

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH : Hyderabad**

(Through Video Conference)

**Before Smt. P. Madhavi Devi, Judicial Member
And
Sri A. Mohan Alankamony, Accountant Member**

**ITA No. 1093/Hyd./2017
Assessment Year: 2007-08**

&

**ITA No. 279/Hyd./2017
Assessment Year: 2009-10**

M/s Goldstone Technologies Ltd. vs. ACIT, Central Circle 3/
Hyderabad ACIT, Circle 2(1)
Hyderabad

PAN: AAACG7478F

(Appellant)

(Respondent)

For Assessee: Sh. P.Murali Mohana Rao, A.R.
For Revenue: Sh. Y.V.S.T. Sai, CIT, D.R.

Date of Hearing : 22/10/2020

Date of Pronouncement : 03/11/2020

ORDER

Per Smt. P. Madhavi Devi, J.M.

Both these are assessee's appeals for the AY 2007-08 and 2009-10 respectively, against separate orders of Ld.CIT(A)-11, Hyderabad dated 29.09.2016 and Ld.CIT(A)-12 Hyderabad dated 26.04.2017.

2. In both these appeals, the assessee is aggrieved by the disallowance of claim of deduction u/s 10A of the I.T. Act, 1961. In addition to the grounds raised against the said disallowance, the assessee has raised additional grounds of appeal stating that the A.O. has failed to issue notice u/s 143(2) of the I.T. Act, 1961 before proceeding with the assessment proceedings u/s 143(3) r.w.s. 153A of the Act and therefore, assessment orders u/s 143(3) r.w.s. 153A of the I.T. Act, 1961 (for both the AYs) are not sustainable. Along with additional grounds of appeal, assessee has submitted an application for admission of additional grounds by placing reliance on the judgement of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) reported in 229 ITR 383. In support of the contentions in the additional grounds, Ld. Counsel for the assessee has also filed copy of the order sheet entries of the assessment proceedings to demonstrate that notice u/s 143(2) of the Act was not issued to the assessee.

3. The Ld.DR was therefore asked to verify the assessment records and report as to whether notice u/s 143(2) of the Act has been issued to the assessee or not for both the A.Ys.

On 22.10.2020, when the case was called for hearing through Video Conferencing, the Ld.DR has reported that he has gone through the assessment record for both the AYs but he did not find any notice issued to assessee u/s 143(2) of the Act for AY 2007-08 and 2009-10.

4. Ld.Counsel for the assessee therefore submitted that in view of the decision of Hon'ble Supreme Court in the case of ACIT vs Hotel Blue Moon (2010), the assessment orders (for both the AYs) are liable to be set aside. He also placed reliance upon the latest decision of Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal in Civil Appeal nos. 6261 and 6262/2019 (Arising out of SLP (Civil) Nos. 19320-19321 of 2019) judgement dated 13th August, 2019 wherein the Hon'ble Supreme Court has reiterated its earlier decision in the case of ACIT vs. Hotel Bluemoon (supra) reported in 188 taxmann.com 113.

5. Respectfully following the decision of Hon'ble Supreme Court cited (supra), we hold that the assessment orders passed by AO for both the AYs without issuance of notice u/s 143(2) of the Act are not sustainable. Since the assessment orders for both the AYs are set aside, we are not adjudicating other grounds of appeal as it would result in an academic exercise at this stage.

6. In the result, the appeals of the assessee for both the AYs 2007-08 and 2009-10 are partly allowed.

Order pronounced in Open Court on 03rd November, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 03rd November, 2020.

**gmv*

Copy of Order forwarded to:

1. M/s Gold Stone Technologies Ltd., C/o P. Murali & Co., CAs, 6-3-655/2/3, 1st floor, Somajiguda, Hyderabad 500 082.
2. ACIT, Central Circle 3, Hyderabad / ACIT, Circle 2(1) Hyderabad.
3. CIT(A) – 11, Hyderabad CIT(A)-12, Hyderabad
4. Pr.CIT (Central), Hyderabad
5. The D.R. ITAT Hyderabad
6. Guard File