

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

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

I.T.A. No. 826/HYD/2013

Assessment Year: 1998-99

N. Gayatri, HYDERABAD [PAN: ABFPN1325R]	Vs	Income Tax Officer, Ward-11(2), HYDERABAD
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(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)-18, Mumbai, dated 08-03-2013, holding concurrent jurisdiction of CIT(A)-VI, Hyderabad, dated 08-03-2013.

2. Assessee filed appeal with 15 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. 18,00,000/- brought to tax as unexplained investment under section 69.*
4. *While the Assessing Officer brought to tax the amount of Rs. 18,00,000/- as unexplained investment under section 69, the CIT(A) erroneously confirmed the same as 'unexplained cash credit' considering it as an addition under section 68; and without appreciating the fact that the assessee discharged the onus cast under section 68.*
5. *Crave Leave to urge/raise any ground that might be necessary at the time hearing”.*

3. Briefly stated facts are that assessee had filed her return of income on 21-10-1999 declaring a total income of Rs. 75,000/-. This return was processed u/s 143(1). However, a notice u/s. 148 of the Income Tax Act [Act] has been issued dt. 11-03-2005 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. 24-03-2006 by making the addition of unexplained investment of Rs. 18,00,000/-. AO noted that assessee has invested an amount of Rs. 20,41,400/- in M/s. Sankhya Infotech Ltd., and the source of investment was Rs. 2,41,470/- out of savings and Rs. 18,00,000/- from the loans raised. AO also acknowledges that assessee while filing the return of income has enclosed confirmation letters and all of them were obtained from agriculturists. AO also records that the notices could not be served on assessee but assessee acknowledged vide letter 24-03-06 that notice u/s. 148 was received by her and original return was filed. AO also records that assessee objected the receipt of notice as it was barred by limitation of time. Since the

assessment was getting time barred, AO relied on the enquiries caused in the company's case and put the initial burden on the assessee and stated that loans received from the farmers cannot be accepted and treated the same as assessee's income.

4. Before the Ld.CIT(A), assessee raised two grounds mainly that the issuance of notice u/s. 148 and reopening of assessment was bad in law and other was the addition of Rs. 18,00,000/-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 submitted that confirmations were filed three times before various authorities and no adverse inference was drawn. Assessee also furnished affidavits from all the loan creditors before CIT(A)-2, Hyderabad which was however, not mentioned by the Ld.CIT(A)-VI, Hyderabad in his order. As seen from the paper book, there was a report of Inspector about the verification done on the additional grounds raised by the assessee which was forwarded by the ITO, Ward-11(2), Hyderabad

on 30-08-2011 with further forwarding letter of Addl. CIT, Range-11, on 05-09-2011.

5. Ld.CIT(A), however, relying on the proceedings before the CIT(A), Bhubaneswar, however, held that assessee has not proved the creditworthiness and genuineness of the transaction and hence addition made by the AO was upheld.

6. 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. 20,41,400/- The sources of the amounts were disclosed in the original return filed and the same were as under:

*“Note: During the year I have invested in Sankhya Infotech Limited
Some are*

<i>Out of Savings</i>	<i>2,41,470</i>	
<i>Loans raised</i>	<i>18,00,000</i>	<i>20,41,470</i>

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

Sl.No.	Name of the Creditor	Amount (Rs)
1	Bhoji	40,000
2	Chinnappa	50,000
3	Eeswara Rao	50,000
4	Hari Ramakrishna	42,000
5	Jayapal	50,000
6	Kanakaiah	50,000
7		50,000
8	Koteswaramma	50,000
9	Krishna Murthy	50,000
10	Mahalakshmi	50,000

11	Mangamma	45,000
12	Mariyamma	36,000
13	Nageswara Rao	50,000
14	Nageswara Rao	50,000
15	Naresh	18,000
16	Paideiah	50,000
17	Raju	45,000
18	Ramakrishna	50,000
19	Ramappa	92,000
20	Rambabu	50,000
21		58,000
22	Ramlingeswara Rao	42,000
23	Rangarao	50,000
24	Sambhasiva Rao	82,000
25	Srinivas	50,000
26	Surya Chandra Rao	50,000
27	Tilapamma	87,000
28	Toota Peddi Raju	50,000
29	Vakalaiah	60,000
30	Veera Babu	42,000
31	Veerabhadra Rao	50,000
32	Venkata Narasimha Rao	50,000
33	Venkata Rama Devi	54,000
34	Vijaya Rama Krishna	68,000
35	Yugandar	42,000
	Total:	18,03,000

6.2. 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.

6.3. Referring to the order of Ld.CIT(A), it was submitted that the reasons for reopening were not communicated by AO. On merits, referring to the order of Ld.CIT(A), Bhubaneswar in the company's appeal, it was submitted that there are enquiries in the case of assessee and there was no denial of investment. Even though assessee submitted affidavits in all the cases, no enquiries were caused. Ld.CIT(A) wrongly relied on the order of the CIT(A), Bhubaneswar which clearly states that the credits are not bogus and Assessing Officers are to make further enquiries. It was submitted that order of the CIT(A) is not based on facts.

6.4. 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 reopening 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 –

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

7. Ld.DR, however, defended the order of the AO/CIT(A) vehemently. Regarding the satisfaction, Ld.DR informed that the same was extracted in the order of the CIT(A) and so, the argument that the same were not communicated is not correct. 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.

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

A) Assessee filed the return of income on 21-10-1999 with the jurisdiction of Income Tax Officer 5(5), admitting incomes and stating the sources of investment of Rs. 20,41,400/- 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 promoter's cases;

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. Paravathavardhini, (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. Kanakiah 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 extant 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 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”.

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 reopen the assessments for protecting the interest of Revenue. As per the paper book filed, there was a direction by Addl. CIT, Range-11, to ACIT to submit proposal for initiating action u/s. 147 immediately, by the letter dt. 09-03-2005;

E) The reopening by the AO, Asst. Commissioner of Income Tax(OSD), Range-11, was consequential to the above letter and AO recorded the satisfaction as under:

“Reasons for the belief that income has escaped assessment:

The assessee admitted an income of Rs. 75,000/- being amount received towards accounting service for Sankhya Management Services Pvt. Ltd. under the head income from profession. The return of income was processed u/s 143(1) on 11.11.1999. In the computation of total income it was mentioned that during the year under consideration, the assessee has invested Rs. 20,41,400/- in Sankhya Infotech Ltd. The sources of investment was Rs. 2,41,400/- out of savings and Rs. 18 lakhs from loans

raised. While filing the return of income, the assessee enclosed confirmation letters for the loans raised. Almost all the confirmation letters were obtained from the agricultural lists and enclosed to the return of income. The assessee is one of the promoters of Sankhya Infotech Ltd., 12B, Metro Tower, Achrya Vihar Square, Bhuvaneshwar, which is being assessed by the DCIT, Circle-I, Bhuvaneshwar.

During the course of pendency of the assessment proceedings in the case of Sankhya Infotech Ltd., for the Asst. Year 1998-99 the Assessing Officer noticed that cash credits found in the books of the company on account of introduction of share application money by the promoters do not have adequate means to introduce such money and also the alleged transactions of unsecured loans obtained by the promoters from various farmers of Krishna District of Andhra Pradesh were not found to be genuine. The Assessing Officer requested the DDIT (Inv.) Vijayawada to conduct enquiries about the genuineness of the loans raised and report. The DDIT (Inv.) Vijayawada conducted the enquiries which reveals that the transactions of loans from farmers are not genuine and they are only paper transactions. In view of the above, the claim of the assessee that she has raised loans from the farmers is not genuine. The investment by the assessee represents her income.

I have reason to believe that income chargeable to tax for the Asst. Year 1998-99 has escaped assessment within the meaning of Section 147 of the I.T. Act, 1961.

I request the Addl. CIT, Range-11, Hyderabad to accord permission to issue notice u/s. 148 of the I.T. Act for the Asst. Year 1998-99”.

F) Assessee was issued notice u/s. 148 dt. 11-03-2005, but the reasons recorded were not communicated either during assessment proceedings or during appeal proceedings, inspite of requesting the same.

G) The Addl. CIT, Range-11, did in fact cause certain enquiries through the ITI, who has given a report as under:

“As directed by the Addl. CIT, Range-11, Hyderabad, I have gone for enquiry on 08-08-2011. On 08-08-2011, I have visited Pedapatnam, Kaanuru, Tallapalem, Janjeru Villages of Machilipatnam Mandal, Krishna District and enquired the whereabouts of the persons who have advanced

the amounts to Smt. N. Parvatha Vardhini, N. Indira Ramani and Gayatri. I have enquired regarding their present land holding and other aspects at random.

1. I have met the people who are present at the time of my visit in the villages ie., Pedapatnam, Kaanuru, Tallapalem, Janjeru. On prima-facie it appears that they are very small farmers earning income of hand to mouth. As directed, I have served the summons on the following persons, to examine the creditworthiness of the farmers:

Sl.No.	Name of the persons S/Sri/Smt.	In the case of
1	Bunga Padma, Pedapatnam	N. Parvathavardhini
2	Moodugumadi Nageswara Rao, Kaanuru	N. Indira Ramani
3	Moodugumadi Nageswara Rao, Kaanuru	N. Parvathavardhini
4	Moodugumadi Nageswara Rao, Kaanuru	N. Gayatri
5	Peddi Rajulu, Kaanuru	N. Indira Ramani
6	Peddi Rajulu, Kaanuru	N. Parvathavardhini
7	Kankaiah G. Kaanuru	N. Parvathavardhini
8	Kankaiah G. Kaanuru	N. Indira Ramani
9	Kankaiah G. Kaanuru	N. Gayatri
10	G. Chittimma, Kaanuru	N. Indira Kumari
11	G. Chittimma, Kaanuru	N. Parvathavardhini
12	V. Ankamma W/o. V. Vakalaiah, Tallapalem	N. Gayatri
13	Vanka Pushpavathi W/O Vanka Ramudu, Tallapalem	N. Gayatri
14	P. Gopi Tallapalem	N. Gayatri
15	Y. Eswar Rao, Pedapatnam	N. Indira Ramani
16	Y. Eswar Rao, Pedapatnam	N. Gayatri
17	Y. Eswar Rao, Pedapatnam	N. Parvathavardhini
18	Lella Joji, Padapatnam	N. Indira Ramani
19	Lella Joji, Padapatnam	N. Gayatri
20	Lella Joji, Padapatnam	N. Parvathavardhini
21	G. Yesupadam, Pedapatnam	N. Indira Ramani
22	G. Yesupadam, Pedapatnam	N. Parvathavardhini
23	G. Chinnappa, Pedapatnam	N. Parvathavardhini
24	G. Chinnappa, Pedapatnam	N. Gayatri
25	G. Chinnappa, Pedapatnam	N. Indira Ramani
26	K. Bapuji, Kaanuru	N. Indira Ramani
27	K. Bapuji, Kaanuru	
28	J. Mahalakshmi, Kaanuru	N. Indira Ramani
29	J. Mahalakshmi, Kaanuru	N. Parvathavardhini
30	J. Mahalakshmi, Kaanuru	N. Gayatri
31	Puppala Rambabu, Kaanuru	N. Gayatri
32	Puppala Rambabu, Kaanuru	N. Parvathavardhini
33	G. Vemlata Ramadevi, Vundrapudi	N. Indira Ramani

34	<i>G. Vemlata Ramadevi, Vundrapudi</i>	<i>N. Gayatri</i>
35	<i>Divi Sambasiva Rao, Pedapatnam</i>	<i>N. Gayatri</i>
36	<i>Divi Sambasiva Rao, Pedapatnam</i>	<i>N. Indira Ramani</i>
37	<i>D. Mangathayaru, Kanuru</i>	<i>N. Parvathavardhini</i>
38	<i>D. Mangathayaru, Kanuru</i>	<i>N. Indira Ramani</i>
39	<i>Munidra Rao, Janjeru</i>	<i>N. Indira Ramani</i>
40	<i>Munidra Rao, Janjeru</i>	<i>N. Parvathavardhini</i>
41	<i>G. Veera Koteswara Rao, Kaanuru</i>	<i>N. Parvathavardhini</i>
42	<i>G. Veera Koteswara Rao, Kaanuru</i>	<i>N. Indira Ramani</i>

2. I have obtained certificate of residence as proof of their stay in the village in the following cases at random:

<i>Sl.No.</i>	<i>Name of the persons S/Sri/Smt.</i>	<i>Name of the village</i>
1	<i>G. Venkateswara Rao</i>	<i>Kaanuru</i>
2	<i>G. Kanakaiah</i>	<i>-do-</i>
3	<i>G. Chittemma</i>	<i>-do-</i>
4	<i>K. Ramalingeswara Rao</i>	<i>-do-</i>
5	<i>Rajamohana Rao</i>	<i>-do-</i>
6	<i>Subramanyeswara Rao</i>	<i>-do-</i>
7	<i>S. Pandu Ranga Rao</i>	<i>-do-</i>
8	<i>Rambabu</i>	<i>-do-</i>
9	<i>G. Chandrayya</i>	<i>-do-</i>
10	<i>Srinivasa Rao</i>	<i>-do-</i>
11	<i>P. Rambabu</i>	<i>-do-</i>
12	<i>D. Sambasiva Rao</i>	<i>Pedapatnam</i>
13	<i>P. Jayalakshmi</i>	<i>-do-</i>
14	<i>Bunga Padma</i>	<i>-do-</i>
15	<i>Y. Yugandhar</i>	<i>-do-</i>
16	<i>Y. Venkateswara Rao</i>	<i>-do-</i>
17	<i>M. Rayappa</i>	<i>-do-</i>
18	<i>Y. Rambabu</i>	<i>-do-</i>
19	<i>B. Venkateswaramma</i>	<i>-do-</i>
20	<i>G. Raju</i>	<i>-do-</i>
21	<i>Y. Eswara Rao</i>	<i>-do-</i>
22	<i>Chinnappa</i>	<i>-do-</i>
23	<i>Lella Joji Raju</i>	<i>-do-</i>
24	<i>V. Subba Rao</i>	<i>Tallapalem</i>
25	<i>V. Vakallaiah</i>	<i>-do-</i>
26	<i>V. Rama swamy</i>	<i>-do-</i>
27	<i>P. Gopi</i>	<i>-do-</i>

3. I have visited the respective VRO's office and personally verified the Pahanis/Hadangals and obtained the copies of Pahanis/Hadangals, as a proof of land holding, in the following persons at random:

Sl.No.	Name of the persons S/Sri/Smt.	Name of the village
1	G. Venkateswara Rao	Kaanuru
2	Ramalingeswara Rao	Kaanuru
3	G. Chittemma	Kaanuru
4	G. Kanakayya	Kaanuru
5	G. Yesupadam	Pedapatnam
6	Y. Venkateswara Rao	Pedapatnam
7	M. David	Pedapatnam
8	Y. Rambabu	Pedapatnam
9	M. Baby	Pedapatnam
10	G. Raju	Pedapatnam
11	B. Venkateswara Rao	Pedapatnam
12	P. Jayapal	Pedapatnam
13	G. Yesobu	Pedapatnam
14	Y. Eswara Rao	Pedapatnam
15	Vura Chinnappa	Pedapatnam
16	D. Sambasiva Rao	Pedapatnam
17	V. Paidaiah	Tallapalem
18	V. Vakalaiah	Tallapalem
19	P. Gopi	Tallapalem
20	V. Subba Rao	Tallapalem

4. On enquiry it was learnt that the following persons have expired. In this regard I have obtained certificate from VRO.

Sl.No.	Name of the persons S/Sri/Smt.
1	Jayapal, Pedapatnam
2	Jayaraju, Pedapatnam
3	Mariyanna, Pedapatnam
4	Bunga Raju, Pedapatnam
5	Ramappa, Pedapatnam
6	Krishna Murthy, Kaanuru
7	Venkata Narasimha Rao, Kaanuru

5. It was also came to know that some of the persons have migrated to some other places on their personal grounds. Submitted for information, please.

Encl: As above

Sd/-
(MD. SAYED BAJI)
ITI :: RANGE-11

H) Ld.CIT(A) relied on the enquiry reports of year 2001 in the company's case even though the enquiries were conducted through the ITI.

9. Now, coming to the merits of the addition, the findings of AO and CIT(A) are not based on facts. 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. *Prima-facie* the report of the Inspector does indicate that many of the people are existing and they have lands. Even though the Inspector seems to have issued summons to them to appear, the verification of the names of creditors with the names to whom summons were issued indicate that there are certain mismatches. For example, at serial number 13 Vanka Pushpavati, 14. P Gopi, 19. Lella Joji were not shown as creditors in the case of assessee. How summons could be issued to such persons could not be examined. The report of the ITO indicates that there was no response to the summons issued but assessee filed further confirmations before the AO along with proof of residence, Village Officer's report and in some cases, copies of Patta books. However, AO reported that credits are not genuine. I am unable to understand how the conclusions were drawn just on the basis of non-appearance of some of the persons before the AO at Hyderabad, when ITI's field enquiry revealed that they are existing and they have lands in their name. Some of the persons also reported to have been died by the time enquiries were conducted. 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 serious enquiry in assessee case to disprove the credits claimed. In the circumstances, I direct the AO to accept the credits as such, as genuine.

10. 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-11 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.

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

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

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

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 12th January, 2018

TNMM

Copy to :

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

2. The Income Tax Officer, Ward-11(2), Hyderabad.

3. CIT (Appeals)-18, Mumbai.

4. CIT(Appeals)-VI, Hyderabad

5. CIT-5/6, Hyderabad.

6. D.R. ITAT, Hyderabad.

7. Guard File.