

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD “A” BENCH : HYDERABAD

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

ITA.Nos.601, 602 & 603/Hyd/2022
Assessment Years 2014-2015, 2015-2016 & 2017-2018

Smt. Rama Devi, Sri B. Pramod And Sri BV Santosh, Legal Heirs of (Late) Sri Laxman Rao Banapuram. Hyderabad. PAN AGHPB1590M	vs.	The DCIT(A), Circle-14(1), Hyderabad.
(Appellant)		(Respondent)

For Assessee :	CA KA Sai Prasad
For Revenue :	Shri Srinath Sadanala, Sr. AR

Date of Hearing :	26.02.2025
Date of Pronouncement :	20.03.2025

ORDER

PER MANJUNATHA G, A.M. :

The above appeals have been filed by the Legal Heirs of (Late) Laxman Rao Banapuram viz., Smt. Rama Devi, Sri B. Pramod And Sri BV Santosh against the order all dated 19.07.2022 of the learned CIT(A)-12, Hyderabad, relating to the assessment years 2014-2015, 2015-2016 and 2017-2018. The assessee has more or less raised common

grounds in the above appeals for the above assessment years and, therefore, for the sake of convenience and brevity, the grounds of appeal for the assessment year 2014 2015 in ITA 601/Hyd./2022 are reproduced as under :

- 1. The order of the Id First Appellate Authority is not correct either in law or on facts and in both.*
- 2. The learned First Appellate Authority failed to appreciate the claim that in the facts and circumstances of the case the Assessing Officer is not justified in invoking the provisions of Sec.142(2A) and hence the assessment is barred by limitations and not valid.*
 - a) The ld. First Appellate Authority is not justified in confirming the addition of Rs.2,80,79,359/- as undisclosed long term Capital gain.*
 - b) The ld. First Appellate Authority failed to appreciate the fact that the land in question is agricultural land and hence the gain on transfer cannot be taxed as long term capital gain.*
 - c) The ld. First Appellate Authority failed to appreciate the fact that the land in fact was transferred on 30.12.2012 evidence by seized agreement of sale and hence the gain if any is liable*

to be brought to tax in A.Y.2013-14 and not in the Asst. Year under appeal, 2014-15.

3. d) The ld. First Appellate Authority failed to appreciate the fact that the actual consideration received by the appellate and the other Co-owner is Rs.1,66,15,000/- in all and hence the Assessing Officer is not justified in adopting Rs.6,14,50,000/- as total sale consideration.

e) The ld. First Appellate Authority is not justified in not treating the sale consideration at Rs.1,66,15,000/- as computed by the Special Auditors.

f) The ld. First Appellate Authority is not justified in confirming the addition, made on assumptions and presumptions.

g) The ld. First Appellate Authority is not justified in not granting deduction u/s 54F as claimed by the assessee.

4. The assessee craves leave to add and or alter any of the above grounds.”

2. At the very outset, there is a delay of 47 days in filing the instant appeals before the Tribunal and the assessee has filed petitions for condonation of the delay of 47 days in filing the appeals. We are satisfied with the reasons explained by the assessee and accordingly, we condone the delay of 47 days in filing the instant appeals before the Tribunal and admit the appeals for adjudication.

3. The brief acts of the case are that, the assessee is an individual and has filed his original return of income for the assessment year 2014-15 on 11.11.2014 declaring total income of Rs.1,648/- and for the assessment year 2015-16 filed his return of income on 21.08.2015 declaring total income of Rs.1,01,767/-. A search and seizure operation u/sec.132 of the Income Tax Act, 1961 [in short "the Act"] was carried-out at the residential premises of the assessee on 06.12.2016. Consequent to search, notice u/sec.153A of the Act was issued for assessment years 2011-2012 to 2016-2017 on 22.11.2017 and 11.01.2018. In response to the above notices, Smt. B. Ramadevi, wife of the assessee filed letter dated 22.02.2018 stating that the assessee Sri

Banapuram Lakshman Rao was expired on 24.02.2017 and further enclosed copy of Death Certificate issued by the GHMC. Accordingly, the Assessing Officer issued notices u/sec.153A of the Act to the legal heirs of the assessee i.e., Smt. B. Rama Devi, W/o. Sri B. Laxman Rao, Sri B. Pramodh, elder son of Sri B. Laxman Rao and Sr. BV Santosh, younger son of Sri B. Laxman Rao on 26.09.2018. In response to the said notices, Shri B. Pramodh and Sri BV Santosh filed affidavits on 27.11.2018 and stated that their mother Smt. B. Rama Devi will represent the case of her father late Shri B Laxmana Rao. Further, in response to the notice issued u/sec.153A of the Act, the legal heirs of the assessee filed return of income on 18.11.2018 for the assessment year 2014-2015 declaring total income of Rs.1,648/- and for assessment year 2015-16 filed return of income on 17.11.2018 declaring total income of Rs.2,60,470/-.

4. The case was selected for scrutiny and notice u/sec.143(2) r.w.s.153A of the act dated 22.11.2018 was issued to the assessee Subsequently notice u/sec. 142(1) of

the Act dated 04.12.2018 was issued to the assessee calling for information. In response to the notices, the assessee furnished various explanations and also filed cash flow statement showing all the transactions. The Assessing Officer after considering relevant statement of the assessee and also considering the cash flow statement filed by the assessee, has proposed to refer the case to special audit as per provisions of sec.142(2A) and accordingly, called objections from the assessee. The assessee vide letter dated 29.12.2018 filed objection on 30.12.2018. The Assessing Officer after considering the objections filed by the assessee, proposed the case for special audit after obtaining necessary approval from the PCIT-6, Hyderabad and appointed M/s. Jawahar & Co to conduct special audit for assessment years 2014-15 to 2017-2018. The special auditor submitted his report on 28.06.2019. Thereafter, a show cause notice dated 16.08.2019 was issued to the assessee and requested to submit the various details as called for in the earlier notice. In response, the assessee filed reply vide letter dated 20.08.2019 and 21.08.2019. The Assessing Officer after

considering the submissions of the assessee and also taken note of special audit report, completed the assessment for the assessment year 2014-2015 and 2015-2016 on 23.08.2019 and determined the total income of the assessee at Rs.2,80,89,359/- and Rs.76,00,000/- respectively, by making various additions including additions towards long term capital gains from sale of property and unexplained investment etc.

5. Being aggrieved by the assessment order of the Assessing Officer, the assessee preferred appeals before the CIT(A). Before the CIT(A), the assessee challenged the reference to the special auditor as per the provisions of section 142(2A) of the Income Tax Act, 1961 in light of the return of income filed by the assessee and argued that the assessee derived income from house property and other sources and does not maintain books of accounts. Therefore, the Assessing Officer without application of mind as to the nature of books of accounts maintained by the assessee and its complexity, simply invoked provisions of sec.142(2A) of the Act on 31.12.2018 i.e., on the last date of

time limit for completion of assessment to buy time for completion of assessment and, therefore, the reference to special auditor is invalid and consequently, the assessment order passed by the Assessing Officer on 23.08.2019 is invalid and barred by limitation. The assessee had also challenged various additions made by the Assessing Officer towards long term capital gains from the sale of property and unexplained investment etc.

6. The learned CIT(A) after considering the relevant submissions of the assessee and also taking note of provisions of section 142(2A) of the Act and the reasons given by the Assessing Officer to refer the case for special audit observed that, there is no merit in the legal ground taken by the assessee challenging the reference to special audit as per the provisions of section 142(2A) of the Act, because the Assessing Officer has correctly followed the procedure enshrined in section 142(2A) by providing the assessee a reasonable opportunity of being heard, before forming his opinion on books of accounts and complexity involved in the books maintained by the assessee.

Therefore, there is no procedural infirmity in referring to special audit and consequently, the objection raised by the assessee that, reference to special auditor and limitation provided under the Act for passing the assessment order is devoid of merit and, therefore, rejected the legal ground taken by the assessee challenging the validity of assessment order passed by the Assessing Officer. The learned CIT(A) also discussed the issue of various additions made by the Assessing Officer and partly allowed the appeal filed by assessee for both the assessment years i.e., 2014-2015, and 2015-2016.

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

8. Learned Counsel for the Assessee CA K A Sai Prasad submitted that, the learned CIT(A) erred in upholding the reasons given by the Assessing Officer to refer the case for special audit in terms of sec.142(2A) of the Act, without appreciating the fact that the Assessing Officer has not applied his mind to the case of the assessee before

referring to special auditor, which is evident from the mechanical reference of the case of the assessee for special audit and mechanical approval by the PCIT-6, Hyderabad for reference of the case for special audit. Learned Counsel for the Assessee, further submitted that in order to invoke provisions of sec.142(2A), the Assessing Officer must make a genuine and honest attempt to understand the accounts maintained by the assessee and the opinion formed by the Assessing Officer must be based on an objective criteria and not mere subjective satisfaction. In the case of assessee, going by the nature of income declared in the return of income and the special audit report submitted by the special auditor and assessment order passed by the Assessing Officer for both the assessment years 2014-2015 and 2015-2016, it is undisputedly clear that, the Assessing Officer has mechanically referred the case for special audit, that too on last date of completion of assessment for both assessment years 2014-2015 and 2015-2016 on 31.12.2018 which is nothing, but, a case of attempt made by the Assessing Officer to extend the “due

date” for passing the assessment order by way of reference to special audit, but, not a case of voluminous books of accounts maintained by the assessee and complexity involved in the books of accounts maintained by the assessee. Therefore, he submitted that reference to special audit by the Assessing Officer and consequent assessment order passed by the Assessing Officer for both the assessment years 2014-2015 and 2015-2016 dated 23.08.2019 is invalid and, therefore, the extended time for passing the assessment order is not available to the Assessing Officer and consequently, the assessment order passed by the Assessing Officer dated 23.08.2019 for both the assessment years 2014-2015 and 2015-2016 is barred by limitation and liable to be quashed. In this regard, he relied upon various judicial precedents, including decision of Hon’ble Madras High court in the case of SRS Mining vs., Union of India [2022] 141 taxman.com 272 (Mad.).

9. The Learned Sr. AR Shri Srinath Sadanala for the Revenue, on the other hand, supporting the order of the learned CIT(A) submitted that the assessee has filed cash

flow statement containing several pages and the Assessing Officer after considering relevant cash flow statement filed by the assessee came to the conclusion that the books of accounts maintained by the assessee are complex in nature which needs assistance of a specialised auditor to determine the correct income of the assessee for all these three assessment years which is relevant to protect the interest of the revenue. The assessee has filed return of income on 18.11.2018 for assessment year 2014-2015 and has filed huge cash flow statement at the fag-end of the assessment proceedings. The Assessing Officer after considering the relevant nature of books of accounts maintained by the assessee and complexity involved in the books of accounts, has referred the same for special audit with the approval of the PCIT-6, Hyderabad and thus, there is no merit in the arguments of assessee. He submitted that the legal ground taken by the assessee that, the Assessing officer has referred the case for special audit to buy time and consequently assessment order passed by the Assessing Officer is barred by limitation should be rejected.

10. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The provisions of sec.142(2A) of the Act deals with reference to special auditor and as per the said provisions, at any stage of the proceedings before the Assessing Officer, the assessing officer having regard to the nature and complexity of the accounts, voluminous of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee and the interest of the revenue, is of the opinion that, it is necessary so to do, he may with the previous approval of the PCIT, direct the assessee to get the accounts audited by an Accountant as defined u/sec.288 of the Income Tax Act 1961. In order to invoke the provisions of sec.142(2A) of the Act, the five parameters which are (1) the nature and complexity of accounts (2) voluminous of the accounts (3) doubt about the correctness of the accounts (4) multiplicity of transactions in the accounts and (5) specialised in nature of business of the assessee, must be satisfied. In otherwords, before

referring to special auditor as per provisions of sec.142(2A) of the Act, the Assessing Officer must come to the conclusion that the books of accounts maintained by the assessee are complex in nature, which needs the assistance of a specialised auditor to determine the correct income of the assessee for the relevant assessment year. Unless the Assessing Officer makes-out a case that, books of accounts maintained by the assessee are complex in nature and, there are multiplicity of transactions in the accounts, he cannot mechanically refer the case for special audit.

11. Further, various Courts have interpreted the term “complexity” in the accounts and the power of the Assessing Officer to invoke the provisions of sec.142(2A) of the Act and as per the judicial precedents, including the decision of Hon’ble Allahabad High court in the case of Swadeshi Cotton Mills vs. CIT [1988] 171 ITR 634 (All.) that the word “complexity” is a word and unless it is difficult to understand cannot be regarded as “complex”. The power u/sec.142(2A) of the Act by the Assessing Officer cannot be exercise lightly. It must be based on objective assessment

having regard to the nature of accounts and it must not be based on subjective satisfaction of the Assessing Officer. Therefore, before referring the case for special audit, the Assessing Officer should make a genuine and honest attempt to understand the accounts maintained by the assessee and that the opinion formed by the Assessing Officer must be based on objective criteria and not mere subjective satisfaction.

12. In the present case, going by the material available on record, we find that the assessee derived income from house property and income from other sources. Except for assessment year 2017-2018, the assessee does not have any income from business or profession. The assessee does not even required to maintain the books of accounts and in fact, the assessee has not maintained any books of accounts for assessment years 2014-2015 and 2015-2016. Therefore, going by the nature of documents submitted by the assessee before the Assessing Officer coupled with the return of income filed by the assessee, in our considered view, there is no case for the Assessing

Officer to refer the case for special audit as claimed by the Assessing Officer, because the assessee has only filed a cash flow statement before the Assessing Officer during assessment proceedings, which is available in the paper book filed by the assessee, where there could be hardly any cash deposits and cash withdrawal from the bank account which runs into only four pages. Except the cash flow statement and bank account, the assessee has not submitted any books of accounts and in fact, even during the search, the Department had not found any books of accounts or incriminating material to suggest/establish the reasons given by the Assessing Officer that books of accounts maintained by the assessee are complex in nature which requires a special audit as per the provisions of sec.142(2A) of the Income tax Act. Therefore, in our considered view, going by the material available on record and further, the audit report submitted by the special auditor, the Assessing Officer has not made-out a case for reference to special audit u/sec.142(2A) of the Act. Further, upon consideration of the assessment order passed by the

Assessing Officer, we find that although, search was taken place on 06.12.2016, the Assessing Officer has issued notice u/sec.153A of the Act on 22.11.2017 and 11.01.2018 i.e., almost nearly one year after the date of search. Further, when the assessee has filed letter on 22.02.2018 stating that the assessee [(late) Shri Bhanapuram Lakshmana Rao] was expired, the Assessing Officer has issued 153A notice to legal-heirs on 26.09.2018 after a period of 6 months. Further, although, the assessee has filed her return of income on 17.11.2018, the Assessing Officer has taken-up the case for verification only on 04.12.2018 by issuing a notice u/sec.142(1) of the Act and further, upon careful verification of the notice issued by the Assessing Officer, we find that it is a general in nature calling for various information without any reference to the cash flow statement filed by the assessee and the alleged complex nature in books of accounts maintained by the assessee. Therefore, in our considered view, the reference to the special auditor by the Assessing Officer dated 31.12.2018 i.e., on the last date of time limit available for the Assessing

Officer to complete the assessment for both the assessment years 2014-2015 and 2015-2016, in our mind, the only inference that can be possibly taken is, the Assessing Officer has made an attempt to extend the time limit for passing the assessment order by a reference to special auditor u/sec.142(2A) of the Act, whereby, the Assessing Officer gets extended time limit for completion of the assessment. We are, therefore, of the considered view that, reference to special audit u/sec.142(2A) of the Act dated 31.12.2018 without satisfying the conditions provided therein, is arbitrary, illegal and *void abinitio*. Therefore, in our considered view, once the reference to special audit is illegal and *void abinitio*, then, the Assessing Officer will not get extended time limit for completion of assessment as per sec.153A) of the Act and consequently, the final assessment orders passed by the Assessing Officer for the assessment years 2014-2015 and 2015-2016 are barred by limitation and thus, we quash the assessment orders passed by the Assessing Officer for assessment years 2014-2015 and 2015-2016.

13. Coming back to various other grounds raised by the assessee challenging the additions made by the Assessing Officer towards long term capital gains from sale of property and unexplained investment etc. Although, both the parties advanced their respective arguments at length on these issues, but because we have quashed the assessment order on the issue of limitation, in our considered view, other grounds taken by the assessee challenging various additions made by the Assessing Officer becomes academic and thus, these other grounds raised by the assessee has been rejected as infructuous.

14. In the result, appeals filed by the assessee for assessment years 2014-2015 and 2015-2016 are allowed.

15. Coming back to assessment year 2017-2018. Although, the assessee has challenged the reference to special auditor u/sec.142(2A) of the Act and consequent assessment order passed by the Assessing Officer on 23.08.2019, but during the course of hearing, the Learned Counsel for the Assessee has made a statement at Bar that,

the assessee does not wish to press the ground taken challenging the validity of reference to special audit and, therefore, the legal ground taken by the assessee challenging the reference to special audit u/sec.142(2A) of the Act is treated as not pressed.

16. Coming back to the additions made by the Assessing Officer of Rs.6 lakhs u/sec.69 of the Income tax Act 1961 towards payment made to Shri Shoukat Ali. During the course of assessment proceedings, the Assessing Officer, on the basis of cash flow statement filed by the assessee observed that, the assessee has made payment of Rs.6 lakhs to Shri Shoukat Ali owner of "Rice Pulling" copper article. The assessee has explained the source of payment, out of advance received from sale of property in the year 2012 and filed relevant cash flow statement before the Assessing Officer. The assessing officer made addition of Rs.6 lakhs on the ground that, there is a huge gap between the payment made by the assessee on 18.08.2016 and the advance received by the assessee in the year 2012. Although, the assessee has shown some withdrawal from

bank account on 02.02.2016, but, that is very meagre amount which is not sufficient to explain payment of Rs.6 lakhs to Shri Shoukat Ali. Therefore, the Assessing Officer rejected the arguments of the assessee and made addition of Rs.6 lakhs as unexplained investment u/sec.69 of the Act.

17. In appeal, the learned CIT(A) has confirmed the additions made by the Assessing Officer.

18. The Learned Counsel for the Assessee submitted that the learned CIT(A) has erred in sustaining the additions made by the Assessing Officer towards payment made to Shri Shoukat Ali, even though, the assessee has filed cash flow statement and explained the source for the payment. Therefore, he submitted that that the impugned addition of Rs.6 lakhs made by the Assessing Officer should be deleted.

19. The Learned DR, on the other hand, supporting the order of the learned CIT(A) submitted that except cash flow statement, the assessee did not explain the nature and source of income for payment to Shri Shoukat Ali and, therefore, the learned CIT(A) has rightly sustained the

addition made by the Assessing Officer. Therefore, the order of the CIT(A) should be upheld.

20. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We find that, the assessee has paid the sum of Rs.6 lakhs to Shri Shoukat Ali on 18.08.2016 and explained source by filing cash flow statement to prove the source for such payment from known source of income. Further, the assessee claimed to have paid amount out of advance received from sale of property in the year 2012 and filed cash flow statement. But, on perusal of cash flow statement filed by the assessee, the Assessing Officer has recorded a categorical finding that there is time gap of more than 4 years when compared to advance received in the year 2012 and payment made in the year 2016. Even before us, the assessee could not explain the source, except reiterating the very same arguments made before the Assessing Officer and the learned CIT(A). Therefore, we are of the considered view, that assessee could not establish the source of payment of Rs.6 lakhs to Shri Shoukat Ali from known

source of income. The learned CIT(A) after considering the relevant material on record, sustained the addition made by the Assessing Officer. Thus, we uphold the findings of the learned CIT(A) on this issue and reject the ground taken by the assessee.

21. In the result appeal of the assessee for the assessment year 2017-2018 is dismissed.

22. To sum-up, appeals filed by the assessee for the assessment years 2014-2015 and 2015-2016 are allowed and appeal of the assessee for the assessment year 2017-2018 is dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 20.03.2025

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 20th March, 2025

VBP

Copy to

1.	Smt. Rama Devi, Sri B. Pramod And Sri BV Santosh, Legal Heirs of (Late) Sri Laxman Rao Banapuram, Plot No.47, Road No.8, Phase-II, Sai Sadan, Behind Appollo Hospital, Shaikpet, Film Nagar, Hyderabad.
2.	The DCIT(A), Circle-14(1), 6 th Floor, IT Towers, AC Guards, Masab Tank, Hyderabad-500 004. Telangana
3.	The CIT(A)-12, Hyderabad.
3.	The Pr. CIT, Hyderabad.
4.	The DR ITAT "A" Bench, Hyderabad.
5.	Guard File.

//By Order//

//True Copy//

Sr. Private Secretary, ITAT,
Hyderabad Benches, Hyderabad.