

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

Before Shri Vijay Pal Rao, Vice President
and
Shri Manjunatha G., Accountant Member

आ.अपी.सं / **ITA No.162 & 163/Hyd/2022**
(निर्धारण वर्ष/Assessment Year: 2015-16 & 2018-19)

Satty and Associates Hyderabad [PAN : AAWFS8350D]	Vs.	Assistant Commissioner of Income Tax Central Circle-1(2) Hyderabad
(Appellant)		(Respondent)
आ.अपी.सं / ITA No.236/Hyd/2022 (निर्धारण वर्ष/Assessment Year: 2016-17)		
Assistant Commissioner of Income Tax Central Circle-1(2) Hyderabad		Satty and Associates Hyderabad [PAN : AAWFS8350D]
(Appellant)		(Respondent)
Cross Objection No.13/Hyd/2022 (Arising out of ITA No.236/Hyd/2022)		
Assistant Commissioner of Income Tax Central Circle-1(2) Hyderabad		Satty and Associates Hyderabad [PAN : AAWFS8350D]
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:		Shri S Rama Rao, AR (appeared through virtual mode)& Ms.S.Sandhya, AR
राजस्व द्वारा/Revenue by:		Shri Srinath Sadanala, DR
सुनवाई की तारीख/Date of hearing:		03/12/2024
घोषणा की तारीख/Date of Pronouncement:		12/12/2024

आदेश / ORDER

PER. MANJUNATHA G., A.M:

These two appeals filed by the assessee and one appeal filed by the Revenue are directed against the order passed by the learned Commissioner of Income Tax (Appeals)-11 [Learned CIT(A)] dated 10.03.2022 and pertains to A.Y.2015-16, 2016-17 and 2018-19. The assessee had also filed cross objection against the appeal filed by the Revenue for the A.Y.2016-17. Since the facts are identical and issues are common, for the sake of convenience, these appeals filed by the assessee, revenue and the cross objection filed by the assessee were heard together and are being disposed of by this consolidated order.

ITA No.162/Hyd/2022, A.Y.2015-16 (Assessee's Appeal)

2. The assessee has raised the following grounds of appeal :
 1. *The order of the learned Commissioner of Income -tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*
 2. *The learned Commissioner of Income-tax (Appeals) erred in confirming the addition made of Rs.7,51,858/- by the Assessing Officer on the ground that the said amount represent unsecured loan pertaining to K.Subbaratnamma and without considering the explanation submitted.*
 3. *The learned Commissioner of Income-tax (Appeals) ought to have seen that the said amount was found in a rough balance sheet; was not in the regular books of account and, therefore, it should not have been considered as true in view of the provisions of Sec.132(4A) of the I.T.Act.*

4. *Without prejudice, the appellant submits that the learned Commissioner of Income Tax (Appeals) having found that there is an opening balance of Rs.6,42,518/- as on 01.04.2015 and made fresh investment of Rs.1,09,340/- during the year, erred in confirming the entire addition made as the amount does not relate to the year of account.*

5. *Any other ground or grounds that may be urged at the time of hearing.*

3. The brief facts of the case are that the assessee, M/s Satty and Associates is a partnership firm and is a licensed book maker with Hyderabad Race Club. A search and seizure operation u/s 132 of the Income tax Act, 1961 ("the Act") was conducted in the case of Sri Satty Ramkumar Reddy and the appellant on 04.03.2019. Consequent to search, notice u/s 153A of the Act, dated 22.01.2020 was issued and duly served on the assessee. In response to the notice u/s 153A, the assessee filed return of income on 03.02.2020, admitting total income of Rs.52,010/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that during the course of search and seizure, certain material was found from the premises of the assessee, which contained rough balance sheet as on 31.03.2015 of the appellant firm. The Assessing Officer further noticed that as per the rough balance sheet found during the course of search, unsecured loan was shown at Rs.11,59,460/-, whereas in final balance sheet, the same was shown at Rs.4,07,602/-. The Assessing Officer called upon the assessee to file reconciliation statement of two balance sheets. In response, the assessee filed reconciliation statement and explained the difference between the unsecured loans shown in the two balance sheets and

claimed that the unsecured loans taken from Smt.K.Subbaratnamma has been repaid on 31.03.2015 and due to this, in the final balance sheet, the unsecured loan liability has come down from Rs.11,59,460/- to Rs.4,07,602/-. Similarly, the Assessing Officer further noticed that there is a difference in profit as per rough balance sheet and income admitted by the appellant amounting to Rs.1,01,190/-. Since the appellant has not explained the difference between unsecured loans with relevant evidences and also the difference in profit declared in rough balance sheet and return of income filed for the relevant assessment year, the Assessing Officer made addition of Rs.8,53,048 (Rs.7,51,858/- + Rs.1,01,190/-) as unexplained money u/s 69A of the Act.

4. Being aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed relevant evidences, including copies of income tax returns filed of the creditor Smt.K.Subbaratnamma and argued that out of Rs.7,51,858/- Rs.6,42,518/- was received in earlier financial year through cheques and the balance amount of Rs.1,09,340/- has been received during the financial year, relevant to the assessment year under consideration through bank account. The assessee also filed confirmation letter from the creditor. Similarly, the assessee has explained the difference between net profit as per rough balance sheet and net profit admitted in the financial statements filed along with the return of income. The Ld.CIT(A) after considering the relevant submissions of the assessee, allowed partial relief in respect of additions towards net profit of

Rs.1,01,190/- by holding that the assessee has explained the difference with relevant evidences, but the Assessing Officer has made additions without any observation as to discrepancy in reconciliation filed by the assessee. However, the Ld.CIT(A) confirmed the additions made towards difference in unsecured loan of Rs.7,51,858/-.

5. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the Ld.CIT(A) erred in confirming the addition of Rs.7,51,858/- made by the Assessing Officer towards unsecured loan received and repaid to Smt.K.Subbaratnamma u/s 69A of the Act, without appreciating the fact that the same cannot be added u/s 69A of the Act, because, the entries found in the books of accounts of the assessee are neither, money which is unexplained nor the explanation of the assessee is incorrect. The learned Counsel for the assessee, further referring to paper book filed by the assessee, submitted that the assessee has received unsecured loan of Rs.7,51,858/- from Smt.K.Subbaratnamma and the same has been repaid on 31.03.2015. The unsecured loans shown in the rough balance sheet is not considered repayment of loan to the creditor. The assessee has explained the reasons by filing reconciliation statement and the Assessing Officer and the Ld.CIT(A) without considering relevant facts, simply made addition u/s 69A of the Act. Therefore, he submitted that the additions made by the Assessing Officer should be deleted.

7. The Ld.DR on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee could not establish the identity of the creditor, genuineness of transactions and creditworthiness of the creditor, to explain the sources for the unsecured loans. The assessee has also failed to explain the difference in the financial statements. The Assessing Officer and the Ld.CIT(A) after considering the relevant facts has rightly sustained the additions and therefore, their order should be upheld.

8. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The Assessing Officer made the addition of Rs.7,51,858/- u/s 69A of the Act as unexplained receipts towards unsecured loan of Rs.7,51,858/- received from Smt.K.Subbaratnamma, on the ground that the assessee has received loan in cash and hence the same is not reflected in the regular accounts of the assessee. It is the argument of the learned Counsel for the assessee that the loan has been received by cheque or bank transfer, but the same has been repaid in cash as on 31.03.2015. Therefore, the observations of the Assessing Officer that the amount of the loan has been received in cash is incorrect. We find that the appellant has filed ledger account of Smt.K.Subbaratnamma and as per ledger account Rs.6,42,518/- has been received in the financial year 2013-14. The appellant had received Rs.1,09,340/- by two bank credits on 25.02.2015. Further, the appellant has repaid the loan in cash on 31.03.2015. From the details filed by the assessee, it

appears that the loans have been received in cheque and repaid in cash. Therefore, the allegation of the Assessing Officer that the appellant has received the loan in cash is incorrect. Further, the appellant has also filed relevant evidences including confirmation letter along with ITR copies of Smt.K.Subbaratnamma. From the details filed by the assessee, we find that the loan given to the appellant has been disclosed in the financial statement of the creditor. Therefore, we are of the considered view that the appellant has filed relevant evidences to prove the amount of loan received from the creditor. Further, the reason for difference in the rough balance sheet and the final balance sheet is explained and as per the rough balance sheet, the appellant has recorded loan received from Smt.K.Subbaratnamma, whereas, after considering the details of repayment of loan, the account was squared up in the final balance sheet. Therefore, from the details filed by the assessee, it is undisputedly clear that the assessee has explained the difference in unsecured loan from two balance sheets by filing reconciliation. The Assessing Officer and the Ld.CIT(A) without appreciating relevant facts, simply sustained the additions made by the Assessing Officer. Thus, we set aside the order of the Ld.CIT(A) and direct the Assessing Officer to delete the addition of Rs.7,51,858/- made towards unsecured loan received from Smt.K.Subbaratnamma u/s 69A of the Act.

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

ITA No.236/Hyd/2022 (Revenue's Appeal) and CO No.13/Hyd/2022

10. The Revenue has raised the following grounds :

1. *The Ld.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.*
2. *The Ld.CIT(A) erred in deleting the addition of Rs.5,14,62,895/- made u/s 68 of the Act towards introduction of fresh capital in cash by partners.*
3. *The Ld.CIT(A) erred in holding that the identity, genuineness and creditworthiness of the partners who introduced capital has been established though the assessee had not filed all relevant details before the Assessing Officer.*
4. *The Ld.CIT(A) ought to have followed his decision for the A.Y.2018-19 wherein the amounts introduced as capital in cash were held as unexplained and not taken a different stand in the A.Y.2016-17.*
5. *The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.*

CO No.13/Hyd/2022, A.Y.2016-17

11. The assessee has raised the following grounds of cross objection :

1. *The learned Commissioner of Income-tax (Appeals) erred in holding that additions could have been made during the assessment proceedings u/s 153A even without any material found during the course of search and seizure operations.*
2. *The learned Commissioner of Income-tax(Appeals) ought to have held that no addition applying the provisions of Sec.68 can be made u/s 153A when such credits are recorded in the books of account found during search and*

no material was found during the course of search and seizure operations.

3. Any other ground that may be urged at the time of hearing.

12. The learned Counsel for the assessee, referring to cross objection filed by the assessee and grounds thereon, submitted that the additions made by the Assessing Officer towards fresh capital introduced by partners u/s 68 of the Act is bad in law and liable to be quashed, because the additions made by the Assessing Officer, without there being any incriminating material found during the course of search is unsustainable because the assessment for the impugned assessment year is unabated / concluded as on the date of search, which is evident from the date of search in the present case i.e. on 04.03.2019 and as on the date of search, the time limit for issue of notice u/s 143(2) of the Act had expired. The learned Counsel for the assessee, referring to the decision of Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd. [2023] 454 ITR 0212 (SC), submitted that the issue is squarely covered by the decision of Hon'ble Supreme Court, wherein, it has been held that in respect of completed assessment / unabated assessment, no additions can be made by the Assessing Officer in the absence of any incriminating material found during the course of search u/s 132 of the Act. Therefore, she submitted that the additions made by the Assessing Officer towards capital account of partners u/s 68 of the Act cannot be sustained and needs to be deleted.

13. The Ld.DR for the Revenue, on the other hand, supporting the order of the Ld.CIT(A) on this issue submitted that when the Ld.CIT(A) passed appellate order, the decision of Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd.(supra) was not available. Therefore, on the basis of the above decision, the benefit cannot be given to the assessee. Therefore, he submitted that there is no merit in the ground of cross objection filed by the assessee, and same needs to be dismissed.

14. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessment year in question is unabated / concluded as on the date of search, because the date of search in the present case is on 04.03.2019 and due date for issue of notice u/s 143(2) of the Act for selection of case for scrutiny assessment was expired on 31.07.2017. It is also an admitted fact that the additions made by the Assessing Officer towards fresh capital introduced by partners is not based on any incriminating material found during the search, but based on regular books of accounts of the assessee. It is a well settled principle of law by the decision of Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd.(supra), where the Hon'ble Supreme Court held that in respect of completed assessments / unabated assessments, no additions can be made by the Assessing Officer in the absence of any incriminating material found during the course of search u/s 132 or requisition u/s 132A of the Act. The Hon'ble Court after considering the arguments of the Revenue

that even in the case of unabated / completed assessment, the Assessing Officer can assess or reassess the total income, taking into consideration incriminating material unearthed during the search and the other material, the Hon'ble Court further held that the object of section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition, therefore, only in a case where undisclosed income is found on the basis of incriminating material, the Assessing Officer would assume the jurisdiction to assess or reassess total income for entire six years block assessment period even in case of completed / unabated assessment. As per second proviso to section 153A, in which the pending assessment or reassessment shall stand abated and the Assessing Officer would assume jurisdiction with respect to such abated assessment, which does not provide that all completed / unabated assessment shall abate. If the submission on behalf of the Revenue is accepted, in that case, second provision to section 153A and sub-section (2) of Section 153A would be redundant and / or rewriting the said provisions, which is not permissible under the law. The sum and substance of the ratio laid down by the Hon'ble Supreme Court is that, in respect of completed assessments / unabated assessments, no additions can be made in the absence of any incriminating material found during the course of search u/s 132 of the Act. In the present case, going by the assessment order, we find that the additions made by the Assessing Officer towards capital account of partners u/s 68 of the Act is not based on any incriminating material found as a result of search. Therefore, we are of the considered opinion that the additions

made by the Assessing Officer towards capital account of partners u/s 68 of the Act in the assessment order passed u/s 153A of the Act, without any reference to incriminating material found during the course of search u/s 132 of the Act cannot be sustained. Thus, we direct the Assessing Officer to delete the additions made towards capital account of partners u/s 68 of the Act.

15. Coming back to the appeal of the Revenue, the Revenue has challenged the order of the Ld.CIT(A) on merits, where the Ld.CIT(A) has deleted the additions made by the Assessing Officer towards fresh capital introduced by partners amounting to Rs.5,14,62,895/- made u/s 68 of the Act. The Ld.DR submitted that the Ld.CIT(A) erred in deleting the additions made by the Assessing Officer towards capital account of partners without appreciating the fact that the appellant failed to file relevant evidences to prove identity, genuineness and creditworthiness of the partners. The Ld.DR, further submitted that the Ld.CIT(A) ought to have followed the his decision for the A.Y.2018-19, wherein, the amounts introduced as capital in cash were held as unexplained, even though the facts are identical for both the assessment years. Therefore, he submitted that the additions made by the Assessing Officer should be upheld.

16. The learned Counsel for the assessee on the other hand, supporting the order of the Ld.CIT(A) submitted that the appellant has filed evidences and proved the credits in the form of capital account of partners by filing relevant evidences. The Ld.CIT(A), after considering relevant facts has rightly deleted the

additions made by the Assessing Officer and the order should be upheld.

17. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The Assessing Officer made additions towards fresh capital introduced by partners on the ground that the amount of fresh capital introduced in the name of various partners in unaccounted income of the appellant, which has been rerouted to the books of accounts of the firm through capital accounts of the partners. It was the argument of the assessee before the Assessing Officer that it has filed relevant evidences to prove identity of partners, genuineness of transactions and credit worthiness of the partners. The appellant further submitted that all the partners are income tax assesseees and having sufficient sources of income to explain the amount of capital contribution to appellant firm. Further, the partners have withdrawn the amount from their capital account in the earlier financial years and the same has been introduced as capital account in the subsequent financial years. Therefore, it cannot be held that fresh capital introduced by the partners is unaccounted income of the appellant firm.

18. We have given our thoughtful consideration to the reasons given by the Ld.CIT(A) to delete the additions made by the Assessing Officer towards capital account of the partners in light of the arguments of the Ld.DR and counter arguments of the learned Counsel for the assessee and we ourselves fully subscribe to the reasons given by the Ld.CIT(A) for the simple reason that, the Assessing Officer made additions towards fresh

capital introduced by the partners only on the basis of suspicion and surmises, without there being any evidence to suggest that the capital introduced by the partners is unaccounted income of the appellant firm. On the other hand, appellant firm submitted the details of partners along with name and address, PAN and income tax returns filed. The partners also filed confirmation letters before DDIT (Investigation) vide letters dated 11.06.2019. The DDIT (Investigation) summoned the partners and recorded statement u/s 131 on 14.06.2019, where, they have admitted to have introduced fresh capital into the partnership firm. From the details submitted by the assessee, we find that the appellant is able to establish identity, genuineness of transactions and creditworthiness of the partners. The Ld.CIT(A) after considering relevant facts has rightly held that the Assessing Officer has made addition only on the basis of suspicion and surmises, without any clinching evidence to suggest that the amount of capital introduced by the partners is unexplained credit or income of the appellant firm. The findings of facts recorded by the Ld.CIT(A) is uncontroverted by the Revenue. Therefore, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue.

19. In the result, cross objection filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

ITA No.163/Hyd/2022, A.Y.2018-19 (Assessee's Appeal)

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

1. *The order of the learned Commissioner of Income-tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

2. *The learned Commissioner of Income-tax (Appeals) ought to have seen that no addition can be made as none of the additions made by the Assessing Officer are based on the material found during the course of search and seizure operations;*

3. *The learned Commissioner of Income Tax (Appeals) erred in holding that the provisions of sec.153A are applicable and further erred in confirming the addition when no material was found.*

4. *The learned Commissioner of Income-tax(Appeals) erred in confirming the addition of Rs.45,58,000/- made by the Assessing Officer u/s 68 of the I.T.Act without considering the fact that all the persons have confirmed the fact of investing the amount into the partnership firm and no information to the contrary was found during the course of search and seizure operations;*

5. *Any other ground or grounds that may be urged at the time of hearing.*

21. The learned Counsel for the assessee submitted that the Ld.CIT(A) erred in sustaining the additions made by the Assessing Officer towards capital introduced by the partners amounting to Rs.45,58,000/- u/s 68 of the Act without appreciating the fact that the appellant has filed all evidence including confirmation letter from the partners to prove identity of the partners, genuineness of the transactions and creditworthiness of the partners. The learned Counsel for the assessee further referring to the decision of Hon'ble High Court of Telangana in the case of Nova Medicare Vs. ITO [2023] 150 taxmann.com 363 (Telangana), submitted that assuming for a moment, the appellant could not explain the source of income of

partners regarding the capital contribution, but the same cannot be added as income of the appellant and further unexplained credits should have been assessed in the partners individual accounts alone. Therefore, she submitted that the additions made by the Assessing Officer and sustained by the Ld.CIT(A) should be deleted.

22. The learned DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that the capital introduced by the partners is in cash and the appellant firm has failed to explain the source of capital introduced by the partners. Although the appellant claims to have filed all evidences, but the Ld.CIT(A) recorded his categorical finding that the appellant firm failed to establish identity, genuineness and creditworthiness of the partners. Further out of 24 partners, 22 partners are not assessed to income tax. All the 24 partners have filed generic confirmation letters and neither a word about sources of income is mentioned nor a single document in support of the sources was furnished. Therefore, the Ld.CIT(A) has rightly sustained the additions made by the Assessing Officer and the order should be upheld.

23. 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 relevant case laws relied upon by the learned Counsel for the assessee in support of their contention. Admittedly, the appellant firm has filed relevant details including name and address of the partners, amount of capital contribution to the appellant firm and confirmation letter from the parties. Further the appellant had also filed other

evidences like ITR copies in few cases. From the details filed by the assessee, we find that the capital contribution from the partners is less than Rs.2 lakhs in all the cases. Since the appellant has filed certain evidences to prove the identity of the parties, in our considered view, even if the appellant failed to explain or prove the source of capital introduced by the partners in their individual capacity, but the amount of capital contribution received from its partners cannot be assessed as unexplained cash credit in the hands of the assessee and further unexplained credits, if any needs to be assessed, then the same needs to be assessed in the individual partners assessment. This principle is supported by the decision of Hon'ble High Court of Telangana in the case of Nova Medicare Vs. Income Tax Officer (supra), where the Hon'ble High Court held as under :

“13. Submissions made by learned counsel for the parties have received the due consideration of the Court.

14. After thorough consideration of all relevant aspects, we are of the view that issue raised in this appeal is squarely covered by the decision of this Court in M.Venkateswara Rao (supra) which is binding on us. That was also a case where certain cash credits were advanced by the partners, which according to the revenue authorities remained unexplained and accordingly were added to the income of the firm. In the facts of that case, this Court held as follows :

7. It is a matter of record that the respondent-firm comprises of ten partners and each of them made contributions, be it in the form of cash or bank guarantees to be furnished to the Government, at the commencement of business. The returns submitted by the respondent-firm were processed, and the facts and figures furnished by it were accepted. However, the matter was reopened at a

later point of time. The Assessing Officer treated the capital raised by the firm in the form of contributions made by the partners as income. This conclusion was arrived at on the ground that source of income for the partners was not explained. Learned counsel for the appellant placed reliance upon the judgment of the Patna High Court in *CIT v. Anupam Udyog* [1983] 142 ITR 133/15 Taxman 259. The Tribunal rested its conclusions upon the judgment of the Bombay High Court in *Narayandas Kedarnath v. CIT* [1952] 22 ITR 18 and that of Allahabad High Court in *CIT v. Jaiswal Motor Finance* [1983] 141 ITR 706.

8. Section 68 of the Act no doubt directs that if an assessee fails to explain the nature and source of credit entered in the books of account of any previous year, the same can be treated as income. In this case, the amount, that is sought to be treated as income of the firm, is the contribution made by the partners, to the capital. In a way, the amount so contributed constitutes the very substratum for the business of the firm. It is difficult to treat the pooling of such capital, as credit. It is only when the entries are made during the course of business that can be subjected to scrutiny under Section 68 of the Act.

9. Even otherwise, it is evident that the respondent explained the amount of Rs.76,57,263 as the contribution from its partners. That must result in a situation, where Section 68 of the Act can no longer be pressed into service. However, in the name of causing verification under Section 68 of the Act, the Assessing Officer has proceeded to identify the source for the respective partners, to make that contribution. Such an enquiry can, at the most be conducted against the individual partners. If the partner is an assessee, the concerned Assessing Officer can require him to explain the source of the money contributed by him to the firm. If on the other hand, the partner is not an assessee, he can be required to file a return and explain the source. Undertaking of such an exercise, vis-a-vis the partnership firm itself, is impermissible in law. In the judgment relied upon by the appellant itself, the Patna High court held as under (page 137 of 142 ITR):

"If there are cash credits in the books of a firm in the accounts of the individual partners and it is found as a fact that cash was received by the firm from its partners, then in the absence of any material to indicate that they are the profits of the firm, they cannot be assessed in the hands of the firm, though they may be assessed in the hands of the individual partners. Cash credits in the individual accounts of members of a joint family with third party cannot be assessed as the income of the family unless the Department discharges the burden of proof to the contrary."

10. Therefore, the view taken by the Assessing Officer that the partnership firm must explain the source of income for the partners regarding the amount contributed by them towards capital of the firm cannot be sustained in law.

11. As regards the other amount i.e., unexplained credit entries, the Tribunal took the view that the amount represented the security deposits made by the retail dealers, and the source thereof was properly explained. Nowhere in the order of assessment, the Assessing Officer recorded any finding to the effect that he verified the matter from the respective retail dealers and that such dealers have denied of making deposits. In the field of Arrack business, it is not uncommon that the retail dealers are required to keep security deposits with the supplier. At any rate, it is a pure question of fact.

12. Therefore, the appeal is dismissed.

15. Following and applying the aforesaid decision of this Court, Patna High Court in Anurag Rice Mills (supra) held that in such circumstances the unexplained cash credits would have to be assessed at the hands of the partners of the firm and not the firm itself. Such amounts could not have been treated as income of the firm by relying upon Section 68 of the Act.

16. In view of the above position, we answer the substantial questions of law in favour of the appellant- assessee and against the respondent-revenue insofar the cash credits pertaining to the two partners of the appellant firm i.e., Smt. K.Sujatha and Sri K.Prabhakar Reddy only are concerned."

24. In view of this matter and considering the facts of the case and also by respectfully following the decision of Hon'ble High Court of Telangana in the case of Nova Medicare Vs. Income Tax Officer (supra), we are of the considered view that, where the assessee firm received capital contribution from its partners, the assessee firm was not required to explain the source of income of partners of such capital contribution and thus, the additions made u/s 68 in the hands of the firm towards capital contribution as unexplained cash credit cannot be sustained. The Ld.CIT(A) without appreciating the relevant facts, simply sustained the additions made by the Assessing Officer. Thus, we set aside the order of the Ld.CIT(A) and direct the Assessing Officer to delete the additions made towards capital contribution u/s 68 of the Act.

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

26. To sum up, appeals filed by the assessee for the A.Y.2015-16 and 2018-19 and the cross objections filed by the assessee for the A.Y.2016-17 are allowed and the appeal filed by the Revenue for the A.Y.2016-17 is dismissed.

Order pronounced in the Open Court on 12th December, 2024.

Sd/- (VIJAY PAL RAO) VICE PRESIDENT	Sd/- (MANJUNATHA G.) ACCOUNTANT MEMBER
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Hyderabad,
dated 12th December, 2024
L.Rama, SPS

Copy to:

S.No	Addresses
1	M/s Satty and Associates, 8-2-684/11/9, Plot No.9, Road No.12, Banjara Hills, Hyderabad
2	The Assistant Commissioner of Income Tax, Central Circle-1(2), Hyderabad
3	The Pr. CIT (Central), Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order