

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" (SMC), HYDERABAD**

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

I.T.A. No. 1401/HYD/2012

Assessment Year: 1998-99

Mr. N. Sridhar,
HYDERABAD

[PAN: ABNPN2619N]

Jt. Commissioner of
Vs Income Tax,
Range-12,
HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri K.C. Devdas, AR
For Revenue : Shri K.J. Rao, DR

Date of Hearing : 17-11-2017
Date of Pronouncement : 12-01-2018

ORDER

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-II, Hyderabad, dated 09-07-2012.

2. Assessee filed appeal on 10-09-2012 with 20 grounds which include submission and case law. Assessee filed revised Form 36 on 24-08-2017, revising some columns and grounds as well. The revised grounds are as under:

“Revised Grounds of Appeal:

1. *The order of the Commissioner of Income tax, (Appeals) is erroneous both on facts and in law.*
2. *The CIT(A) failed to appreciate that reopening of assessment under section 147 was bad in Law; and thus ought to have annulled the assessment.*

3. *The CIT(A) erred in confirming the addition of Rs. 22,30,000/- brought to tax as unexplained investment.*
4. *Crave Leave to urge/raise any ground that might be necessary at the time hearing”.*

3. Briefly stated facts are that assessee had filed his return of income on 27-11-1998 declaring a total income of Rs. 55,000/- and claiming a refund of Rs. 5,000/-. This return was processed u/s 143(1). However, a notice u/s. 148 of the Income Tax Act [Act] has been issued dt. 18-03-2005 on the reason that the income has escaped assessment. The Assessing Officer (AO) has completed the assessment u/s. 143(3) r.w.s. 147 vide order dt. 31-03-2006 by making the following additions and raising the demand.

- | | | |
|---|---|-----------------|
| i. Unexplained investment | : | Rs. 22,30,000/- |
| ii. Unexplained investment said
to be from sale of gold and saving : | | Rs. 10,13,000/- |

3.1. Assessee had filed a rectification application u/s. 154 dt. 12-04-2006 stating that Rs. 10,13,000/- was reflected in the balance sheet and the addition made to this account was unwarranted. The AO after duly considering assessee's petition has reduced the amount.

4. Before the Ld.CIT(A), assessee raised two grounds mainly one was that the issuance of notice u/s. 148 and reopening of assessment is bad in law and other was the addition of Rs. 22,30,000/- on account of unexplained investment. It was the contention of assessee that the reopening was at the instance of report of JCIT, Bhubaneswar, that the reasons for reopening were

not communicated, that the notices were not served properly. No enquiries were made and those reports of enquiry which were relied were not furnished to assessee and no cross-examination was provided. Further, reliance of enquiries conducted in the company's case does not establish the unaccounted nature of amounts involved and no fresh material was available. It was further contended that assessee had disclosed the investments and sources in the returns filed originally along with confirmations and these returns were accepted without any scrutiny. In the proceedings before Ld.CIT(A), assessee filed fresh affidavits from the creditors in support of borrowals. Ld.CIT(A) in the detailed order (which was not extracted herein) has negated the assessee contentions and confirmed the additions, hence the present appeal.

5. Ld. Counsel explained that assessee along with other family members (whose appeals are separately dealt with) has invested in a company (M/s Sankhya Infotech Ltd, Bhubaneswar) promoted by them and the investment by assessee was to the tune of Rs. 22,30,000/-. The sources of the amounts were disclosed in the original return filed and the same were as under:

“Note: 1. During the year ending 31.3.1998 I have invested in Sankhya Infotech Limited Rs. 22.30 Lakhs

<i>Source:</i>	<i>Rs. In Lakhs</i>
<i>Savings & Sale of Gold</i>	<i>8.80</i>
<i>Add: Loans from friends</i>	<i>13.50</i>
<i>Total</i>	<i>22.30 ”</i>

5.1. It was submitted that there was no enquiry about the sale of gold, but AO has treated the same as unexplained and Ld.CIT(A) has not even discussed about the same.

5.2. It was submitted that assessee has borrowed from the following persons:

Sl.No.	Name of the Creditor	Amount (Rs)
1	Bapuji	2,00,000
2	Chittemma	1,00,000
3	Kanakaiah	1,00,000
4	Kanakayya	50,000
5	Koteswaramma	1,00,000
6	Naga Srinivasa Rao	1,00,000
7	Rambabu	50,000
8	Satyavathi	50,000
9	Tilapalamma	1,00,000
10	Veerababu	1,00,000
11	Veera Koteswara Rao	1,00,000
12	Venkata Narasimha Rao	50,000
13	Venkateswara Rao	2,00,000
14	Vijaya Ramakrishna	50,000
	Total	13,50,000

5.3. It was further submitted that the enquiries were originally caused in the case of company and there, the promoters' investment was enquired but the addition was made as unexplained investment in Machinery. During the assessment proceedings, the DDIT, Vijayawada made enquiries of sources of source and that too behind the back of assessee's promoters after a lapse of time and no cross-examination was provided. Assessee filed detailed replies in the case of company's appeal and Ld.CIT(A) deleted the additions so made. Anticipating an adverse order, the JCIT, Bhubaneswar has written a letter to the officers in Hyderabad to reopen the assessments of promoters and that was

the basis for issuance of notice. Even though assessee filed the returns of income disclosing the investments and sources, the AO who has no jurisdiction, had reopened the assessment and without further enquiries relied on the earlier reports and completed the assessment.

5.4. Referring to the order of Ld.CIT(A), it was submitted that the fact is that the reasons for reopening were not communicated by AO and communicated only during the present appeal proceedings recently, that too in the form of paper book filed before this forum and referred to the letter of AO given to CIT(A) that no satisfaction was recorded.

5.5. On merits, referring to the order of Ld.CIT(A), Bhubaneswar in the company's appeal, it was submitted that there are no enquiries in the case of assessee (Shri N. Sridhar) and even in the enquiries conducted in the other cases, there was no denial of investment. Regarding the statement of Shri Kanakaiah [Para 6.5 of CIT(A)] relied on by Department, it was submitted that his statement was not subjected to cross-examination and his later affidavit filed before the Ld.CIT(A) has not been controverted. Regarding the statement of Shri G. Srinivas (Para 6.4), it was submitted that assessee had borrowed in FY. 1997-98 and the cyclone of 1999 has no effect on the fact of borrowals. The said statement in fact supports the assessee that there was prawn culture and the persons have sources to invest. Subsequently, they may have suffered financial losses and migrated, but the statement does not deny the borrowals in FY. 1997-98. The order of Ld.CIT(A) is therefore devoid of facts and should be set aside.

5.6. Regarding the issue of reopening, the summary of contentions are as under:

No tangible material – In the returns of income filed originally in all the cases, notes were appended to the ROI about investment in shares of Sankhya Infotech, Bhuvaneshwar. Details of loans taken and confirmation letter etc. were filed in case of Ramakrishna, Parvathavardini, Indira Ramani, N. Sridhar and N. Gayatri. Except these notes, evidences and the letter received from Addln. CIT, Bhuvaneshwar, to take action u/s. 147 there is no tangible material that income has escaped assessment. Relied on judgment of Delhi High Court in the case of CIT Vs. Atul Kumar Swami where reference to notes filed along with original return of income are made. The entire reasons recorded for re-opening of assessment is “BORROWED SATISFACTION” and not that of the Assessing Officer.

Reasons for re-opening not communicated in any of the cases – Fatal to re-assessment –

Not furnishing of reasons or its non-communication is fatal to reassessment proceedings. Pls. see case law relied upon as under –

Sr. No.	Case Law	ITR	Page	Court
i.	CIT Vs. Tecumseh Product	361	429	AP & Telangana
ii.	CIT Vs. Trend Electronics	379	456	Mumbai
iii.	CIT Vs. Vijaya Talkies & Distributors	398	13	Delhi
iv.	CIT Vs. Kothari Mills	377	581	Karnataka

6. Ld.DR, however, defended the order of the AO/CIT(A) vehemently. Regarding the letter of AO denying the recording of reasons, it was stated that the letter is not correct and how the same reached assessee is not known. While admitting that the reasons recorded were traced and provided to assessee recently (in pg.17, in the form of paper book filed), it was submitted that the enquiries were conducted and assessee is aware of all the proceedings and there was non-co-operation from assessee. He

referred to various orders- that of Ld.CIT(A), Bhubaneswar, the order of AO and CIT(A)- to support the AO's action.

7. I have considered the rival contentions and perused the orders and documents placed on record and precedents relied. Before advertng to the adjudication of issues, the following facts are to be noted:

A) Assessee filed the return of income on 27-11-1998 with the jurisdiction of Asst. Commissioner of Income Tax, Circle-4(2), admitting incomes and stating the sources of investment of Rs. 22,30,000/- in M/s. Sankya Infotech Ltd., and necessary confirmations were enclosed to the return. This was accepted u/s. 143(1) and no scrutiny was taken up;

B) The company M/s. Sankya Infotech Ltd., was assessed at Bhubaneswar and enquiries were conducted in some promoters cases, but not in assessee case;

C) In the company appeal, Ld.CIT(A), Bhubaneswar has deleted the addition with the following observations/findings:

“In this case, the AO has made certain enquiries through the DDTI (Inv.), Hyderabad and Vijayawada regarding the sources of investment towards share capital contributed by four shareholders namely, (i) Shri N. Ramakrishna Rao, (ii) Smt N. Paravathavarhini, (iii) Smt. N. Gayatri and (iv) Smt. N. Indira Ramani. The AO has relied upon the report of the DDTI(Inv.), Hyderabad and the statements recorded by him on oath from Shri Babu Rao, Shri Suryanarayana and Shri G. Kanakaiah to state that the loans were bogus and that the agent who arranged the loans had obtained signatures on the loan confirmation letters after bribing the agriculturists. Of course this report was not confronted to the appellant by the AO, but the same had been confronted in course of the remand proceeding. The appellant-company have also cited from

the same report to contend that Shri G. Kanakiah together with his family members have given money to Shri Babu Rao, who has given the money to the appellant-company and that the farmer-creditors have stated that they have signed the loan confirmation letters. The AO has relied upon the said report to question the creditworthiness of the farmers on the ground that, the land was drought prone area for the last five to six years and sufficient income was not generated. The appellant-company has quoted from the same report to assert that from 1986 to 1996, prawn was being cultivated in the land where the yield per acre was Rs.1 lakh per annum. The AO has drawn attention to the discrepancies between the plot/survey numbers and the extent of land area given by the cultivators and as appearing in the land records. This discrepancy has been attempted to be explained by the appellant-company by attributing the same to non-mutation of land and typographical and unintentional error etc., although the veracity of the allegation has been admitted in few cases. The difference regarding the extent of land area was attributed to causes like sale/gift or sharing of land subsequently. But, be that as it may, the enquiry report does not indicate that the sources of source, i.e., the loans advanced by the farmers to the Directors/shareholders; were totally bogus or that they completely lack creditworthiness. But, there appears to be some substance in the assertion of the AO/Jt.CIT that certain elements like the genuineness of the transactions and complete creditworthiness of the farmers was not conclusively established. These matters nevertheless require further enquiry as only sixteen out of seventy five farmer-creditors, who have advanced loans to the four shareholders have been examined. No enquiry has been conducted in respect of loans availed by the two promoter-directors; namely Shri N. Srinivas and Shri N. Sridhar. Therefore the AO or the concerned AOs can conduct further enquiries and if it is found that the loans given by the farmers were neither credible nor genuine; the additions could be made in the hands of the shareholders who have subscribed to the shares of the appellant-company. The sources of funds in such cases can be tackled by the AO in the hands of the subscribers to the equity shares who have availed the loans. Therefore, the AO is free to conduct further enquiries in the case of individual shareholders as per the extant provisions of law and consider these amounts in their hands in view of the discussions in para 4.1 and 4.2 and the judicial decisions cited supra”.

D) Before the order of Ld.CIT(A), Bhubaneswar was passed, the JCIT has reported his findings to the officers at Hyderabad with a request to reopening the assessments for protecting the interest of Revenue. As per the paper book filed by the Dept (page 15), there

was a direction by Addl. CIT, Range-12, to ACIT to submit proposal for initiating action u/s. 147 immediately, by the letter dt. 07-03-2005;

E) The reopening by the AO, Asst. Commissioner of Income Tax, Circle-12(1), was consequential to the above letter and AO recorded the satisfaction as under:

ORDER SHEET
A.Y. 1998-99

In this case the information has been received from the JCIT, Range-2, Bhubaneswar, in the form of a letter dt.23.02.2005. As per the letter the gist of the information received is as under.

The assessee is a promoter of the Company by name M/s Sankhya Infotech Ltd., Bhubaneswar. The assessee introduced the amount of Rs.22,30,000/- as share application money during the period relevant to the assessment year 1998-99. In the case of the assessment of the Company, the money introduced by the assessee have been examined and inquiries were also conducted by the DDI(Inv.) Unit-I(2) Hyderabad, and also the DDI(Inv.) Vijayawada, reveals the fact that the sources of introduction of money by the assessee are through loans from farmers etc. The inquiries revealed that the transactions of loans from the farmers are not genuine and they are only paper transactions and in fact that the money lenders do not own the land shown In the affidavits produced by them before the CIT(A), Bhubaneswar. Thus, the sum brought the assessee as share application money are unexplained cash credits in the hands of the assessee for the assessment year 1998-99.

Therefore, I have reason to believe that the income chargeable to tax as escaped assessment within the meaning of sec.147 for the assessment year 1998-99 to the extent of Rs. 22,30,100 as the amount introduced by the assessee. Since the assessment involved is for the assessment year 1998-99, sanction for issuance of notice u/s. 148 is sought from the Addl. CIT, as required u/s. 151(2). Proposal u/s. 148 accordingly is submitted to the Addl.CIT”.

F) Assessee received notice u/s. 148 dt. 18-03-2005, but the reasons recorded were not communicated either during assessment proceedings or during appeal proceedings. In fact the letter of ACIT, Circle-12(1), dt. NIL filed by assessee has this noting;

*Office of the
Asst. Commissioner of Income tax,
Circle 12(1),
Hyderabad*

PAN NO ABNPN2619N

*To,
The Commissioner of Income Tax (Appeals-II)
Hyderabad,*

Sir,

Sub: Appellate Proceedings in the case of Sri N. Sridhar-A.Y.1998-99 Submission of Report – Reg.

*Ref: CIT(Appeals-II), Hyd, Letter No. 0079&0081/CIT-(A)-II/06-07
Dt: 26-11-2007*

Kind Reference is invited to the above.

I have gone through the written submissions filed by the assessee and the entire record, also the order sheet maintained for the year under consideration and found that no where in the order sheet(s) reasons for issuing notice(s) issued u/s. 148 is noted, though the assessee has requested reasons for initiating action u/s. 147(a) and re-opening the Assessment has not been recorded. No evidence of issuing any Notice(s) to the loan creditors or Postal covers returned un-served is available on record. No evidence is available on record asking the assessee to produce the loan creditors for cross-examination.

The contents of affidavit tallies with the loan confirmation letters submitted during the course of hearing. The amount of loan taken

as per record is Rs. 13.50 lakhs, but not Rs. 15.00 lakhs as stated in the assessment order dated 31.03.2006.

Submitted

Yours faithfully

Sd/-

(D. Prakash Rao)

*Asst. Commissioner of Income Tax,
Range-12, Hyderabad*

G) Even though confirmation was filed earlier, no further enquiries were caused, nor the earlier reports were given to assessee and opportunity of cross examination was not provided;

H) Though the source of sale of gold was shown to an extent of Rs. 8,30,000/-, no enquiries were caused on that issue. Assessee did not offer any capital gains/loss on sale of gold. This aspect was not examined at all;

I) AO and CIT(A) relied on the enquiry reports of year 2001 in the company's case without any further enquiry or allowing cross-examination;

J) The affidavits filed by assessee before CIT(A), Hyd. has been sent to AO but what enquiries were caused and what findings were arrived has not been brought on record, even though the letter of AO, extracted above, do indicate that AO has more or less accepted the affidavits;

K) An addition of Rs. 15 Lakhs was made even though the loan amounts were only Rs. 13.50 Lakhs during the year;

8. Now, coming to the merits of the addition, the findings of AO and CIT(A) are not based on facts. No enquiry was conducted in assessee's case and those enquiries conducted in some of the other promoter's cases cannot be relied in the absence of cross-examination. The statement of Shri Kanakaiah (supposed to be a mediator) was behind the back of assessee and assessee never claimed that he is the mediator. The confirmation and affidavits given later have not been disproved. The statement of Shri G. Srinivas in fact confirms that there was prawn cultivation and ryots got affected due to cyclone in 1999, much later to the advance of monies. Subsequent problem by farmers could be reason for assessee's inability to get them produced before AO in the proceedings, but it does not prove that the claim of credits is not genuine. The reliance on CIT(A), Bhubaneswar order by the present CIT(A), Hyderabad is also misplaced. In fact, the order of CIT(A) has this to state:

".....But, be that as it may, the enquiry report does not indicate that the sources of source, i.e., the loans advanced by the farmers to the Directors/shareholders; were totally bogus or that they completely lack creditworthiness. But, there appears to be some substance in the assertion of the AO/Jt.CIT that certain elements like the genuineness of the transactions and complete creditworthiness of the farmers was not conclusively established. These matters nevertheless require further enquiry as only sixteen out of seventy five farmer-creditors, who have advanced loans to the four share holders have been examined. No enquiry has been conducted in respect of loans availed by the two promoter-directors; namely Shri N. Srinivas and Shri N. Sridhar. Therefore, the AO or the concerned AOs can conduct further enquiries and if it is found that the loans given by the farmers were neither credible nor genuine; the additions could be made in the hands of the shareholders who have subscribed to the shares of the appellant-company. The sources of funds in such cases can be tackled by the AO in the hands of the subscribers to the equity shares who have availed the loans. Therefore, the AO is free to conduct further enquiries in the case of individual shareholders as per the extant provisions of law and consider these amounts in their hands in

view of the discussions in para 4.1 and 4.2 and the judicial decisions cited supra”.

Thus, the observation of CIT(A) indeed does not state that the sources are totally bogus and AO was in fact, asked to make further enquiries. Since no enquiries worth were made, the order of CIT(A) Bhubaneswar cannot be relied on, for denying the genuineness of the credits. Since so much time has lapsed and the affidavits furnished dt. 25-10-2007 have not been disproved, the contentions of assessee in this regard has merit. I am of the opinion that Revenue wrongly relied on the reports in the case of company and on the order of CIT(A), Bhubaneswar and has not made any enquiry in assessee case to disprove the credits claimed. In the circumstances, I direct the AO to accept the credits as such, as genuine. In fact, the borrowals are only to the extent of Rs. 13.50 lakhs. Addition of Rs 22.30 lakhs, being the entire investment in that company without examining the other sources is not correct and hence deleted.

9. That leaves us the matter of reopening. Even though the same is academic now, in view of the acceptance of issue of credits on merit, it is to be placed on record that the contentions on the issue have merit. First of all, assessee has disclosed the investment and enclosed the confirmations to the original return which was accepted. There was a direction by Addl. CIT, Range-12 to reopen the assessment. Another offer (whose jurisdiction is not examined) has issued the notices, even though assessee was assessed earlier. The reasons for reopening were not communicated violating the directions of Hon'ble Supreme Court in

the case of GKN Drive Shaft, [259 ITR 19] (SC). The contentions extracted in assessee counsel's submissions and the case law relied, support the conclusion that the reopening itself is bad in law.

10. On these reasons, the order of AO and CIT(A) cannot be upheld. The grounds are allowed.

11. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 12th January, 2018

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 12th January, 2018

TNMM

Copy to :

1. Mr. N. Sridhar, C/o. Shri K.C. Devdas, Chartered Accountants, R.P. Road, Secunderabad.

2. The Jt. Commissioner of Income Tax, Range-12, Hyderabad.

3. CIT (Appeals)-II, Hyderabad.

4. CIT-I, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.