

IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM DIVN BENCH : VISAKHAPATNAM

[THROUGH VIRTUAL HEARING AT ITAT: HYDERABAD]

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

S.No.	ITA.No.	Appellant	Respondent	A.Y.	Appealed against the Order of CIT(A)-12, Hyderabad, Dated
1.	359/Viz./2024	ACIT, Guntur	M/s. Vijayasai Lakshmi Srinivasa Cotton Mills, Guntur PAN AANFS5583M	2016- 2017	10.07.2024
2.	367/Viz./2024	The ITO, Guntur	Madhusushana Venkata Subba Rao Potti, Guntur PAN AINPP2211R	2016- 2017	10.07.2024
3.	368/Viz./2024	The ITO, Ward-1(1), Guntur	Potti Kumara Naga Venkata Sai Chakravarthy, Guntur PAN ARUPP2843D	2016- 2017	10.07.2024
4.	460/Viz./2024	ITO, Ward- 2(3), Guntur	M/s. Shivani Cotton Industries Private Limited, Guntur. PAN AATCS4010J	2016- 2017	30.09.2024

For Revenue :	Shri Badicala Yadagiri, CIT-DR
For Assessees :	Shri MV Prasad, C.A.

Date of Hearing :	06.08.2025
Date of Pronouncement :	08.10.2025

**ORDER****PER MANJUNATHA G, A.M. :**

The above batch of 4 appeals are filed by the Revenue against the respective separate Orders dated 10.07.2024 and 30.09.2024 of the learned Commissioner of Income Tax (Appeals)-12, Hyderabad, relating to the assessment year 2016-2017 tabulated hereinabove in the above cause title. Since common issues are involved in all these 4 appeals, these appeals were heard together and are being disposed of by this single consolidated order for the sake of convenience and brevity. First, we take up Revenue's appeal in ITA. No. 359/VIZ./2024 for the assessment year 2016-2017, in which, the Revenue has raised the following grounds :

- i. *"The Ld. CIT(A) ought to have upheld the addition made by the AO, as the assessee firm claimed to have given an amount of Rs.2,15,00,000/- as advance to M/s. Jaya Balajee Real Media Private Limited (JBRMPL) in the F.Y. 2015-16 relevant to A.Y. 2016-17 in the form of cash during the demonetization period, since the assessee has failed to discharge the onus to prove that the transaction is genuine.*
- ii. *The addition of Rs.2,15,00,000/- has been confirmed in the hands M/s. Jaya Balajee Real Media Private Limited (JBRMPL),*

*which went for further appeal before Hon'ble ITAT, Visakhapatnam (ITA.No.674/Hyd /2024 dtd.13.07.2024). In order to keep the issue alive in the hands of the assessee, since the assessment was done on protective basis, further appeal is necessary.*

iii. *Any other ground that may be urged at the time of appeal hearing.”*

2. Briefly stated facts of the case are that, the assessee is a Firm engaged in the business of Cotton Trading & Ginning business along with investment in Films. In this case, consequent to deposit of Rs.40 Crores in Specified Bank Notes (SBNs)/old demonetized notes during the demonetization period in December, 2016 in the bank account of M/s Jaya Balajee Real Media Private Limited [in short “JBRMPL”], a search and seizure operation u/sec.132 of the Income Tax Act, 1961 [in short “the Act”] was carried out on that company, it’s Directors and other related parties on 31.12.2016. During the search and seizure proceedings, sworn statements were recorded u/sec.132(4) of the Act on 02.01.2017, 03.01.2017, 17.02.2017 and 24.02.2017 from Sri Thandra Ramesh, Director of JBRMPL, in which, he has mentioned the name of M/s. Vijaya Sai Laxmi Srinivasa

Cotton Mills only in the written submissions filed on 17.03.2017 as source of Rs.2,15,00,000/- claimed to have given as advance for the movie rights during financial year 2015-2016. Therefore, the Assessing Officer has reason to believe that the income chargeable to tax has escaped assessment and the case was reopened u/sec.147 of the Income Tax Act, 1961 by issuing notice u/sec.148 of the Income Tax Act, 1961 on 22.03.2019. In response, the assessee vide email dated 18.07.2019 has stated that, income tax return for the assessment year 2016-2017 filed through online on 18.07.2019 electronically and requested for the reasons for issue of notice u/sec.148 of the Income Tax Act, 1961. On the request of the assessee, the reasons for reopening were forwarded by the Assessing Officer vide letter dated 19.07.2019. In response, the assessee vide letter dated 25.07.2019 [received in the O/o. Assessing Officer through email on 11.09.2019] has furnished the objections for issue of notice u/sec.148 of the Act. The objections filed by the assessee were rejected and the same was also intimated to the assessee by the Assessing Officer

vide letter dated 05.10.2019. Thereafter, in response to the notice, the assessee filed its reply vide email dated 17.10.2019 and submitted part details. Further, in response to the notice u/sec.148 of the Act, the assessee filed its return of income on 18.07.2019, for the assessment year 2016-2017, declaring Rs.-NIL- total income [business loss of Rs.12,64,794/-]. Thereafter, the Assessing Officer issued notices u/sec.143(2) and 142(1) of the Income Tax Act, 1961 dated 05.10.2019 along-with questionnaire and duly served upon the assessee. In response, the assessee submitted that, he had filed his original return of income u/sec.139(1) of the Income Tax Act, 1961 on 05.03.2017 declaring Rs.NIL total income [business loss of Rs.12,64,794/-].

3. During the course of assessment proceedings, the Assessing Officer noted that, consequent to deposit of Rs.40 Crores in Specified Bank Notes (SBNs)/old demonetized notes during the demonetization period in December, 2016 in the bank account of M/s Jaya Balajee Real Media Private Limited (JBRMPL), a search and seizure action u/sec.132 of the Act was carried-out on that company, its Directors and

other related parties on 31.12.2016. During the course of search and seizure proceedings, Shri Tandra Ramesh, Director of JBRMPL has not mentioned the name of M/s. Vijayasai Laxmi Srinivasa Cotton Mills in any of the sworn statements recorded on 02.01.2017, 03.01.2017, 17.02.2017 and 24.02.2017 and neither in the Affidavit filed before ADIT(Inv), Unit II(1), Hyderabad on 03.03.2017. However, he has mentioned the name of the assessee viz., M/s. Vijayasai Laxmi Srinivasa Cotton Mills only in the written submissions filed on 17.03.2017 as source of Rs.2.15,00,000/- claimed to have given as advance for the movie rights during financial year 2015-2016. Further, no seized document contains any hint about the claimed transaction between the assessee M/s. Vijayasai Laxmi Srinivasa Cotton Mills and JBRMPL. The Assessing Officer also observed that, the assessee has filed return of income for assessment year 2016-2017 only in March, 2017, after filing of Affidavit by Shri Tandra Ramesh, Director of JBRMPL.

4. During the course of assessment proceedings, the assessee company was confronted with the above and once again required to produce evidences, if any, in respect of the above and also the assessee was given adequate opportunity to produce explanation. Since, there were no response from the assessee, the Assessing Officer vide letter dated 21.11.2019 issued show cause notice to the assessee to show cause, as to why the advance of Rs.2,15,00,000/- claimed to be given by the assessee company to JBRMPL in financial year 2015-2016 relevant to assessment year 2016-2017 towards the rights of movie is proposed to be assessed in the hands of assessee-company for the assessment year 2016-2017 on protective basis as unexplained investment. In response, the assessee submitted that, the impugned advance of Rs.2,15,00,000/- was given to JBRMPL out of Over Draft Account is not acceptable to the Assessing Officer. Therefore, the Assessing Officer in absence of any satisfactory explanation from the assessee, treated the sum of Rs.2,15,00,000/- as unexplained money u/sec.69 of the Income Tax Act, 1961, vide order dated 08.12.2019 passed

u/sec.143(3) r.w.s.147 of the Income Tax Act, 1961 and determined the total income of the assessee at Rs.2,15,00,000/-.

5. Aggrieved by the assessment order, the assessee company preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee filed its submissions which has been reproduced by the learned CIT(A) in his order from pages 10 to 23 of the order. The learned CIT(A) after considering the relevant submissions of the assessee and the assessment order observed that, *“the appeal of M/s. Jaya Balajee Real Media Private Limited filed before CIT(A)-12, Hyderabad against the said substantive addition has been dismissed and addition of Rs.2,15,00,000/-has been confirmed in the hands of M/s. Jaya Balajec Real Media Private Limited in the appellate order passed in appeal number CIT(A), Hyderabad-12/10354/2018-19 dated 10.07.2024. Since the addition of Rs.2,15,00,000/-has already been confirmed on substantive basis in the hands of M/s. Jaya Balajee Real Media Private Limited in the AY 2017-18, the protective addition of Rs.2,15,00,000/- in the*

*hand of the appellant is hereby deleted*". The learned CIT(A), accordingly, deleted the addition of Rs.2,15,00,000/- made by the Assessing Officer.

6. On identical set of facts, the learned CIT(A), has given identical observations and deleted the addition of Rs.5,20,00,000/- in the case of Madhusushana Venkata Subba Rao Potti; Rs.4,50,00,000/- in the case of Potti Kumara Naga Venkata Sai Chakravarthy and Rs.2,00,00,000/- in the case of M/s. Shivani Cotton Industries Private Limited, for the assessment year 2016-2017.

7. Aggrieved by the order of the learned CIT(A), the Revenue is now, in appeal before the Tribunal.

8. Sri Badicala Yadagiri, learned CIT-DR for the Revenue, supporting the order of the Assessing Officer submitted that, learned CIT(A) ought to have upheld the addition made by the Assessing Officer towards advance claimed to have been given to M/s. Jaya Balajee Real Media Private Limited in the financial year 2015-2016 relevant to

assessment year 2016-2017 in cash during the demonetisation period, since the assessee failed to discharge the onus to prove the transaction is genuine. Learned DR further submitted that, although, the CIT(A) confirmed the addition made in the hands of M/s. Jaya Balajee Real Media Private Limited, but, the fact remains that, the above company went for further appeal before the ITAT, Visakhapatnam and, therefore, in order to keep the issue alive in the hands of the assessee, the learned CIT(A) should have confirm the addition till the disposal of the appeal by the Tribunal. The Learned DR further submitted that, although, the assessee claims to have given huge amount of advance to the above company, but, going by the facts available on record, the said company does not have even sufficient income to explain the source and further, the return of income has been filed belatedly to cover-up the transaction of cash advance given to the above company. The learned CIT(A) without appreciating the relevant facts simply deleted the addition made by the Assessing

Officer. He, therefore, submitted that, the Order of the Assessing Officer should be upheld.

9. CA, MV Prasad, Learned Counsel for the Assessee, on the other hand, referring to the petition filed by the assessee, under Rule 27 of IT Rules, 1963 submitted that, the assessee has taken a legal ground challenging the reassessment proceedings including the issue of notice under section 148 of the Act before the learned CIT(A) and the learned CIT(A) has not decided the legal ground of the assessee on the ground that, the addition made by the Assessing Officer has been deleted on substantive ground on merits. However, the fact remains that, the Revenue has challenged the order of the learned CIT(A) by filling appeal before the Tribunal and the assessee filed cross objection and submitted that, since he has got relief from the learned CIT(A), there is no necessity of filling further appeal before the Tribunal. Further, upon perusal of the relevant grounds filed by the Revenue before the Tribunal, the assessee found that, the Revenue has taken certain legal grounds challenging the Order of the CIT(A), particularly, stating that

the appeal has been filed by the Revenue in view of keeping the issue alive and, therefore, after considering the relevant grounds, the assessee opined that, petition under Rule 27 of IT Rules, 1963 needs to be filed with above grounds. Therefore, he submitted that, the petition filed under Rule 27 of IT Rules, 1963 with the following grounds should be admitted.

1. *“The Ld. CIT(A) ought to have upheld the addition made by the AO, as the assessee firm claimed to have given an amount of Rs.2,15,00,000/- as advance to M/s. Jaya Balajee Real Media Private Limited (JBRMPL) in the F.Y. 2015-16 relevant to A.Y. 2016-17 in the form of cash during the demonetization period, since the assessee has failed to discharge the onus to prove that the transaction is genuine.*
  2. *The addition of Rs. 2,15,00,000/- has been confirmed in the hands M/s. Jaya Balajee Real Media Private Limited (JBRMPL), which went for further appeal before Hon'ble ITAT, Visakhapatnam(ITA No.674/Hyd/2024 dtd. 13.07.2024). In order to keep the issue alive in the hands of the assessee, since the assessment was done on protective basis, further appeal is necessary.*
- (ii) *Any other ground that may be urged at the time of appeal hearing.”*

9.1. In this regard he relied upon certain judicial precedents.

10. Per contra, Sri Badicala Yadagiri, learned CIT-DR, on the other hand, strongly opposed the petition filed by the assessee under Rule 27 of IT Rules, 1963 on the ground that, once the assessee has not challenged the findings of the learned CIT(A) and legal ground, then, the assessee cannot be permitted to file petition under Rule 27 of IT Rules, 1963 because, Rule 27 deals with filing petition by the respondent on the ground which has been decided against in the appeal, but, in the present case, the learned CIT(A) has not decided that legal ground taken by the assessee and, therefore, petition filed by the assessee under Rule 27 of IT Rules, 1963 should be rejected.

11. 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 the relevant petition filed by the assessee under Rule 27 of IT Rules, 1963 in light of relevant grounds taken before the Tribunal along with grounds of appeal filed before the learned CIT(A) on validity of reopening of the assessment to make the protective assessment. Therefore, we deem it first

to deal with the petition filed by the assessee under Rule 27 of IT Rules, 1963.

12. Admittedly, the Assessing Officer has re-opened the assessment under section 147, in the case of the assessee for the reasons recorded, as per which, income chargeable to tax had been escaped assessment on account of advance given to M/s. Jaya Balajee Real Media Private Limited in the financial year 2015-2016 relevant to the assessment year 2016-2017. The Assessing Officer had completed the assessment under section 143(3) r.w.s.147 of the Income Tax Act, 1961 for the assessment year 2016-2017 and made additions towards advance given to the above company on 'protective basis' to protect the interest of the Revenue on the ground that, substantive addition has been made in the case of the M/s. Jaya Balajee Real Media Private Limited towards cash deposit into bank account during demonetization period for the assessment year 2017-2018. The assessee has challenged the Order passed by the Assessing Officer before the learned CIT(A) and challenged the order on two grounds i.e., (i) on legal grounds as well as

(ii) on merits. The learned CIT(A) disposed of the appeal filed by the assessee and deleted the additions made by the Assessing Officer towards advance given to M/s. Jaya Balajee Real Media Private Limited on the ground that, the 'substantive addition' made in the hands of M/s. Jaya Balajee Real Media Private Limited has been confirmed by the learned CIT(A) and, therefore, the legal ground taken by the assessee challenging the validity of reopening of assessment under section 147 of the Act for making protective additions are redundant for adjudication. In otherwords, although, the assessee has raised the legal ground before the learned CIT(A) which are similar to grounds raised by the assessee in the petition filed under Rule 27 of IT Rules, 1963, but, the learned CIT(A) did not adjudicate the above grounds on the ground that, the assessee has got relief on the issue of additions made by the Assessing Officer towards advance given to M/s. Jaya Balajee Real Media Private Limited. Therefore, it is necessary for us to consider the admissibility of the petition

file by the assessee under Rule 27 of IT Rules, 1963 in light of the above facts.

13. It is a settled legal position from the decision of Hon'ble Gujarat High Court in the case of PCIT vs., Sun Pharmaceuticals Industries Ltd., [2017] 86 taxmann.com 148 (Guj.) wherein it has been clearly held that, although, the respondent-assessee though, he may not have appealed, is free to defend the order before the Appellate Forum on all grounds including ground, which may have been held against him by lower authority or Court, whose order is otherwise in his favour. A similar view has been taken by the Hon'ble Delhi High Court in the case Sanjay Sawhney vs., PCIT [2020] 116 Taxman.com 701 (Del.). Further, the Bombay High Court in the case of Peter Vaz vs., CIT [2021] 128 taxman.com 180 (Bom.) held that, the fundamental principle that a respondent must have been aggrieved by the final order passed by the lower authority or Court and, therefore, has not filed an appeal against the same, is entitled to defend such an Order before Appellate Forum on all grounds including ground which has been

held against him by lower authorities, though, final order is in it's favour. The Hon'ble Madras High Court in the case CIT vs., India Cements Limited [2020] 118 taxmann.com 99 (Mad.) had considered an identical issue and in paras 28 and 29 very clearly held that, once the learned CIT(A) did not adjudicate the correctness of the assessment proceeding, which was challenged by the assessee, then, it is deemed that, said issue was decided against the assessee and that, the assessee was entitled to canvass the said issue before the Tribunal without independently filing an appeal in light of Rule 27 of Income Tax Appellate Tribunal Rules, 1963. The sum and substance of the ratio laid down by the various Courts are that, although, the assessee did not filed the appeal or Cross-Objection against the Order of the learned CIT(A), but, yet it can file a petition under Rule 27 of Income Tax Appellate Tribunal Rules, 1963 to support or challenge the Order on all grounds including on any other ground that may be decided against him by the lower authority or Court. In the present case, since, the assessee has challenged the reopening of assessment proceedings by

filing legal grounds before the learned CIT(A) and the learned CIT(A) did not considered the above grounds on the ground of redundant because, he has allowed relief to the assessee on merits, therefore, in our considered view, it is deemed that, the learned CIT(A) has considered the above legal grounds and on the said ground, the assessee can file a petition under Rule 27 of IT Rules, 1963. Thus, we admit the petition filed by the assessee under Rule 27 of IT Rules, 1963 for adjudication.

14. Learned Counsel for the Assessee, referring to the ground taken in the petition filed under Rule 27 of Income Tax Appellate Tribunal Rules, 1963 submitted that, the reopening of assessment is invalid to make the 'protective assessment' because, in the present case, although, the Assessing Officer has reopened the assessment on the belief of escapement of income, but, finally he has made addition on protective basis, even though, there is no substantive assessment in the case of M/s. Jaya Balajee Real Media Private Limited for the assessment year 2016-2017. Learned Counsel for the Assessee, further referring to the

assessment order passed by the Assessing Officer in the case of M/s. Jaya Balajee Real Media Private Limited submitted that, the Assessing Officer made addition in the hands of above company for the assessment year 2017-2018, whereas, in the case of the assessee, the Assessing Officer made addition on protective basis for the assessment year 2016-2017. Further, in order to make protective assessment, there should be a substantive addition for the very same assessment year. Since, there is no substantive addition for the very same assessment year, the protective assessment made by the Assessing Officer cannot be sustained. In this regard, he relied upon the decision of ITAT Delhi Bench, Delhi in the case of ITO vs., Fussy Financial Services Private Limited ITA.No.4227/Del./2014 and the decision of ITAT, Mumbai Bench, Mumbai in the case of E. Suresh K. Jajoo vs., ACIT, Circle-4(2), Mumbai [2010] 39 SOT 514 (Mum.)

15. Sri Badicala Yadagiri, learned CIT-DR, on the other hand, submitted that, there is no merit in the legal ground taken by the assessee challenging the validity of

reopening of the assessment because, the Assessing Officer has rightly made addition in the case of the assessee towards advance given to the above company for the assessment year 2016-2017 on protective basis because, the assessee claims to have given an advance in the financial year 2015-2016 relevant to the assessment year 2016-2017. The Assessing Officer made addition in the hands of M/s. Jaya Balajee Real Media Private Limited for the assessment year 2017-2018 because, the assessee company could not explain the source for cash deposited into the bank account during the demonetization period which falls into the financial 2016-2017 relevant to assessment year 2017-2018. Since, the facts in the present case necessitated additions for the assessment year 2016-2017 and because the Assessing Officer made substantive additions in the hands of M/s. Jaya Balajee Real Media Private Limited on the very same advance, the addition made by the Assessing Officer in the case of the assessee on protective basis should be sustained. Therefore, he submitted that, the grounds of appeal filed by the assessee

in the petition filed under Rule 27 of Income Tax Appellate Tribunal Rules, 1963 is not maintainable and thus, should be rejected.

16. We have heard both the parties, perused the material on record and had gone through the orders of the authorities below. There is no dispute with regard to the fact that, the issue of reopening of assessment in the present case was triggered because, there was an explanation by M/s. Jaya Balajee Real Media Private Limited towards cash deposited into bank account during demonetisation period in the financial year 2016-2017 relevant to assessment year 2017-2018, where the above company explained the source for cash deposited out of advance claimed to have been received from the assessee. The Assessing Officer reopened assessment on the ground that, the income chargeable to tax has been escaped assessment on account of advance given to the above company in cash. However, in the assessment order passed under section 143(3) r.w.s.147 of the Income Tax Act, 1961, the Assessing Officer made addition on 'protective basis' on the ground that, the

substantive addition has been made in the hands of the company for the assessment year 2017-2018. From the above facts, it is undisputedly clear that, the Assessing Officer made protective assessment in the hands of the assessee without there being any substantive addition towards very same transaction in any other case for the assessment year 2016-2017. It is an admitted legal position and concept that, while making any protective assessment, there should be substantive assessment to be made in any other case. The above concept is for the simple reason that, while making the assessment on a particular income or transaction, the Assessing Officer is not sure about the assessee, on which, the said income is chargeable to tax because of multiple claims made by various parties or both parties or the assessee claim of such transactions for multiple assessment years. In case, a particular transaction has been claimed by both the parties, then, the Assessing Officer on the basis of facts available on record, shall make an assessment on substantive basis in one hand or on assessee and further, make a protective assessment in other

case to protect the interest of Revenue. Further, even an assessee claimed a transaction in different assessment years and Assessing Officer was of the view that, the said transactions falls under different assessment years, then, the Assessing Officer should make a substantive assessment in the year, in which, he feels the income is taxable and further make a protective assessment in other year, where the assessee claims that, such transaction falls in other year. Therefore, to make a protective assessment, there should be a substantive assessment for the very same assessment year. In the present case, the Assessing Officer made protective assessment in the hands of the assessee towards advance given to M/s. Jaya Balajee Real Media Private Limited in the financial year 2015-2016 relevant to assessment year 2016-2017, whereas, made substantive assessment or addition in the case of M/s. Jaya Balajee Real Media Private Limited for the assessment year 2017-2018. Further, going by the facts available on record, the Assessing Officer made addition in the hands of the assessee on protective basis towards advance given to above

company under section 69 of the Income Tax Act, 1961 as unexplained investment, whereas, in the hands of the company, the Assessing Officer made addition towards cash deposit under section 69A of the Income Tax Act, 1961 as unexplained money for the assessment year 2017-2018. In otherwords, for the assessment year 2016-2017, there is no addition in the hands of the company towards advance received from the assessee, which is, evident from re-assessment order passed by the Assessing Officer under section 143(3) r.w.s.147 of the Income Tax Act, 1961. Hence, it is implied that, there is no substantive assessment made in the hands of the Company towards advanced received from the assessee. Once there is no substantive addition towards advance received from the assessee in the hands of M/s. Jaya Balajee Real Media Private Limited, then, in our considered view, the protective addition made by the Assessing Officer in the hands of the assessee towards a very same advance, is devoid of merit and cannot be accepted.

17. The assessee has relied upon certain judicial precedents in support of its contention that, unless there is a substantive assessment in the hands of any other person for the very same assessment year, the protective addition made in the hands of the assessee, cannot be sustained. The assessee has relied upon the decision of ITAT, Delhi Bench, Delhi in the case of ITO vs., Fussy Financial Services Private Limited (supra) where it has been held as under :

*"We further note that the analysis of the investment account reveal that the company has made investment of Rs.5,04,01,000/. The statement given by Sh. PN Jha assumes importance wherein he categorically admitted that the company was doing the business of investment and finance and during the year the bank accounts of the company have been used to provide the accommodation entries. The addition of Rs.3,17,67,951/- made by the Assessing Officer on protective basis, which is not sustainable in the eyes of law, because in this case the AO himself stated in the assessment order that the Department is looking after the cases of beneficiaries and the amounts channelized through this group would be taxed in the hands of the beneficiaries, the amount of total credits of Rs.3,17,67,951/- made in its bank account with Kotak*

*Mahindra Bank, KG Marg, New Delhi, during the year is added to the income of the assessee on protective basis. In this case we find that AD has not made any substantive assessment. There may be substantive assessment without any protective assessment, but there cannot be any protective assessment without there being a substantive assessment.*

*Keeping in view of the facts and circumstances of the present case, we are of the considered view that Ld. CIT(A) has rightly deleted the addition in dispute, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue."*

18. The assessee has also relied upon the decision of ITAT, Mumbai Bench, Mumbai in the case of E.Suresh K. Jajoo vs., ACIT, Circle-4(2), Mumbai (supra), wherein the Coordinate Bench of ITAT, Mumbai under identical set of facts held as under :

*"Keeping in mind the principles as explained above, let us see whether the assessment for assessment year 2001-02 can be said to be a protective assessment. We have already extracted the order of the Assessing Officer for assessment year 2001-02 in para-3 of this order.*

27. *The gist of the conclusion of the Assessing Officer in assessment for assessment year 2001-02 is that he refers to the assessee's submission regarding the date of transfer being on 12-4-2000 when the broker raised the bill dated 12-4-2000 after scheduled pay-in/pay-out of securities to Stock Exchange was completed only on 12-4-2000. The Assessing Officer has accepted the above claim of the assessee but expressed a doubt that the transaction could be said to be completed on 30-3-2000 as per the contract note of the broker because the subsequent events like delivery of share certificate and receipt of payment are only formalities and, therefore, when these formalities are completed the date of sale would relate back to the date of the broker's contract note. The Assessing Officer was also satisfied on looking into the ledger account of the assessee as per the books of the broker that payment was made only on 12-4-2000. Finally, the Assessing Officer taxed the capital gain as a long-term capital gain as offered by the assessee. The Assessing Officer made the following observations :*

*"As the assessee has already offered this income in assessment year 2001-02, the same is assessed in this year to protect the interest of the revenue."*

*Whether the above observations are enough to conclude that the assessment of the capital gain as long-term capital gain in assessment year 2001-02 by the Assessing Officer was only a protective assessment? We have already seen the ratio laid down by the Hon'ble Supreme Court in the case of Lalji Haridas (supra) wherein the Hon'ble Supreme Court while recognizing the concept of protective assessment has very clearly laid down that there must be an exhaustive enquiry and the question as to who is liable to pay (in this case which year the capital gain is to be assessed and whether as long-term capital gain in assessment year 2001-02 or short-term capital gain in assessment year 2000-01) should be determined after hearing objections. He should determine the question in the case of one person (in this case In one assessment year) and then conclude the proceedings in the case of the other person (in this case in other year) in whose case assessment has to be made protectively. Thus, protective assessment has to be done only after substantive assessment is done. An assessment can be considered as protective only when there is substantive assessment. Thus, substantive assessment has to precede protective assessment.”*

19. Coming back to another argument of the Learned Counsel for the Assessee that, re-opening of the assessment under section 147 of the Income Tax Act, 1961 is bad in law, when, no substantive addition has been made in the assessment order. The Assessing Officer has reopened the assessment in the present case after recording reasons to believe that, income chargeable to tax had been escaped assessment towards advance given to above company. However, in the assessment order passed under section 147 of the Income Tax Act, 1961, the Assessing Officer has not made any addition towards advance given to the above company on substantive basis, although, he has made addition on protective basis and if we go by the reasons given by the Assessing Officer in the assessment order to make protective addition, in our considered view, the reasons recorded for reopening of the assessment by the Assessing Officer is not on the basis of formation of reasonable believe of escapement of income, but, it is only on the basis of reasons to suspect that, the income chargeable to tax had been escaped assessment. In our

considered view, the assessment cannot be reopened for the purpose of making protective assessment because, before reopening of assessment, the Assessing Officer must record 'reasonable belief of escapement' which should have a live link between the 'tangible material' and the 'formation of the reason' to believe that, income had escaped assessment. In the present case, the Assessing Officer has reopened the case for verifying source for advance given to M/s. Jaya Balajee Real Media Private Limited by the assessee. Therefore, from the above it is very clear that, the Assessing Officer does not have any material in his possession to arrive at a reasonable belief of escapement of income that, the assessee does not have source to explain the advance given to the above company. The reason to believe indicate that, the believe must be that, for a reasonable person, based on reasonable grounds emerging from direct or substantial evidence and not on mere suspicion, gossip or rumour. The reason to believe recorded did not refer to any material that came to the knowledge of the Assessing Officer whereby it could be inferred that, he could have formed a

reasonable belief that, for the assessment year in question had escaped assessment. The requirement of law is, reason to believe and not reason to suspect. In the present case, since the purported reasons to believe recorded indicate that, the Assessing Officer has acted on mere surmises without any basis, the action of reopening of the assessment for making protective assessment is contrary to law and is unsustainable. This view is supported by the decision of Hon'ble High Court of Bombay in the case of DHFL Venture Capital Fund vs., ITO-19(3)(1), Bombay [2013] 34 taxman.com 300 (Bom.) where it has been held that, "*where Assessing Officer sought to make protective assessment of reopening an assessment on the ground that a contingency may arise in future resulting in escapement of income, that would be wholly impermissible and would amount to re-writing of statutory provision*". Similar view has been taken by the Hon'ble Delhi High Court in the case of Krown Agro Foods (P.) Ltd., vs., ACIT, Circle-5(1), New Delhi [2015] 57 taxmann.com 355 Del.).

20. In this view of the matter and considering the facts and circumstances of the case and also by following the ratio of various High Courts discussed hereinabove in the preceding paragraphs, we are the considered view that, reopening of the assessment under section 147 of the Income Tax Act, 1961, in the present case, is bad in law because, the reasons recorded for reopening of the assessment does not show any nexus between the reasonable belief of escapement of income and tangible material which suggests escapement of income, which is clearly evident from the assessment order passed by the Assessing Officer, where the Assessing Officer has made protective addition in the hands of assessee towards advance given to M/s. Jaya Balajee Real Media Private Limited, even though, there is no substantive additions towards advance in the hands of M/s. Jaya Balajee Real Media Private Limited for the assessment year 2016-2017. Thus, reopening of the assessment under section 147 of the Income Tax Act, 1961 is bad in law and liable to be quashed. Thus, we quash the reassessment order passed by

the Assessing Officer under section 147 of the Income Tax Act, 1961.

21. Since, we have quashed the reassessment order passed by the Assessing Officer, the appeal filed by the Revenue by challenging the deletion of addition made by the Assessing Officer towards advance given to M/s. Jaya Balajee Real Media Private Limited becomes infructuous and thus, the appeal of the Revenue is dismissed as infructuous.

**ITA.Nos.367, 368 & 460/Viz./2024 – A.Y. 2016-2017 – [Revenue Appeals]**

22. The facts and issues involved in these three appeals filed by the Revenue are identical to the facts and issues which we have considered in Revenue's appeal in ITA.No.359/VIZ./2024 for the assessment year 2016-2017 in the case of M/s. Vijayasai Lakshmi Srinivasa Cotton Mills, Guntur. But for figures, the facts and issues are identical. The reasons given by us in preceding paragraph nos.11 to 21 hereinabove shall *mutatis mutandis* apply to these three Revenue's appeals i.e., ITA.Nos.367, 368 & 460/Viz./2024 for the assessment year 2016-2017 as well.

Therefore, for similar reasons, we quash the re-assessment order passed by the Assessing Officer under sec.147 of the Income Tax Act, 1961 in all these three Revenue's appeals i.e., ITA.Nos.367, 368 & 460/Viz./2024 for the assessment year 2016-2017. Accordingly, appeals ITA.Nos.367, 368 & 460/Viz./2024, for the assessment year 2016-2017 are dismissed.

23. In the result, appeals ITA.Nos.367, 368 & 460/Viz./2024 of the Revenue for the assessment year 2016-2017 are dismissed.

24. To sum-up, Revenue's appeals ITA.Nos.359, 367, 368 & 460/Viz./2024, for the assessment year 2016-2017, are dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 08.10.2025

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT  
Hyderabad, Dated 08<sup>th</sup> October, 2025  
VBP

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

Copy to

1.	M/s. Vijayasai Lakshmi Srinivasa Cotton Mills, D.No.19-10-4, Etukuru Road, GUNTUR – 522 003. Andhra Pradesh.
2.	Madhusushana Venkata Subba Rao Potti, Prop. Ambica Dall Mill, Plot No.19-10-4, Ramamandiram Street, Etukuru Road, Guntur – 522 003. Andhra Pradesh
3.	Potti Kumara Naga Venkata Sai Chakravarthy, 19-10-4, Etukuru Road, Guntur – 522 003. Andhra Pradesh.
4.	M/s. Shivani Cotton Industries Private Limited, 8-11-108B, 7/1, Nehru Nagar, Guntur – 522 001. Andhra Pradesh.
5.	The Assistant Commissioner of Income Tax, Standard House, Nagarampalem, GUNTUR – 522 004. Andhra Pradesh.
6.	The Income Tax Officer, Standard House, Nagarampalem, Main Road, GUNTUR – 522 004. Andhra Pradesh.
7.	The Income Tax Officer, Ward-1(1), 2 <sup>nd</sup> Floor, Standard House, Nagarampalem, Main Road, GUNTUR. PIN – 522 004. Andhra Pradesh.
8.	The Income Tax Officer, Ward-2(3), 3 <sup>rd</sup> Floor, Standard House, Nagarampalem Main Road, GUNTUR – 522 004. Andhra Pradesh.
9.	The learned CIT(A)-12, 6 <sup>th</sup> Floor, Aayakar Bhawan, Basheerbagh, Hyderabad – 500 004.
10.	The Pr. CIT-(Central), Hyderabad.
11	The DR ITAT, Visakhapatnam Divn Bench, Visakhapatnam.
12.	Guard File.

//By Order//

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