

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' DB-B ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA Nos.1796 to 1798/Hyd/2019 & ITA**
Nos.30 and 31/Hyd/2020
(निर्धारण वर्ष/Assessment Years: 2008-09 to 2010-11)

Dy. CIT Circle 16(2) Hyderabad (Appellant)	Vs.	Shri Parasuraman Karthik Iyer, CHENNAI PAN:AFTPK1261M (Respondent)
राजस्व द्वारा/Revenue by:		Smt. M. Narmada, CIT(DR)
निर्धारिती द्वारा/Assessee by:		Shri A. Srinivas, CA
सुनवाई की तारीख/Date of hearing:		06/02/2025
घोषणा की तारीख/Pronouncement:		30/04/2025

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These 5 appeals filed by the Department are directed against the separate orders of the learned CIT (A)-4, Hyderabad, out of which 3 appeals are arising from the orders passed u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 for the A.Y 2008-09 to 2010-11 and 2 appeals are arising from the penalty order passed u/s 271(1)(c) of the Act, for the A.Ys 2009-10 and 2010-11 respectively. In the quantum appeals, the Department has raised

identical grounds, except the quantum of additions. The grounds raised by the Department in the quantum appeals are as under:

ITA No.1796/Hyd/2019 – A.Y 2008-09

“1. The learned CIT (A) erred in deleting the addition made by the Assessing Officer which was based on congruent impounded.

2. Any other ground that may be raised at the time of hearing”.

The

ITA No.1797/Hyd/2019 – A.Y 2009-10

“1. The learned CIT (A) erred in deleting the addition made by the Assessing Officer which was based on congruent impounded.

2. Any other ground that may be raised at the time of hearing”.

ITA No.1798/Hyd/2019 – A.Y 2010-11

“1. The learned CIT (A) erred in deleting the addition made by the Assessing Officer which was based on congruent impounded.

2. Any other ground that may be raised at the time of hearing”.

3. The assessee is an individual and an Executive of the Deccan Chronicle Holdings Ltd deriving income from salary, business, capital gains and other sources. The assessee filed his return of income for the A.Y 2008-09 on 29/09/2008 declaring total income of Rs.2,38,50,370/-. The return was initially processed u/s 143(1) of the Act and thereafter, the assessment was reopened by issuance of notice u/s 148 of the Act for the A.Y 2008-09 to assess the income escaped the assessment on account of the cash received by the assessee for giving donation to M/s. South Indian Educational Society College of Commerce and Economics, Mumbai which was claimed as deduction u/s 80G of

the I.T. Act, 1961. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 147 of the Act whereby the addition of Rs.1,50,00,000/- was made by the Assessing Officer on account of cash received by M/s. South Indian Educational Society for giving donation of the identical amount and claimed deduction u/s 80G of the Act. Similar additions were made by the Assessing Officer for the A.Y 2009-10 of Rs.6,50,00,000/- and for the ay 2010-11 of Rs.12,10,00,000/- respectively. The assessee challenged the action of the Assessing Officer before the learned CIT (A) and contended that the additions were made by the Assessing Officer on the basis of the statement of Shri V Shankar, Secretary of the M/s. South Indian Educational Society Trust, Shri G. Chidambaram, Treasurer of the said Society and Shri N. Venkatanathan, alias Rajamani, Life Member of M/s. South Indian Educational Society Trust and Personal Secretary of Sri V Shankar recorded by the Investigation Wing of the Department during the survey conducted at the said Society Trust. The assessee contended that when the assessee was not given the opportunity to cross examine the witness which was the basis of the additions made by the Assessing Officer, the learned CIT (A) accepted the contention of the assessee and deleted the additions made by the Assessing Officer.

4. Before the Tribunal, the learned CIT (DR) has submitted that the addition is not merely based on the statement but the incriminating material was found and impounded by the Director of Income Tax (Inv.) Mumbai during the survey conducted in case of M/s. South Indian Educational Society Trust

showing that the Trust has received the capitation fee and the same was converted into donation by adopting the modes operandi of paying the cash to different individual and receiving back the same as donation. As per the impounded material, it is established that the assessee has received Rs.1,50,00,000/- during the financial year 2007-08, Rs.6,50,00,000/- during the financial year 2008-09 and Rs.12,10,00,000/- during the financial year 2009-10 respectively from M/s. South Indian Educational Society. The Assessing Officer asked the assessee to explain and produce the relevant details and evidences. However, instead of producing any supporting evidence to show that the donations given by the assessee in these A.Ys are out of assessee's own funds and not against the consideration of the alleged amount in cash. The learned DR has further submitted that the assessee has only raised an objection for an opportunity to cross examine the persons from whom the statements were recorded. The Assessing Officer has made it clear to the assessee that the said statements were recorded by the Investigation Wing at Mumbai and therefore, the opportunity to cross examine the persons cannot be given to the assessee by the Assessing Officer. The learned DR has further contended that the evidences gathered during the search along with the statements recorded from the officials/office bearers of the Trust have a great evidentiary value and in the absence of rebuttal on the part of the assessee, the additions made on the basis of the said evidence is justified. The learned DR has then referred to the findings of the learned CIT (A) and submitted that the learned CIT (A) has deleted the addition only on the ground that the Assessing Officer has

made the addition on the basis of the information and evidence gathered by the Investigation Wing without giving an opportunity to the assessee to cross examine the persons whose statements were relied upon by the Assessing Officer. She has contended that the assessee has not disputed the fact which is also a matter that the assessee has given the donation of huge amounts during these 3 years and during the investigation in the case of the Trust, it was unearthed that the said Trust was collecting capitation fee and the same was converted into donation as the cash was routed through the persons including the assessee. Therefore, it is a case of arrangement of these transactions with the sole motive of avoidance of the Tax on the part of the Trust as well as on the part of the assessee. Thus, the learned DR has submitted that the orders of the learned CIT (A) be set aside and the order of the Assessing Officer be restored.

5. On the other hand, the learned AR of the assessee has submitted that the Assessing Officer has made the additions solely on the basis of the statement of the office bearers of M/s. South Indian Educational Society Trust without giving an opportunity of cross examination to the assessee. He has further contended that the Assessing Officer has not brought any material on record to show that the assessee has received the alleged cash. Therefore, the addition made by the Assessing Officer on account of the alleged cash received by the assessee is not sustainable in law and has rightly been deleted by the learned CIT (A). In support of his contention, he has relied upon the following decisions:

- i) Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Excise, Kolkata (S.C) reported in 281 CTR 214.
- ii) Hon'ble Delhi High Court in the case of CIT vs. Ashwani Gupta reported in 288 ITR 386 (Delhi High Court).
- iii) Hon'ble Delhi High Court CIT vs. SMC Share Brokers Ltd reported in [2007]288ITR386(DELHI)
- iv) ITAT Ahmedabad Benches in the case of Nirav Chandrakantbhai Bhalani vs. Pr. CIT in ITA No.1041/Ahd/2024

6. Thus, the learned AR of the assessee has submitted that when the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Excise, Kolkata (Supra) has held that not allowing the assessee to cross examine the witness by the adjudicating authority whose statements were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounts to violation of principles of natural justice. He has further submitted that similar view has been taken by the Hon'ble Delhi High Court in the case of CIT vs. Ashwani Gupta (Supra) as well as the order of the Coordinate Bench of the Tribunal in the cases cited above. He has strongly supported the impugned order of the learned CIT (A).

7. We have considered the rival submission as well as relevant material available on record. There is no dispute that the assessee has given the donations of Rs.1,50,00,000/- during financial year 2007-08, Rs.6,50,00,000/- during the financial year 2008-09 and Rs.12,10,00,000/- during the financial year

2009-10 to M/s. South Indian Educational Society Trust and claimed the deduction u/s 80G of the I.T. Act, 1961 for the A.Ys under consideration. There was an investigation carried out in case of M/s. South Indian Educational Society Trust by the Investigation Wing of Mumbai and during the course of said investigation, certain incriminating materials were seized and impounded revealed the fact that the said Society was collecting capitation fee and the same was converted into donation with the modus operandi of paying the cash to the persons and receiving back the cheques in the name of donations. The Assessing Officer has issued a show cause notice to the assessee dated 4/3/2015 which is re-produced in para 6 of the as order as under:

6.0 Based on the information furnished and material available with the department, a show cause letter dated 04.03.2015 to assessee was issued proposing why the unaccounted portion of cash shall not be added back to the assessed income. The show cause letter is reproduced as under:

"The Income tax proceedings in your case for the AY 2009-10 are pending before the undersigned. Substantial evidence was received by the department regarding cash transactions incurred by you with M/s South Indian Educational Society College of Commerce and Economics, T.V. Chidambaram Marg, Sion (East), Mumbai. Accordingly, the assessment proceedings were re-opened by issuing notice U/s 148 Dtd. 4.11.2013 and the same was duly served on you. In response to notice U/s 148, you have filed reply vide letter dtd. 04.12.2013 stating that "the return filed vide Ack. 100588. declaring Return of Income of Rs. 2,38,50,370/- can be considered as the return filed, in response to notice U/s 148". Subsequently, assessment proceedings are continued by issuing notice U/s 143(2) and notices U/s 142(1), to furnish the information called for. Further, you have also requested reasons for re-opening of the assessment proceedings vide letter dtd 04.12.2013. As requested by you the reasons for re-opening has been furnished vide this office letter dtd. 05.01.2015. Subsequently, the assessee has filed the objections for re-opening vide your letter dtd. 23.01.2015. All your objections, for re-opening of the assessment proceedings were duly considered and clearly rebutted vide this office letter dtd. 04.02.2015.

It is bring to you notice that, a survey proceedings U/s 133A of the I.T.Act,1961 was conducted by DDIT(Inv.), Unit – VIII(4), Mumbai on 11.05.2010 & 12.05.2010 in the premises of M/s South Indian Educational Society College of Commerce and Economics, T.V. Chidambaram Marg, Sion (East), Mumbai, and M/s South Indian Educational Society High School, K A Subramanyam Road, Muthunga, Mumbai. During these proceedings, it is observed by the department that the directors of these educational institutions were giving cash to many persons and in turn receiving back the same through cheque in the form of donations to these educational institutions. Thus the persons, who are giving donations, are bringing unaccounted income into regular books of accounts. The relevant impounded material has been obtained from the concerned DDIT.

Upon perusal of impounded material, it is observed that, the assessee has also received unaccounted cash from the directors of these educational institutions and given back these amount as donations in cheque, thus claiming deduction U/s 80G of the I.T. Act. During the FY 2007-08, relevant to the AY 2008-09, the assessee has received unaccounted cash amounting to Rs. 1,50,00,000/- from M/s South Indian Educational Society trust. The same has been duly confirmed by the Sri. V. Shanker, Honorary Secretary of M/s South Indian Educational Society Trust, Sri. G.Chidambaram, Treasurer of M/s South Indian Educational Society Trust and Sri. N. Venkatanatham, Life member of M/s South Indian Educational Society Trust and personal secretary of Sri. V. Shanker, in their sworn statements, recorded under oath during the survey proceedings. In turn you have given back these unaccounted cash through cheque.

It is bring to your notice that authenticate and real facts of the assessee will be detected during the Search / Survey proceedings. Hence, the search / Survey proceedings bring the substantial and tangible evidence regarding business operations. Further, the evidences gathered during these proceedings have great evidentiary value. Even the statements recorded, under oath, during Search / Survey proceedings also have great evidentiary value and the same can be used before judicial authorities.

In the assessee's case for the AY 2008-09, it is confirmed by the persons associated with the South Indian Educational Society trust that the assessee is given unaccounted money in the form of cash and in turn received back the same through cheque. Thus the assessee is involved in converting unaccounted cash and bringing back into regular books of accounts. Further, complete transaction has not been recorded in books of the assessee for the AY 2008-09. Hence, it is inferred that the assessee is involved in out of books cash transactions.

In view of the above observations, you are required to show cause, as to why the unaccounted cash in your possession shall not be added back to your assessed income, as per the provisions of Income Tax Act 1961. Further, you are also required to substantiate your claims, if any, with substantial and concrete documentary evidences. Your reply / objections shall be submitted on or before 09.02.2015, otherwise the issues will be decided based on merits of the case and facts / material available with the department."

8. The reply to the said show cause notice by the assessee is also reproduced by the Assessing Officer in para 7 of the assessment order as under:

7.0 In reply to this show cause letter, the assessee's AR vide letter dated 04.02.2015 made submissions, reiterating the submissions made on dtd. 28.01.2015, which are reproduced here under:

"Kindly refer to the show cause letter dated 04.03.2015 calling for reasons as to why the unaccounted portion of cash shall not be added back to your assessed income. In reply to the notice I submit that it shall not be added for the following reasons.

2.1 *It is stated in your letter that "upon perusal of the impounded materials and statements recorded under oath from Sri. V shaker, G. Chidambaram and N. Venkatanathan... It is noticed that the assessee during the F.Y. 2007-08 relevant to the Asst. Year 2008-09 has received unaccounted cash from M/s South Indian Educational Society Trust and made donation amounting to Rs. 1,00,00,000/- to M/s South Indian Educational Society Trust".*

2.2 *From the above reasons, it is not clear whether the reopening is prompted by 'impounding materials' or 'statement recorded'. If it is based on impounding materials, it is necessary in order to know if it is 'tangible materials' as defined by Hon'ble Supreme Court in the case of CIT Vs Kelvinator of India Ltd.(2010) 320 ITR 561 to countable that income chargeable to tax escaped assessment. Relevant portion of the judgment for ready reference.*

"However, one needs to give a schematic interpretation to the words 'reason to believe', failing which section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of 'mere change of opinion', which cannot be per se reason to reopen. One must also keep in mind the conceptual difference between power of review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess, but the reassessment has to be based on fulfillment of certain per-conditions and it the concept of 'change of opinion' is removed as contended on behalf of the department, then in the grab of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment. Under Direct Tax Laws (Amendment) Act, 1987, the Parliament not only deleted the words 'reason to believe' but also inserted the word 'opinion' in section 147. However, on receipt of representations from the companies against omission of the words 'reason to believe', the Parliament reintroduced the said expression and deleted the word 'opinion' on the ground that it would vest arbitrary powers in the Assessing Officer".

On the subject, ITAT, Hyderabad Bench 'A', in the case of AP Mineral Development Corporation Vs. DCIT in ITA No. 419/Hyd/2013 dated 12.07.2013, referred to the above judgment of Supreme Court emphasizing the need that 'there should be tangible material' to the conclusion that income had escaped assessment.

It is once reiterated that I had not received any unaccounted cash from the said South Indi Educational Society Trust. Since I deny that I have received unaccounted cash from the said Societ Trust, I can plead that there cannot be any tangible material to enable you good selves to believe tha income chargeable to tax escaped assessment in my case. In case it is otherwise, I request you to kindly provide me with the same so as to enable me to confront and prove the mala fides.

3.1 *In case the reopening w/s 147 is based on the statements given on oath by V. Shankar, G. Chidambaram and N. Venkatanathan alias Rajamani, it is contended that the same cannot be relied upon because placing reliance on 'third party assessee' is not 'material' for coming to conclusions on escapement of income as has been held by Hon'ble Madras High Court in the case of P.S. Veerappa Vs. CIT(127 ITR 247).*

3.2 *The ratio of above judgment was followed by ITAT, Mumbai, in the case of Shaf Boardcast P. Ltd. Mumbai Vs. ACIT in ITA No. 1189/Mum./2012 dt. 17.04.2013.*

3.3 *It is also requested to provide an opportunity to cross examine the two persons on whose statements the proposal of additions is based. Providing such facility is incumbent upon the departmental authorities, for denial of the right to cross examine is sufficient to vitiate the order. Kind reference is invited to the judgment in the case of P.S. Abdul Majeed Vs. Agricultral ITO (1994) ITR 821 (Kerla).*

3.4 *It is also brought to your kind notice that their Lordship observed that a statement of a director of the company is also subject to right of cross examination on the ground of natural justice and in the absence of right of cross examination being provided despite request by the assessee, such statement could not be relied upon to the detriment of the assessee- CIT v. SMC Share Brokers Ltd., (2007) 288 ITR 345 (Delhi).*

3.5 *On affording opportunity to cross examine, the Delhi High Court in CIT Vs. Dharampal Prem Chand Ltd. (2007) ITR 105, held: "There is no doubt that even if strict rules of evidence may not apply, the basic principle of natural justice would apply and the AO is obliged to grant opportunity".*

3.6 *It is further submitted that not addition could be made merely be relying on the statement recorded under section 132(4) when there is no evidence or material to justify such addition-ACIT vs. Anoop Kumar [2005] 147 Taxman 26(Asr.) (Mag.).*

3.7 *It is further brought to your kind notice that evidence to be used against assessee can only be done after an opportunity to controvert and cross examine such evidence/statement. It is also relied on*

the following case laws in the following propositions - Kishanchand Celluram Vs. CIT reported in 125 ITR 713(SC).

4. *It is submitted that the inference that the assessee is in possession of cash is without any basis.*
5. *It is submitted that no evidence can be produced for a thing which has not happened. Therefore, it cannot be substantiated.*
6. *In view of the above facts and legal position, my submissions made above may be considered and the proposed addition may be dropped."*

9. Thus, in reply the assessee has not produced any detail or record to show that the donations given by the assessee are source from assessee's own funds and not from the alleged cash received by the assessee from the said society. This is not a case where a fact is revealed during the course of investigation which is denied by the assessee but in the case of the assessee the donations are not in dispute and the only fact which was detected during the investigation is that the said society indulged in collecting the capitation fee and converting the same into donation through various persons including the assessee. The Assessing Officer has referred the statements of the various office bearers of the said society who explained the modus operandi and admitted the fact that the said society received unaccounted cash and given these amounts to the persons who converted the same into donation. Therefore, the donations given by the assessee to the said society coupled with the material found during the investigation and the statements recorded by the Investigation Wing from the office bearers of the said society clearly made out a case of alleged conversion of cash into donations and hence, the onus is shifted to the assessee to dispel the said allegation based

on the material as well as facts and circumstances brought on record by the Assessing Officer with some supporting evidence on the part of the assessee to show that the donations given by the assessee are not sourced or against consideration of the receipt of the alleged cash. This is not a fact brought on record by the Assessing Officer solely on the basis of the statements recorded by the Investigation Wing but the donation given by the assessee is not in dispute and what is the controversy in the case is only whether the assessee has given the donation as part of the arrangements between the society and the assessee to convert the unaccounted cash into donation or not. Therefore, the assessee was under the obligation to produce the record to establish that the donation was given by the assessee to the tune of Rs.20.10 crores during these 3 years is not against the receipt of cash but it is a voluntary donation from the assessee's own funds. Prima facie, the Assessing Officer has brought on record the relevant material and facts to suggest that there was an arrangement between the society and the other persons including the assessee that the sole purpose of this arrangement is to avoid the tax and that too double avoidance of tax on both sides. The society has avoided the tax by converting unaccounted cash into donation and the persons who are giving the donation against the cash are also taking the benefit of section 80G of the I.T. Act, 1961 by misuse and abuse the provisions of the Act. We found that during the assesment proceedings as well as before the learned CIT (A), the assessee has not produced any evidence to dispel the allegation based on the investigation conducted by the Department in case of M/s. South Indian Educational Society,

Mumbai. These appeals are filed by the Department and the assessee chose not to file any record even before us to show that the donations given by the assessee are genuine transaction and not against the alleged receipt of cash. The learned CIT (A) has deleted the addition only on the technical ground in para 8.4 and 9 as under:

“8.4 In this regard, verification of the assessment records and the details furnished by the appellant revealed that there is no evidence to show that the appellant has received Rs.1,50,00,000/- for the year under appeal. Hence, the opinion drawn by the AO in this regard is held to be inconclusive as they are not substantiated by any cogent material. As can be seen from the above, it can be concluded that there was nothing on the record to show that the appellant has received cash of Rs. 1,50,00,000/- from the above Society. Moreover, the appellant has issued cheques from his own source of funds. The AO's conclusion that the amounts have come back to the appellant and has to be assessed in the hands of the appellant does not seem to be logical. In this regard, the case laws relied upon by the AR are directly on the issue on hand. Hence, respectfully following the same and also on verification of the facts, the AO's action in treating the said amount of Rs.1,50,00,000/- in the hands of the appellant as income is without any cogent evidence. Therefore, the addition of Rs. 1,50,00,000/- made by the AO is directed to be deleted. As a result, the grounds raised in this regard are allowed.

9. It is seen from the assessment order, the assessed income was arrived at Rs.4,01,05,649/-. As the AO made an addition of Rs.1,50,00,000/- to the returned income of Rs.2,38,50,370/-, the assessed income works out to Rs.3,88,50,370/- only. Thus, there is a difference of Rs.12,55,279/- appeared to have been occurred as a result of wrong totaling. Therefore, AO is directed to verify the same and modify the assessed income accordingly. As a result, the ground raised in this regard is allowed for statistical purposes”

10. Thus, it is manifest from the order of the learned CIT (A) that the assessee has not produced any record and consequently, the learned CIT (A) has not given the findings on

the basis of the record/evidence filed by the assessee to show that the donations given by the assessee are not in exchange of alleged cash. Hence, in the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of the learned CIT (A) in the appeals arising from the re-assessment order for the A.Ys 2008-09 to 2010-11 and the matters are remanded to the record of the Assessing Officer for fresh adjudication after conducting a proper inquiry and to trace out the money trail of the alleged cash received directly or indirectly by the assessee. The assessee is also directed to produce all the relevant details and evidence to prove that the donations given by the assessee for these 3 years are genuine transaction and source from its own funds.

11. In the result, appeals in ITA Nos.1796 to 1798/Hyd/2019 are allowed for statistical purposes.

ITA Nos.30 & 31/Hyd/2020

In ITA Nos.30 & 31/Hyd/2020 the Revenue has raised identical grounds as under:

ITA No.30/Hyd/2020

“1. The learned CIT (A) erred in deleting the penalty levied of Rs.2,21,59,780/- u/s 271(1)(c) of the I.T. Act, 1961.

ITA No.31/Hyd/2020

“1. The learned CIT (A) erred in deleting the penalty levied of Rs.3,73,89,000/- u/s 271(1)(c) of the I.T. Act, 1961.”

12. The penalty levied u/s 271(1)(c) of the I.T. Act, 1961 is consequential to the addition made by the Assessing Officer. Since we have set aside the matter of additions made by the

Assessing Officer in the quantum appeals, therefore, the matters of levy of penalty u/s 271(1)(c) of the Act are also set aside to the record of the Assessing Officer for taking the steps as per the outcome of the set aside proceedings in the quantum appeals.

13. In the result, all the 5 appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in the Open Court on 30th April, 2025.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
--	---

Hyderabad, dated 30th April, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	Dy.CIT Circle 16(2) 2 nd Floor, B Block, IT Towers, AC Guards, Masab Tank, Hyderabad
2	Sri Parasuraman Karthik Iyer, House No.2, LIC Colony Dr. RK Nagar, Thiruvanimayur, Chennai 600041
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order