

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**  
*(Through Video Conferencing)*

**Before Smt. P. Madhavi Devi, Judicial Member**  
**AND**  
**Shri D.S. Sunder Singh, Accountant Member**

ITA Nos. 734/Hyd/2014 & 1364/Hyd/2015			
Assessment Years: 2009-10 & 2010-11			
Shailaja Hyderabad.	Kalvakuntla,	Vs.	Income-tax Officer, Ward – 1(2), Hyderabad.
PAN – AHGPK 9438D			
(Appellant)			(Respondent)
Assessee by:		Shri K.C. Devdas	
Revenue by:		Shri Sunku Srinivas	
Date of hearing:		19/11/2020	
Date of pronouncement:		06/01/2021	

**ORDER**

**Per D.S. Sunder Singh, A.M.**

Both these appeals are filed by the assessee for the AYs 2009-10 and 2010-11.

ITA No. 734/Hyd/2014

2. This appeal is directed against the order of CIT(A) – IV, Hyderabad, dated 14/02/2014 for AY 2009-10.

3. All the grounds in this appeal are related to the addition confirmed by the Id.CIT(A) for an amount of Rs.85,63,498/- made by the AO u/s 69 of the IT Act.

4. Brief facts of the case are that the assessee did not file the return of income for the AY 2009-10, hence, the AO issued notice u/s 148 of the Act, to which, there was no response from the assessee. Later, the AO issued the notice u/s 142(1) of the IT Act calling for the details and, in response to which, the AR of the assessee appeared before the AO and furnished the details and the assessment was completed u/s 144 rws 147 of the Act on a total income of Rs. 1,04,57,680/-. In the assessment order framed u/s 144 r.w.s.147 of the Act, the AO made the following additions:

(i)	Income from house property as admitted In the computation of total income filed During the assessment proceedings	Rs. 7,57,680
(ii)	Unexplained investment made in purchase of land at Shaikpet assessed to tax u/s 69	Rs.97,00,000

Out of the above additions, the dispute is with regard to the unexplained investment made in purchase of land at Shaikpet, which is assessed u/s 69 of the Act.

4.1 During the assessment proceedings, the AO found that the assessee has advanced the amount of Rs. 97,00,000/- for purchase of land admeasuring 1800 sq.yds. in Shaikpet and made the payments as under:

i)	Paid through cash on 21/07/2008	Rs. 45,00,000
ii)	Paid through cas on 05/08/2008	Rs. 45,00,000
iii)	Paid through Ch. No. 430219, dt. 21/07/08 of ABN AMRO Bank, Banjara Hills.	Rs. 2,00,000
iv)	Paid through Ch.No. 430221, dt. 05/08/2008 of ABN AMRO Bank, Banjara Hills.	<u>Rs. 5,00,000</u>
	Total	<u>Rs 97,00,000</u> =====

The assessee has explained the source for purchase of the land by way of cash flow statement compiled for the FYs 2007-08 and 2008-09. During the scrutiny assessment proceedings of the A.Y.2008-09 the assessee has furnished the cash flow statements, up to the A.Y.2008-09. As per which the opening cash balance was Rs. 64,30,048/- as on 01/04/2007 and the receipts during the F.Y. 2007-08 were Rs.38,53,914/- and closing cash balance was Rs.75,70,268/- as at the end of the year 31/03/2008. The assessee also submitted the balance sheet before the AO as on 31/03/2008. The AO picked up one of the items of Rs.5.00 lacs deposited in ABN-AMRO Bank on 25/07/2007 from the cash flow statement and made the addition under section 68 to the returned income in the order made under section 144 r.w.s 147 dated 31/12/2011 for the A.Y.2008-09.

4.2. The Asst.year under consideration is 2009-10 relevant to the F.Y.2008-09 the assessee furnished the cash flow statement in page No.51 of the paper book with the opening balance of Rs.75,70,268/- (Closing balance of 31/03/2008) and the receipts during the year of Rs.61,98,780/- and thus the assessee explained the sources for acquiring the land through cash flow statement in page 51 of the paper book which contain the sources and application of funds.

4.3. The AO during the assessment proceedings of 2009-09, examined the cash flow statement of F.Y.2008-09 and viewed that there was no basis for the opening cash balance of Rs.64,30,048/- as on 01.04.2007. The assessee claimed the receipt from HSBC amounting to Rs.39,50,000/ as a source and the AO did not allow the credit for source, since, the assessee failed to explain the nexus between the loan taken from HSBC and the

advance made for purchase of land. Similarly, the assessee said to have been received the sums from Aparna Constructions & Estates Pvt. Ltd. and from her husband, which was also not allowed by the AO. All the transactions were related to the A.Y.2008-09. Thus the AO reduced the source of opening cash balance available to the assessee.

4.4. In the cash flow statement for the A.Y.2009-10, the assessee has shown the receipts of Rs. 20 lakhs from Shri G. Balakishan Rao, G. Narayana Rao and Sri. E. Madan Mohan Rao towards sale of land as under:

Shri G. Balakishan Rao	Rs.5.00 lacs
SriG. Narayana Rao	Rs.10.00 lacs
Sri. E. Madan Mohan Rao	Rs.5.00 lacs

The Assessee furnished the confirmation letters from Shri G. Balakishan Rao, and G. Narayana Rao in support of the advance. However, since the assessee failed to establish creditworthiness of the said creditors, the AO did not believe the source of Rs. 15.00 lakhs advance received from Shri G. Balakishan Rao and G. Narayana Rao. With regard to Sri. E. Madan Mohan Rao also since, the assessee failed to file confirmation from Sri E. Madan Mohan Rao, the AO rejected the claim of the assessee with regard to sources. Accordingly the AO disbelieved the source of entire investment of Rs. 97,00,000/- towards purchase of land and made the addition u/s 69 of the Act.

5. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and received part relief from the Id. CIT(A). The Id. CIT(A) worked out the cash balance as on 01/04/2007 at Rs. 11,36,502/- as under:

Opening cash balance on 01/04/2001	Rs. Nil
Add: Receipt from Aparna Construction	Rs. 4,00,000
Advance from Husband	Rs. Nil
Loan from HSBC	<u>Rs. 39,50,000</u>
Total	Rs. 43,00,000
Less: Outflow during FYs 2002-03 to 2005-06	<u>Rs. 31,63,498</u>
Cash balance as on 01/04/2007	Rs. 11,36,502
	=====

With regard to Rs. 20 lakhs received from Shri G. Balakishan Rao, G. Narayana Rao and Sri. E. Madan Mohan Rao was disbelieved by the Ld.CIT(A) also and rejected the assessee's claim. With regard to cash flow statement of F.Y.2007-08, relevant to A.Y.2008-09, the Id. CIT(A) has viewed that the AO has no occasion to examine the correctness of the cash flow statement and hence held that the AO is right in rejecting the contention of the assessee with regard to correctness of the entries in cash flow statement and the closing balance. Accordingly, Ld.CIT(A) allowed part relief to the assessee. Against the order of Ld. CIT(A), the assessee is in appeal before the Tribunal.

6. During the appeal hearing, Id. AR of the assessee submitted that the source for the investment of Rs. 97,00,000/- was out of opening cash balance, the borrowings and own sources of income which was explained by the assessee before the Ld.AO by cash flow statement and a copy of the same was placed at page No. 51 of the paper book. He further submitted that the AO doubted the genuineness of the opening cash balance of Rs. 75,70,268/- reported in the cash flow statement merely because huge balances were maintained which is the presumption of the AO. Ld. AR further submitted that for AY 2008-09, the assessment was completed in a scrutiny manner and the assessee furnished the cash flow statement and

the balance sheet before the AO for AY 2008-09, which is placed at page no. 91 of the paper book, wherein the assessee had worked out the opening balance of Rs. 64,30,048/- as on 01.04.2007 and the closing balance of Rs. 75,70,268/- as on 31.03.2008 which was accepted by the AO. In the assessment proceedings, for AY 2008-09, out of the entries in cash flow statement, the AO picked up one item i.e. advances for land of Rs. 5 lakhs and added the same to the returned income and thus accepted the remaining cash flow statement and the balance sheet. The Ld.AR argued that the balance available in cash flow statement as at the end of the FY 2008-09 has become final and, therefore, the AO cannot revisit the same in the proceedings for the subsequent years and reject the opening balances and entries in the cash flow statement of 2008-09. There must be an end for litigation and therefore, argued that the payment for advance of land stands explained, hence, no addition is warranted.

6.1. With regard credits made in respect of Shri G. Balakishan Rao, and G. Narayana Rao aggregating to Rs.15 lakhs, Id. AR submitted that they have filed confirmation letters and the sources were explained by the respective creditors before the AO. He, therefore, submitted that there is no reason to suspect the genuineness of the receipts from Shri G. Balakishan Rao, and G. Narayana Rao, who have deposed the statement u/s 131 of the Act. The Id. AR of the assessee explained that the source in the hands of the assessee stands explained and if, the genuineness of the source of source is suspected, the same is required to be taxed in the hands of the respective creditors, but, not in the hands of the assessee. The Id. AR

further argued that the Ld.CIT(A) considered the cash flow statement and accepted the loan from HSBC, but, rejected the opening cash as on 01.04.2001 and the remaining entries which is incorrect and contradictory to her own observation. Since the assessee has filed the cash flow statement, the CIT(A) ought to have taken entire cash flow statement instead of considering the statement in piecemeal. He submitted that the Ld.CIT(A) allowed the credit of Rs.4 lakhs receipt from Aparna construction and Rs. 39,50,000/- from HSBC as the source and reduced the cash out flow for the entire period of 2002-03 to 2005-06 ignoring the income tax returns filed by the assessee which shows contradictory approaches of the Ld.CIT(A). He further submitted that the assessee has filed necessary evidences before the AO as well as the CIT(A). It is submitted that the assessee's husband Shri Ram Gopal Rao is a Forest Settlement Officer and has filed the returns of income regularly and having sufficient sources. It is contended that the Id. CIT(A) has rejected the sources explained by the assessee in respect of the receipts received from her husband, which were reflected in the balance sheet of her husband and it is unfair to reject the same in the hands of the assessee. It is submitted that since the assessee's husband has filed return of income for AY 2008-09 and is regularly assessed to tax, if the AO suspects the source of her husband, the same required to be assessed in the hands of her husband, but, not in the hands of the assessee. It is, thus, argued that in spite of the fact that assessee is having sufficient sources of income and explained before the AO and the Ld.CIT(A), both the lower authorities have rejected the contentions of the assessee without any evidences. Ld. AR brought the attention of the Bench

to page 140 of paper book relating to remand report submitted by the AO to CIT(A) wherein he had acknowledged the filing of cash flow statement by the assessee for FY 2007-08 and no defects were brought by the AO to reject the assessee's contention.

6.2. With regard to the addition of Rs 5.00 lakhs addition made by the AO for the A.Y.2008-09, the Id. AR submitted that the Hon'ble ITAT has remitted the matter back to the file of the AO vide its order dated 12/01/2016 and, thus, argued that the source for the payment of Rs. 97,00,000/- was clearly explained in the cash flow statement and balance sheet, filed at page 51 of the paper book. therefore, he argued that there is no case for making the addition u/s 69 of the Act. He, accordingly, contended that the orders of the lower authorities be set aside and allow the appeal of the assessee.

6.3. The Id. AR also submitted that since, the additions were made u/s 69 of the Act, the burden is on the AO to disprove the claim of the assessee. Apart from the above, the Id. AR also argued that the AO ought to have made the addition u/s 68 of the Act. The Id. AR of the assessee relied on the following cases in support of assessee's case:

1. CIVT Vs. Dinesh Jain, HUF, 352 ITR 629 (Del.)
2. CIT Vs. Kulwinder Singh [2019] 415 ITR 49 (P&H)

7. The Id. DR, on the other hand, vehemently opposed the contentions of the Id. AR and argued that there is no basis for cash flow statement

submitted by the assessee. He argued that assessee has shown opening cash balance of Rs. 75,70,268/-, which was rejected by the Id. CIT(A) in her reasoned order. He submitted that the CIT(A) has rejected the source of Rs. 20,00,000/- advance received by the assessee during the year and the sums received from her husband amounting to Rs. 25 lakhs and, therefore, he argued that the opening balance claimed in the cash flow statement deserves to be rejected for want of evidence. Ld. DR further submitted that the AO did not have any occasion to verify the cash flow statement filed by the assessee for AY 2008-09, since, the assessment was taken up for scrutiny for limited purpose. In the limited scrutiny, AO required to examine the issue for which the case was selected for scrutiny, thus, he argued that the CIT(A) has rightly rejected the contention of the assessee that the AO has not examined the correctness of the cash flow statement for the AY 2008-09. Ld. DR further argued that the assessee failed to establish the source for the investment for payment of land at Shaikpet, hence, the Id. CIT(A) rightly sustained the addition of Rs. 85,63,498/- after allowing the credit of Rs. 11,32,502/-. Accordingly, he argued that no interference is called for in the order of CIT(A) and requested to uphold the order of CIT(A) and dismiss the appeal of the assessee.

8. We have heard both the parties and perused the material on record. In the instant case, during the impugned AY, the assessee has made payment of Rs. 97,00,000/- for purchase of land admeasuring 1800 sq.yds., which was brought to tax u/s 69 of the Act. The assessee explained the payment through cash flow statement, which is placed at page 51 of the

paper book and as per which, the assessee had the opening cash balance of Rs.75,70,268/-, which the AO disbelieved on the pretext of impossibility of maintaining such huge cash balances and not substantiating the correctness of entries made in the cash flow statement of earlier years. In the immediately preceding AY, the assessment was completed in scrutiny manner u/s 144 r.w.s. 147 of the Act and the assessment orders are placed at page nos. 139A and 139B of the paper book II. During the assessment proceedings for AY 2008-09, the assessee has furnished cash flow statement, which is also placed at page 149 of the paper book II. As per the cash flow statement of A.Y.2008-09, the opening balance was Rs.64,30,048/- and the closing balance was Rs.75,70,268/-. From the cash flow statement of F.Y.2007-08, the receipts and payments aggregated to the sum of Rs.1,02,83,962/ including the opening and the closing balances of cash. The AO selected the item of advance for land of Rs. 5 lakhs and disbelieved the source of Rs.5.00 lakhs and added back to the returned income of the assessee for AY 2008-09. The remaining entries and opening and closing cash balances were untouched by the AO in the assessment proceedings for AY 2008-09. Thus, it is established that entries made in the cash flow statement for AY 2008-09 became final, except the sum of Rs.5 lakhs which was added back to the income. The contention of the Id. CIT(A) that there was no occasion for the AO to examine the correctness of cash flow statement for AY 2008-09 is incorrect and misinterpretation of the provision of the Act. Since, the cash flow statement was furnished to the AO, if there is any doubt or suspicion regarding the entries in the cash flow statement, the AO is having mandatory obligation to

verify the correctness of entries converting the case in to full scrutiny after obtaining the approval from competent authorities. If there was an understatement of income relating to the A.Y.2008-09, the AO has to examine and make addition in the A.Y.2008-09 itself but not in the subsequent assessment years. Having not verified the entries and accepted the same, the AO is not permitted to agitate and revisit the same issues under the pretext of non verification. There must be an ending for litigation and it should not be prolonged after completing the scrutiny assessment without sufficient reasons. AO in his remand report, furnished at page 140 of the paper book, clearly spelt out that the assessee has filed cash flow statement for the FY 2007-08 and, thus, the contention of the CIT(A) with regard to non-verification of the cash flow statement for the AY 2008-09 by the AO does not hold waters. Even though, the case was taken up for limited scrutiny, during the assessment proceedings, if any entries are suspicious or any other suppression of income, comes to the notice of the AO, it is mandatory obligation of the AO to take necessary permission from the authorities i.e. Pr. CIT/CIT as applicable and examine the suspicious entries to bring the true and correct income to tax and it is the duty of the AO to assess true and correct income. Therefore, we are unable to accept the argument of the Id. DR that merely because the case was taken up for limited scrutiny, the AO is barred from verifying the other entries in the cash flow statement. Since the assessee has furnished cash flow statement during the assessment proceedings for the AY 2008-09, the entries in the cash flow statement, which were already reflected in AY 2008-09, cannot be disturbed by revisiting the same statements in later years. For income tax,

each year is independent and what is to be examined in the impugned AY is the entries made in the relevant AY i.e. receipts and payments during the year under consideration, but, not the entries that were made in the earlier year. Thus, the closing balance declared by the assessee as at the end of the FY2007- 2008 stands explained and the assessee is entitled to claim the credit for the opening balance in the year under consideration. Hence, we hold that the assessee is permitted to take opening balance of Rs. 75,70,268/- as source.

8.1. Then the issue comes to sources for receipts during the year. Out of the receipts during the year, the AO rejected the advance amount of Rs. 20 lakhs received from S/Shri G. Balkishna Rao, G. Narayana Rao and E. Madan Mohan Rao. The assessee furnished confirmation letters from G. Balkishna Rao and G. Narayana Rao and the AO did not make any further enquiries. From the order of CIT(A), it is observed that during the appellate proceedings, G. Balkishna Rao and G. Narayana Rao have confirmed the payment to the assessee u/s 131 of the Act. Therefore, there is no reason to reject the credit. If the AO was not convinced with the explanation offered by the creditors, the same is required to be brought to tax in the hands of the creditors, since, they have confirmed the credit and explained the source, but, not in the hands of the assessee. Thus we hold that there is no case for rejection of opening balance and the loans from G.Balakrishna Rao and G.Narayana Rao and accordingly we direct the AO to accept the same.

8.2. With regard to the amount of Rs.5.00 lakhs received from Shri E. Madan Mohan Rao, as seen from the paper book page No.73 and 74 the creditor has issued the legal notice for recovery of the loan with the dates of amounts lent. Since the legal notice is available the AO should have caused necessary enquiries instead of pressing the assessee to produce the creditor. Having not caused the enquiries and did not bring any material to show that the advance received from E.Madan Mohan Rao was bogus, the AO is not permitted to make the addition in the hands of the assessee. Thus we direct the AO to accept the credit from E.Madan Mohan Rao.

8.3. In respect of Rs. 25 lakhs received from her husband, the same was reflected in the balance sheet of her husband and he is assessed to tax. Her husband Shri Ram Gopal Rao also filed confirmation having given the loans to the assessee, therefore, there is no reason to suspect the source. Even if it is to be suspected, the same is required to be examined in the AY 2005-06, but, not in the impugned assessment year.

8.4 From the cash flow statement, we find that the payment of Rs.97 lakhs on account of advance for land was clearly explained by the assessee and therefore, we hold that there is no case for making the addition, hence, we delete the addition made by the AO on this count and set aside the order of the Ld.CIT(A) and appeal of the assessee is allowed.

ITA No. 1364/Hyd/2015 for AY 2010-11

9. The assessee filed her return of income for the AY 2010-11 on 11/12/2012 admitting a total income of Rs. 8,78,560/- besides agricultural

income of Rs. 75,000/-. Since the assessee did not file a valid return of income, a notice u/s 148 dated 06/02/2013 was issued. Subsequently, the AO had issued notice u/s 142(1) of the Act, in response to which, the assessee filed return of income admitting total income of Rs. 8,78,560/- and the AO completed the assessment on a total income of Rs. 59,28,560/-.

9.1. During the assessment proceedings, the AO made addition of Rs. 50,50,000/- relating to investments made by the assessee in partnership firm. i.e Rs. 20 lakhs in Shivam Builders, Rs. 10,50,000/- in SSAARGORAP Constructions Pvt. Ltd. and Rs. 20 lakhs in Land at Shaikpet admeasuring 1800 sq.yds., aggregating to Rs. 50,50,000/-. The assessee explained the sources of the above investment was out of the opening cash balance of Rs. 33,13,802/- and rental deposit of Rs. 20 lakhs. The AO did not believe the source of rental deposit as well as opening cash balance, hence, made the addition u/s 69 of the Act. When the assessee carried the matter in appeal before the CIT(A), the Ld.CIT(A) confirmed the assessment order.

10. As regards the first issue of opening cash balance of Rs. 33,13,802/- available as on 01/04/2010, we have already made a detailed discussion and allowed the closing balance of Rs. 33,13,802/- in the appeal for the A.Y.2009-10. Therefore, the balance of Rs. 33,13,802/- stands explained. Hence, we delete the addition of Rs. 33,13,802/- in respect of opening cash balance.

11. As regards the issue of rental deposit of Rs. 20 lakhs, which was stated to have been received by the assessee, the AO made the addition disbelieving the rental deposit and the Id. CIT(A) confirmed the addition made by the AO in the absence of any evidence or information.

12. The assessee stated to have received the sum of Rs. 20 lakhs for letting out the property at MLA Colony. The AO addressed a letter to the lessee / creditor and there was no response from the lessee. The assessee failed to submit the details of receipt with dates and mode of payment. Therefore, the CIT(A) confirmed the addition made by the AO. Hence, the assessee is in appeal before us.

13. During the appeal hearing, Id. AR submitted that the amount in question was received from a tenant for letting out the property located in MLA Colony. He further submitted that the receipt of the amount of advance was supported by the lease deed dated 28/11/2009. The assessee had let out the house located at MLA Colony, Road No. 12, Banjara Hills to Shri M. Venkata Srinivasa Prasad and as per the lease deed, a deposit of Rs.20 lakhs was received. However, the details of deposit were not mentioned with date and mode of payment etc. The Id. AR argued that, in this regard, there was a dispute going on in the Civil Court, as per the plaintiff copy in OS No. 308 of 2007, annexed as page Nos. 5 to 7 of paper book, assessee had acknowledged the adjustment of advance of Rs. 20 lakhs towards monthly rents paid till the end of the December, 2013. In the counter filed by the respondent Shri M. Venkata Srinivas Prasad, he has not disputed the

adjustment of rent. Thus the Ld. AR of the Assessee submitted that the assessee had received the sum of Rs. 20 lakhs as advance, which was adjusted subsequently through monthly rentals. He, therefore, argued that there is no reason to suspect the genuineness of receipt of advance and, hence, requested to set aside the order of CIT(A) allow the appeal of the assessee.

14. The Id. DR, on the other hand, relied on the orders of lower authorities.

15. We have heard both the parties and perused the material on record. In the instant case, the assessee has claimed rent advance of Rs. 20 lakhs received from Shri M. Venkata Shiva Prasad for letting out the house at MLA Colony, Banjara Hills. Lease agreement was placed on record. However, the details of date of receipt and mode of payment were not furnished by the assessee. Similarly, the lessee has not responded to the notice issued u/s 133(6) of the Act. However, there was a civil case filed by the assessee in the Civil Court wherein the sum of Rs. 20 lakhs stated to have been adjusted towards monthly rentals. Therefore, the issue needs to be considered after verification of the details and genuineness of the transaction. Both the parties have agreed to remit the issue back to the file of the AO to examine the receipt of Rs. 20 lakhs as advance from the tenant. The assessee is directed to cooperate with the AO and submit necessary information to substantiate her claim with regard to the receipt of rent deposit of Rs. 20 lakhs. Since the legal dispute is pending the AO also

need to make sincere efforts to verify the correct fact by causing the enquiries instead of simply asking the assessee to produce the creditor. Thus, the issue is remitted back to the file of AO to decide afresh on merits and in accordance with law. Thus, this issue is treated as allowed for statistical purposes.

16. In the result, appeal in ITA no. 734/hyd/2014 for AY 2009-10 is allowed and the appeal in ITA no. 1364/Hyd/2015 for AY 2010-11 is partly allowed for statistical purposes.

Order pronounced in the Open Court on 6<sup>th</sup> January, 2021.

<b>Sd/-</b> <b>(P. MADHAVI DEVI)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(D.S.SUNDER SINGH)</b> <b>ACCOUNTANT MEMBER</b>
-------------------------------------------------------------------	----------------------------------------------------------------------

Hyderabad, dated 6<sup>th</sup> January, 2021.

*kv*

Copy to:

- 1 Shailaja Kalvakuntla, C/o B. Narasing Rao & Co., CAs., Plot No. 554, Road No. 92, Jubilee Hills, Hyderabad – 500 096
- 2 ITO, Ward – 3(1), Hyderabad.
- 3 CIT (A) - IV, Hyderabad
- 4 CIT – III, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File