

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

श्री मंजूनाथ जी., माननीय लेखा सदस्य
एवं
श्री रवीश सूद, माननीय न्यायिक सदस्य

SHRI MANJUNATHA G., HON'BLE ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

आ.अपी.सं /**ITA No.514/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Gowri Shankar Gupta Hyderabad PAN : ACGPG2124D	Vs.	Income Tax Officer Ward-2(3) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Sashank Dundu, AR	
राजस्व द्वारा / Revenue by:	Shri D.Praveen, DR	
सुनवाई की तारीख / Date of Hearing:	08/05/2025	
घोषणा की तारीख / Date of Pronouncement:	15/05/2025	

आदेश / ORDER

प्रति रवीश सूद, जे.एम. / PER RAVISH SOOD, J.M.

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals) ["CIT(A)"], National Faceless Appeal Centre, Delhi dated 17.01.2024, which in turn arises from the assessment order

passed by the Assessing Officer (“the AO”) u/s 143(3) of the Income Tax Act, 1961 (“the Act”) dated 10.12.2019.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. On the facts and in the circumstances of the case the order passed by the National Faceless Appeals Centre(hereinafter referred to as NFAC) is erroneous both on facts and in law.

2. The NFAC erred in confirming the addition made by the AO amounting to Rs.11,02,500/- on account of rental receipt from M/s leadspace under the head income from other sources.

3. The NFAC erred in assuming that there was no agreement with respect to the rental receipts whereas the fact remains that an agreement was entered into between the appellant and M/s leadspace for a period of 9 years commencing from 01.11.2014.

4. The NFAC ought to have noticed that as per the agreement dt. 01.10.2014 greenland side on terrace of the GS Shamlal icon was allotted to M/s leadspace for utilisation of the same to construct hoarding and thus the rent received therefrom is nothing but the income referable to the allotment of space of the building.

5. The NFAC erred in confirming the addition made by AO amounting to Rs.35,13,000/- on account of cash deposits in bank account as unexplained income even though the appellant has submitted a cash flow statement explaining the fact that the

aforesaid amount emanated from the cash in hand available with the appellant.

6. The NFAC erred in confining itself to the figure appearing under schedule AL in the return of income since the said figure was mistakenly entered by the accountant ignoring the correct amount of Rs. 36,66,031/- available as opening cash in hand of the Appellant as on 01.04.2016.

7. The NFAC. erred in solely relying on the figure appearing under schedule AL in the return of Income of earlier year even though glaring evidences such as financial statements as well as cash flow statement was produced by the Appellant to prove the factual situation.

8. The NFAC erred in confirming the addition of the AO wherein the cash deposits are treated as Unexplained money u/s 69A even though the appellant has produced a cash flow statement along with the balance sheet for each year maintained by the appellant which clearly show that the opening cash available with the appellant were sufficient to cover the deposits made during the year.

9. The lower authorities erred in not giving credit of Tax Deducted at source by M/s Leadspace amounting to Rs.1,10,250/- in the computation sheet even though there is no mention of the same in the Assessment order or appellate order.

10. The tax authorities omitted to consider the ratio laid down by the Honourable Madras High Court in the case of CIT vs Indian Express (Madurai) 1983 140 ITR 705 (Mad) (HC) wherein the Court observed that Income-tax proceedings cannot be equated to a lies between two parties since the object is to arrive at the correct taxable income and in this back-drop the

tax authorities ought to have taken into consideration the fact that the cash deposits are supported by a source and thus invoking provisions of section 69A is bad in law and at any rate, bringing the same to tax at a higher rate u/s 115BBE is also contrary to the provisions of section 294 of the Act.

11. For these and other grounds that may be urged at the time of hearing, appellant prays that the Hon'ble Tribunal may be pleased to delete the arbitrary additions made and upheld by the lower authorities.

3. Succinctly stated, the assessee had e-filed his return of income for the A.Y.2017-18 on 24.07.2017, declaring an income of Rs.47,74,430/-. Subsequently, the case of the assessee was selected for limited scrutiny for two reasons, viz.(i) the amount paid or credited in his "Form 26AS" was significantly more as compared to the income from house property as was declared in the return of income; and (ii) that there were large value of cash deposits made during the demonetization period.

4. During the course of the assessment proceedings, the Assessing Officer ("the AO") observed that the assessee in the demonetization period had made cash deposits of Rs.35.13 lacs in his bank account No.118001000030501 with Indian Overseas Bank. It was further observed by him that the aforesaid bank

account held by the assessee with Indian Overseas Bank was not disclosed by him in the return of income. As the assessee had failed to come forth with any explanation regarding the source of the cash deposit of Rs.35.13 lacs (supra) in his bank account, therefore, the AO held the same as having been sourced out of his unexplained money u/s 69A of the Act. Apart from that, the AO observed that though the assessee as per 26AS had received an amount of Rs.11,02,500/- towards rent from M/s Lead Space, but had not disclosed the same in his return of income. On being queried, the assessee though claimed that he had not received the aforesaid income, but he failed to corroborate the same. Accordingly, the AO made an addition of the undisclosed rent receipt in the hands of the assessee and vide his order u/s 143(3) dated 10.12.2019 determined his income at Rs.93,93,456/-.

5. Aggrieved, the assessee carried the matter before the CIT(A), but, without success. Apropos the addition of cash deposits of Rs.35.13 lacs (supra), it was the claim of the assessee that the same was sourced out of the opening cash balance of Rs.36,66,031/- available with him on 31.03.2016. However, the

CIT(A) did not find favor with the said explanation of the assessee. The CIT(A) observed that the assessee in the “Schedule AL” of his return of income for the A.Y.2016-17 had, inter alia, claimed the availability with him of cash in hand of Rs.1,06,092/- on 31.03.2016. Accordingly, the CIT(A) based on the aforesaid facts rejected the explanation of the assessee regarding the source of the cash deposits of Rs.35.13 lacs (supra) made in his bank account during the subject year.

6. Apropos the rental income of Rs.11,02,500/- received by the assessee from M/s Lead Space, it was the assessee’s claim that the same was liable to be assessed under the head “income from house property” as against “income from other sources” as had been so done by the AO. Although the assessee in support of his aforesaid contention had pressed into service certain judicial pronouncements, but the same did not find favor with the CIT(A). The CIT(A) was of the view that as the assessee had received the rental income from displaying of the hoarding and not from letting out of the roof, therefore, the same was rightly assessed by the AO under the head “income from other sources”. Also, the CIT(A)

observed that as the assessee despite specific direction had failed to place on record a copy of the “agreement” which could reveal whether the amount was received for usage of space or from erecting/placing of hoarding, therefore, the judicial pronouncements relied upon by him could not be acted upon. Accordingly, the CIT(A) approved the view taken by the AO that the rental receipt from placing the hoarding was rightly brought to tax under the head “income from other sources”. For the sake of clarity, the observations of the CIT(A) on both the aforesaid issues is culled out as under :

“6.1. During the appellate proceedings, the appellant has not disputed regarding taxing the rental income of Rs.11,02,500/- received from M/s Lead Space, however, he has claimed that the same should be taxed under the head “Income from House Property” as against taxed by the AO under the head “Income from Other Sources” and deduction u/s 24 of the Act should to be allowed at 30% of rental receipts of Rs.3,30,750/- should be allowed. It has been claimed by the appellant that rent received was against Mounting Antenna and hence income thereupon should be treated as “Income from House Property”. The appellant relied upon the following judicial pronouncements in this regard

- i. Nayagara Hotels & Builders Pvt Ltd Vs. CIT [2015] 60 taxmann.com 83 (Delhi)
- ii. Manpreet Singh Vs. ITO (ITA No. 3976/Del/2013)
- iii. Bhimanagr Co-op Housing Society Ltd Vs. ITO (ITA No. 423/Ahd/2012)

6.2. I have duly considered the submissions of the appellant and materials on record. In the case of Hon'ble Calcutta High Court in the case of Mukherjee Estate (P.) Ltd. Vs. CIT [2000] 113 Taxmann 313 (CAL) has held that the income from hoardings permitted by the assessee to other persons is assessable as income from other sources. Relevant extract of the order is as under –

2. The assessee derives income from house property, business, capital gains and other sources. The business of the assessee consists of letting out on hire of cinema hall, service charges realised from the various house properties and share dealing. During the course of the assessment, the ITO has also noticed that the assessee has realised, inter alia, a total sum of Rs.51,864 on account of display of hoardings of various concerns on top of the assessee's building for advertisement purpose. The ITO did not treat the realisation on account of letting out for display of hoardings of various concerns as income from house property and assessed this income as income from other sources. In appeal, the Commissioner (Appeals) has allowed the claim of the assessee that the receipt of Rs.51,864 be assessed as income from house property. In appeal before the Tribunal, the Tribunal has considered the decision of this Court in the case of CIT v. Kanak Investments (P.) Ltd. [1974] 95 ITR 419, and also the decision of this Court in CIT v. Modee Mfg. Co. (P.) Ltd. [1986] 159 ITR 270, and reversed the view taken by the Commissioner (Appeals) holding that letting out the hoardings on the top of the roof to display the advertisements is not income from the house property as hoardings do not form part of the building which is separable from the cinema hall and other parts of the building.

None appeared for the revenue. The learned counsel for the assessee submits that the assessee has let out the roof for hoarding and advertisement. Therefore, the income should be assessed as income from house property. A query was put to him

whether there was an agreement to this effect to conclude whether the hoarding was let out or the roof is let out. He failed to produce that agreement nor is there any reference to such agreement before the authorities below. Therefore, considering the finding of the Tribunal that the assessee has let out the hoardings, these are neither part of the building nor the land appurtenant thereto. Therefore, permitting some companies to display their boards on hoardings cannot be taken as income from house property as hoardings cannot be treated as part of the building.

The fact of the present case and that of Mukherjee Estate (P.) Ltd. (Supra) are identical. Like the case of Mukherjee Estate (P.) Ltd. (Supra), the appellant has also failed to produce any agreement for allowing M/s Lead Space to display its hoarding. The appellant also failed to demonstrate the arrangement that took place in order to earn impugned rental income.

6.3. In the case relied upon by the Appellant viz., Nayagara Hotels & Builders Pvt Ltd (Supra), there was existence of "Leave and Licence Agreement" for the use of space whereas in the present case, the appellant has not placed copy of any agreement either during the assessment proceedings not in appellate proceedings. The income received was for the use of space or only erecting of hoarding has not been made clear by the appellant by placing copy of agreement, if any, on record. In the case of Nayagara Hotels & Builders Pvt Ltd (Supra), decision of Mukherjee Estate (P.) Ltd. (Supra) has been discussed and was distinguished on this issue alone. Therefore, the decision in the case of Nayagara Hotels & Builders Pvt Ltd (Supra) is distinguishable on facts and is not applicable in the present case.

6.3. Another decision relied upon by the Appellant viz., Manpreet Singh Vs. ITO (ITA No. 3976/Del/2013) is also distinguishable on facts wherein also the decision of Mukherjee Estate (P.) Ltd. (Supra) has been discussed and was distinguished on the issue that in the case of

Mukherjee Estate (P.) Ltd. (Supra) the issue was in respect of rent was only for fixing the hoarding, whereas in the case of Manpreet Singh (Supra), the issue was in respect of use of “roof and terrace” area for which agreements were executed.

6.4. In the case of Bhimanagr Co-op Housing Society Ltd Vs. ITO (ITA No. 423/Ahd/2012) relied upon by the appellant, Hon’ble ITAT, Ahmedabad has found that the consideration received by the assessee was for the right to install the hoarding and not rent for hoarding installed. There is no clarity on this aspect in the present case. No copy of agreement has been provided to that effect. Therefore, this case is also distinguishable on facts.

6.5. Considering the totality of facts and circumstances of the case and applying the ratio laid down by the Hon’ble Calcutta High Court in the case of Mukherjee Estate (P.) Ltd. (Supra), I uphold the action of the AO in bringing rent received by the appellant amounting to Rs.11,02,500/- from M/s Lead Space under the head “Income from Other Sources”. Accordingly, ground no. 3 is dismissed.

7. Ground no. 4 is against the addition made by the AO amounting to Rs.35,13,000/- on account of unexplained cash deposits in bank account. During the course assessment proceedings, the appellant has made following submission –

The appellant is submitting the copies of the returns of income filed for the said assessment years. Cash balance was available with the appellant throughout. Such amount of cash balance was deposited into the bank. The appellant further submits that he underwent kidney transplantation at Mount Elizabeth Hospital, Singapore. The cash available with him was deposited in his bank account and was utilised during May to August, 2017 at the time of kidney transplantation. It is humbly submitted that cash was kept with the appellant as he was in the waiting list of the kidney donors and cash was to be spent immediately. As there was a requirement of getting himself operated

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for kidney transplantation, the amount was deposited into the bank account and obtained International Debit Card to meet the hospitalization expenses. It is humbly submitted that the amount was properly explained by the appellant. However, the Assessing Officer is of the view that corroborative evidence was not provided. But the appellant submits that the information available on record clearly indicates that substantial amount of income was offered over a period of time and the appellant was assessed to tax on higher incomes as mentioned in the earlier paragraph. The details of availability of cash is also clear from the cash flow statement filed along with the return of income. Therefore, the Assessing Officer is not justified in mentioning that the appellant did not furnish the information with regard to cash deposits.

7.1. In his submissions, the appellant has stated to have sufficient cash with him and the cash deposits were made out of the available cash. It has further been stated by the appellant that he was having opening cash balance of Rs.36,66,031/- as on 31.03.2016. In this regard, I have verified the copy of ROI filed by the appellant for the A.Y. 2016-17 wherein there is Schedule AL as under –

Schedule AL		Asset and Liability at the end of the year (Applicable in a case where total income exceeds Rs. 50 lakh)	
A	Particulars of Asset	Amount (Cost) (Rs.)	
1	Immovable Asset		
	a Land		0
	b Building		12752172
2	Movable Asset		
	a Cash in hand		106092
	b Jewellery, bullion etc.		11832630
	c Vehicles, yachts, boats and aircrafts		916616
3	Total		25607510
B	Liability in relation to Assets at A		0

Above Schedule AL clearly shows that the cash balance as on 31.03.2016 available with the appellant was Rs.1,06,092/- and not Rs.36,66,031/- as claimed in the submissions made during the course of appellate proceedings. The figures reported in the ROI has credential value and cannot simply brushed up and set aside. The appellant has not provided any material in contravention

to these facts. Therefore, the contentions of the appellant cannot be relied upon.

7.2. Considering the totality of facts and circumstances of the case, it is held that the AO has rightly brought an amount of Rs.35,13,000/- to tax as unexplained cash deposits u/s 69A of the Act. Accordingly, ground no. 4 is dismissed.

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

8. We have heard the learned authorized representatives of both parties, perused the material available on record as well as considered the judicial pronouncements that were pressed into service by the Ld.AR to drive home his contentions. Shri Sashank Dundu, Ld.AR for the assessee, at the threshold of the hearing of the appeal, submitted that the AO had grossly erred in treating the cash deposits of Rs.35.13 lacs (supra) made by the assessee in his bank account, as having been sourced out of his unexplained money u/s 69A of the Act. Elaborating on his contention, the Ld.AR submitted that the assessee had inadvertently in his return of income for the A.Y.2016-17, had wrongly mentioned the cash in hand available with him on 31.03.2016 as Rs.1,06,092/-. The Ld.AR submitted that the

subject cash deposit of Rs.35.13 lacs (supra) was made by the assessee out of the cash in hand available with him on 31.03.2016. The Ld.AR to buttress his claim had drawn our attention to the “balance sheet” of the assessee for F.Y.2015-16, which revealed cash in hand of Rs.36,66,031/- on 31.03.2016, Page 12 of APB. Also, the Ld.AR to impress upon us that the assessee in the preceding years too had substantial cash in hand available with him drawn support from the “balance sheets” of the assessee for F.Y.2013-14, F.Y. 2014-15 and F.Y. 2016-17. The Ld.AR submitted that though the assessee had substantial cash in hand of Rs.36.66 lacs (approx.) available with him on 31.03.2016, but inadvertently, the same was mentioned in the “Schedule AL” of his return of income for the A.Y.2016-17 as Rs.1,06,092/-. On a specific query by the Bench, whether the “balance sheet” for the F.Y.2015-16 and those for the preceding years were filed with/formed part of the returns of income of the assessee for respective years, the Ld.AR answered in negative.

9. Apropos the rental income received by the assessee from M/s Lead Space, that was brought to tax by the A.O as his income

under the head “Other sources”, the Ld.AR submitted that as the assessee had received the said income from letting out of the terrace, where the hoarding was put, therefore, the same was liable to be assessed under the head “house property”. The Ld.AR to buttress his aforesaid claim had drawn support from “Form 26AS” for the subject year, which, inter alia revealed that the TDS on the rental receipts in question was deducted u/s 194I(b) of the Act. The Ld.AR had further drawn support from certain judicial pronouncements.

10. Per contra, the Ld. DR relied upon the orders of the lower authorities. The Ld. DR submitted that as the assessee had in his return of income for the A.Y.2016-17 claimed that cash in hand of Rs.1,06,092/- was available with him on 31.03.2016, therefore, he cannot be permitted to state a fact contrary to the record and claim availability of cash in hand of Rs.36.66 lacs (supra) on 31.03.2016. Elaborating further, the Ld. DR submitted that the “balance sheet” filed by the assessee for the year ending 31.03.2016 could not be acted upon as the same was not filed along with the return of income and had no evidentiary value.

The Ld. D.R further submitted that as the assessee had received the rental income from M/s Lead Spare for putting of the hoarding on the terrace, therefore, the same had rightly been brought to tax in his hands under the head “Income from other sources”.

11. We have thoughtfully considered the contentions of the Ld. Authorized Representatives of both parties in the backdrop of the orders of the lower authorities.

12. Apropos the claim of the Ld.AR that the cash deposit of Rs.35.13 lacs (supra) made in the assessee’s bank account during the year under consideration was sourced out of the cash in hand of Rs.36.66 lacs (supra) that was available with him on 31.03.2016, we are unable to concur with the same. As the assessee in the “Schedule AL” of his return of income for the A.Y.2016-17, had claimed the availability with him of cash in hand of Rs.1,06,092/- on 31.03.2016, therefore, he cannot be permitted to turn around and to state a fact contrary to the record that cash in hand of Rs.36.66 lacs (supra) was available with him on 31.03.2016. In so far the “balance sheet” as on 31.03.2016

relied upon by the assessee is concerned, wherein, he had tried to project the availability of cash in hand of Rs. 36.66 lacs (supra) on 31.03.2016, we find no substance in the same. We say so, for the reason, that though the Ld.AR had drawn support from the aforesaid “balance sheet”, but as observed by the Ld. D.R, and rightly so, as the same was never filed by the assessee along with the return of income, therefore, the same does not have any evidentiary value. Accordingly, the aforesaid “balance sheet” pressed into service by the assessee in his attempt to establish the availability of cash in hand of Rs. 36.66 lacs (supra) with him on 31.03.2016, in the absence of any evidentiary value cannot be admitted to dislodge his disclosure of possessing cash in hand of Rs. 1,06,092/- made in the “Schedule AL” of his return of income for the subject year. We thus, find no infirmity in the view taken by the lower authorities, who had rightly rejected the claim of the assessee regarding the sources of the cash deposit of Rs.35.13 lakhs (supra) and held the same as having been sourced out of his unexplained money u/s 69A of the Act, uphold the same.

13. Apropos the claim of the assessee that the rental income received by him from M/s Lead Space, i.e. for putting up the hoarding at the terrace, we find no infirmity in the view taken by the lower authorities, who had rightly brought the same to tax as his income under the head “Other sources”. We say so, for the reason, that a perusal of the “agreement” dated 01.10.2014 executed between the assessee and M/s Lead Space, reveals beyond doubt that the same was for the installation of one advertisement hoarding on the terrace of the property owned by the assessee. On a careful perusal of the terms of the aforesaid “agreement”, it transpires that the assessee had agreed to the erection of one hoarding of size 70”x40” on the terrace of his property, i.e., Plot No.1-11-89, located at S.P.Road, Begumpet, Secunderabad. Also, in unequivocal terms, it is stated in the “agreement” that an amount of Rs.10,00,000/- per annum would be received by the assessee for ground rental for putting up the hoarding on his aforementioned property. Considering the facts as are discernible from the aforesaid “agreement” dated 01.10.2014, we are of the firm conviction that as the assessee had received the rental income of Rs.11,02,500/- for putting up

of the hoarding on the aforesaid property and not for letting out of the terrace or any part thereof, the same had rightly been brought to tax in his hands as income from other sources. Although, the Ld.AR had relied upon the judgment of Hon'ble High Court of Delhi in the case of Niagara Hotels & Builders (P.) Ltd. Vs. Commissioner of Income Tax [2015] 60 taxmann.com 83 (Delhi), but the same being distinguishable on facts, thus, would not carry its case any further. In the said case, the assessee which owned the terrace floor of a building had entered into an "agreement" with a telecom company and had given the said floor on licence as space for mounting the tower and antenna. As the assessee in the case before us had not entered into any agreement for letting out any floor/space, but had executed an agreement, permitting the other party to erect one hoarding on the terrace of his property, therefore, the reliance placed by the Ld.AR on the aforesaid judicial pronouncement is misconceived. Rather, we find that the facts involved in the case of the assessee before us are covered by the judgment of Hon'ble High Court of Kolkata in the case of Mukherjee Estate (P.) Ltd. Vs. CIT [2000] 113 Taxmann 313 (CAL), wherein, it was held that the income from

hoarding received by the assessee was assessable as its income from other sources. Also, a similar view had been taken by the Hon'ble High Court of Calcutta in the case of CIT Vs. Kanak Investments (P.) Ltd. [1974] 95 ITR 419 and CIT Vs. Modee Mfg.Co. (P.) Ltd. [1986] 159 ITR 270 (CAL). We thus, find no infirmity in the view taken by the CIT(A), who had approved the view taken by the A.O that the rental income received by the assessee from putting up/erecting the hoarding on his property, was to be brought to tax as its income under the head "other sources", and thus, uphold the same.

14. Resultantly, the appeal filed by the assessee being devoid and bereft of any substance is dismissed.

15th मई, 2025 को खुली अदालत में सुनाया गया आदेश।

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Gowri Shankar Gupta 

Order pronounced in the Open Court on 15th May, 2025.

<p>Sd/- (मंजूनाथ जी) (MANJUNATHA G.) लेखा सदस्य/ ACCOUNTANT MEMBER</p>	<p>Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/ JUDICIAL MEMBER</p>
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Hyderabad,

Dated 15th May, 2025

#*L.Rama, SPS

Copy to:

S.No	Addresses
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2	The Income Tax Officer, Ward-2(3), Signature Towers, Sy.No.6P of Kondapur, Opposite Botanical Gardens, Serilingampally, Ranga Reddy Dist, Hyderabad
3	The Pr.Commissioner of Income Tax, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order