Dy.Cit, Central Circle-2,, Hyderabad vs Sri K Ravinder Reddy,, Hyderabad on 21 April, 2017

IN THE INCOME TAX APPELLATE TRIBUNAL HYDERABAD BENCH "B", HYDERABAD BEFORE SHRI P. MADHAVI DEVI, JUDICIAL MEMBER AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER S.No. ITA No. AY Assessee Respondent 1 & 2 343 & 2007-08 Dy. K. Kranthi Kiran 344/H/13 & Commissioner of Reddy, 2008-09 Income-tax, Hyderabad.

			Central Circle - 6, Hyderabad.	PAN - AIGPK 4038 C
3 & 4	404 & 405/H/13	2007-08 & 2008-09	K. Kranthi Kiran Reddy, Hyderabad. PAN - AIGPK 4038 C	Dy. Commissioner of Income-tax, Central Circle - 6, Hyderabad
5 & 6	402 & 403/H/13	2007-08 & 2008-09	K. Ravinder Reddy, Hyderabad. PAN - ADOPK 7300 A	Dy. Commissioner of Income-tax, Central Circle - 6, Hyderabad
7 & 8	345 & 346/H/13	2007-08 & 2008-09	Dy. Commissioner of Income-tax, Central Circle - 6, Hyderabad	K. Ravinder Reddy, Hyderabad. PAN - ADOPK 7300 A
9	407/H/13	2008-09	K. Priyamvada Reddy, Hyd. PAN - AGTPK 0205 A	Dy. Commissioner of Income-tax, Central Circle - 6, Hyderabad
10	348/H/13	2008-09	Dy. Commissioner of Income-tax, Central Circle - 6, Hyderabad	K. Priyamvada Reddy, Hyd. PAN - AGTPK 0205 A

Assessee by : Shri A. Srinivas
Revenue by : Shri K.J. Rao & Smt. U. Minichandran

Shri K. Ravinder Reddy, Hyd. And others

Date of hearing 23-02-2017
Date of pronouncement -03-2017

O RDE R

PER BENCH:

All these appeals are pertaining to three different assesses and are filed by the respective assessees as well as the revenue directed against the orders of CIT(A) - 1, Hyderabad, for assessment years 2007-08 & 2008-09. As identical issues are involved in all these appeals, they were clubbed and heard together, therefore, a common order is passed for the sake of convenience.

ITA Nos. 404 & 405/Hyd/2013 for AYs 2007-08 & 2008-09 in case of Shri K. Kranthi Kiran Reddy.

ITA Nos. 402 & 403/Hyd/2013 for AY 2007-08 and 2008-09 in case of Shri K. Ravinder Reddy.

2008-09.

2. The following common grounds have been raised with regard to agricultural income in all the appeals of the assessees:

> 2. The A.O ought not to have treated the agricultural income as income from other sources and brought the same to tax.
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> 3. The Appellate Commissioner ought not to have confirmed the order of the A.O in treating the agricultural income as income from other sources.
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> 4. The Appellate Commissioner ought not have given relief to the extent of Rs.10,50,000/- being agricultural income and taxing the balance as income from other sources.

3. To dispose of these grounds, we refer to the facts from the case of Shri K. Kranthi Kiran Reddy in ITA Nos. 404 & 405/Hyd/2013.

Shri K. Ravinder Reddy, Hyd.

And others 3.1 As regards ground Nos. 2, 3 & 4, pertaining to the addition of Rs. 55,11,895/- and Rs. 38,30,000/- towards agricultural income, the Assessing Officer noted that the assessee had shown in the Receipts and Payments a/c, cash receipts from JP Agro Farms during the year. He noted that cash had been deposited into the bank a/c of the assessee. However, no evidence for sale of agricultural produce or agricultural expenditure was found in the office or residential premises of the assessee during the search. The Assessing Officer noted that in his statement recorded u/s.132(4) of the Act, Shri K.Ravinder Reddy, Managing Director of the group companies, had stated that his brother in law, Dr. Jitender Reddy is looking after all his agricultural matters, and

therefore, he did not have any papers or vouchers relating to agricultural operations. Accordingly, in the course of assessment proceedings the assessee was requested to file evidence/confirmation in respect of receipts appearing in the Receipts and Payments A/c, which were claimed as cash receipts representing sale of agricultural produce.

3.2 The Authorised Representative of the assessee contended before the Assessing Officer that the agricultural expenditure of Rs. 20,77,771/- and Rs. 7,79,025/-, respectively, in these years had been met by M/s. Janapriya Engineers Syndicate, a partnership firm, wherein the assessee is a partner, debiting such amounts to the capital a/c of the partner in the firm by way of a journal entry. However, no evidence in support of agricultural receipts and agriculture expenditure towards tilling, cultivation, etc could be filed. Therefore the AO treated the receipts from JP Agro Farms of Rs.55,11,895/- and Rs.38,30,000/- as income from other sources and added to the income of the assessee for the assessment years 2007- 08 and 2008-09.

4. During the course of appellate proceedings, the Authorized Representative of the assessee submitted that the assessee had Shri K. Ravinder Reddy, Hyd.

And others received agricultural income of Rs.55,11,895/- and Rs.38,30,000/- in the Assessment years 2007-08 and 2008-09 directly, which were reflected in the cash flow statement submitted before the AO. The expenditure of Rs. 20,77,771/- and Rs. 7,79,024/- towards agricultural operations had been met by M/s Janapriya Engineers Syndicate, wherein the assessee is a partner. He claimed that the amounts stated above were extracted by the AO from the cash flow statements itself and treated as income from other sources, even while the expenditure was ignored, holding that no details were furnished.

4.1 The AR of the assessee submitted that in the assessee's own case for other AYs, in respect of similar additions made in the order u/s 143(3) rws 153A, the CIT(A), in his common order, dated 21/02/2012, has directed the AO to follow the same methodology of treating a portion of agricultural income as non agricultural income.

5. After considering the submissions of the assessee, the CIT(A) following the decision of his predecessor in assessee's own case held as follows:

> " 8.3 Despite the fact that the methodology stated above is not acceptable, it cannot be denied that the assessee has not been found having sold any of the land holdings in these years. It cannot be denied that the lands owned by the two farms have agricultural potential. Considering the set up and the potential, it is also logical to accept that agricultural operations were carried thereon. Therefore, a part of the agricultural income shown by the assessee is indeed to be considered as genuine. In this regard, it is seen that the Hon'ble Jurisdictional Income-tax Appellate Tribunal in the case of Ms. T. Kalpana Reddy & Anr. (ITA No.469/Hydj2009) have opined that normally 1 acre of land cultivated with mango trees would fetch Rs.15,000/-- per acre in a year. They have also held that it is also common to fetch Rs. 10,000/- per acre with regard to Paddy cultivation. Accordingly, in terms of the said judicial

pronouncement, the maximum income per acre could be Rs.15,000/- per year. However, considering the fact that the agricultural lands of the assessee are organized into agricultural farms, wherein agriculture can be conducted in a more scientific and productive manner, by even using multiple cropping, the average yield per acre from the said Shri K. Ravinder Reddy, Hyd.

And others farms can be taken at Rs.20,000/-. At the said rate, the total income from 210 acres of land comes to Rs. 42,00,000/- (210 x 20,000). Assuming that the assessee and three others had equal share of land holding, the assessee's share comes to Rs. 10,50,000/-. Accordingly, agricultural income to the extent of Rs. 10,50,000/- in each year is accepted, while the remaining income shown of Rs. 44,61,895/- (55,11,895-10,50,000) and Rs.27,80,000/- (38,30,000-10,50,000) in the Assessment Years 2007-08 and 2008-09, respectively, is considered income from other sources. The grounds in this regard are therefore decided partly in favour of the assessee."

6. Aggrieved with the above order, assessee preferred appeal before us. Ld. AR submitted that the issue in dispute is squarely covered by the decision of the coordinate bench in assessee's own case for AYs 2002-03 to 2006-07.

7. Ld. DR relied on the orders of revenue authorities.

8. Considered the rival submissions and perused the material facts on record. We observed that the assessee has disclosed the agricultural income in earlier years and the assessments reached finality also as under:

AY	Agr. Income declared by the assessee	Assessed by the AO by as income from other sources	Sustained by the CIT(A) as income from other sources	Assessee got relief as
2002-	27,32,717	27,32,717	3,85,000	23,47,717
2003-	33,49,392	33,49,392	-	33,49,392
2004-	36,90,044	36,90,044	-	36,90,044
2005-	36,48,223	36,48,223	5,11,000	31,37,223
2006-	32,97,322	32,97,322	4,65,000	28,32,322

Note: AO completed assessments for AY 2003-04 & 2004-05 u/s 143(3) Shri K. Ravinder Reddy, Hyd.

And others Excessive income sustained by the CIT(A) comes to an average of 14% out of agricultural income declared by the assessee.

In the current Appeals under consideration 2007- 55,11,895 55,11,895 44,61,895 10,50,000 2008- 38,30,000 38,30,000 27,80,000 10,50,000 As per the above statement, in the AYs 2003-04 and 2004-05, assessee has disclosed/claimed agricultural income which was verified by the AO and disallowed certain portion as excessive. Following the above findings, the CIT(A) and coordinate bench has disallowed certain portion as excessive in other assessments. Similarly in the AYs under consideration i.e. 2007-08 and 2008-09, by following the earlier direction of the coordinate bench, we suggest that similar disallowance can be applied for the sake of consistency. Over the years, assessee had disclosed similar income consistently which was accepted by the department. The ld. CIT(A) has brought in findings of ITAT in the case of T. Kalpana Reddy & Anr. We cannot apply the same in the given case by assuming that the agricultural yield will be similar in all the cases. The income from agriculture cannot be presumed without having data or scientific study. There are cash crops and non cash crops involved. For the sake of consistency, we direct the AO to apply the earlier decision of ITAT and disallow the excess claim to the extent of 14%.

9. The following common ground raised in all the assesees' appeals relating to deemed dividend.

5. The A.O ought not to have treated the amounts received from the companies in which the assessee is a shareholder as deemed dividend, in spite of the fact that the Appellate Commissioner has given a direction to the A.O to decide the matter after verification.

Shri K. Ravinder Reddy, Hyd.

And others

10. The facts as taken from Shri K. Kranthi Reddy are that in the Assessment Year 2007-08, the Assessing Officer noticed that the assessee had received an amount of Rs.10 lakhs as advance/loan from Engineers Reddy Homes Pvt Ltd. The assessee had also received loan of Rs.50 lakhs from Engineers Syndicate India Pvt Ltd (ESIPL). It was noted that the assessee had to receive loan of Rs.9,80,000/- from ESIPL, whereas he had received RS.50 lakhs. Therefore, the advance/loan given by the said company to the assessee during the year 2006-07 came to Rs. 40,20,000/-. The Assessing Officer observed that the assessee was having more than 20% shareholding in the above companies and that both of them were having adequate reserves to advance .the said loans to the assessee. He therefore proposed to treat the same as deemed dividend u/s.2(22)(e) of the Act.

10.1 It was submitted before him that the amounts had been paid by the companies on account of payments to be made to the landlords on behalf of the company for purchase of lands. But the transactions did not materialize and the amounts were returned back by the assessee to the company.

10.2 On a consideration of the above explanation, however, the Assessing Officer found that the assessee could not produce any evidence to substantiate the same. Accordingly, invoking the provisions of sec.2(22)(e), the amounts of Rs.10 lakhs and Rs.40,20,000/- from the said companies were treated as deemed dividend, leading to addition of Rs. 50,20,000/- in the Assessment Year 2007 -08.

10.3 In the Assessment Year 2008-09, the Assessing Officer noticed from the details that an advance of Rs.17,23,033/- had been received by the assessee from ESIPL. It was seen that those were payments made by ESIPL on behalf of the assessee towards his personal Shri K. Ravinder Reddy, Hyd.

And others expenditure and debited to his a/c. Since the assessee was holding more than 10% shares in the said company and the company had sufficient reserves as on 31-3-2008, he proposed to treat the same as deemed dividend. As no explanation was submitted, the amount of Rs. 17,23,033/- was treated as deemed dividend and added in AY 2008-09.

11. Before the CIT(A), it was submitted that ESIPL maintains accounts both at the Hyderabad head office and Bangalore Branch office. Assessee contended that in AY 2007-08, the AO considered the payment of Rs. 50 lakhs by ESIPL (Hyd.) shown on the receipts side of the receipts and payments statement of the assessee, but ignored Rs.64 lakhs paid by the assessee to the company's Bangalore branch. It was claimed that the company being a single entity, there was no effective debit. Besides, it was claimed that funds had flown from/through the assessee towards the business needs of the company in which he has substantial interest and used for the purpose of business of the company itself.

11.1 In respect of the Assessment Year 2008-09 also, the Authorized Representative submitted that the Assessing Officer considered debits alone of Rs.17.23 lakhs and ignored the credits, including the opening credit balance. Referring to the Receipts and payments Statement, he submitted that on the receipts side, Rs.2.20 lakhs was shown as received from ESIPL (Hyd), the balance being debits by way of journal entries. He stated that the amounts spent by the assessee for the purpose of Bangalore works were accounted for in the branch books, duly crediting his a/c and amounts paid to the assessee from the Head Office were debited to his a/ c in the books of HO. It was argued that the company being a single entity, in essence, there was no effective debit. The Authorised Representative pointed out that as on 31-3-2007, there was debit balance of Rs.40,20,000/- in the HO books and a credit balance of Rs71,21,225/-

Shri K. Ravinder Reddy, Hyd.

And others at Bangalore, reflecting a net credit balance of RS.31,01,225/-. Accordingly, it was submitted that the opening balance itself being Rs. 31,01,225/- and the total debits being Rs.17,23,033/- only, the assessee has never received any funds from the company. It was further contended that as per the a/c copy, the funds have flown from/through the assessee towards the business needs of the company wherein he has substantial interest and as such used for the purpose of business of the company. Accordingly, he claimed that the provisions of section 2(22)(e) are not applicable.

12. Ld. CIT(A) made the following observations in his order. As regards the advance/loan of Rs.10 lakhs from M/s.Engineers Reddy Homes Pvt. Ltd., from the copy of accounts submitted by the assessee, the CIT(A) observed that the assessee had an opening debit balance of Rs. 5 lakhs as on 1-4-2006. Subsequently, he further received Rs.10 lakhs from the said company by cheque on

9-6-2006. The closing debit balance of the said account at the year end was Rs.15 lakhs. Under the circumstances, no infirmity can be said to exist in the treatment of the advance/loan of Rs.10 lakhs from the said company during the year as deemed dividend in the Asst. year 2007 -08.

12.1 As regards the amounts received from M/s. Engineers Syndicate India Pvt. Ltd,(ESIPL), the CIT(A) observed as follows: "It is an established position of law that withdrawal over and above credit balance, which a shareholder/Director has with the company, can only be treated as the 'deemed dividend'. Reliance in this regard can be placed on the decision in the case of C.I.T. Vs. P. Sarada 154 I.T.R. 387 (Mad). In the case of C.I.T. Vs. P.K. Badyani (76 I.T.R. 369) (Bom) also, it has been explained that if the shareholder has a current a/c with a company, the position regarding each debit will have to be considered individually, as it may or may not be alone. In such a case, the debit balance of the shareholder with the company at Shri K. Ravinder Reddy, Hyd.

And others any point of time cannot be taken to represent an advance/loan by the company; nor can the amount at the previous year be alone taken as loan. Accordingly, the stand taken by the Representative of the assessee is indeed in consonance with the legal position. However, on going through the statement of account of the assessee with ESIPL, Bangalore, it is seen that while there was an opening credit balance of RS.7,31,211/-, the subsequent credits have come in cash only, resulting in the closing credit balance of Rs.71,21,225/-. Accordingly, except for the entry with regard to the remuneration received by him from the company, the contention of payment of Rs.64 lakhs to the Bangalore branch is not verifiable. On the other hand, the Hyderabad Account clearly shows that as against the opening credit balance of Rs.9,80,000/-, the assessee was paid Rs.50 lakhs by cheque on 25/09/2006. Likewise, in the ledger account for the Financial Year 2007-08, though several personal expenses of the assessee have been debited on account of payment thereof by the company, the credit entries shown therein are mostly unverifiable, as the mode of payment is cash or journal entries. Therefore, in the absence of evidence regarding genuineness of credit balance claimed as appearing in the Bangalore account, there is indeed payment of loan/advance to the assessee by the said company during the year, which is required to be brought to tax as deemed dividend in the Asst.Years 2007-08 & 2008-09. However, considering the fact that both Bangalore and Hyderabad offices are part of the same entity, the Assessing Officer is directed to verify the account copies of the assessee in both the offices of ESIPL and arrive at the net debit balance, after considering verifiable entries other than cash, and treat the same as the deemed dividend in the Assessment Years 2007-08 and 2008-09. The grounds raised in this regard are, therefore, decided partly in favour of the assessee, subject to such verification."

13. The ld. AR submitted that the issue under consideration is squarely covered by the decision of the coordinate bench of this Shri K. Ravinder Reddy, Hyd.

And others Tribunal in assessee's own case for AYs 2002-03 to 2006-07 in ITA Nos. 684 to 688/H/12 vide order dated 30/11/2016 wherein the coordinate bench dismissed the ground raised by the revenue observing as under:

> 30. Considered the rival submissions and perused the material facts on record. There is no dispute with regard to application of provisions of sections 2(22)(e) in this case.

CIT(A) has adjudicated that there exists credit balance in the books of account of the respective company, in favour of the assessee, it has to be adjusted to arrive at the net amount, which can be treated as deemed dividend. The mute question before us is whether the payment itself will amount to deemed dividend or there can be room for making any adjustment as adjudicated by the CIT(A). As per the provisions of section 2(22)(e) any payment by a company, of any sum, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power. At the same time in exclusion clause (ii), it excludes any advance or loan made to a shareholder by a company in the ordinary course of its business. The meaning ordinary course can be business of financing or could be in the ordinary running of the business say directors may be dealing on behalf of company, in that process they will take advance for that purpose. These kind of advances and relating credit in their respective account should be excluded. Ld. AO is not tracing the actual advance payment to director rather, he takes only the debit balances without considering the credit balances. When the director is representing and habitually taking money and returning it, at this situation, one has to take the net balance. The mute point to consider in dealing with the deemed dividend is, whether the director takes the undue advantage by taking advance from the company. In the given case, there is no specific withdrawal by the director as advances. It is accumulation of small advances, in this case, the department has to consider the net advance taken by the director. Hence, the findings of the CIT(A) in this case is found to be proper. The ground raised by the department is dismissed.

30.1 Moreover, the specific advance taken by the director, then only the credit entry in the books can be added as deemed dividend that in the present case there is no specific credit for loan. Hence, only the net balance alone can be treated as deemed dividend.

14. The ld. DR, on the other hand, neither controverted nor brought any contrary decision in this regard.

Shri K. Ravinder Reddy, Hyd.

And others

15. Considered the rival submissions and perused the material facts on record. As the issue in the earlier years is identical to that of issue in hand, respectfully following the decision of coordinate bench (wherein both the Members are signatories), we allow this ground of appeal of the assessees'.

With regard to rental income

16. In the case of K. Kranthi Kiran Reddy, the following grounds have been raised:

6. The A.O erred and acted against law and facts of the case in estimating rents that have never been earned by the assessee and bringing the same to tax on an estimated basis.

7. The Appellate Commissioner erred in confirming the above estimation of rents made by the A.O. 16.1 In the case of Shri K. Ravinder Reddy, the following grounds have been raised:

6. The A.O erred and acted against law and facts of the case in estimating rents that have never been earned by the assessee and bringing the same to tax on an estimated basis in respect of the Himayatnagar property amounting to Rs.3,37,554/-

7. The A.O erred and acted against law and facts of the case in estimating rents that have never been earned by the assessee and bringing the same to tax on an estimated basis in respect of the Nagole property amounting to Rs.3,48,6001-·

8. The A.O erred and acted against law and facts of the case in estimating rents that have never been earned by the assessee and bringing the same to tax on an estimated basis in respect of the Maruthi Nagar property amounting to Rs.5,28,301/-

9. The A.O erred and acted against law and facts of the case in estimating rents that have never been earned by the assessee and bringing the same to tax on an estimated basis in respect of the Bangalore property amounting to Rs. 21,98,607/- .

16.2 In the case of K. Prayamvada, the following grounds have been raised:

Shri K. Ravinder Reddy, Hyd.

And others Ground Nos. 6, 7, 8 & 9 are pertaining to the addition in respect of Himayatnagar Property amounting to Rs. 6,18,358/-, Rs. 4,70,400/- in respect of Nagole Property, Addition of Rs. 6,79,168/- in respect of Maruthi Nagar Property and Addition of Rs. 10,75,200/- in respect of Bangalore Property.

17. The facts as taken from Shri K. Kranthi Kiran Reddy are that the Assessing Officer noted that the assessee had shown rent received of Rs.4,74,680/- in respect of school building located at Miyapur, Hyderabad and of Rs. 4,02,680/-, in respect of school building located at Attapur, Hyderabad in the said two years. The assessee's Authorized Representative stated that no rental agreements had been entered into in respect of any of the school buildings. Considering the fact that the areas of the school buildings were 22000 square feet and 33000 square feet respectively, the Assessing Officer noted that the rate comes to Rs. 1.78 and Rs. 1.11 per square foot, per month only, respectively, which was considered by the AO as low. The assessee explained that both the schools were being run by Janapriya group of companies, and hence the rent charged was low, as the premises were given for educational and charitable purposes. However, applying the provisions of sec.23, the Assessing Officer adopted the rate of Rs.10/- per square foot per month, whereby monthly rent for both the

buildings came to Rs.5,20,000/-. Accordingly, the excess of total annual rent Rs.62,40,000/-, over the rent admitted of Rs.8,77,360/- in these years, was added after allowing statutory deduction u/s.24, leading to addition of Rs.37,53,848/- in both the years.

18. Aggrieved with the above order, assessee preferred appeal before the CIT(A). During the course of appellate proceedings, the Authorised Representative reiterated the above contentions and further submitted that to calculate the annual value under Section 23, the rigors of Section 22 must be fulfilled. He submitted that section 22 reads that the Annual value of a property consisting of any buildings, Shri K. Ravinder Reddy, Hyd.

And others or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income tax, shall be chargeable to income tax under the head 'Income from house property'. He submitted that as per the above definition of Section 22, that portion of property occupied for the purposes' of any business or profession carried on shall not be chargeable to income tax. It was stated that the assessee is a partner in the firms which are carrying on business from the said premises, and this is evident from the order of the AO, This being the case, then there is no question of the same being chargeable to income tax under Section 22 itself. The Authorised Representative averred that if section 22, which is the charging section, is not applicable then the calculation of annual value under Section 23 does arise at all. Accordingly, it was claimed that the action of the AO in determining the annual value and proceeding to tax the property on a higher rent is not tenable in law. The Authorised Representative of the assessee also relied on the decision in the case of CIT Vs. H.S. Singhal and Sons 253 ITR 653 (Delhi).

18.1 Without prejudice to the above submission, the Authorised Representative submitted that the methodology of the A.O in determining the rent at Rs.10 per square foot is flawed. Section 23

(l)(a) does not give the AO unfettered powers to determine the fair market value. The A.O has to keep many factors in mind which deflate or inflate the rental value. This being the case the AO has not given any cogent reason as to why he has adopted Rs.10/-. He has not given any comparable instances in the nearby area nor has he made an attempt to find the value as per the municipal rates. He has just adopted the value at Rs.10 and come to a conclusion that the rate is reasonable. If at all the value has to be adopted under Section 23(1) of the I.T. Act, then it has to be on a scientific basis and not on the whims of the Assessing Officer and that it has been laid down in a Shri K. Ravinder Reddy, Hyd.

And others number of cases that the annual rateable value under the local municipal laws will be a good indicator for determining the Annual Value. It was therefore submitted that the additions made on account of determining the annual value be deleted as the assessee is occupying the same for his business purposes, or alternatively, the annual value has to be determined as per the provisions of law and not as per the estimate of the AO.

19. After considering the submissions of the assessee, the CIT(A) following the decision of his predecessor in assessee's own case, observed as under:

> "11.1 Considering the facts of the case and the decision of the Hon'ble High Court of Calcutta cited by my predecessor, I also hold that the assessee's case does not fall under the exempted category of sec.22, as the business is not run by the assessee itself but by a Society consisting of 5 members. On the other hand, it cannot be disputed that while the rental shown by the assessee in these years is also abysmally low, even the Assessing Officer has not cited any comparable instance of the locality for justifying the rate of Rs.10/- per square foot and arriving at the Fair Rental Value in view of the market conditions. In tandem with the view taken by my predecessor in earlier years therefore, the Assessing Officer is directed to re-compute the rental income from these properties in both the Assessment Years 2007-08 and 2008-.09, after considering 10% appreciation of rent in each year over the rental arrived at for the Assessment Year 2006-07 after verification of comparable cases, as directed in the earlier appellate order. This ground is therefore decided partly in favour of the assessee, subject to such verification and recomputation."

20. The ld. AR of the assessee submitted that the said grounds have been decided against the assessee by the coordinate bench in assessee's own cases for AYs 2002-03 to 2006-07.

21. The ld. DR relied on the orders of revenue authorities.

Shri K. Ravinder Reddy, Hyd.

And others

22. Considered the rival submissions and perused the material facts on record. The coordinate bench considered this issue in detail and held against the assessee as below:

> "8.5 Considered the rival submissions and perused the material facts on record. Assessee has let out this building at Nagole on rent to an education society in which assessee is a Managing Trustee. However, it will not amount to running of business by assessee on such property. As per the provisions of section 22, the condition to get exemption is that the property should be in occupation of the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income tax. In the present case, running a school is not the business of the assessee nor the income of the educational society is chargeable to income tax, at least, it has not brought on record to show that the above business profits are chargeable to income-tax. In our considered view, the educational society is a separate taxable entity and, therefore, nothing to do with the assessee, hence, the contention of the assessee is rejected and the findings given by the CIT(A) on this issue are proper. Accordingly, this ground raised by the assessee is rejected."

22.1 Considering the above findings, the ground in respect of K. Kranthi Kiran Reddy, we uphold the findings of CIT(A) on this issue and dismiss the grounds raised in this regard in both the years under consideration.

22.2 As regards ground No. 6 in case of Shri K. Ravinder Reddy in AY 2007-08 & 2008, similar issue arose in assessee's own case for AYs 2002-03 to 2006-07, wherein the ground raised by assessee is allowed by the coordinate bench by observing as under:

> "7.5 Considered the rival submissions and perused the material facts on record. The facts are, assessee owns the property along with his wife, let out a portion of the property to the firm in which he is a partner. Assessee claims that being a partner in the business, he occupies such portion of the property as used for running a business by himself and claiming deduction u/s 22 of the Act. By going through various judicial pronouncements on this matter, we find that exemption of income from property used for assessee's business must also be granted in case where the property of the assessee is used by a partnership business in which the assessee is also a partner. In Shri K. Ravinder Reddy, Hyd.
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> And others the following cases, the respective high courts have held the decision on this issue, in favour of the assessee, they are as follows:
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> 1. CIT Vs. Thomas [1990] 181 ITR 256 (Ker.)
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> 2. CIT Vs. Syyed Anwar Hussain, [1990] 186 ITR 749 (Pat.)
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> 3. CIT Vs. Rabindranath Bhol [1995] 211 ITR 799 (Or.)
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> 4. CIT Vs. Mustafa Khan 270 ITR 601 (All.) 7.6 At the same time, in the following cases, the High Courts of Karnataka and Calcutta decided in faovur of the revenue:
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> 1. CIT Vs. Guruswamy (K.N.) [1984] 146 ITR 34 (Karn.)
>
> 2. Prodeep Kumar Bothra (supra) 7.7 As there is no jurisdictional High Court's decision on this matter, we are bound to follow the decision of other High Courts.

Since various high courts have held different views, we are bound to follow the decision which is favouring to the assessee as per the decision of the Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Ltd., 88 ITR 192 (SC). Following the above decision, we adjudicate this matter in favour of the assessee following the decision of the Allahabad High Court in the case of Mustafa Khan (supra). Hence, the ground raised by the assessee is allowed."

As the facts in these years are identical to that of AYs 2002-03 to 2006-07, this ground is allowed in both the years under consideration.

22.3 As regards ground No. 7 pertaining to nagole property rent, similar issue arose in 2006-07, wherein the coordinate bench rejected this ground by observing as under:

> 8.5 Considered the rival submissions and perused the material facts on record. Assessee has let out this building at Nagole on rent to an education society in which assessee is a Managing Trustee. However, it will not amount to running of business by assessee on such property. As per the provisions of section 22, the condition to get exemption is the property should be in occupation of the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income tax. In the present case, running a school is not the business of the assessee nor the income of the educational society is chargeable to income tax, at least, it has not brought on record to show that the above business profits are chargeable to income-tax. In our considered view, the educational society is a separate taxable entity and, therefore, nothing to do with the assessee, hence, the contention of the assessee is rejected and Shri K. Ravinder Reddy, Hyd.

And others the findings given by the CIT(A) on this issue are proper. Accordingly, this ground raised by the assessee is rejected.

Respectfully following the decision of the coordinate bench in AY 2006-07, this ground of assessee is dismissed.

22.4 As regards ground No. 8 pertaining to rent on Maruthi Nagar in case of Shri K. Ravidender Reddy, similar issue arose in AY 2006-07 wherein the coordinate bench rejected this ground by observing as under:

> 9.4 Considered the rival submissions and perused the material facts on record. Assessee has let out this building at Maruthi Nagar on rent to a charitable society in which assessee is a Managing Trustee. However, it will not amount to running of business by assessee on such property. As per the provisions of section 22, the condition to get exemption is the property should be in occupation of the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income tax. In the present case, running a charitable society is not the business of the assessee nor the income of the charitable society is chargeable to income tax, at least, it has not brought on record to show that the above business profits are chargeable to income-tax. In our considered view, the charitable society is a separate taxable entity and, therefore, nothing to do with the assessee, hence, the contention of the assessee is rejected and the findings given by the CIT(A) on this issue are proper. Accordingly, this ground raised by the assessee is rejected.

As the issue under consideration is materially identical to that of AY 2006-07, following conclusions of coordinate bench in that year, we reject this ground of appeal in both the years under consideration.

22.5 As regards ground No. 9 relating to addition on account of rent in respect of Bangalore property, as this ground is similar to ground Nos. 6, 7 & 8 (supra), following the conclusions drawn therein, we reject this ground of assessee in both the years under consideration.

Shri K. Ravinder Reddy, Hyd.

And others 22.6 As regards ground Nos. 6, 7, 8 & 9 pertaining to the additions in respect of Himayat Nagar Property, Nagole Property, Maruthi Nagar Property and Bangalore Property raised in the case of K. Priyamvada, as these grounds are materially identical to that of ground No. 6, 7, 8 & 9 raised in the case of Shri K. Ravinder Reddy, following the conclusions drawn therein, ground No. 6 is allowed and ground Nos. 7, 8 & 9 are rejected.

23. With regard to interest claim, in the case of K. Kranthi Kiran Reddy, the following grounds have been raised:

> 8. The A.O erred in disallowing the interest paid on housing loans amounting to Rs. 11,19,101/-
>
> 9. The Appellate Commissioner erred in confirming the disallowance of interest made by the A.O. 23.1 In the case of K. Ravinder Reddy, the following grounds have been raised:
>
> 10. The A.O erred in disallowing the interest paid on housing loans amounting to Rs.21,98,607/-
>
> 11. The Appellate Commissioner erred in confirming the disallowance of interest made by the A.O. 23.2 Grounds No. 10 & 11 relating to the disallowance of interest of Rs. 29,22,210/- in the case of K. Prayamvada Reddy.
>
> 24. As these grounds are similar, we refer to the facts from Shri K. Kranthi Kiran Reddy. The Assessing Officer noted that in the Financial Year 2006-07, the assessee, along with his parents, had purchased a house at Jubilee Hills for Rs.9,50,00,000/-, availing a loan of Rs.2,50,00,000/- from bank. The assessee was having 1/3 rd share therein and had shown rent of Rs.4,02,680/- and Rs.3,30,600/-, in those years respectively, in his hands, and at the same time claiming his share of bank interest at Rs. 11,19,101/- and Rs.14,73,713/-, respectively. It was admitted that no rental agreement Shri K. Ravinder Reddy, Hyd.

And others had been entered into with the tenants of the house and further that it was not possible to submit any confirmation regarding the rent so received, as the tenant was not available. In the absence of rental agreement or confirmation, the Assessing Officer felt that it was not possible to verify whether the house had actually been let out during the year. Therefore, the interest claim of Rs. 11,19,101/- and Rs.14,73,713/- was disallowed in the Assessment Year 2007-08 and 2008-09 respectively.

25. During the course of appellate proceedings, the Authorized Representative of the assessee submitted that the assessee had disclosed rent from the said property in both the years, which was appearing in the Cash Flow submitted. He argued that the Assessing Officer could not have taxed

the rent and at the same time, disallowed the interest claim. He also argued that the additions u/s.2(22)(e) etc. were made on the basis of the same cash flow statement and only a part of it could not be accepted, while ignoring certain items. The Authorized Representative contended that it is a well settled law that where a property is let out and income there from is accepted, the total interest paid for the same has to be allowed, even if the rent is received for a part of the period.

26. After considering the submissions of the assessee, the CIT(A) observed that there is no dispute on the part of the assessee that despite having shown the "rental income" contendedly received from the above property, the assessee could not furnish any documentary or even any other reliable evidence to prove that the premises had actually been let out. Mere presentation of certain income as income from a particular house property cannot be considered as an evidence of actual letting out except declaring the rent in cash flow statement. Accordingly, finding no merit in the contentions, the CIT(A) confirmed the disallowance of interest by the Assessing Officer and dismissed the grounds of assessee.

Shri K. Ravinder Reddy, Hyd.

And others

27. Ld. AR submitted that the assessee has purchased the property along with his parent with the help of loan taken from bank. Since the same property was used for availing loan and the property was let out. Assessee has rightly shown as rental income and claimed interest expenditure.

28. Ld. DR relied on the order of AO.

29. Considered the rival submissions and perused the material facts on record. The assessee has taken loan from bank to procure the property and incurred interest expenditure. Assessee has also shown rental income but without any documentary evidence to show that the property was actually let out. In our considered view, the assessee has not brought on record any documentary evidence to show that the property has actually let out. We are not in a position to accept the contention of the assessee that the property was actually let out. In the interest of justice, we direct to the AO not to consider the rental income as well as interest expenditure for calculating the taxable income of the assessee. Hence, grounds raised by the assessees' are accordingly dismissed.

30. In ITA No. 402/H/2013 for AY 2007-08 in case of Shri K. Ravinder Reddy, ground Nos. 12 & 13 are as under:

> 12. The A.O erred in adding an amount of Rs.1,48,00,000/- as unexplained income.
>
> 13. The Appellate Commissioner erred in confirming the above addition of Rs.1,48,00,000/-"

31. During the course of search and seizure operation, it was noticed that the assessee had purchased Ac. 9.05 Gts. of land at Badangpet village for Rs. 1,46,00,000/- and paid the

consideration in cash. After going the through seized material/documents being "Agreement of Sale dated 3-11-2006", the assessee in his statement Shri K. Ravinder Reddy, Hyd.

And others dated 2-4-2008 stated that the said payments were made in cash to Mr. Ram Reddy and T.Madan Mohan Reddy, He submitted that the "Agreement of Sale" were entered into by M/s. Janapriya Engineers Syndicate (Firm) presently M/s. Janapriya Properties Ltd in the Financial Year 2006-07 and the payments in cash were made on behalf of the said company. He admitted that the payments were not accounted for in the books of Janapriya Properties pvt Ltd or any other group concern and that the sources for the investment were unaccounted business receipts of himself and Janapriya Engineers Syndicate Ltd. Accordingly, he offered Rs.2 lakhs in his own hands for the Financial Year 2004-05 and Rs.49,50,000/- in the hands of M/s. Janapriya Engineers Syndicate Ltd for the Assessment Year 2006-07. With regard to the balance of Rs.87.45 lakhs made during the Financial Year 2007-08, he stated that the same was made out of the cash withdrawn from ING Vysya Bank of group concerns. He also submitted a statement containing details of withdrawals from the bank and the payments made to the land owners on various dates. He also stated that he would furnish complete details of cash payments till date to Mr. T.Rajasekhar Reddy.

31.1 During the course of assessment proceedings, the Assessing Officer proposed to tax the amount of Rs. 1,46,00,000/- in the hands of the assessee, as the lands were registered in his name and from the sale agreement it was seen that the entire amount had been paid on 3-11-2006, receipt whereof had been acknowledged by the vendors separately. The Assessing Officer noted that in his statement the assessee had stated that the balance of Rs.87.45 lakhs was paid in the Financial Year 2007-08. However, as per the seized agreement, the entire amount stood paid before 3-11-2006 itself and the payments were not recorded in the books of account. Therefore, he brought to tax the balance of Rs.1,44,00,000/-, after excluding Rs. 2 lakhs paid in the earlier year, in the hands of the assessee as unexplained investment for the Assessment Year- 2007-08.

Shri K. Ravinder Reddy, Hyd.

And others 31.2 The Assessing Officer further noticed that as per seized Annexure A/JES/18, the assessee had purchased lands at Badangpet and paid Rs.4 lakhs to Shri N.Satyanarayana and Shri Yadagiri. In his statement dated 2-4-2008, the assessee admitted that the said payments were in cash and not accounted for. He offered the same to tax in the hands of JESL on the ground that those were made by the company out of its unaccounted receipts. However, since the lands were registered in the name of the assessee, the Assessing Officer taxed the same as unexplained investment in the hands of the assessee. Accordingly, an addition of Rs.4 lakhs was made.

31.3 The Assessing Officer further noticed that the assessee could not produce any evidence to prove that the balance amounts were paid in the Financial Year 2007-08. Whereas the Agreement of Sale cum GPA clearly showed that the payment was made before 3-11- 2006. He noted that it was on that date the vendors gave possession and GPA and registered the lands in favour of the assessee. In the light of the decision of the Hon'ble High Court of Kerala in the case of Kerala Liquor Corporation Vs. Commissioner of Income-tax (222 ITR

333) as also that of the Hon'ble Income-tax Appellate Tribunal, Madras in T.S.Kumara Samy Vs. ACIT (65 ITD 188) and the Hon'ble Income-tax Appellate Tribunal, Hyderabad in the case of Smt. Kesari Bai Vs. ITO, 32 ITD 1 (TM) and further that of the Hon'ble Income-tax Appellate Tribunal,Mumbai in P.R.Patel Vs. Den 78 ITD 51, the Assessing Officer concluded that in view of the provisions of sec.132(4A), the documents seized during the course of search are presumed to be correct. Accordingly, the total sale consideration paid in cash towards the above transactions of Rs. 1,48,00,000/- was added to the total income.

32. Aggrieved, assessee preferred appeal before the CIT(A). During the course of appellate proceedings, it was submitted that the Shri K. Ravinder Reddy, Hyd.

And others search and seizure operation in the assessee's case took place on 19-2-2008, and therefore, Financial Year 2007-08, relevant to the Assessment Year 2008-09 was still open. The Authorised Representative stated that the assessee had categorically brought on record before the DDIT, the sources for the payment in respect of the agreement for Rs.1,46,00,000/- being unexplained income and withdrawals from bank. He stated that the unexplained income part was offered in the assessee's hands for the Financial Year 2004-05 and in the hands of JESL for the Financial Year 2006-07. With regard to the withdrawals from bank, the assessee had filed a Cash Flow statement before the DDIT, explaining withdrawals from banks as source and payments to various landlords as its application. It was averred that the amounts in the banks were the business receipts of the companies to whom the said bank accounts belonged. He argued that the Assessing Officer added Rs.1,44,00,000/- after excluding Rs.2 lakhs offered as unexplained investment by the assessee for the Assessment Year 2005-06, showing that the addition was based on the admission of the assessee and not on the Agreement of Sale. Accordingly, he claimed that that Assessing Officer should have also accepted the admission of Rs.49,50,000/- in the hands of JESL and his explanation regarding the balance amounts. Accordingly, he claimed that the assessee had brought the factual position on record, rebutting the Agreement of Sale. He pointed out that on one hand the Assessing Officer stated that the entire consideration was paid on the date of agreement and is unexplained, while on the other hand, he proceeded to give credit to the income of Rs.2 lakhs, admitted in the earlier year. Accordingly, he maintained th at the Assessing Officer should have given credit for the admission before the DDIT and not taken the route of evidentiary value of the seized material, as in view of the established law, such evidence is rebuttable, which the assessee had rebutted.

Shri K. Ravinder Reddy, Hyd.

And others 32.1 With regard to the other amount of Rs.4 lakhs, it was submitted that in the course of post search proceedings, such amount was also offered to tax in the hands of the JESL.

33. After considering the submissions of the assessee, the CIT(A) observed as under:

> "35.0 I have gone through the facts of the case and submissions made by the assessee. It has never been disputed by the assessee that the land at Badangpet, purchased from Mr.Ram Reddy and Mr.T.Madan Mohan Reddy for Rs.1,46,00,000/- as per the

Agreement of Sale cum GPA dt.3-11-2006, was registered in his name. It is only on the basis of the averments in the statement before the Investigation Wing that the assessee has tried to substantiate that it made by M/s Janapriya Engineers Syndicate, presently M/s.Janapriya Properties Ltd. However, one cannot lose sight of the fact that at no stage, it could be demonstrated that any part of such consideration had gone out of the bank accounts of M/s Janapriya engineers Syndicate, which can lend any credence to the assessee's contention. Admittedly, the entire consideration. was paid in cash. Under the circumstances, the assessee claimed in the statement dt.2-4-2008 that the payments were on behalf of the said company, such claim is not substantiated by any contemporaneous accounting entry. On the other hand, it was categorically admitted that the payments were not accounted for in the books of the said concern or any other group concern. While the assessee himself categorically admitted that the investment was partly made out of his own unaccounted business receipts, no evidence could ever be submitted to prove the contention that the unaccounted business receipts of Janapriya Engineers Syndicate Ltd. were also utilized to make the said investment. Accordingly, it is clear that while the assessee grossly failed to rebut the presumption u/s.132(4A) that arose from the categorical recital in the Agreement of Sale seized in the course of search, he could not substantiate the contentions raised in his statement with any evidence. Under the circumstances, no infirmity can be said to exist in the reliance of the Assessing Officer on the said seized Agreement of Sale.

35.1 Further, it is seen that it is also not in dispute that as per the above referred Agreement of Sale, the entire consideration of Rs.1,46,00,000/- had been paid on the date of agreement itself and the vendors had even categorically acknowledged the same. While it is very likely that an initial payment of Rs.2,00,000/- out of the same could have been made by the assessee himself in the Financial Year 2004-05, there is nothing to substantiate that Shri K. Ravinder Reddy, Hyd.

And others any other part, including the sum of Rs.49,50,000/- offered in the hands of M/s.Janapriya Engineers Syndicate Ltd. for the Assessment Year 2006-07, was paid by any person other' than the assessee himself. Accordingly, the action of the Assessing Officer in bringing to tax the balance investment of Rs.1,44,00,000/- in the hands of the assessee is upheld.

35.2 Likewise, even if the cash of Rs.4,00,000/- paid and Sri Yadgiri for another land at Badangpet was offered in the hands of JESL, no contemporaneous documentary evidence could be furnished at any stage to establish the contention that such investments were made by the said company out of its unaccounted receipts. Rather, in this case also, the lands were undisputedly registered in the name of the assessee only. Accordingly, the addition of Rs.4 lakhs on account of such unexplained investment in the hands of the assessee is also upheld."

34. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

35. Ld. AR reiterated the submissions what were submitted before the CIT(A).

36. Ld. DR relied on the orders of revenue authorities.

37. Considered the rival submissions and perused the material facts on record. The AO made the addition based on the document seized during search. As per the agreement for sale, the sale consideration was paid prior to 03/11/2006 i.e. in AY 2007-08. The fact remains that the whole transaction was completed involving only cash. Hence, there is no documentation to prove where the payments were made. The assessee claims that these were paid from the income of self and the company where he is associated. Since the property is registered in the name of the assessee, the addition can be made only in the hands of the assessee. The assessee claims that as disclosed before DDIT, the sources of such payment and accordingly the incomes were disclosed in the associate companies as well as assessee's own Shri K. Ravinder Reddy, Hyd.

And others hand. We do not have records of the associate companies, to verify whether it is disclosed in their return of incomes. The income can be taxed only once, accordingly, the income declared by the assessee in the associate companies should be excluded. In our considered view, the whole income should be taxed in the hands of assessee as the property was registered in the name of the assessee. If the revenue accepted the income as disclosed by the assessee and associated companies, the portion which was already taxed should be eliminated in the assessee's hand. Considering the fact that income can be taxed only once, we deem it fit and proper to remit this issue back to the file of the AO to determine income which was already disclosed and balance should be taxed in the hands of assessee. The grounds raised are allowed for statistical purposes.

38. As regards ground Nos. 12 & 13 relating to the addition of Rs. 48,50,000/- on account of unexplained investment in Bhongir Land in AY 2008-09 in the case of Sri K. Ravinder Reddy, the Assessing Officer noted that as per the Purchase Agreement dated 17-9-2007, seized as Annexure A/JES/18 dated 9-2-2008, the assessee, along with his son, had purchased land at Bhuvangiri and paid cash of Rs.80 lakhs which was not recorded in their books or the books of any company. It was also noticed that the payment of Rs.80 lakhs was not appearing in the Receipts and Payments A/c. Since the lands were purchased jointly, taking the assessee's share at 50%, Rs.40 lakhs was brought to tax as unexplained investment in the Assessment Year 2008-09.

39. During the Course of appellate proceedings, it was submitted that this issue has been dealt with in the hands of M/s. Janapriya Engineers Syndicate Ltd and added in their hands. He argued that in any search, the statement recorded by the investigating Officer is the foundation of subsequent proceedings. In this case, the search was primarily on Janapriya group of concerns and a statement was Shri K. Ravinder Reddy, Hyd.

And others recorded from Mr. Ravinder Reddy, the MD and assessee's father. He stated that Shri Ravinder Reddy in his statement dated 2-4-2008 had offered the amount concerned in the hands of JESL, categorically explaining that the amounts were drawn from the bank a/c of JESL. He argued that even though the Assessing Officer made additions in respect of agricultural income on the basis of same statement, he ignored · another part regarding investments in land.

40. The CIT(A) after considering the submissions of the assessee, observed as under:

"41. I have gone through the facts of the case and the arguments of the Authorised Representative of the assessee. Even if it had been stated in the statement recorded in the course of search that the Bhongir land, for which the total payment of Rs.80 lakhs had been made in cash, pertained to M/s. JESL, such statement was only an assertion which was required to be substantiated with documentary evidence. Mere affirmation of this kind in a statement uls.132(4), sans any documentary evidence, cannot be considered as an evidence in itself. It has not been disputed that the transaction was not recorded in the books of any company, including JESL, nor the payment of Rs.80 lakhs was not appearing in the books or the Receipts and Payments a/c of the assessee. Under these circumstances, it is clear that the assessee failed to substantiate its claim that the investment had been made out of the Sources of the JESL itself and for that company only. As against this, undisputedly, the lands were purchased jointly by the assessee, conferring 50% title over the property to the assessee only. Since sources for such investment remained unexplained, no infirmity can be said to exist in treatment of such investment as unexplained investment for the Assessment Year 2008-09. The ground relating to such contention is therefore decided against the assessee.

41. A further addition of Rs.8.50 lakhs was made in the Assessment Year 2008-09(part of Ground Nos. 12 & 13) in view of the seized material in Annexure No.A/JES/18, showing that the assessee had purchased lands at Badangpet by paying Rs.8,50,000/- in cash to Shri N.Satyanarayana. The assessee in his statement dated 2-4-2008 admitted that the above payments were not accounted for in the Shri K. Ravinder Reddy, Hyd.

And others books of account till the date of search, though it was claimed that those were made out of withdrawals from Vysya Bank A/C of various companies. As the lands were registered in the name of the assessee, the Assessing Officer proposed to tax the unaccounted payments of Rs.8.50 lakhs in the hands of the assessee. Since the assessee failed to file any satisfactory explanation or evidence to the letter dated 10-11-2009 on this issue, the addition of Rs.8.50 lakhs was made.

42. During the course of appellate proceedings, the Authorised Representative of the assessee contended that explanation with regard to the said investment was also like Bhongir land as the same has been dealt with in the hands of JESL and added in the hands of the said company.

43. After considering the submissions of the assessee, the CIT(A) observed that undisputedly, the lands were purchased in the name of the assessee, conferring title over the property to the assessee only. Since sources for such investment remained unexplained, no infirmity can be said to exist in treatment of such investment as unexplained investment for the Assessment Year 2008-09. The ground relating to such contention was therefore, decided against the assessee.

44. Considered the rival submissions and perused the material facts on record. The issues in grounds 12 & 13 are similar to the issues already adjudicated in para 37. Accordingly, this ground is allowed for statistical purposes.

45. As regards ground Nos. 14 & 15 in the Assessment Year 2008- 09 in the case of Sri K. Ravinder Reddy, relating to the addition of Rs.57,16,000/- on account of cash found from the residence of the assessee in the course of search, the Assessing Officer noted that the assessee had failed to submit any explanation in this regard on Shri K. Ravinder Reddy, Hyd.

And others the date of search and stated that he would verify the facts and submit an explanation. On being required to explain the same, the assessee in his statement dated 8-4-2008 further contended that he would file the reconciliation statement in respect of the cash balances available on 19-2-2008 in the hands of the firms/companies/individuals. However, the assessee again failed to explain the cash. During the course of assessment proceedings, the assessee submitted that there were withdrawals made from various banks by the group companies and that the cash was out of the same. It was submitted that on the date of search, as per the books of account of the group companies, if any cash is available, the same can be considered. However, the Assessing Officer noticed that the books of account of the group companies were not closed and no cash balances had been drawn. Accordingly, he opined that the books were unreliable and the cash withdrawals could not be linked with the cash found at the residence. Accordingly, the cash of Rs.57,16,000/- was considered as unexplained and added to the total income of the assessee.

46. During the course of appellate proceedings, the Authorised Representative of the assessee argued that the cash balances of the companies/firms and other concerns was found at the assessee's residence as he was the Managing Director of the companies and partner of firms. He contended that cash balances were explained in detail at the time as pertaining to agricultural income, advances received from customers which were accounted in the companies books etc. The Authorised Representative submitted that such explanation was accepted by the DDlT and relevant entries were passed in the books of account. Accordingly he claimed that the cash stood explained.

47. After considering the submissions of the assessee, the CIT(A) observed as under:

> Shri K. Ravinder Reddy, Hyd.
>
> And others 38.0 I have gone through the facts of the case and submissions of the assessee. It is clear that despite claiming that the cash balances of the companies/firms and other concerns were found at the assessee's residence as he was the Managing Director or Partner thereof, the assessee has not been able to substantiate such contention with any contemporaneous documentary evidence. It is also clear that in the books of accounts/cash book of none of them, the fact of alleged removal of cash from their business premises to the assessee's residence was found recorded on the date of search. Even if the assessee made certain contentions before the Investigation Wing in this regard, mere averments to this effect could not have sufficed and entitled the assessee to make entries on this account subsequently.

Accordingly, it is clear that while the contention of cash belonging to various companies/firms is only an after-thought, it cannot be disputed that the assessee could not substantiate the source of cash found at his residence on the date of search. Therefore, the treatment of cash of Rs.57,16,000/-

so found as unexplained is upheld and the grounds raised in this regard are decided against the assessee."

48. Ld. AR submitted that the assessee had already explained to the AO as well as CIT(A) that the group companies had withdrawn cash. The details are part of paper book (refer page 28). The sources are already explained.

49. Ld. DR relied on the orders of revenue authorities.

50. Considered the rival submissions and perused the material facts on record. The assessee has submitted the cash book, bank book and cash flow before the lower authorities to show the source of cash on hand. It is worth to note that the cash book and bank book reflects negative balances, no doubt, there are huge withdrawals and receipts in the books. Considering the fact that the cash book carries negative balance, it cannot be taken as proper proof. Moreover, the assessee has shown the excess cash and bank balance on monthly/yearly summary. This is just a summary of transaction. It had failed to explain with cogent material to prove the source of cash balance on hand. We are not in a position to appreciate the evidence put forth by Shri K. Ravinder Reddy, Hyd.

And others the assessee. Accordingly, grounds raised by the assessee are dismissed.

Now we deal with the appeals of the revenue

1. Appeals of the revenue in the case of Sri K. Kranthi Reddy for AYs 2007-08 and 2008-09 in ITA Nos. 343 & 344/Hyd/13

2. Appeals of the revenue in the case of Shri K. Ravinder Reddy for AYs. 2007-08 & 2008-09 in ITA Nos. 345 & 346/Hyd/13.

3. Appeal of the revenue in the case of Smt. Priyamvada Reddy for AY 2008-09 in ITA No. 348/Hyd/13.

51. In all these appeals, the revenue has raised the following grounds:

> "1) The CIT(A) has erred on both the facts and law.
>
> 2) The CIT(A) ought to have held that the onus is on the assessee to prove his claim of agricultural income, which was not discharged by the assessee and the entire income shown as agricultural income has to be treated as income from other sources.
>
> 3) The CIT(A) has erred in law in holding that only closing debit balances at the end of the year after considering the credit entries during the year has to be taken for arriving of the deemed dividend in the hands of the assessee u/s 2(22)(e) of the IT Act, instead of the total amounts credited by the company to the account of the assessee.

4) Any other ground that may be urged at the time of appeal hearing."

52. Before us, the ld. AR submitted that the said two grounds have been covered by the decision of ITAT in assessees' own case for AYs 2002-03 to 2006-07 (appeals filed by the revenue), therefore, the same may be followed in these years also.

53. Ld. DR did not controvert the submissions of the ld. AR of the assessee nor brought any contrary decision in this regard.

Shri K. Ravinder Reddy, Hyd.

And others

54. Considered the rival submissions and perused the material facts on record. As submitted by the ld. AR, in assessee's own case for AYs 2002-03 to 2006-07, the revenue has raised similar grounds, for the sake of convenience, we reproduce the grounds raised in earlier AYs.:

"1) The CIT(A) has erred on both the facts and law.

2) The CIT(A) ought to have held that the onus is on the assessee to prove his claim of agricultural income, which was not discharged by the assessee and the entire income shown as agricultural income has to be treated as income from other sources.

3) The CIT(A) has erred in law in holding that only closing debit balances at the end of the year after considering the credit entries during the year has to be taken for arriving of the deemed dividend in the hands of the assessee u/s 2(22)(e) of the IT Act, instead of the total amounts credited by the company to the account of the assessee.

4) Any other ground that may be urged at the time of appeal hearing."

54.1 Since, similar issues and grounds are raised by revenue, we are bound to follow the findings of earlier decision. The findings are as below:

For Ground No. 2:

24. Considered the rival submissions and perused the material facts on record. The agricultural income was treated as other income due to the fact that there was no material found during survey to corroborate the evidence to show that assessee has actually carried out agricultural activities. But the assessee has disclosed agricultural income in all the years. Only in AY 2003-04 and AY 2004-05, there was scrutiny assessment and in which the AO has verified the records and made adjustments to the agricultural income. He partly accepted agricultural income and he treated part of the income as income from other sources.

It shows that the AO had applied his mind and determined the agricultural income. The same cannot be denied simply because assessee could not submit any evidence during search. In our considered view, the department cannot have two views on the Shri K. Ravinder Reddy, Hyd.

And others same matter. The AO in the earlier assessment, determined the agricultural income after applying his mind. Now, the present AO cannot doubt the wisdom of the earlier AO. Considering the above, the income determined u/s 143(3) holds good for assessment u/s 153A also. Taking the findings of ld. CIT(A) in assessment u/s 143(3) as standard and accept the agricultural income in AY 2002-03, 2005-06 and 2006-07. Hence, grounds raised by the department are dismissed.

For Ground No. 3:

> 30. Considered the rival submissions and perused the material facts on record. There is no dispute with regard to application of provisions of sections 2(22)(e) in this case. CIT(A) has adjudicated that there exists credit balance in the books of account of the respective company, in favour of the assessee, it has to be adjusted to arrive at the net amount, which can be treated as deemed dividend. The mute question before us is whether the payment itself will amount to deemed dividend or there can be room for making any adjustment as adjudicated by the CIT(A). As per the provisions of section 2(22)(e) any payment by a company, of any sum, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power. At the same time in exclusion clause (ii), it excludes any advance or loan made to a shareholder by a company in the ordinary course of its business. The meaning ordinary course can be business of financing or could be in the ordinary running of the business say directors may be dealing on behalf of company, in that process they will take advance for that purpose. These kind of advances and relating credit in their respective account should be excluded. Ld. AO is not tracing the actual advance payment to director rather, he takes only the debit balances without considering the credit balances. When the director is representing and habitually taking money and returning it, at this situation, one has to take the net balance. The mute point to consider in dealing with the deemed dividend is, whether the director takes the undue advantage by taking advance from the company. In the given case, there is no specific withdrawal by the director as advances. It is accumulation of small advances, in this case, the department has to consider the net advance taken by the director. Hence, the findings of the CIT(A) in this case is found to be proper. The ground raised by the department is dismissed.
>
> 30.1 Moreover, the specific advance taken by the director, then only the credit entry in the books can be added as deemed dividend that in the present case there is no specific credit for Shri K. Ravinder Reddy, Hyd.

And others loan. Hence, only the net balance alone can be treated as deemed dividend.

55. As the issues under consideration are materially identical to that of AYs 2002-03 to 2006-07, following the decision of the coordinate bench in those years, we dismiss the grounds of appeal raised by the revenue in all its appeals.

56. In the result, all the appeals of revenue are dismissed.

57. To sum up, assessee's appeals are partly allowed for statistical purposes and revenue's appeals are dismissed.

Pronounced in the open court on 21 st April, 2017 Sd/- Sd/-

(P. MADHAVI DEVI)	(S. RIFAUR RAHMAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad, Dated: 21 st April, 2017
kv

Copy to:-

1. Shri K. Ravinder Reddy,	8-2-120/86, Plot No. 11 & 12, Keerthi and Pride Towers, Road No. 2, Banjara Hills, Hyderabad - 34.
2. Smt. Priyamvada Reddy	
2. Shri K. Kranthi Kiran Reddy,	
3. DCIT, CC - 6, Hyd.	
4. ACIT, CC - 2, Hyderabad	
5. CIT(A) - 1, Hyderabad	
6. CIT (Central), Hyd.	
7. DR, ITAT, Hyderabad	
8. Guard File	

S.No.	Description	Date	Intls
1.	Draft dictated on		
2.	Draft placed before author		
3	Draft proposed & placed before the second Me mber		

4 Draft discussed /approved by second Me mber

5 Approved Draft co mes to the Sr. P.S./PS

6. Kept for pronou nce ment on

7. File sent to the Bench Clerk

8 D a t e o n wh i c h f i l e g o e s t o t h e H e a d C l e r k

9 Date of Dispatch of order