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

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER AND
SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA Nos. 621 & 622/Hyd/2015
Assessment Years: 2003-04 & 2004-05

Elem Investments Pvt. Ltd., Hyderabad. PAN – AAACE4370L	vs.	Asst, Commissioner of Income-tax, Central Circle – 8, Hyderabad.
Appellant		Respondent

ITA Nos. 626 & 627/Hyd/2015
Assessment Years: 2003-04 & 2004-05

Fincity Investments Pvt. Ltd., Hyderabad. PAN – AAACF3011D	vs.	Asst, Commissioner of Income-tax, Central Circle – 8, Hyderabad.
Appellant		Respondent

Assessee by: Shri K.C. Devdas
Revenue by: Shri R.S. Arvindakshan

Date of hearing: 16/10/2019
Date of pronouncement: 28/11/2019

O R D E R

PER V. DURGA RAO, J.M.:

All these appeals filed by two assessees are directed against the orders of CIT(A) – 12, Hyderabad for the AYs 2003-04 and 2004-05. As identical issues are involved in these appeals the same were clubbed and heard together and therefore, a common order is passed for the sake of convenience.

2. In all these appeals, the main grounds raised by the assessee are, i) against reopening of assessment, ii) against

disallowance u/s 14A of the Act and iii) regarding computation of income and segregation of 'loss from speculation business'. The ld. AR of the assessee mainly argued on these grounds. Therefore, we adjudicate these grounds accordingly. All other grounds are argumentative in nature, hence, need no adjudication.

3. To dispose of these grounds of appeal, we refer to the facts from the case of Elem Investments Pvt. Ltd. in ITA No. 621/Hyd/2015.

4. Brief facts of the case are that the assessee company filed its return of income for the AY 2003-04 on 28/11/2003 declaring total income of Rs. 17,00,030/-. Subsequently, the case was selected for scrutiny and following the due procedure, the assessment was completed u/s 143(3) of the Act on 06/03/2006 disallowing part of expenditure incurred towards service charges determining the total income at Rs. 32,00,033/-.

4.1 Based on the confessional statement made by the Chairman of M/s Satyam Computer Services Ltd. Sri B. Ramalinga Raju on 7th January, 2009 in his letter sent to the Board of Directors (with a copy marked to SEBI) that the books of accounts of SCSL have been fudged for the last several years to manipulate the book results and the revenues and profits were manipulated by falsification of accounts for the last several years, the AO reopened the assessment of the assessee by issuing notice u/s 148, as the assessee company was incorporated by the family members of the promoters of Satyam Computers Services Ltd. The reasons for reopening the assessment given by the AO vide issuance of notice u/s 148, are as under:

"*Elem Investments Pvt Ltd PAN - AAACE4370L has filed its return of Income for 1 the assessment year 2003-04 on 28-1'1-2003 declaring income of Rs. 17,00,030/-. The assessment under section 143(3) was completed on 0603-2006 and income was assessed at Rs. 32,00,030/-*

On 7th January, 2009, Sri. B. Ramalinga Raju, Ex-Chairman of M/s. Satyam Computer Services Ltd. (SCSL for short) in his letter sent to the Board of Directors with a copy marked to SEBI has stated that Books of accounts have been fudged for the last several years. He further stated that the revenues and profits were manipulated by falsification of accounts for the last several years. Subsequently, investigating agencies like the CBI, SFIO and the Enforcement Directorate have conducted investigations and it came to light that Shri. B. Ramalinga Raju and his family members have floated numerous front companies for the purpose of routing the funds and to acquire vast tracts of land in and around Hyderabad in the names of entities like the assessee company. The control and management of these companies was with Shri. B. Ramalinga Raju and in particular through Shri. B.Suryanarayana Raju his brother. The controlling directors or shareholders of these front companies are the family members of Shri. B. Ramalinga Raju. In almost all these companies the other directors are the employees of concerns of Sri B Ramalinga Raju.

Sworn statement of Sri B Ramalinga Raju was recorded under sec.131 of the I. T. Act, 1961 on 21.02.2009 in the central prison, Chenchalguda, Hyderabad. In his statement, he has confirmed and reiterated the facts and figures that were stated in his letter dated 07.01.2009 addressed to the board of directors. Sri B Ramalinga Raju. has further stated that the step was taken '"to artificially shore up the performance of the company in line with the market expectations.

Further Shri. B. Ramalinga Raju has also floated five investment companies. These investment companies were used to offload the shares of Mis SCSL on behalf of the family members. The funds so generated were in turn routed through these front companies or as advances to some other inter-related concerns. The assessee company is one such investment company. As per the return of income and its enclosed annual reports for the F.Y. 2002-03, The directors and the share holders of the company are relatives and employees of Sri B Ramalinga Raju. Sri B Suryanarayana Raju brother

of B Ramalinga Raju who is the main share holder is the main person controlling the affairs of the company. It is further observed that monies have originated from the family members by way of sale of shares by this company and have been transferred in a circuitous and complex manner through the front companies with an intention to prevent the revenue and the regulatory agencies to trace the antecedents and to mask the actual sources of money and the consequent generation of income from these transactions. The proceeds have thus found its way into investments and in creation of assets in the shape of large tracts of land.

There is further information that some of the funds advanced to M/s SCSL have not been recorded in the books of SCSL at the behest of Sri B Ramalinga Raju and that certain transactions entered in the books of SCSL are not recorded in the accounts of the group companies. The books of such investment companies and their financial statements do not reflect the true and fair statement of affairs of these companies. Thus it is apparent that some of the transactions are also not recorded in the books of these companies like that of the assessee-company. The entire setoff un recorded transactions by SCSL and group of companies and individuals were thus planned and executed by one master mind viz. B Ramalinga Raju.

The assessments in these cases were completed under section 143(3) of the I. T. act and

a) The revelations in the confessional statement of Sri B Ramalinga Raju, the facts of fudging of accounts.

b) The real and effective control over the front companies of Sri B Ramalinga Raju and his family members:

c) That there were variations in the quantum of income and assets/liabilities of SCSL and the front companies was revealed in the confessional statement etc. which came to light in the investigations:

Were all not known to the assessing officer at the time of making the original assessments Uls 143(3) of the act. The fraudulent transactions revealed by Sri Ramalinga Raju, apparently will have a bearing on the financial affairs of the group companies and their consequent income and assets position in view of the

complex circuitous nature of transactions between the group entities.

The annual report of the assessee company shows that its share capital as on 31.03.2003 was Rs. 5, 96, 000/-. The current liabilities show balances towards some of the family members such as B Jhansi Rani Rs.8,77,02,781/-, M/s Maytas Infra Ltd Rs.16,16,94,395/- etc. Similarly loans and advances are given to family concerns such as Mis oceanic Farms Pvt Ltd Rs. 24,98,900/-, Mis Samrat Marine Products Rs. 25,71,110/- etc. Investment in land is at Rs. 21,29,501/-. The acquisition of land in the names of other front companies by routing the monies in a circuitous and complex set of transactions between the group individuals /entities has been revealed during the investigations by the investigating agencies.

The assessee company was mainly engaged in the business of purchase and sale shares. It was seen from profit and loss account relevant to A.Y. 2003-04 that income from sale of shares was Rs. 16,29,37,072/-and interest income Rs. 22,72, 574/- and dividend income of Rs.14,37,531/-. The assessee returned income of Rs. 17,00,033/-. The assessment was completed uls 143(3) on 06.03.2006, determining the total income at Rs. 32,00,030/-.

It was seen from computation of income statement that the assessee computed income Rs. 17000300 and claimed exemption of dividend income. Income from other sources (Interest income) was not computed separately. As per explanation to sec.73 and explanation to sec.28 the expenditure incurred by the assessee from trading of shares was to be computed separately and the same cannot be allowed to be set off against "income from other sources"-interest income. As such, income from other sources works out to Rs.22, 72,574/-. The incorrect computation of income and set off of expenditure against "Income from other sources" resulted in under assessment of income of Rs.22, 72,574/-.

I have, thus, reason to believe that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for A. Y. 2003-04 and also that it resulted in escapement of income chargeable to tax to the tune of atleast Rs.5,16,828/-, given the volume of the transactions as

stated above, within the meaning of sec. 147 read with sec. 149 of the I.T. Act."

4.2 The assessee objected the reopening of assessment, however, the AO completed the assessment u/s 143(3) read with section 147 of the Act, dated 05/08/2011 by assessing the total income of the assessee at Rs. 35,08,092/-.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) challenging the reopening of assessment made by the AO.

6. The ld. CIT(A) after considering the arguments of the assessee, upheld the reopening of assessment by observing as under:

"5.1 The statement dated 07/01/2009 of the Chairman/promoter of the iconic Company of Andhra Pradesh, M/s Sat yam Computers had created turmoil in all circles and opened a Pandora box. In this statement, apart from the doings in the Co, M/s Satyam Computers ltd, he had also mentioned about 33 specific companies that had given amounts to M/s Sat yam computers ltd. A separate statement was also recorded on 21/2/2009 in the jail from him, wherein the statement dt 7/1/09 was confirmed by him apart from the other misdoings like "fudging" of books of accounts. Consequently, all the companies and entities with whom he was associated had a question mark over their transactions. Whether the AO had explicitly mentioned this aspect or not, this coming of all the related companies under the cloud, is a fact that cannot be brushed under the carpet and 'the legality of reopening cannot be examined in isolation of this vital background. Further, as seen from the addition of an amount of Rs.20 crores narrated at para 2.2.3, it is a fact that the books of the appellant as well as M/s SCSL did not disclose this transaction.

5.2 At the stage of issual of notice u/s 147, as per law, all that was required was a bonafide belief or a reason to believe about escapement of income. This belief and its bonafide were certainly there in the background. Thus, the issue of notice is therefore upheld. The

justification of the additions made is altogether a different issue and the additions made are now examined."

7. Before us, the ld. Counsel for the assessee submitted that notice for reopening of assessment issued by the AO is beyond four years, therefore, unless there is a violation on the part of the assessee to disclose all the facts truly and fully, assessment cannot be reopened. For this proposition, he relied on the following cases:

1. CIT Vs. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom.)
2. Ranbaxy Laboratories Ltd. Vs. CIT, [2011] 336 ITR 136 (Del.)
3. ACIT Vs. Major Deepak Mehta, [2012] 344 ITR 641 (Chattisgarh)
4. CIT Vs. Mohmed Juned Dadani, [2013] 355 ITR 172.

8. The ld. DR, on the other hand relied on the orders of revenue authorities. He also relied on the following cases:

1. Greater Mohali Area Development Authority Vs. DCIT, [2018] 93 Taxmann.com 441 (P&H)
2. Innovative Foods Ltd. Vs. Union of India, [2018] 96 Taxmann.com 250 (Kerala)
3. Instant Holdings Ltd., Vs. DCIT, [2014] 44 Taxmann.com 386 (Mum.)
4. DCIT Vs. Tivoli Investment and Trading Co. (P) Ltd., [2014] 49 Taxmann.com 479 (Mum.)

9. We considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. Also gone through the case law relied upon by both the counsels. The issue for our consideration before us is whether reopening of assessment made by the AO is in accordance with law or not. On perusal of the reasons recorded by the AO for reopening of assessment (cited supra), it is a fact that notice u/s 148 was issued by the AO after four years, the fact of which was not objected by the department. No doubt that in the reopening of assessment notice issued beyond four years, the AO has established the fact that the

assessee has not disclosed all the facts fully and truly to complete the assessment. From the reading of the above reasons recorded by the AO, we find that the AO after examining the entire file of the assessee came to the conclusion that the assessee has not disclosed true facts before him to complete the assessment. AO also clearly mentioned that the assessee has failed to disclose truly and fully all the material facts to complete the assessment. Thus, we find that the AO has rightly reopened the assessment. Even the CIT(A) in his order gave ca categorical finding that the statements given by Chairman/Promoter of the SCSL dated 07/01/2009 with reference to 33 specified companies fudged all the books of account and the AO based on the statement given by the Chairman of the SCSL and information gathered from the books of account of the assessee and other documents, came to a prima facie conclusion that the assessee has not disclosed the true facts and all other materials to complete the assessment. We find that the AO has rightly reopened the assessment and accordingly we uphold the order of CIT(A) in confirming the reopening of assessment made by the AO u/s 147 of the Act. The cases relied upon by the assessee are distinguishable on facts to the case of the assessee and Accordingly, the ground raised by the assessee in all the appeals under consideration is dismissed.

10. As far as the merits of the case is concerned, the AO made a disallowance of Rs. 3,08,059/- u/s 14A of the Act.

10.1 The AO noticed that while computing the total income, the assessee company had claimed administrative and other expenses of Rs. 24,85,726/- and interest on financial charges of Rs. 1,20,360/- were claimed. Of this amount, an amount of

Rs. 15,00,000/- was already disallowed towards service charges. In the remaining expenditure there were donations of Rs. 2,98,000/-, which was already added back by the assessee. The remaining expenditure comes to Rs. 8,08,086/-, which includes the expenditure incurred towards earning the exempted income also. The AO noted that since the details furnished were inclusive of both exempted income and taxable income, it is very difficult to bifurcate. According to AO, as there is no regular income and only interest income was shown as taxable income, it is clear that the expenditure incurred is mainly towards earning the exempted income only. Hence, the AO disallowed the expenditure of Rs. 3,08,059/- corresponding to exempted income as non allowable expenditure as per section 14A of the Act.

10.2 The CIT(A) restricted the disallowance to Rs. 50,000/- as against the addition of Rs. 3,08,059/-, by giving a relief to the assessee of Rs. 2,58,059/-.

10.3 After considering the rival submissions and material on record, we find no infirmity in the decision of the CIT(A) in restricting the disallowance to Rs. 50,000/- and accordingly, we uphold the order of CIT(A) on this issue and dismiss the ground raised by the assessee.

11. Similar ground u/s 14A was raised by the assessee in ITA No. 626/Hyd/2015. The CIT(A) has restricted the disallowance to Rs. 50,000/- as against the disallowance of Rs. 2,78,582/- made by the AO. Accordingly, we find no reason to interfere with the decision and hence, uphold the order of CIT(A) on this issue and dismiss the ground raised by the assessee.

12. As regards the issue regarding computation of income and segregation of 'loss from speculation business', the AO observed that in the course of assessment proceedings, when the assessee was asked to show cause as to why the income from other sources should not be computed separately, the Assessee has not provided any specific answer and has stated that the interest income is part of business income.

12.1 The AO observed that as per Explanation to section 73 of the Act and explanation to section 28, the expenditure incurred by the assessee from trading of shares was to be computed separately and the same cannot be allowed to be set-ff against 'income from other sources' i.e. interest income. The AO, therefore, held that income from other sources i.e. interest income of Rs. 22,72,574/- is considered separately while computing the total income of the assessee company.

12.2 When the assessee preferred an appeal before the CIT(A), the CIT(A) directed the AO to verify whether the transactions are speculative transactions and thereafter recompute the income of the assessee accordingly, by observing as under:

> *"7.1 Prima facie, from the asst. order, it appears that the AO is treating the activity of trading in shares as speculative transaction. This is incorrect as by this definition of the AO, there cannot be any trading in shares by any assessee other than by way of doing speculative transactions. The AO referred specifically to explanation to Section 73 and explanation to section 28 in isolation. Section 43(5) defines speculation. It is basically a contract settled otherwise by actual delivery or transfer of the commodity or scrips. In fact, even this definition has been liberalized w.e.f, AY 2006-07 to provide for hedging, jobbing or arbitrage transactions and the trading in derivatives if carried in a recognized stock exchange. It is the loss from such speculative transaction which is not allowed to be set off u/s 73. The AO should first analyze and collate transactions which can be called as speculative before doing any alteration*

in the computation made by the appellant. I do not find any such finding in the asst. order as to what transactions the AO had identified as speculative transactions which were settled without actual delivery of share scrips. In absence of any such finding of specific speculative transaction, the computation so made is incorrect since the appellant co. was in the business of purchase and sale of shares as submitted by it before the AD and before me and as can be verified from the memorandum and articles of association and that the appellant company was consistently stating that it is an investment company and the losses arose in normal course.

Last but not the least, it is to be stated that the AD by invoking provision of speculative transaction in the current asst. year can utmost see that any loss on account of such transaction arising during the year is not set off against the other income of the assessee for the year. This year there was no business loss nor was there any claim of set off of brought forward losses. The exercise done by the AO in reclassifying the income is unnecessary even otherwise. If the AO wanted to be technically correct, then he would have done the exercise of finding out whether the transactions were speculative transactions at all. He did not do this exercise also before invoking the provisions erroneously.

7.2 In view of the above findings, the AD is directed to recompute the income of the appellant while giving effect to this appellate order."

13. We have heard both the parties and perused the material on record as well as gone through the orders of revenue authorities. We are of the view that the CIT(A) has rightly directed the AO to verify the true nature of the transactions and decide the issue in accordance with law and recompute the income of the assessee accordingly. We do not find any reason to interfere with the decision of the CIT(A) and accordingly, we uphold the order of the CIT(A) and dismiss the ground raised by the assessee on this issue.

13.1 Similar ground raised in other appeals i.e. 622, 626 & 627/Hyd/2015 by the assessee. Following the said decision as in Para 13, we uphold the orders of CIT(A) in those appeals, and dismiss the ground raised in said the appeals.

14. As regards the ground raised regarding charging of interest under sections 234B, 234C and 234D, charging interest under these sections consequential in nature and, therefore, the AO is directed accordingly.

15. In the result, all the appeals under consideration are dismissed.

Pronounced in the open court on 28th November, 2019.

Sd/-	Sd/-
(A.MOHAN ALANKAMONY)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Hyderabad, dated 28th November, 2019.

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Copy forwarded to:

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4. *CIT(A) - 12, Hyderabad.*
5. *CIT (Central), Hyderabad*
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1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S/PS
3	Draft proposed & placed before the second Member			JM/AM
4	Draft discussed/approved by second Member			JM/AM
5	Approved Draft comes to the Sr.P.S./PS			Sr.P.S./P.S
6.	Kept for pronouncement on			Sr. P.S./P.S.
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9	Date of Dispatch of order			