

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

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.1278 to 1281/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2017-18 to 2020-21)

Shri Sanjay Awathare Chandrapur (MS) PAN:AKWPA7660C (Appellant)	Vs.	ACIT Central Circle 2(4) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:		Advocate A.V. Raghuram
राजस्व द्वारा/Revenue by::		Shri Srinath Sadanala, DR
सुनवाई की तारीख/Date of hearing:		02/06/2025
घोषणा की तारीख/Pronouncement:		03/06/2025

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These 4 appeals filed by the assessee are directed against the 4 separate orders of the learned CIT (A)-12 Hyderabad, all dated 27/08/2024 for the A.Ys 2017-18 to 2020-21 respectively. The assessee has raised the following grounds of appeal for the A.Ys 2017-18 and 2018-19:

ITA No.1278/Hyd/2024 (2017-18)

1. The order passed by Ld. CIT(A) is erroneous and in violation of principles of natural justice.
2. The Ld. CIT(A) failed to appreciate that on 08.01.2024 & 13.02.2024 adjournment was filed requesting 2 month's time and further filed adjournment requesting time on 26.08.2024 (Ay.2019-20) on the ground that as the Appellant is in judicial remand the counsel is facing difficulties in obtaining necessary information/relevant documents.
3. Without prejudice to the above, the Ld. CIT(A) erred in confirming the addition of Rs.81,72,000 made by the AO as unexplained credit u/s.68 of the Act. The authorities below failed to appreciate the documentary evidence in the form of bank statements and that the sources are from business which is considered while filing return of income.
4. The Ld. CIT(A) failed to appreciate that the amount was transferred through RTGS from R.B. Enterprises and that the sources remained explained.
5. Any other ground that may be urged at the time of hearing.

ITA No.1279/Hyd/2024 (A.Y 2018-19)

1. The order passed by Ld. CIT(A) is erroneous and in violation of principles of natural justice.
 2. The Ld. CIT(A) failed to appreciate that on 08.01.2024 & 13.02.2024 adjournment was filed requesting 2 month's time and further filed adjournment requesting time on 26.08.2024 (Ay.2019-20) on the ground that as the Appellant is in judicial remand the counsel is facing difficulties in obtaining necessary information/relevant documents.
 3. Without prejudice to the above, the Ld. CIT(A) erred in confirming the addition of Rs.64,66,059 made by the AO as unexplained credit u/s.68 of the Act.
 4. The Ld. CIT(A) erred in confirming the addition of Rs.10,00,000 made by the AO as unexplained money u/s.69A of the Act.
 5. The authorities below failed to appreciate the documentary evidence in the form of bank statements and that the sources are from business which is considered while filing return of income.
 6. The Ld. CIT(A) failed to appreciate that the amount was transferred through RTGS from R.B. Enterprises and that the sources remained explained.
 7. Any other ground that may be urged at the time of hearing.
3. The assessee has also raised additional grounds of appeal. However, at the time of hearing, the learned AR has

submitted that the additional grounds raised by the assessee is pressed only for the A.Y 2017-18 and 2018-19 which reads as under:

A.Y 2017-18

The assessment order dated 28.03.2022 passed by the Assessing Officer under section 153A r.w.s. 144 of the Act and the additions of Rs.23,19,152 (Rs.6 lacs and Rs.17.19 lacs) made under sections 69A and 68 of the Income Tax Act, 1961 is bad in law and unsustainable, as the same is not based on seized material unearthed in the course of search/requisition under section 132A of the Act, especially as the Appellant has filed his return of income under section 139(1)/139(4) of the Act.

2018-19

The assessment order dated 28.03.2022 passed by the Assessing Officer under section 153A r.w.s. 144 of the Act and the addition of Rs.64,66,059 made therein under section 68 of the Income Tax Act, 1961 is bad in law and unsustainable, as the same is not based on seized material unearthed in the course of search/requisition under section 132A of the Act, especially as the Appellant has filed his return of income under section 139(1) of the Act.

4. The learned AR has submitted that the issue raised by the assessee in the additional ground is purely legal in nature and does not call for fresh investigation into the facts, therefore, the additional grounds raised by the assessee can be disposed off, on the basis of the facts already available on record and the same does not require fresh inquiry of facts or material. Thus, the learned AR has submitted that the additional grounds raised by the assessee for the A.Ys 2017-18 and 2018-19 be admitted for adjudication on merits. In support of his contention, he has

relied upon the judgement of the Hon'ble Supreme Court in the case of NTPC Ltd vs. CIT reported in 229 ITR 383 wherein the Hon'ble Supreme Court has held that the legal ground can be taken at any stage of the proceedings.

5. On the other hand, the learned DR has objected to the admission of the additional ground and contended that this is the 2nd round of litigation and in the earlier round, the Tribunal remanded the matter to the record of learned CIT (A) vide order dated 27th March, 2023. However, the assessee again failed to comply with the notices issued by the learned CIT (A) or filing any supporting evidence to explain the deposits/credits made in the bank account of the assessee. Thus, the learned DR has submitted that the assessee cannot be allowed to raise the additional ground at this stage.

6. We have considered the rival submission and carefully perused the additional ground raised by the assessee whereby the assessee has challenged the addition made by the Assessing Officer in the assesment proceedings u/s 153A of the Act based on the entries in the bank account statement of the assessee without any incriminating material found or seized. Thus, the assessee has challenged the validity of the addition made by the Assessing Officer in view of the judgment of the Hon'ble Supreme Court in case of Pr. CIT vs. Abhisar Buildwell (P) Ltd reported in 454 ITR 212. Therefore, the issue raised by the assessee in the additional ground is purely legal in nature and adjudication of the same does not require any fresh investigation or verification of any facts or material. Accordingly, in view of the judgement of the

Hon'ble Supreme Court in case of NTPC Ltd vs. CIT (Supra), the additional ground raised by the assessee are admitted for adjudication for the A.Ys 2017-18 and 2018-19 respectively.

7. The learned AR of the assessee has submitted that the assessee is an individual having income from partnership firm M/s. Mahalakshmi Corporation. For the A.Y 2017-18, the assessee filed return of income on 21/09/2017 admitting total income of Rs.6,01,750/-. Thereafter, the Police Authorities intercepted the assessee and seized a cash of Rs.1.20 crores on 2/6/2020. On the basis of the information received from the Police, the Department made a requisition u/s 132A of the I.T. Act, 1961 on 26/06/2020 of the cash seized by the police from the assessee. Based on the said authorization u/s 132A of the Act, the Assessing Officer initiated proceedings u/s 153A of the Act by issuing notice on 02/12/2021. In response to the said notice, the assessee filed return of income admitting the total income as declared in the original return of income. The learned AR has submitted that the Assessing Officer has made the addition on account of credits in the bank account of the assessee u/s 68 r.w.s. 115BBE of the Act. The learned AR has submitted that the assessments for the A.Y 2017-18 and 2018-19 were not pending as on the date of requisition u/s 132A of the I.T. Act, 1961 and therefore, these assessments did not get abated due to the said requisition. The learned AR has further submitted that the Assessing Officer has made the addition on the basis of the credit entries in the Bank Account of the assessee and not on the basis of any incriminating material found or seized during the course of search/requisition u/s 132A of the I.T. Act, 1961. Thus,

he has submitted that in view of the judgment of the Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Bhildwell (P) Ltd (Supra), the additions made by the Assessing Officer in respect of the unabated assessments i.e. for the A.Ys 2017-18 and 2018-19 are not sustainable in law and liable to be deleted.

8. On the other hand, the learned DR has submitted that there was a seizure of cash from the possession of the assessee by the Police authorities which was subsequently handed over to the Department as requisition made u/s 132 A of the Act. The seizure of the cash itself is incriminating material. He has further submitted that there was no assessment in the case of the assessee u/s 143(3) of the Act and therefore, these were not completed assessment as on the date of the search.

9. We have considered the rival submission as well as the relevant material available on record. There is no dispute that the assessee filed the original return of income for the A.Y 2017-18 on 21/09/2017 and for the A.Y 2018-19 on 22/07/2018. The requisition was made by the Department u/s 132A of the Act on 26/06/2020 and therefore, the limitation for issuing notice u/s 143(2) of the Act was already expired on 30.09.2018 and 30.09.2019 respectively for both the A.Ys under consideration. Thus, the assessment for the A.Y 2017-18 and 2018-19 were not pending as on the date of requisition u/s 132A of the Act i.e. 26/06/2020. We further note that the Assessing Officer has made the addition u/s 68 of the I.T. Act, 1961 while passing the assessment order u/s 153A r.w.s. 144 of the I.T. Act, 1961 for the A.Ys 2017-18 and 2018-19 on the basis of the bank account

statements of the assessee. The relevant details are given by the Assessing Officer in para 4 of the assessment order for the A.Y 2017-18 and 2018-19 as under:

A.Y 2017-18

4. On verification of the bank account statements obtained from the bank authorities u/s.133(6) of the I.T.Act, 1961, the following credits are noticed:

Name of the bank	A/c.No.	Total amount of credits in Rs.	Credit/ Cash credit
Warangal Urban Coop Bank Ltd	200204180001369	81,72,880	Credit

During the course of assessment proceedings, a notice u/s.142(1) was issued requiring the assessee to explain the nature and source of above credits and also state whether the same were reflected in the return of income, or not.

4.1 The assessee has not filed any information with regard to the sources for the credits till date though the assessee was afforded several opportunities vide this office notices u/s.142(1) of the I.T.Act, 1961 to provide the requisite information. In the absence of any explanation or information, it is treated that the assessee has no evidence to prove the genuineness and creditworthiness of the transactions. In view of the above, the entire credits of Rs.81,72,880/- is treated as unexplained and assessed u/s.68 of the Act and therefore, taxed under the provisions of Sec.115BBE of the Act. Since the assessee failed to pay taxes at the rate of sixty per cent of the undisclosed income of the specified previous year and as the income was not covered under the provisions of clause (a) of Section 271AAB(1A), penalty proceedings u/s.271AAC of the I.T.Act, 1961 are initiated separately.

Penalty proceedings u/s.271AAC of the I.T.Act, 1961 are initiated separately.

A.Y 2018-19

4. On verification of the bank account statements obtained from the bank authorities u/s. 133(6) of the I.T.Act, 1961, the following credits are noticed:

Name of the bank	A/c.No.	Total amount of credits in Rs,	Credit/ Cash credit
Warangal Urban Coop Bank Ltd	200204180001369	64,66,059	Credit

During the course of assessment proceedings, a notice u/s.142(1) was issued requiring the assessee to explain the nature and source of above credits, and also state whether the same were reflected in the return of income, or not.

4.1- The assessee has not filed any information with regard to the sources for the credits till date though the assessee was afforded several opportunities vide this office notices u/s. 142(1) of the I.T.Act, 1961 to provide the requisite information. In the absence of any explanation or information, it is treated that the assessee has no evidence to prove the genuineness and creditworthiness of the transactions. In view of the above, the entire credits of Rs.71,42,920/- is treated as unexplained and assessed u/s.68 of the Act and therefore, taxed under the provisions of Sec.115BBE of the Act. Since the assessee failed to pay taxes at the rate of sixty per cent of the undisclosed income of the specified previous year and as the income was not covered under the provisions of clause (a) of Section 271AAB(1A), penalty proceedings u/s.271AAC of the I.T.Act, 1961 are initiated separately.

Penalty proceedings u/s.271AAC of the I. T.Act, 1961 are initiated separately.

Total income returned.	Rs. 3,42,110
Add: Addition as discussed above (to be taxed separately U/S.115BBE @60%)	Rs. 64,66,059
Total income assessed	Rs. 68,08,169

The assessment is completed after obtaining the approval of the Additional Commissioner of Income Tax, Central Range-2, Hyderabad u/s.153D of the I.T.Act, vide letter in F.No.Addl.CIT-CR-2/153D/CC-2(4)/2021-22 dated: 23/03/2022."

10. Thus, the Assessing Officer made the addition in respect of the total credits of the amounts in the bank account of the assessee and no addition was made in the hand of the assessee based on any incriminating material found or seized during the course of requisition u/s 132A of the Act. The addition made by the Assessing Officer while framing the assessment u/s

153A of the Act for the unabated A.Ys in the absence of any incriminating material are not sustainable in law as held by the Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell (P) Ltd (Supra). The concluding finding of the Hon'ble Supreme Court are in para 14 of the judgement are as under:

“14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the ‘total income’ taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns;

and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.”

11. Thus, as per the 2nd proviso to section 153A of the Act, only pending assessments or re-assessments shall stand abated and the Assessing Officer would assume the jurisdiction in respect of such abated assessment to assess the income based on the material available with the Assessing Officer. In case no incriminating material is found during the course of search u/s 132 or requisition u/s 132A of the Act, no addition can be made by the Assessing Officer in respect of the completed assessments/unabated assessments. Accordingly, in view of the judgment of the Hon'ble Supreme Court in case of Pr. CIT vs. Abhisar Buildwell (P) Ltd (Supra), the addition made by the Assessing Officer for the A.Ys 2017-18 and 2018-19 in the absence of any incriminating material are not sustainable in law and liable to be deleted. We order accordingly.

12. Regarding the other grounds raised in Form-36 by the assessee for the A.Ys 2017-18 and 2018-19, the addition has been deleted as a consequence of additional grounds raised by the assessee and therefore, the grounds raised on the merits of the addition become infructuous.

13. For the A.Y 2019-20 and 2020-21, the assessee has raised the following grounds of appeal:

ITA No.1280/Hyd/2024 (2019-20)

1. The order passed by Ld. CIT(A) is erroneous and in violation of principles of natural justice.
2. The Ld. CIT(A) failed to appreciate that on 08.01.2024 & 13.02.2024 adjournment was filed requesting 2 month's time and further filed adjournment requesting time on 26.08.2024 on the ground that as the Appellant is in judicial remand the counsel is facing difficulties in obtaining necessary information/relevant documents.
3. Without prejudice to the above, the Ld. CIT(A) erred in confirming the addition of Rs.74,42,920 made by the AO as unexplained credit u/s.68 of the Act.
4. The Ld. CIT(A) erred in confirming the addition of Rs.10,00,000 made by the AO as unexplained money u/s.69A of the Act.
5. The authorities below failed to appreciate the documentary evidence in the form of bank statements and that the sources are from business which is considered while filing return of income.
6. The Ld. CIT(A) failed to appreciate that the amount was transferred through RTGS from Mr. Mohammed Bashumiya and Mr. Lumaji Shamrao Waghare and that the sources remained explained.
7. The Ld. CIT(A) erred in not considering the D.D. cancellation amounts which are evident from the bank statement of the appellant on the ground that no books of accounts or any D.D cancellation details are filed.
8. Any other ground that may be urged at the time of hearing.

ITA 1281/Hyd/2024 (2020-21)

1. The order passed by Ld. CIT(A) is erroneous and in violation of principles of natural justice.
 2. The Ld. CIT(A) failed to appreciate that on 08.01.2024 & 13.02.2024 adjournment was filed requesting 2 month's time and further filed adjournment requesting time on 26.08.2024 (Ay.2019-20) on the ground that as the Appellant is in judicial remand the counsel is facing difficulties in obtaining necessary information/relevant documents.
 3. Without prejudice to the above, the Ld. CIT(A) erred in confirming the addition of Rs.17,19,152 made by the AO as unexplained credit u/s.68 of the Act.
 4. The Ld. CIT(A) erred in confirming the addition of Rs.6,00,000 made by the AO as unexplained money u/s.69A of the Act.
 5. The authorities below failed to appreciate the documentary evidence in the form of bank statements and that the sources are from business which is considered while filing return of income.
 6. Any other ground that may be urged at the time of hearing.
14. These 2 A.Ys were got abated by virtue of the requisition u/s 132A of the Act and therefore, the Assessing Officer assumed jurisdiction to assess the income of the assessee on the basis of the seized material as well as other material available with the Assessing Officer.
15. The learned AR of the assessee has submitted that earlier, this Tribunal vide order dated 27/03/2023 remanded the matter to the record of the learned CIT (A) as the assessee was in

the judicial custody and could not participate in the proceedings before the Assessing Officer as well as the learned CIT (A). He has further submitted that in the remand proceedings also the assessee could not appear before the learned CIT (A) or file any supporting evidence due to the same reason that the assessee was under judicial custody. The learned AR has further submitted that the Assessing Officer has made the addition for these 2 A.Ys on the basis of the credit entry in the bank account of the assessee. He has pointed out that the Assessing Officer has made 2 separate additions, one on account of cash deposits in the bank account and another on the basis of the credits in the bank account of the assessee. The learned AR of the assessee has submitted that the credits in the bank accounts are through banking channels/RTGS and therefore, the same represents the business receipts of the assessee. The learned AR has further submitted that there are substantial withdrawals of the cash from the bank account of the assessee and therefore, the source of the subsequent cash deposits in the bank account stands explained by the withdrawal of cash. The learned AR has pleaded that since the assessee is still in the judicial custody, therefore, the relevant details and evidence could not be produced. He has prayed that the matter may be remanded to the record of the Assessing Officer to verify the source of cash deposits being withdrawn from the bank account as well as credits in the bank accounts are business receipts of the assessee already offered to tax in the return of income.

16. On the other hand, the learned DR has filed the copies of the bank account of the assessee with Bank of Maharashtra

showing the credits in the bank account of the assessee which is the basis of the addition made by the Assessing Officer for these 2 A.Ys. He has further submitted that despite the matter was remanded to the record of the learned CIT (A), the assessee failed to produce any supporting evidence before the learned CIT (A). Thus, the learned DR has opposed the prayer of the assessee for remanding the matter to the record of the Assessing Officer. He has relied upon the impugned order of the learned CIT (A).

17. We have considered the rival submission as well as relevant material available on record. For the A.Y 2019-20 and 2020-21, the Assessing Officer has made the addition on account of cash deposits and credits in the bank account in para 4 of the assessment orders as under:

A.Y 2019-20

4. On verification of the bank account statements obtained from the bank authorities u/s.133(6) of the I.T.Act, 1961, the following credits are noticed:

Name of the bank	A/c.No.	Total amount of credits in Rs.	Credit/ Cash credit
Warangal Urban Coop Bank Ltd	200204180001369	10,00,000	Cash deposit
		71,42,920	Credits
Total		81,42,920	

A.Y 2020-21

4. On verification of the bank account statements obtained from the bank authorities u/s.133(6) of the I.T.Act, 1961, the following credits are noticed:

Name of the bank	A/c.No.	Total amount of credits in Rs.	Credit/ Cash credit
Warangal Urban Coop Bank Ltd	200204180001369	6,00,000	Cash deposit
		17,19,152	Credits

18. As per the bank account statement filed by the learned DR we find that the entries of the credits are reflected in the bank account of the assessee with Bank of Maharashtra. We further note that this account is also declared by the assessee in the return of income for the purpose of refund. Thus, it is clear that the addition made by the Assessing Officer on the basis of the credit entries are in respect of the bank account maintained by the assessee with the Bank of Maharashtra. Most of the entries are in the nature of RTGS/NEFT or cheque transfer/cheque deposits. The Assessing Officer has made the addition of the entire credit as well as cash deposits in the bank account when the assessee did not file any explanation or source of the said credits. It is pertinent to note that this Tribunal while remanding the matter vide order dated 27/03/2023 has taken note of the fact that due to the assessee being in Jail/Judicial Custody, he could not receive the notices issued by the learned CIT (A) and therefore, the assessee was given further opportunity to appear before the learned CIT (A) and substantiate his case. The learned AR has pointed out that the assessee is still in the judicial custody and therefore, he could not avail the opportunity granted by this Tribunal to produce relevant evidence before the learned CIT (A). Thus, it is clear that the assessee could not produce any explanation or the source of the deposits as well as credits in the bank account of the assessee due to the reason that he was in the judicial custody. The assessee has also taken a plea that there are substantial withdrawals from the bank account which can be considered as source of subsequent cash deposits in the bank account. All these facts are required to be verified and reexamined on the basis of the relevant record to be produced by the

assessee. Accordingly, in the facts and circumstances of the case and in the interest of justice, we set aside the matter for the A.Ys 2019-20 and 2020-21 to the record of the Assessing Officer for fresh adjudication after giving an opportunity to the assessee to produce the relevant details and evidence explaining the source of credits as well as the cash deposits in the bank account of the assessee.

19. In the result, appeals for the A.Ys 2017-18 and 2018-19 are allowed and appeals for the A.Y 2019-20 and 2020-21 are allowed for statistical purposes.

Order pronounced in the Open Court on 3rd June, 2025.

Sd/-

Sd/-

(MANJUNATHA, G.) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 3rd June, 2025

Vinodan/sps

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order