

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER and
SRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 329/Hyd/2012 – A.Y. 2003-04
ITA No. 330/Hyd/2012 – A.Y. 2004-05
ITA No. 331/Hyd/2012 – A.Y. 2005-06
ITA No. 332/Hyd/2012 – A.Y. 2006-07
ITA No. 333/Hyd/2012 – A.Y. 2007-08
ITA No. 334/Hyd/2012 – A.Y. 2008-09

The Deputy CIT Central Circle-6 Hyderabad Appellant	vs.	Sri K. Babu Rao Hyderabad PAN: ALDPK9558K Respondent
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ITA No. 335/Hyd/2012 – A.Y. 2007-08

The Deputy CIT Central Circle-6 Hyderabad Appellant	vs.	Smt. K. Rani, w/o. Sri K. Babu Rao, Hyderabad PAN: ALDPK9557G Respondent
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Appellant by: Sri P. Soma Sekhar Reddy
Respondent by: Sri Rajeev Dave

Date of hearing: 29.11.2013
Date of pronouncement: 24.01.2014

ORDER

PER CHANDRA POOJARI, AM:

The above appeals by the Revenue are directed against the common order of the CIT(A)-I, Hyderabad in case of Sri K. Babu Rao in ITA Nos. 329-334/Hyd/2012 for A.Ys. 2003-04 to 2008-09 and separate order in ITA No. 335/Hyd/2012 in case of

Smt. K. Rani, w/o. Sri K. Babu Rao for A.Y. 2007-08. Since the issues in all these appeals are identical, they are clubbed and heard together and are being disposed of by this common order for the sake of convenience.

2. The common grounds raised by the Revenue are as follows:

1. *The learned CIT (A) ought to have appreciated the seized material based examples given by the AO in the later pages of the assessment order, in support of the fact that three zeros were missing for non-banking transactions.*

2. *The learned CIT (A) failed to appreciate this basic logic given by the AO that when banking and non-banking transactions were written and summed up alike and all of them three zeros are missing. Had two zeros are missing in non-banking transactions and three in the case of banking transactions, as opined by the Id. CIT(A), they must had written and summed up differently. The opening and closing balances go against the opinion made by the Id. CIT (A).*

3. *The CIT (A) could have appreciated that the AO not only rebutted the evidences submitted by the assessee, but also disproved them with examples in the assessment order.*

4. *The Id. CIT(A) ought to have appreciated the fact that the transactions were recorded by the two wives and managers of assessee continuously for about 6 years and that too in a uniform manner. He further failed to understand that it is impossible to record the transactions by different persons uniformly unless it is common for both banking and non-banking transactions.*

3. Brief facts of the case are that a search and seizure operation u/s. 132 of Income-tax Act, 1961 was conducted at the residential premises of the assessee on 29-4-2008. Consequent to search, notice u/s. 153A was issued and the assessee filed the returns of income on 17-2- 2009 for the assessment years 2003-04 to 2008-09 admitting incomes as under.

Asst. Year	Income returned (Rs.)	Agricultural income (Rs.)
2003-04	83,889	7,00,000
2004-05	1,41,55,230 (includes LTCG of Rs. 49,38,085)	6,50,000
2005-06	8,22,630 (includes LTCG of Rs. 50,000)	7,50,000
2006-07	73,21,661	7,50,000
2007-08	42,84,275 (includes LTCG of Rs. 10,39,275)	8,00,000
2008-09	-7,22,080	7,50,000

4. During assessment proceedings, the AO observed that as per the seized material Annexure KBR/A/02 and KBR/A/4, assessee was involved in several financial transactions relating to real estate business for the period 2003 to 2008 and these transactions were written in coded form. He observed that in the statement recorded on the date of search, assessee admitted that the seized books contain details of day-to-day expenditure. In the statement recorded u/s. 131 on 23-7- 2008, the assessee further admitted that the seized books contain receipts and payments partly related to him and partly related to others and the entries were written in coded form. He also

admitted that these books were written by his managers and his two wives Smt. Sridevi and Smt. Rani. The AO analyzed the entries in the books by entering the same in chronological order in excel spreadsheet and fed the receipts and payments against the names mentioned. He noticed that in every transaction last three digits were omitted while recording. For example, car insurance payment was written as Rs. 10.6 which stands for a payment of Rs. 10,600/-. Similarly, in respect of bank transactions, last three digits were omitted. It was further observed that receipts include bank withdrawals, capital receipts like receipts on sale of land/plots, sale of vehicles, borrowings made from outside, agricultural receipts, etc and the payments include deposits into the bank, capital expenditure like payments made for purchase of plots and vehicles, repayment of loan borrowals, interest payments, personal expenditure, investments like premium payments, etc. The AO also obtained account extracts of the assessee from various banks and cross verified the same with the information on hand and confirmed that the transactions that were noted in the seized books pertain to assessee and his family members; as such, the income generated on them should be brought to tax in their hands for the respective periods. AO also recorded a sworn statement of the assessee on 29-8-2008 during which assessee had given the details of working of his undisclosed income as recorded in the books marked as Annexure KBR/A/2 and KBR/A/4. The AO separated the bank transactions and non-bank transactions. He also separated the personal

expenditure, capital gains and investments made by the assessee. Assessee admitted that the bank transactions were entered by omitting the last three zeroes and other transactions were entered by omitting last two zeroes. Assessee also admitted that for the assessment years 2003-04 to 2008-09, there was undisclosed income from business, undisclosed investments and undisclosed capital gains in his hands and undisclosed income from other sources and undisclosed capital gains in both the hands of his wives Smt. K. Sridevi and Smt. K. Rani. Assessee explained to the AO that three digits were omitted for all the bank transactions and two digits were omitted for all non-banking transactions. However, the AO held that the assessee had omitted three digits for almost all the transactions i.e. both banking and non-banking transactions. The AO for the detailed reasoning given at page No. 15 to 19 of the assessment order, held that up to Sep. 2003 the books were written eliminating two digits and from Sep. 2003 to Apr. 2008, books were written omitting three digits and arrived at the undisclosed income of the assessee and his two wives as under.

F.Y.	K. Babu Rao (Rs.)	K. Sridevi (Rs.)	K. Rani (Rs.)
2002-03	209640	102225	0
2003-04	138422220	0	0
2004-05	11596300	0	0
2005-06	77480300	0	0
2006-07	50342750	320780	10296390
2007-08	1529200	835780	0
2008-09	0	0	0
Total	279580410	1258785	10296390

5. After giving an opportunity to the assessee the AO rejected the submissions of the assessee as not standing .to the test of rationality and concluded that three digits were omitted by the assessee for both banking and nonbanking transactions. The undisclosed incomes of the assessee for the assessment years 2003-04 to 2008-09 under consideration and tax demands thereon were thus arrived at as under.

A.Y.	Income assessed (Rs.)	Tax demand raised (Rs.)
2003-04	2,09,640	96,263
2004-05	13,84,22,220	10,46,24,924
2005-06	1,15,96,300	78,42,773
2006-07	7,74,80,300	4,90,56,813
2007-08	5,03,42,750	2,62,72,072
2008-09	15,79,200	6,75,340

6. On appeal, the CIT(A) observed that majority of the expenses represent day-to-day household expenses as well as personal nature of expenses. On page 94 of KBR/A/2 (year 2003) the entries include non-vegetarian plus parcel kirana - 5.00, Doctor - 4.00, Indica diesel - 5.00, Sweet and mixture - 3.00, Tirupatamma - 30.00, Vengaiyah (car repair) - 3.00, Opel car petrol - 5.00, Kirana - 4.00, Magic card - 10.00, cycle repair - 6.00, Non veg - 2.00, AC repair - 15.00, Indica car repair - 13.00, Ramalakshmi salary - 10.00, Indica diesel and Doctor fee - 10.00, Gymkhana- club bill - 75.00. The nature of expenses is such that they do not require any independent evidence to support that they are to be multiplied by '100' only. These expenses would not have been incurred in multiples of thousand as contended by the AO. So is the case with other

pages as well. Many items represent such expenses in other pages also. They are representing the salary payments, daily expenses for groceries, vegetables, fruits, medicines, other eatables diesel, petrol, repair expenses of car, TV, AC, telephone cell bills, ticket expenses, electricity bill etc. None of these items appearing on these documents would support the contention of the AO to base his addition for all the years under reference.

7. The CIT(A) observed that the AO has proceeded on the basis of some isolated entries that they do not correctly represent what the appellant has considered in his submission. He has made some enquiries independently and obtained information from Delhi Public School about the school fee paid by the appellant for his children. If the payment of school fee is not appearing in the documents, the AO could have made independent addition about such expenditure instead of trying to link such payment to the nearest figure appearing on the documents. He is resuming a particular entry of '100' as one lakh as against 10000 and trying to apportion Rs. 80,000/- towards school fee and balance Rs. 20,000/- as incidental expenses. The entry in the seized document for '100' is appearing on 10-6-2006 whereas the school is confirming that the fee was paid on 12-6-2006 so that it cannot be linked. The argument of the AO is purely presumptuous and on conjectures without any base to make such an addition. It is wild guess to such probability. Similarly in respect of another item (83.5) the AO reasons that fee paid of Rs. 76,400 comes nearer to Rs.

83,500 than 'Rs. 8,350' thereby concludes that all the entries are to be read as multiplication with thousand. In this case also, the dates are not matching as the entry in the document is appearing on 12-7-2007 and fee is remitted on 16-7-2007. When the AO is referring to a specific item, then he should bring direct evidence to such entry without leaving any scope for logic or conjectures. He is only talking about nearest figure than the direct amount. In the same way the AO tried to justify his stand by bringing out some entries which are appearing twice on page 63 and 64 as well as on 66 and 67 and also entries appearing on a few pages as narrated in page 17 and 18 of the assessment order. Without any independent material supporting the view that the entries are to be multiplied with '1000', it is very difficult to validate such contention. Neither the evidences of the assessee are disproved nor any evidence brought to support the contention of the AO.

8. The CIT(A) observed that although the assessee owned up the document and entries appearing on those documents as his own and disclosed additional income, the fact remains is that the onus shifts to Assessing Authority to rebut any contention made by the assessee in respect of those entries especially evidences have been furnished before the Department in the course of post search proceedings. The Assessing Officer simply rejected those evidences on the ground that these are third party evidences hence not reliable. It is for the AO to disprove such third party evidences to base his

reasoning. On his part the assessee, after detailed working, has admitted the additional income and paid taxes. While doing so, he has taken not only the entries appearing in his name but also his party workers and declared the income of such persons as his income and paid taxes. In that background, it is very necessary on the part of the Assessing Officer to bring on record the independent corroborative evidence to suggest that all entries appearing in the seized documents are to be multiplied with '1000'. In the absence of such evidences with direct evidences to the entries made in the documents it is very difficult to adopt one multiplication figure uniformly for all entries. More so, when the assessee furnished third party evidences to such entries and the same were not rebutted by the AO in his order. Mere rejection does not amount to rebuttal of the evidences furnished by the assessee. As narrated above, many of such entries do not require supporting evidence to suggest that they are to be multiplied with two zeroes only as they speak themselves.

9. The CIT(A) further observed that the seized papers do not represent regular books of account so that the accounting system is not to be applied. As admitted, they are written by various persons other than the assessee from time to time. Hence one cannot be expected a uniform method and the entries can at best be deciphered by the persons who have written those entries. In view of the above factual matrix, it is not correct to assume that a uniform method is followed in

respect of totalling and balancing of the payments and receipts. They are written as and when a particular event of payment or receipt takes place. The entries are totalled for convenience sake but not for accounting purpose. Based on such totalling one cannot assume that the assessee has earned so much income. The entries are not for one year and they are written for many years by many people. Hence, continuity and standardization cannot be expected of such methodology of entering the expenses which are incurred from time to time. Another factor to be noted is that assessee is not engaged in any day-to-day business activity. Therefore, the view of the AO is not correct. Tax has to be collected on real income but not on hypothetical income. Unless those entries are independently corroborated with contemporaneous record, no adverse view can be taken by the Assessing Authority. No such direct independent evidences have been brought to demolish the contention of the assessee. As contended by the assessee, no assets have been unearthed during search, which is ultimate weapon of the Dept., for making such addition on the basis of some mathematical calculation. Mostly, the AO proceeded on assumptions and presumptions to arrive at the additional income by multiplying all entries with '1000'. If all the entries appearing on the seized documents are multiplied with thousand, the resultant figure leads to an absurdity because there are number of entries in the nature of day-to-day domestic and personal expenses etc. If one is to follow the method adopted by the Assessing Officer, expenditure like

cycle repairs, purchase of vegetables, fruits, meat etc gives a picture of abnormality. Such an abnormality cannot be acceptable even under the naked eye inspection of entries. It would not require any independent further evidence to prove that the expenditure is to be multiplied by '100'.

10. As stated earlier, these documents are prepared and maintained by managers, there are bound to be mistakes which cannot fasten on the assessee to pay taxes on unearned income. During search and seizure proceedings, cash Rs. 4 lakhs and the two diaries were recovered but no unaccounted assets found. AO did not mention any of such unaccounted assets found during search. In this background additions based on some entries in the diaries by affixing three zeroes for all transactions is totally unjustified. There should be some reasonable matching between the income and the assets or expenditure, that nexus is clearly lacking on the facts as brought on record. Even though the AO has stated in the assessment order about the nature of entries relating to period prior to Sep. 2003 that the elimination of two zeroes and from Sep. 2003 onwards, elimination of three zeroes is considered, but in reality, he as in wholesome adopted affixing three zeroes for all the entries in the year. However, the assessee has taken uniform stand for all the entries in the diaries. Instead of identifying the nature of expenditure which necessitates the adoption of higher value than the value adopted by the assessee (by adopting two zeroes), the AO went on to assess the total

amount based on affixing three zeroes for all entries which leads to abnormality as well as unrealistic figures.

11. The CIT(A) was of the view that it is very difficult to sustain the stand of the AO in making addition based on multiplication of the entries with '1000', He simply added one zero to the income disclosed by the assessee. Without rebutting the evidences filed by the assessee and without bringing any evidence to his logic, the addition made by him is unsustainable under law. Such presumption of AO needs sound logic and cogent evidence. Lack of unaccounted assets also weakens the case of AO. Therefore, adding three zeroes uniformly to all entries is not correct. Accordingly he directed the AO to delete the addition worked on the basis of multiplication with 3 zeroes for all assessment years from 2004-05 to 2008-09.

12. The CIT(A) observed that it cannot be ruled out about the possibility of some of the expenditure not recorded in the documents itself. This has been evidenced by the fact of children's school fee and college fee as brought out by the AO in respect of DP School, Engineering college fee, etc. Besides, there are other entries in the nature of interest payment on loans, furniture purchase, house repairs which includes marble, brick purchases etc. which require more than the value adopted by the assessee. For instance, interest payment of Rs. 900 on a loan of Rs. 3 lakhs is not realistic by any reckoning. Similarly, expenditure on marble of Rs. 500 is also quite low when compared to the value of marble in the market. To cover all

such discrepancies and unrecorded cash expenses, a reasonable estimate of disallowance is inevitable. After going through such entries and the nature of expenditure, the CIT(A) held that disallowance of a sum of Rs. 5 lakhs for each asst. year would suffice the shortfall if any in respect of the expenditure unrecorded and under-recorded. Therefore, the CIT(A) directed the AO to make addition of Rs. 5 lakhs for each asst. year from 2004-05 to 2008-09 and delete the addition made by him and re-compute the total income of the assessee.

13. The CIT(A) observed that in the course of appellate proceedings, the assessee contested that the AO added the agricultural income disclosed in the names of assessee's two wives Smt. K. Rani and Smt. K. Sridevi in the hands of the assessee though the agricultural income has been duly reflected in the returns of income filed by respective income holders and accepted by the same AO. Accordingly, the assessee requested the CIT(A) to direct the AO to delete the addition of agricultural Income belonging to Smt. K. Rani and Smt. K. Sridevi from the total income of the assessee in respect of asst. years commencing from 2003-04 to 2008-09. The CIT(A) examined the contention of the assessee and found that the AO has added again the agricultural income in the hands of the assessee without subscribing any reason for doing so. When such agricultural income was duly accepted in the hands of two wives of the assessee, it is not justified again subjecting the

same agricultural income in the hands of the assessee for taxation. Therefore, he directed the AO to re-compute the total income of the assessee for all these years under appeal i.e., 2003-04 to 2008-09 by deleting the agricultural income of assessee's wives and following the above directions of adding Rs. 5 lakhs to the income disclosed for each assessment year from 2004-05 to 2008-09. Against this, the Revenue is in appeal before us.

14. The learned DR submitted that the CIT(A) is not justified in deleting the addition by taking certain isolated entries in the seized material to suggest that the amount written by the assessee becomes exorbitant if "000" are added to the figures written by the assessee. Those entries are isolated entries and a conclusion cannot be drawn on the basis of those entries like non-vegetarian plus parcel kirana - 5.00, Doctor - 4.00, Indica diesel - 5.00, Sweet and mixture - 3.00, Tirupatamma - 30.00, Vengaiah (car repair) - 3.00, Opel car petrol - 5.00, Kirana - 4.00, Magic card - 10.00, cycle repair - 6.00, Non veg - 2.00, AC repair - 15.00, Indica car repair - 13.00, Ramalakshmi salary - 10.00, Indica diesel and Doctor fee - 10.00, Gymkhana- club bill - 75.00. The CIT(A) ought to have excluded these items for addition and for the balance entries, he must have multiplied with "000" so as to sustain the addition. According to him, it is not a inviolable rule applicable to all situations and to all cases that every seized document should be corroborated before addition can be based on it. He submitted that if calculations

and computations having been made in the seized document in such a manner that its probative value and genuineness cannot be doubted, nothing prevents the AO from making additions on the basis of such document despite the absence of any corroboration. The CIT(A) should have observed that in a case like this, it is difficult to obtain corroboration particularly when there is seized material showing unaccounted transactions. Seized document should be considered as a foolproof evidence in the absence of proper books of account maintained by the assessee and even scribbling in the loose paper suggested that the assessee has been involved in gross violation of maintaining books of account and habitually detail in the transactions and entering the same in loose slips. Even if there are procedural lapses on the part of the AO, the CIT(A) could have very well avoided the errors in his order and the proper course allowed to the CIT(A) is to remit the issue back to the AO to correct procedural lapses, if any, committed by the AO. He relied on the order of the AO.

15. On the other hand, the learned AR submitted that search operation was conducted on 29.4.2008 by the Investigation Wing, Income-tax Department, Hyderabad on K. Babu Rao. K.Babu Rao was initially engaged in the business of dealing in pearls and diamonds and operating from Mumbai where he had a shop. However, the business was closed with effect from the year 2001. Subsequently, he entered politics and was also engaged in the business of Real Estate as facilitator/purchase

and sale of land in and around Hyderabad. During the course of search, 2 notebooks were seized and marked as Annexure KBR/A/02 and KBR/A/4. In these books, certain financial transactions were written in coded form and covered the period from 2003-04 to 2007-08. These notebooks contained both amounts received and paid on various dates and in names of various persons on various accounts. An amount of Rs. 4,00,000 cash was also seized by the Investigation Wing. During the course of post-search operations, K. Babu Rao admitted that the notebooks contained receipts and payments which partly relate to him and partly to others. He also mentioned categorically that the amounts were written in coded form and further that these notebooks were written by his managers and sometimes by his two wives, viz., Smt. K. Sridevi and Smt. K. Rani. The statement of the assessee was recorded on 23-7-2008 by Dy. Director of Income-tax (Inv) wherein the assessee has clearly stated about the nature of entries recorded in the seized documents. That these entries relate to receipts and payments of partly to the assessee and partly to others. That they are written by his Managers, workers and his two wives. That the entries are in coded form and all bank transactions are to be multiplied by '1000' and all other transactions are to be multiplied by '100'.

16. The AR submitted that during the course of post-search operations, K. Babu Rao fully cooperated with the Department and himself arrived at his undisclosed income as evidenced

from the diaries. Although some of the transactions did not relate to him, in order to buy peace with the Department, he admitted as his income the net receipts as evidenced from the diaries. He made a true disclosure and he computed the net receipts from the 2 diaries based on the workings which were also subsequently verified by the Dy. Director of Income-tax (Investigation). He made a disclosure under section 132(4) admitting his undisclosed income from each of the Assessment Years under the various heads as his as well his two wives (viz., Smt. K. Sridevi and Smt. K. Rani) income.

17. The AR submitted that the workings which were submitted to the Dy. Director of Income-tax (Investigation) and explained in detail about his income from business, his drawings, investments, capital gains, etc. On specific query from DDIT(Inv), bank statements were produced and verified with the transactions in the noting of the diary which confirms the contention of the assessee that the bank transactions are written by omitting three zeroes. The DDIT verified and did not raise any issue on this matter. As regards the cash transactions, the assessee produced proof of payments of around 72 instances from the diary which clearly establishes the fact of cash transactions were recorded after eliminating two zeroes only. The same instances have been mentioned in the assessment order by the AO in page No. 9 to 11. Some of these payments were LIC and tax payments for which third party

evidence is always available and the same were verified by the DDIT (Inv) as well as in the course of assessment proceedings.

18. The AR submitted that the total income admitted by K. Babu Rao, Smt. K. Sridevi and Smt. K. Rani, in the returns of Income filed in pursuance of the notice issued under section 153A on the basis of the workings submitted to the DDIT were as follows: –

Undisclosed income other than agricultural income

F.Y.	A.Y.	Sri K. Babu Rao (Rs.)	Smt. K. Sri Devi (Rs.)	Smt. K. Rani (Rs.)
2002-03	2003-04	86,865	1,02,225	Nil
2003-04	2004-05	1,35,17,232	Nil	Nil
2004-05	2005-06	8,34,630	18,075	Nil
2005-06	2006-07	73,98,030	36,062	Nil
2006-07	2007-08	43,84,275	72,078	12,79,639
2007-08	2008-09	1,52,920	1,26,078	3,61,733
Total		2,63,73,952	3,54,518	16,41,372

19. Further, in addition to the above, the assessee also admitted the income from agriculture in the Returns as per the evidences of Tahsildar receipts produced before the DDIT (Investigation). The agricultural income admitted by the three assesseees for each of the Assessment Years is as follows:-

F.Y.	A.Y.	Sri K. Babu Rao (Rs.)	Smt. K. Sri Devi (Rs.)	Smt. K. Rani (Rs.)
2002-03	2003-04	7,00,000	2,25,000	NIL
2003-04	2004-05	6,50,000	3,25,000	NIL
2004-05	2005-06	7,50,000	3,25,000	NIL
2005-06	2006-07	7,50,000	3,50,000	NIL
2006-07	2007-08	8,00,000	4,00,000	2,50,000
2007-08	2008-09	7,50,000	4,25,000	4,50,000
TOTAL		44,00,000	20,50,000	7,00,000

20. The AR submitted that the total disclosure (including agricultural income) made by K. Babu Rao on his as well as K. Sridevi and K. Rani behalf is Rs. 3,55,19,842. He also paid taxes and proved his bona-fides. While making the payment of taxes, Rs. 4,00,0000 cash seized by the Department was also adjusted by him towards his tax dues. During the course of assessment proceedings, the assessee also furnished the receipts and payments account for each of the Assessment Years as well as the statement of affairs as on the close of the relevant financial year to substantiate the end-use of the undisclosed income admitted by him in his statement made under section 132(4) as well as Return of Income filed for each of the Assessment Years. The Assessing Officer accepted the statement of affairs since no issues were raised with regard to the various assets and liabilities mentioned in the said statement. The diaries were written in coded form and therefore to write bank transactions by eliminating 3 zeros and cash transactions by eliminating 2 zeros is known only to the person writing or under whose instructions the transactions are being written. The assessee has been able to substantiate with third party evidence regarding veracity of this fact. However, the Assessing Officer has chosen not to verify the seized-material or the supporting material which were furnished during the course of the proceedings but in an arbitrary manner, concluded that all transactions were written by eliminating 3 zeros and thereby assessed the undisclosed income at an unimaginable and unrealistic high figures by

simply adding one more '0' to the workings which were furnished by K. Babu Rao during the course of the proceedings.

21. The AR submitted that the Assessing Officer has also ignored the bank statements provided by banks and the transactions of which were also mentioned in the diaries and therefore could be easily correlated as to the actual amount of these transactions. In all the cases of bank transactions, the assessee was able to furnish the bank transactions which clearly reveal that the transactions in the diaries relating to the bank were written after eliminating 3 zeros. Copies of the bank statements are being enclosed which clearly identify the transactions recorded in the diaries and clearly prove the fact that the entries were written after eliminating 3 zeros. The Assessing Officer has, with a prejudice mind and without servicing the cause of natural justice, chose to add one more '0' to the non bank transactions thereby making a very high pitched assessment of the undisclosed income. With regard to the non-bank transactions also, the noting on diaries reveal payments made which were relating to his business. To the extent that the third party evidence was available, K. Babu Rao was able to produce the same which conforms that the cash transactions were written by eliminating 2 zeros.

22. The AR submitted that the assessee contested the observation of the AO in respect of the entries made in the diaries. That nowhere has the assessee made any admission that the cash transactions were written in a codified form after

eliminating 3 zeros. The Assessing Officer, however, has chosen to treat the submissions made with regard to the school and college fees as 'tacit admission' by the assessee. The Ld. CIT(A) will appreciate the diary is not a regular books and therefore principle of uniformity, balancing, negative cash etc., does not hold good as in the case of regular books of account, that the entire assessment has been made based on presumption, surmises and conjectures. The evidence produced by the assessee has been totally ignored without furnishing any reasons in the Order as to why they have been rejected. The entire assessment was made in hurried manner without verifying the contents of the seized-material as well as the documentary proof -such as -bank statements, land purchase and sale-deeds, and other documentary supporting -such as LIC, Income-tax challans, other third party evidences. The Assessing Officer has not even assessed the income based on his own findings as appearing in para 3.7 -where it is mentioned that only for non-bank transactions 3 zeros to be considered. However, while making assessment, he has computed total income by adding 3 zeros thereby adding one more zero to the bank transactions which were already considered and admitted by the assessee with 3 zeros. The Assessing Officer has also not substantiated the income assessed by him with the end-use of such income. There has to be some assets backed by such huge income. The Assessing Officer cannot take one-sided view while determining the income without considering related asset. The entire assessment has been made by simply

adding one more zero to the income admitted by the assessee. The Assessing Officer has not considered the transactions of capital gains for which documentary proofs were provided. Similarly, he has not considered the third party evidence in support of the cash payments furnished by the assessee. Finally, by refuting his own findings that the bank transactions have been considered after adding 3 zeros, he has once again added one more zero to the bank transactions while arriving at the assessed income. Similarly by accepting the agricultural income admitted by the assessee, and setting off the same only while calculating the taxable income, the AO has sought to inflate the taxable income in a pick and choose manner to his liking. Accordingly it is requested to delete the additions made in such an arbitrary manner by the Assessing Officer and to accept the income admitted by the assessee based on the seized material for which the statement under section 132 was also made and taxes paid.

23. The AR submitted that in the further submissions filed during appellate proceedings assessee pleaded that the AO has ignored the agricultural income of Smt. K. Rani and Smt. K. Sridevi and added the same as business income of the assessee. It is submitted that the agricultural income disclosed by Smt. K. Rani and Smt. K. Sridevi in their returns of income has been accepted by the Department. Hence due credit has to be given to the agricultural income of these two persons and the same cannot be added as income of the assessee as was

done by the AO in all the years under appeal. Accordingly it was pleaded that the same may be deleted.

24. The AR submitted that the Assessing Officer on Page-12 of his Order in Paragraph 3.5, has mentioned that there is a discrepancy between the income disclosed during the course of Investigation and admitted in his Return of Income. In this connection, it may be noted that there is no discrepancy in the income declared and the income admitted. The AO has again added the agricultural income belonging to Smt. K. Rani and K. Sridevi in the hands of the assessee although in their individual hands the same has been disclosed and accepted by the same AO. It is not correct on the part of the AO again subjecting such agricultural income in the hands of the assessee while computing his total income. The assessee has filed a detailed working of each assessment year-wise reconciliation of the income disclosed and admitted as well as assessed by the AO. Accordingly the assessee pleaded for deletion of the addition made in each year under appeal as such additions are made purely on hypothetical basis without any real evidences.

25. We have heard both the parties and perused the material on record. Section 153A of Income-tax Act, 1961 reads as follows:

153A.

[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under

section 132A after the 31st day of May, 2003, the Assessing Officer shall—

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate;

[Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.]

[(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.]

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

26. It is clear from the above provisions of section 153A that the income of the assessee in case of a person where search is initiated u/s. 132, the books of account or other documents or any assets are requisitioned u/s. 132A, the Assessing Officer after issue of a notice to furnish income of the assessee in respect of each assessment year falling within 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition made, the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisitioned, as the case may be, on bringing on record the material to show that there is undisclosed income of the assessee. In other words, there should be material on record to show that the income is assessed on the basis of material/evidence in hands of the Assessing Officer.

27. Being so, in our opinion, guess work is not possible in case of search assessment framed u/s. 143(3) or u/s. 153A of the Act without any proper material. The AO shall have the basis for assuming that the expenditure incurred by the assessee is out of undisclosed income. It is not permissible to assess the undisclosed income in the absence of any other evidence on arbitrary basis. The unsubstantiated loose sheets cannot be

considered as a conclusive evidence to make any addition towards undisclosed income. It was held by the Supreme Court in the case of CBI vs. V.C. Shukla (1998) 3 SCC 410 that "file containing loose sheets of papers are not books" and hence entries therein are not admissible u/s. 34 of the Evidence Act, 1872.

28. In the present case, the seized material (two note books) marked as KBR/A/02 and KBR/A/04 wherein certain entries are found recording various transactions pertaining to the assessee. These entries in the notebook are unsubstantiated and on that basis the AO reached to the conclusion that the figures mentioned therein are to be read by adding 3 zeros and thereby he came to conclude that there is undisclosed income in these 6 assessment years. In our opinion, the document recovered during the course of search was a dumb document and led nowhere. The CIT(A) rightly came to the conclusion that it cannot be acted upon and deleted the addition.

29. Other than the loose paper, the AO has not brought on record any corroborative material or evidence to show that the inference made by him is correct. The CIT(A) after taking the totality of the circumstances into consideration came to the conclusion that the addition made by the AO is not justified and the argument put forth by the assessee is supported by documentary evidence. This was not a case where relevant evidence had been ignored by the CIT(A) and their relevant evidence has been taken into consideration. The only test that

was required to be applied was whether on the facts found and the state of evidence on record, the conclusion arrived at by the CIT(A) was one which could be arrived by a reasonable person properly informed in law. Applying this test, it could not be said that the decision recorded by the CIT(A) one which could not have been arrived at by a reasonable person properly informed in law considering the state of evidence on record. Hence, in our considered opinion, the CIT(A) has reached a correct conclusion in deleting the addition made by the AO on the basis of loose sheets.

30. Accordingly, we are inclined to confirm the order of the CIT(A) in all cases and the Revenue appeals ITA Nos. 329 to 334/Hyd/2012 are dismissed. Even, the Revenue appeal in ITA No. 335/Hyd/2012 is also similar in nature as in other cases, and we dismiss this appeal also.

31. In the result, all appeals of the Revenue are dismissed.

Order pronounced in the open court on 24th January, 2014.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Hyderabad, dated 24th January, 2014
tpra0

Copy forwarded to:

1. The Deputy CIT, Central Circle-6, 7th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad-500 004.
2. Sri K. Babu Rao, Plot No. 794, Road No. 40, Jubilee Hills, Hyderabad.
3. Smt. K. Rani, w/o. Sri K. Babu Rao, Plot No. 794, Road No. 40, Jubilee Hills, Hyderabad.
4. The CIT(A)-I, Hyderabad.
5. The CIT (Central), Hyderabad
6. The DR – 'A' Bench, ITAT, Hyderabad