Sri Bhagavan Estates Pvt Ltd. in connection with the Search and Seizure operations in the group cases of Shri Alakram Satyanandam and Group. Consequent to search, the assessee was centralized to the office of the DCIT, Central Circle-2, Visakhapatnam and notice under section 153A of the Act was issued on 15.09.2018. In response, assessee filed her Return of Income electronically for the A.Y.2014-15 on 17.10.2018 declaring Total Income at Rs. 2,56,940/-. Subsequently, statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. In response to the above notices, Authorized Representative of the assessee appeared and furnished the information as called for by the DCIT. Not convinced with the submissions of the assessee, Assessing Officer completed the assessment by noticing that assessee has received cash gifts amounting to Rs.5,00,000/- each from her family members namely G Subba Rao, K Padmavathi, G Sri Devi, G Srinivasa Rao, G Nagam ani and P Krishnaveni totalling to Rs. 30,00,000/-, the Assessing Officer treated the said gifts amounting to Rs. 30,00,000/- as ingenuine and added them as unexplained cash credit under section 68 of the Act. Further, Assessing Officer noticed that Sri Poosarla Satyanarayana has received Rs.36,75,000/- from various relatives and the said gifts were added as

unexplained cash credit under section 68 of the Act on protective basis as admitted by the assessee before the Investigation Directorate as her unexplained investment under section 69 of the Act. Further, Assessing Officer in his order observed that M/s. Sri Bhagavan Estates Pvt Ltd has received Share Capital amounting to Rs. 89,67,000/- from various relatives of the Directors of the company, the Assessing Officer treated the share investments as ingenuine and added the same as unexplained cash credit under section 68 of the Act on protective basis as admitted by the assessee before the Investigation Directorate as her unexplained investment under section 69 of the Income tax Act. Assessing Officer has computed gain on sale of shares in M/s. Sri Bhagavan Builders Pvt Ltd., and Sri Bhagavan Niketan Ltd., amounting to Rs. 91,117/-. Further Assessing Officer noticed that assessee has earned an agricultural income of Rs. 2,40,000/- and as no documentary evidence in support of the same were submitted before him, hence the entire claim of the agricultural income is disallowed and added back to the returned income as unexplained cash credit.

27. Being aggrieved by the order of the Assessing Officer, assessee filed an appeal before the Ld. CIT(A) and filed submissions. After considering the submissions of the assessee and material available on record, Ld. CIT(A) allowed the appeal of the assessee.

28. Being aggrieved, by the order of the Ld. CIT(A), revenue is in appeal

before us by raising following grounds of appeal: -

“i. On the facts and circumstances of the case, the Id. CIT(A) erred in holding that the AO has no jurisdiction to make additions in respect of concluded assessment in the absence of any incriminating material when the AO has referred to the incriminating material in the assessment order which was in the form of bank pay-in-slips belonging to various depositors but were found and seized in the residence of the assessee.

ii. The CIT(A) failed to appreciate the fact that the pay-in-slips belonging to third parties are supposed to be in the possession of respective parties, but not in the possession of assessee.

iii. The Id. CIT(A) erred in quashing the assessments completed by the AO u/s 143(3) r.w.s153A of the I.T.Act, 1961 as barred by limitation..

iv. Any other ground of appeal that may arise at the time of hearing.”

29. Further, Assessee has raised following grounds in its cross objection: -

“1. That under the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) has rightly deleted the addition made u/s 68 of the IT Act of Rs.30,00,000/-

2. That under the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) has rightly deleted the addition made, on protective basis, u/s 69 of the IT Act of Rs. 36,75,000/-.

3. That under the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) has rightly deleted the addition made, on protective basis, u/s 69 of the IT Act of Rs. 89,67,000/-.’

30. At the outset, Ld. AR argued that consequent to CBDT Circular No. 09/2024 dated 17th September, 2024, the tax effect of the appeal is less than Rs.60 lakhs and hence it is not maintainable.

31. Per contra, Ld. DR on the directions of the bench submitted a letter dated 21.10.2024, the reply received from the Ld.AO on the issue whether the case falls in the exceptions prescribed in the CBDT Circular 5/2024 dated 15.03.2024.

32. We have heard both sides and perused the material available on record. Consequent to the issuance of Circular No. 9/2024 dated 17th September, 2024 wherein it was clearly mentioned that in Para No. 5 as follows: -

*“5. The modification shall come into effect from the date of issue of this circular, this circular will apply to SLPs/appeal to be filled hence forth in SC/HCs/Tribunal. **It shall also apply to the SLPs/appeals pending before Supreme Court/High Courts/Tribunal which may accordingly be withdrawn.**”*

33. We have considered the reply submitted by the Ld.DR received from the Ld.AO whether the assessee case falls within the exceptions prescribed in the CBDT Circular No. 5/2024 & 9/2024. We notice that, the Ld.DR has placed reliance on Apex Court judgement with respect to additions made under section 68 of the Act and requested that the case may be considered as an exceptional case as per CBDT Circulars 5/2024 & 9/2024. The submissions of the Ld.DR could not be considered in the absence of any categorical clarification that the assessee case is covered within the exceptions. We therefore are unable to accept the reply of the Ld.DR but grant a liberty to file a miscellaneous

application in case any documentary evidences are available with the revenue regarding the objections by the revenue audit party.

34. We are therefore of the considered view that the appeal is not maintainable before the Tribunal, since the tax effect as per Form 36 is around Rs.53,67,201/- which is below Rs.60,00,000/- and hence appeal is not maintainable and dismissed in limine. Sine the appeal is dismissed in limine the Cross objection filed by the assessee is also not maintainable and hence dismissed.

35. In the result, appeal of the revenue is dismissed in limine and Cross objection filed is assessee is dismissed as infructuous.

36. To sum-up, appeals are adjudicated as below: -

Sl.No.	ITA No./CO No	Result
1.	ITA No.227/VIZ/2020 (A.Y. 2014-15)	Partly allowed for statistical purposes.
2.	ITA No. 117/VIZ/2021 (A.Y. 2014-15)	Dismissed in limine.
3.	C.O. No. 13/VIZ/2023 (A.Y. 2014-15)	Dismissed as infructuous.

Order pronounced in the open court on 30th October, 2024.

Sd/-

(दुव्वूरु आरएल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 30.10.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/ The Assessee	:	i) M/s. Linton Projects Private Limited D.No. 16-5-23 Yelugubantivari Veedhi Near M.R. College Vizianagaram - 535002
			ii) Smt. Poosarla Satyavathi D.No. 16-5-23 Yelugubanti Street Near M.R. College Vizianagaram - 535002
2.	राजस्व/ The Revenue	:	i) Income Tax Officer- Ward - 1 Vizianagaram - 535002
			ii) The Dy. Commissioner of Income Tax Central Circle - 2 Prathyakshakar Bhavan, Sector - 8 MVP double Road Visakhapatnam - 530017
3.	The Principal Commissioner of Income Tax		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam