

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1882/Hyd/2019		
Assessment Year: 2011-12		
Sri Jitender Kumar Gupta (HUF), Hyderabad PAN:AABHJ7446L (Appellant)	Vs.	A.C.I.T Circle 7(1) Hyderabad (Respondent)
Assessee by:	Sri Siddharth Mantri	
Revenue by:	Smt. Kanika Agarwal,DR	
Date of hearing:	05/04/2021	
Date of pronouncement:	27/05/2021	

ORDER

This is assessee's appeal for the A.Y 2011-12 against the order of the CIT (A)-3, Hyderabad, dated 20.11.2019.

2. Brief facts of the case are that the assessee HUF had filed his return of income for the A.Y 2011-12 on 30.12.2011 declaring an income of Rs.5,40,992/- comprising of income from other sources Rs.4,14,992 and income from house property Rs.1,26,000/- and claimed Chapter VIA deduction of Rs.1,00,000/-.

3. Meanwhile the Assessing Officer had received information from the Investigation Wing, Kolkata that the assessee has purchased 70,000 shares of the following penny scrips for a total value of Rs.12,98,500/- during the financial year 2010-11 relevant to the A.Y 2011-12:

a) M/s. Golden Bull Research & Growth Ltd

- b) M/s. Regency Trust Ltd
- c) M/s. Global Capital Markets Ltd

3.1 As per the report of the Investigation Wing, Kolkata, the above penny stocks are used for generating bogus LTCG/STCL and business loss. In view of the same, the assessment was reopened on 29.03.2018 by issuance of notice u/s 148 of the Act and was served on the assessee and the assessee responded by stating that the shares were purchased from the approved broker and also explained the sources of investment. However, the Assessing Officer was not convinced and therefore, the total value of shares of Rs.12,98,500/- purchased by the assessee as penny stocks were treated as unexplained investment u/s 69B of the Act accordingly added to the income returned by the assessee. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the orders of the Assessing Officer and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

"1. The order of the learned Commissioner of Income tax, (Appeals)-3, Hyderabad in sustaining the additions of Rs.12,98,500/- as unexplained investment u/s 69B or u/s 69 is wholly unsustainable in law and on facts.

2. The CIT (A) failed to note that the source of investment of Rs. 12,98,500/- were properly explained and the same was acknowledged by the A.O in the order, therefore the CIT(A) ought to have held that there was no unexplained investment as provided u/ s 69B or u/ s 69 and therefore erred in confirming the addition of Rs. 12,98,500/-.

3. The CIT (A) failed to note that the addition was made in pursuance to reopening of the case u/ s 148, hence it was mandatory" on part of A.O to provide reasons for reopening the case, which he failed and therefore the CIT (A) ought to have held that the assessment u/ s 147 without providing the reasons for reopening and without affording the opportunity to the assessee to file his objections if any, would be unsustainable in law.

4. The CIT (A) failed to note that merely investment in a dubious company does not make the investment unexplained if otherwise the sources of investments are

properly explained. Therefore the CIT (A) ought to have deleted the addition which was wrongly made on above premise.

5. The CIT (A) has wrongly based his order on following decisions:

A. Sumati Dayal V CIT (80 Taxman 89) (SC).

B. Bimalchand Jain L/H Shanti Devi Bimalchand Jain V CIT (Bombay High Court, ITA No.18/2017).

C. Sri Abhimanyu Soin V ACI (Chandigarh Bench of ITAT - ITA No.951/2016).

D. ITO V Shamim M Bharwani (ITAT, Mumbai - ITA No 4906/2011).

The above cases were decided in relation to unexplained credits u/ s 68 or claim of exemptions u/ s 10(38).

As the relevant facts of the above cases are entirely different from the facts in case of Appellant, therefore the CIT (A) ought to have differentiated the facts and should not have passed the order on irrelevant facts and therefore erred in sustaining the addition of Rs. 12,98,500/- u/ s 69

6. The CIT (A) has passed order based on wrong understanding that the Appellant has claimed exemption u/ s 10(38), whereas the Appellant has not claimed any exemption u/s 10(38) and therefore erred in sustaining addition of Rs.12,98,500/ - u/s 69.

7. The CIT(A) has wrongly presumed that the disallowance u/ s 69B is a typographical error on the part of A.O and the same should be u/ s 69, as no such confirmation of A.O is there on record.

8. The Order of CIT (A) is against the principles of natural justice as no opportunity of hearing was given.

9. Any other ground or grounds that may be urged at the time of hearing”.

4. The learned Counsel for the assessee reiterated the submissions made before the lower authorities while the learned DR supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, I find that similar issue had arisen in the case of Shri

Narender Kumar Gupta (HUF) in ITA No.1084/Hyd/2019 vide orders dated 22.04.2021 wherein the Tribunal has held as under:

“5. The learned Counsel for the assessee has drawn my attention to page 5 of the Paper Book filed by the assessee wherein vide letter dated 13.1.2018, the assessee had requested the Assessing Officer to provide him with a copy of the reasons for reopening of the case u/s 147 of the Act. He also drew my attention to page 8 of the Paper Book wherein, vide letter dated 19.11.18, the assessee had informed the Assessing Officer that the return has been uploaded pursuant to notice u/s 148 on 30.4.2018 and that there was no sale of immovable property during the financial year 2010-11 and also requested for supply of reasons for reopening of the assessment u/s 148 of the Act. There is no mention of any letters nor there was any mention of supplying the reasons for reopening of the assessment to the assessee. Though a specific ground was taken before the CIT (A), he has not held the issue in favour of the assessee. The Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs Income Tax Officer And Ors reported in (2002) Supp(4) SCR 359 on 25 November, 2002, held that where a notice u/s 148 is issued and the assessee, after filing of the return of income in response to such notice, requests the Assessing Officer to supply the reasons for reopening, the Assessing Officer is bound to supply the reasons for reopening the assessment and only after disposal of the objections, if any, raised by the assessee, can the Assessing Officer proceed to reassess the income of the assessee. In this case, it is clear that the Assessing Officer has not followed the due procedure as mandated by the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (cited Supra).

6. In view of the same, I deem it fit and proper to remand the issue to the file of the Assessing Officer with a direction to supply the reasons for reopening of the assessment to the assessee and only after disposal of the objections, if any, raised by the assessee, the Assessing Officer shall proceed to recompute the income of the assessee in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing.

7. In the result, assessee's appeal is treated as allowed for statistical purposes”.

6. Respectfully following the same, this appeal of the assessee is also remitted to the file of the Assessing Officer with a direction to supply the assessee, the reasons for reopening of the assessment and only after disposal of the objections, if any, raised

by the assessee to the reopening, the Assessing Officer shall proceed to recompute the income of the assessee in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing.

7. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 27th May, 2021.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Hyderabad, dated 27th May, 2021.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri Jitender Kumar Gupta (HUF) C/o Madhu Mantri & Associates, C.A 3-5-873, C-103 Matrushree Apartments, Hyderguda, Hyderabad
2	ACIT, Circle 7(1) Signature Towers, Kondapur, Hyderabad
3	CIT (A)-3, Hyderabad
4	Pr. CIT -3, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order