

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" : HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
(THROUGH VIRTUAL CONFERENCE)**

**I.T.A. Nos. 220 & 221/HYD/2018**  
Assessment Years: 2010-11 & 2011-12

**And**

**SA Nos. 215 & 216/Hyd/2019  
(Arising out of ITA Nos. 220 & 221/hyd/2018)**

Sutinder Singh, Hyderabad.  
PAN – ACKPS 9714 P

Income-tax Officer,  
Vs Ward – 16(3), Hyderabad.

(Appellant)

(Respondent)

For Assessee : Shri P. Murali Mohan Rao  
For Revenue : Shri Ashok Kardam

Date of Hearing : 19-10-2020  
Date of Pronouncement : 20-10-2020

**ORDER**

**PER Smt. P. MADHAVI DEVI, J.M. :**

Both these are the appeals of the assessee for AYs 2010-11 & 2011-12 against separate orders of CIT(A) – 8, Hyderabad, dated 10/01/2018 for the respective assessment years.

2. The brief facts of the case are that the assessee, an individual, engaged in the business of distribution of mobile

phones and also a director of M/s PCH Marketing Pvt. Ltd. and a proprietary business in the name of M/s Mobile Network, filed his returns of income for the respective assessment years. During the assessment proceedings u/s 143(3) r.w.s. 147 of the IT Act, the AO observed that the assessee has invested huge amounts in M/s PCH Pvt. Ltd. (PCHPL) and M/s PCH Marketing Pvt. Ltd. (PCHMPL) towards share capital. When enquired about the sources for the investment, the assessee submitted that the investment made by him during the year in M/s PCH Pvt. Ltd. was Rs. 4.77 cores and the balance amount was invested by his father. Explaining the sources for the sum of Rs. 4.76 crores, the assessee submitted that Rs. 2.77 crores was invested out of share application money brought in during the previous year 2009-10 and the balance of Rs. 2.50 crores was taken as loan from M/s SK Interiors and Furnishers (SKIF). On verification of the confirmation letter from M/s SK Interiors and Furnishers, the AO observed that the confirmation is undated and does not contain PAN and, therefore, he did not accept the source for the sum of Rs. 2.50 crores and treated it as unexplained investment.

2.1 With regard to the sources of investment of Rs. 14,75,07,000/- in PCHMPL, the assessee submitted that Rs. 1 crore was out of share application money brought in during the last year and Rs. 10.44 crores was out of loan taken from M/s

Peoples Co-op Credit Society Ltd., Rs. 2.60 crores was a loan taken from SKIF and balance Rs. 71.02 lakhs was from his proprietary concern M/s India Connect. The AO was not satisfied with the assessee's explanation with regard to the sum of Rs. 2.60 crores loan from SKIF. He, therefore, brought a sum of Rs. 5.10 crores (2.5 crores + 2.6 crores) to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the assessment order by observing that the assessee has not discharged the onus cast on him in respect of establishing the identity of the creditor, genuineness of the transaction and creditworthiness. Against this order, the assessee is in appeal before us raising the following grounds of appeal:

*"1. The Order of the Commissioner (Appeals) of Income Tax is in gross violation of the provisions of law and hence is bad in law.*

*2. The Commissioner of Appeals has erred in upholding the reopening of assessment u/s 147.*

*3. The Commissioner of Appeals has erred in upholding loan borrowed from S K Interiors & Furnishers as unexplained and the addition thereof of Rs. 5,10,00,000.*

*4. The Commissioner of Income Tax (Appeals) has erred in upholding the demand raised of Rs2,92,46,214/-*

*5. Any other ground that may be urged at the time of hearing."*

3.1 *Vide letter dated 06/09/2018, the assessee has raised the following Additional Grounds of Appeal:*

*“6. The Ld. CIT(A) ought to have appreciated that the assessing officer erred in assuming jurisdiction under section 147 of the Act.*

*7. The Ld. CIT(A) ought to have appreciated that the reasons for the issue of notice u/s 148 of the Act are vague and scanty and not to be any reasons at all.*

*8. The Ld. CIT(A) ought to have appreciated that there was only an information which had purportedly been received from the Investigation Wing, Hyderabad but there was no belief, whatsoever, formed by the assessing officer that there was any escapement of income which necessitated the issuance of notice under section 148 of the Act.*

*9. The Ld. CIT(A) ought to have appreciated that the assessing officer has not independently made up his mind on the basis of the information received from the Investigation Wing, Hyderabad, before the issue of notice u/s 148 of the Act.*

*10. The Ld. CIT(A) ought to have appreciated that the information with regard to investment towards Share Capital by the assessee in M/s. Punjab Crockery House Pvt. Ltd and M/s. PCH Marketing Pvt Ltd. is very much available with the Department even before the date of survey u/s 133A in the Returns Of Income filed by these companies for the assessment year under consideration and that this information cannot be considered as a fresh tangible material for the purpose of issue of notice u/s 148 of the Act in the assessee's case.*

*11. The Ld. CIT(A) ought to have appreciated that the notice issued u/s. 148 of the Act dated 30.03.2016 and the assessment completed u/s 143(3) r.w.s. 147 of the Act dated 30.12.2016 are invalid on the ground that the sanction for issue of the notice u/s 148 has been granted by the Pro CIT-IV, Hyderabad in violation of the Provisions of sub-section (2) of section 151 of the Act.*

*12. The Id. CIT(A) ought to have appreciated that the reasons for issue of notice u/s 148 of the Act, must point out to the income escaping assessment and not merely need any enquiry which may require detection of income escaping assessment.*

*13. The Id. CIT(A) ought to have appreciated that the ratio laid down by the Apex Court in the case of Chhugamal Vs. P.Chaliha [1971] 79 ITR 603 (S.C.)*

*3.2 Vide letter dated 11/09/2018, the assessee has raised further additional grounds, which are as under:*

*"14. The Ld. CIT (A) ought to have appreciated that there is no addition*

*made based on the reason formed and recorded for the year under consideration.*

*15. The Ld. CIT(A) ought to have appreciated that there must be a live link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income.*

*16. The Ld. CIT (A) ought to have appreciated that there exists no live link between formation of reason to belief and addition made for the year under consideration.*

*17. The Ld. CIT (A) ought to have appreciated that reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment."*

4. The Id. counsel for the assessee submitted that the additional grounds of appeal raised are against the validity of reassessment proceedings u/s 147 of the Act and as regards the other grounds, the Id. counsel for the assessee submitted that he has now filed confirmation letters of the respective parties, from whom the assessee has received money, which has been invested in PCHPL and PCHMPL and prayed for consideration of the same by the AO. He, therefore, prayed for the admission of additional grounds and adjudication of the same.

5. The Id. DR, on the other hand, objected to the admission of additional grounds on the ground that inspite of several opportunities given by the AO as well as CIT(A), the assessee has not furnished relevant material before them and, therefore, assessee should not be given another opportunity to present his case.

6. Having regard to the rival submissions and material on record, we find that the additional grounds of appeal from ground No. 6 to 17 are against the validity of reassessment proceedings u/s 147 and the same being legal grounds will go to the root of the matter. We find that the facts are on record and facts do not require fresh investigation, therefore, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT 229 ITR 383 (SC), we admit the said additional grounds of assessee for adjudication. Since the relevant facts are on record and these additional grounds are raised by the assessee for the first time before us, we deem it fit and proper to remand the issue to the file of the AO with a direction to reconsider the issue de-novo in accordance with law. If the AO is inclined to uphold the validity of the reassessment proceedings, then, the AO shall consider the additional evidence filed by the assessee and re-adjudicate the issue in accordance

with law after providing reasonable opportunity to the assessee for hearing.

7. In the result both the appeals under consideration are treated as partly allowed for statistical purposes.

8. As the corresponding appeals were disposed of as above, the SAs filed by the assessee become infructuous and, therefore, the same are dismissed as infructuous.

9. To sum up, both the appeals of the assessee are partly allowed for statistical purposes and the SAs are dismissed.

*Order pronounced in the open court on 20<sup>th</sup> October, 2020.*

**Sd/-  
( A. MOHAN ALANKAMONY )  
ACCOUNTANT MEMBER**

**Sd/-  
( P. MADHAVI DEVI )  
JUDICIAL MEMBER**

Hyderabad, Dated: 20<sup>th</sup> October, 2020.

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