

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT**

<b>ITA No.2562/Bang/2019</b>
<b>Assessment Year : 2006-07</b>

M/s. Team 3 Engineers and Builders, No.7, 3 <sup>rd</sup> Cross, Vivekananda Nagar, Bengaluru – 560 033. <b>PAN : AABFT 6334 R</b>	Vs.	The Income Tax Officer, Ward - 6(4), Bengaluru.
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Assessee by	:	Shri. K. Mallaharao, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	06.10.2021
Date of Pronouncement	:	12.10.2021

**ORDER**

*Per N. V. Vasudevan, Vice President*

This is an appeal by the assessee against the order dated 20.09.2019 of CIT(A)-2, Bengaluru, relating to Assessment Year 2006-07.

2. The only issue that arises for consideration in this appeal is as to whether the Revenue authorities were justified in making an addition of R.14,00,000/- under section 69 of the Income Tax Act, 1961 (hereinafter called the ‘Act’) to the total income of the Assessee.

3. The assessee is a partnership firm. It is engaged in the business of acting as civil contractors. In the course of assessment proceedings of the assessee for Assessment Year 2006-07, the assessee was asked to explain the source of

investments to the extent of Rs.14 lakhs. The breakup of the sum of Rs.14 lakhs is as follows:

- (i) Amount given by Rakesh Gupta – Rs.4 lakhs
- (ii) Mr. Sameesh Abraham – Rs.5 lakhs
- (iii) Mr. Suresh Mathew – Rs.5 lakhs.

4. In the assessment proceedings, confirmation from these parties were filed. From the perusal of the confirmation of the Rakesh Gupta, the AO noticed that Mr. Rakesh Gupta has confirmed that he has invested Rs. 5 lakhs with Mr. Mohana Chandran of M/s. Good Earth Properties, Trivandrum. Similarly, Mr. Suresh Mathew confirmed that he has invested a sum of Rs.5 lakhs with M/s. Good Earth Properties, Trivandrum. Similarly, Mr. Sameesh Abraham confirmed that he has also invested a sum of Rs.5 lakhs by way of cheque with M/s. Good Earth Properties, Trivandrum. The AO took a view that since these parties confirmed their investment with M/s. Good Earth Properties, Trivandrum which has no connection with the assessee, it has to be held that the assessee failed to explain the source of funds out of which investments to the tune of 14 lakhs was made by the assessee and accordingly added the aforesaid sum to the total income of the assessee under section 69 of the Act.

5. On appeal by the assessee, the CIT(A) confirmed the action of the AO with the following observation:

*“7.1 Ground No.1:- The petitioner requests to delete the additions of Rs. 14 lakhs as un explained investment, Rs. 4,92,137/- as interest paid to partners; Rs. 1,00,364/- as bank interest and Rs. 72,024/-which has been disallowed u/s. 40A(3) by the A.O.*

*(a) Addition of Rs.14 lakhs as unexplained investment u/s 69:- The AO at the time of assessment made additions of Rs. 14 lakhs as unexplained investment made on 16.01.2006, 21.01.2006, 17.02.2006 and 25.02.2006 on the basis of information received during search and seizure operations on M/s Good*

*Earth properties, Trivandrum. The AO has made this addition on the premise that the appellant has invested in M/s Good Earth properties, Trivandrum through three persons called Mr. R K Gupta, Suresh Mathew and Sameesh Abraham to the tune of Rs.14 lakhs. Though the reasons and circumstances by which the AO arrived at a conclusion that Rs.14 lakhs invested on the above mentioned dates in M/s. Good Feral properties belonged to the appellant firm, in the remand report dated 27.08.2019 also, the AO stated that the explanation given by the assessee was not accepted a the appellant could riot disprove that the investments made were not belonging to it arid therefore the addition made u/s 69 of the Act by the AO is justified. Therefore I confirm the addition of Rs.14 lakhs made by the AO uls 69 of the income tax Act as unexplained investment. Accordingly this ground of the appellant is dismissed.”*

6. Aggrieved by the order of the CIT(A), assessee is in appeal before the Tribunal. Before the Tribunal, the assessee has sought to file affidavit of Sameesh Abraham, Suresh Mathew and Rakesh Gupta as additional evidence. In their affidavit, they have stated that the assessee has nothing to do with the investments of Rs.14 lakhs by them in Good Earth Properties, Trivandrum and that the aforesaid sum was investments made by the aforesaid parties in their individual capacity. I have considered the aforesaid affidavit and I am of the view that the issue requires fresh examination by the AO in the light of affidavit filed by the assessee before the Tribunal. In this regard, I may mention that section 69 of the Act will stand attracted only when there is investment made by the assessee for which he is unable to explain the source. Perusal of the order of the AO shows that there is no such facts brought out on record by AO in the order of assessment to show that the assessee in fact made investment to the extent of Rs.14 lacs. In fact, the CIT(A) has also expressed the same view and has observed that the AO has made the addition on the premise that the assessee has invested in M/s Good Earth properties, Trivandrum through three persons called Mr. R K Gupta, Suresh Mathew and Sameesh Abraham to the tune of Rs.14 lakhs but circumstances by which the AO arrived at a conclusion that Rs.14 lakhs invested on the above mentioned dates in M/s. Good Feral properties belonged to the assessee firm is not

clear. The CIT(A) however proceeded to place onus on the assessee to explain source of funds out of which investment of Rs.14 lakhs was made by the assessee. As I have already observed that the onus will shift to the Assessee only when the Revenue is able to show that the assessee has made investments of Rs.14 lakhs. This element is apparently absent in the present case. I however make it clear that the AO is at liberty to bring the material on record to substantiate his case and examine this issue in the light of the affidavit filed by the Rakesh Kumar, Suresh Mathew and Sameesh Abraham. With these observations, I allow the appeal of the assessee for statistical purposes.

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

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.

Dated: 12.10.2021.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.