

ADDITIONS U/S 68 OF THE ACT

PARTNERS' CONTRIBUTIONS OF CAPITAL FOR BUSINESS OF FIRM-FIRM CANNOT BE CALLED UPON TO EXPLAIN SOURCE OF INCOME OF PARTNERS.

[2015] 370 ITR 212(T & AP)

[IN THE TELANGANA AND ANDHRA PRADESH HIGH COURT]

COMMISSIONER OF INCOME-TAX

v.

M. VENKATESWARA RAO AND OTHERS

Held, dismissing the appeal, (i) that the amount that was sought to be treated as income of the firm was the contribution made by the partners to the capital. In a way, the amount so contributed constitutes the very substratum for the business of the firm. The pooling of such capital as credit. It was only when the entries were made during the course of business that they could be subjected to scrutiny under section 68 of the Income-tax Act, 1961. Even otherwise, it was evident that the assessee explained the amount of Rs. 76,57,263 as the contribution from its partners. In such a situation, section 68 could no longer be pressed into service. Inquiry into the source for the respective partners to make that contribution could, at the most, be conducted against the individual partners. If the partner was an assessee, the concerned Assessing Officer can require him to explain the source of the money contributed by him to the firm. If, on the other hand, the partner was not an assessee, he can be required to file a return and explain the source. Undertaking such an exercise, vis-a-vis the firm itself, was impermissible in law. Therefore, the view taken by the Assessing Officer that the firm must explain the source of income for the partners regarding the amount contributed by them towards capital of the firm could not be sustained in law.

CIT v. ANUPAM UDYOG [1983] 142 ITR 133 (Patna) *followed*.