

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA No. 2325/Hyd/2018
Assessment Year: 2011-12

Raminder Singh Soin, vs. Dy. Commissioner of
Scunderabad. Income-tax, Circle – 16(3),
Hyderabad.

PAN – AJEPS 4529D

Appellant

Respondent

Assessee by: Shri P. Murali Mohan Rao
Revenue by: Smt. Esther N. Hangal

Date of hearing: 03/06/2019
Date of pronouncement: 03/07/2019

ORDER

PER S. RIFAUH RAHMAN, AM:

This appeal filed by the assessee is directed against the order of CIT(A) – 4, Hyderabad, dated, 28/09/2017 for AY 2011-12.

2. On perusal of record, we find that there is a delay of 358 days in filing this appeal before us. To this effect, the assessee filed an affidavit affirming therein that the appeal papers were misplaced by one of office staff, due to which, the delay occurred in filing the appeal. As there is a sufficient reason in not filing the appeal within the stipulated time and also there is merit in favour of the assessee, we admit the appeal for hearing and adjudication.

3. Brief facts of the case are, the assessee, director of M/s Quad Electronic Solutions Pvt. Ltd., filed his return of income for the AY 2011-12 on 25/10/2011 declaring taxable income of

Rs. 20,98,684/-, which was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the case was selected for scrutiny and notice u/s 143(2) was issued on 21/09/2012 and duly served on the assessee. The AR of the assessee filed the required information in response to the said notice.

3.1 During the scrutiny proceedings, the AO observed that the during the year under consideration, the assessee had invested in mutual funds worth Rs. 18,00,000/- in Morgan Stanley and Reliance Mutual Funds on 10/05/2010. When the AO asked the assessee to furnish details, assessee failed to furnish the same and accordingly, the AO treated the said amount of 18,00,000/- as unexplained investments u/s 69 of the Act.

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) dismissed the appeal on the ground of non-appearance by the assessee inspite of several opportunities provided. Further, the CIT(A) observed that since there is no material available and no information filed by the assessee, unable to counter the additions made by the AO, accordingly, the same were upheld.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1. The Hon. ITAT is requested to kindly admit the additional grounds which are taken for the first time though not taken before the first appellate authority, due to oversight, as per the ratio laid down by the Hon. Supreme Court of India in the case of NTPC vs. CIT [1998] 229 ITR 383 (sc).

2. The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as "the Ld. CIT (A) erred both on facts and in law in dismissing the appeal of the appellant

which was filed against the order u/s.143(3) of Income Tax Act, 1961 (hereinafter referred to as "the Act"), dt. 26.03.2014 by the DCIT, Circle-16(3), Hyderabad (hereinafter referred to as "the Assessing Officer/ A.O").

3. The Ld. CIT (A) erred in dismissing the appeal of the appellant by upholding addition of Rs. 18,00,000 towards unexplained investments u/s 69 of the Act, without appreciating the facts of the case and merely stating that the appellant neither appeared nor filed the information.

4. The Ld. CIT (A) erred in dismissing the appeal of the appellant by upholding the addition towards unexplained investments u/s 69 of the Act, without affording reasonable opportunity of being heard to the appellant.

5. The Ld. CIT (A) ought to have appreciated the fact that the A.O erred in making addition towards unexplained investments u/s 69 of the Act, without appreciating the facts of the case and the information furnished by the appellant.

6. Without prejudice to ground nos. 3 to 6 above, the Ld. CIT (A) ought to have appreciated the fact that the investments in question relate to the investments in mutual funds in Morgan Stanley and Reliance Mutual Funds and the same were made from out of accounted income.

7. Without prejudice to the ground no. 3 to 6 above, the Ld. CIT (A) ought to have appreciated the fact that the investments in question were made through Banking channels.

8. Without prejudice to the ground nos. 3 to 6 above, the Ld. CIT(A) ought to have appreciated the fact that the appellant is regularly assessed to tax and payments towards the investments in question were made from out of past savings from the income of the appellant which has already suffered tax.

9. Without prejudice to the ground Nos. 3 to 6 above, the Ld. CIT(A) ought to have appreciated the fact that making addition towards unexplained investments u/s 69 results in double taxation on the appellant.

10. Without prejudice to the ground Nos. 3 to 10 above, the Ld. CIT(A) ought to have appreciated the fact that the

investments in question amounted to Rs. 12 lakhs and not Rs. 18 lakhs as held by the AO.

11. The appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

5.1 The assessee filed a petition for admission of following additional grounds relying on the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., Vs. CIT, 229 ITR 383:

12. As per the ratio laid down by the Honourable Supreme Court of India in the case of National Thermal Power Co. Ltd v. CIT (1998) 229 ITR 383 (SC), the Hon'ble IT AT has jurisdiction to examine the question of law which has been taken before the IT AT for the first time though not taken before the first appellate authority.

13. The Ld. CIT (A) ought to have appreciated that the Notice Issued u/s 143(2) is not issued within the time limits as prescribed under the Income Tax Act, 1961

14. The Ld. CIT (A) ought to have confirmed that non-issuance of notice u/s 143(2) within time limits as prescribed under the Act shall invalidate the assessment proceedings as per the provisions of Income Tax Act, 1961

15. The Ld. CIT (A) erred in confirming the addition without appreciating the fact that the notice u/s 143(2) is issued by the Assistant Commissioner of Income Tax – circle 12(1) dated: 15.10.2013 is without jurisdiction and hence initiation of assessment proceedings shall be void-ab-inito.”

6. Considered the rival submissions and perused the material on record. It is noticed that assessee has not filed any material before the AO and CIT(A). Ld. CIT(A) has dismissed the appeal due to non-appearance by the assessee. Now before us, assessee has filed additional evidence for admission. This additional evidence was not verified by any of the authorities below. For the sake of justice, we are inclined

to remit this issue back to the file of AO to verify the additional evidence, which is accepted by us. In case, it is found in order, after giving an opportunity of being heard to the assessee, it may be allowed in accordance with law. The assessee is directed to cooperate with the authorities.

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

Pronounced in the open court on 3rd July, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 3rd July, 2019.

kv

Copy forwarded to:

1. *Raminder Singh Soin, C/o P. Murali & Co., CAs, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad – 82*
2. *DCIT, Circle – 16(3), 6th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad – 500 004*
3. *CIT(A) - 4, Hyderabad*
4. *Pr. CIT - 4, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*