

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad SMC Bench, Hyderabad**  
*(Through Video Conferencing)*  
**Before Smt. P. Madhavi Devi, Judicial Member**

ITA No.1084/Hyd/2019		
Assessment Year: 2011-12		
Sri Narender Kumar Gupta HUF, Hyderabad PAN:AABHN1491F (Appellant)	Vs.	Asstt. CIT Circle 7(1) Hyderabad (Respondent)
Assessee by:	Sri Siddharth Mantri	
Revenue by:	Sri Subramanyam Tota, DR	
Date of hearing:	08/04/2021	
Date of pronouncement:	22/04/2021	

**ORDER**

This is assessee's appeal for the A.Y 2011-12 against the order of the CIT (A)-3, Hyderabad, dated 20.05.2019,

2. Brief facts of the case are that the assessee is an HUF and filed its return of income (in HUF capacity) for the A.Y 2011-12 on 30.12.2011 declaring an income of Rs.6,38,150/- comprising of 'income from other sources' of Rs.6,06,274/- and 'income from house property' of Rs.1,26,000 and claimed chapter VIA deduction of Rs.94,120/-.

3. Meanwhile, the Assessing Officer had received information from the Investigation Wing, Kolkata that the assessee has purchased 70,000 shares of the following penny scripits for a total value of Rs.12,77,500/- during the financial year 2010-11 relevant to the A.Y 2011-12:

a) M/s. Golden Bull Research & Growth Ltd

- b) M/s. Regency Trust Ltd
- c) M/s. Global Capital Markets Ltd

3.1 As per the report of the Investigation Wing, Kolkata, the above penny stocks are used for generating bogus LTCG/STCL and business loss. In view of the same, the Assessing Officer was of the opinion that the income of the assessee had escaped the assessment and therefore, he issued notices u/s 148 of the Act to the assessee. In spite of several notices given to the assessee, none appeared for the assessee except for filing a reply dated 24.12.2018 and furnishing of return of income, bank a/c copies and sources of payment i.e. withdrawal from M/s Jitender Roller Flour Mills, a partnership firm where karta of HUF is one of the three partners. The Assessing Officer observed that though the assessee has stated that he has furnished the sources of investment and the shares were acquired through SEBI approved broker on platform of recognized stock exchange, the investigation report received from the PMO clearly stated that these penny stock companies are being used for generating bogus LTCG/STCL to specific clients. Thus, observing, the Assessing Officer treated the total investment of Rs.12,77,500/- as unexplained investment u/s 69B of the Act and brought it to tax. One of the grounds raised by the assessee was that the assessee was not provided with the reasons for reopening and also that the issuance of the notice u/s 148 after 6 years from the end of the relevant A.Y is bad in law as there is no reason to believe any concealment of income.

3.2 As regards the grounds against validity of re-assessment proceedings, the CIT (A) observed that the assessee has participated in the proceedings and therefore, the provisions

of section 293B are very much applicable and accordingly he held the re-assessment proceedings to be valid.

3.3 The CIT (A) further, relied upon the decision of the Hon'ble Supreme Court in the case of NRA Iron and Steel (P) Ltd in SLP No.29855 of 2018 dated 5<sup>th</sup> March, 2019 (reported in 103 taxmann.com 48) to dismiss the assessee's appeal on merits.

4. Aggrieved, the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

*“1. The order of the learned Commissioner of Income tax, (Appeals) - 3, Hyderabad in sustaining the additions of Rs.12, 77 ,500/- as unexplained investment u/s 69B is wholly unsustainable in law and on facts.*

*2. The CIT (A) failed to note that the source of investment of Rs.12,77,500/- were properly explained and the same was acknowledged by the A.O in the order, therefore the CIT(A) ought to have held that there was no unexplained investment as provided u/s 69B and therefore erred in confirming the addition of Rs.12,77,500/-.*

*3. The CIT (A) failed to note that the addition was made in pursuance to reopening of the case u/s 148, hence it was mandatory on part of A.O to provide reasons for reopening the case, which he failed and therefore the CIT (A) ought to have held that the assessment u/s 147 without providing the reasons for reopening and without affording the opportunity to the assessee to file his objections if any, would be unsustainable in law.*

*4. The CIT (A) failed to note that merely investment in a dubious company does not make the investment unexplained if otherwise the sources of investments are properly explained. Therefore the CIT (A) ought to have deleted the addition which was wrongly made on above premise.*

*5. The CIT (A) has wrongly based his order on the decision of Hon. Supreme Court in case of M/s NRA Iron & Steel (P) Ltd., (103 taxmann. Com48), as the relevant facts of the case are entirely different from the facts in case of Appellant, therefore the CIT (A) ought to have differentiated the facts and should not have passed the order on irrelevant facts and therefore erred in sustaining the addition of Rs.12,77,500/- u/s 69B.*

*6. The Order of CIT (A) is against the principles of natural justice as no opportunity of hearing was given.*

*7. Any other ground or grounds that may be urged at the time of hearing”.*

5. The learned Counsel for the assessee has drawn my attention to page 5 of the Paper Book filed by the assessee wherein vide letter dated 13.1.2018, the assessee had requested the Assessing Officer to provide him with a copy of the reasons for reopening of the case u/s 147 of the Act. He also drew my attention to page 8 of the Paper Book wherein, vide letter dated 19.11.18, the assessee had informed the Assessing Officer that the return has been uploaded pursuant to notice u/s 148 on 30.4.2018 and that there was no sale of immovable property during the financial year 2010-11 and also requested for supply of reasons for reopening of the assessment u/s 148 of the Act. There is no mention of any letters nor there was any mention of supplying the reasons for reopening of the assessment to the assessee. Though a specific ground was taken before the CIT (A), he has not held the issue in favour of the assessee. The Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs Income Tax Officer And Ors reported in (2002) Supp(4) SCR 359 on 25 November, 2002, held that where a notice u/s 148 is issued and the assessee, after filing of the return of income in response to such notice, requests the Assessing Officer to supply the reasons for reopening, the Assessing Officer is bound to supply the reasons for reopening the assessment and only after disposal of the objections, if any, raised by the assessee, can the Assessing Officer proceed to reassess the income of the assessee. In this case, it is clear that the Assessing Officer has not followed the due

procedure as mandated by the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (cited Supra).

6. In view of the same, I deem it fit and proper to remand the issue to the file of the Assessing Officer with a direction to supply the reasons for reopening of the assessment to the assessee and only after disposal of the objections, if any, raised by the assessee, the Assessing Officer shall proceed to recompute the income of the assessee in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing.

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

Order pronounced in the Open Court on 22<sup>nd</sup> April, 2021.

**Sd/-**

**(P. MADHAVI DEVI)  
JUDICIAL MEMBER**

Hyderabad, dated 22<sup>nd</sup> April, 2021.

**Vinodan/sps**

Copy to:

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2	ACIT, Circle 7(1) Signature Towers, Kondapur, Hyderabad
3	CIT (A)-3, Hyderabad
4	Pr. CIT -3, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*