

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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

	ITA No.390/Hyd/2017		
	Assessment Year: 2011-12		
Good Health Agro Tech Ltd, Hyderabad. AAACG 7494 F	Vs.	DCIT, Circle-2(3), Hyderabad.	
(Appellant)		(Respondent)	

	ITA No.355/Hyd/2017		
	Assessment Year: 2011-12		
DCIT, Circle-2(2), Hyderabad.	Vs.	Good Health Agro Tech. Ltd., Hyderabad. AAACG 7494 F	
(Appellant)		(Respondent)	
	Assessee by:	Shri C.V. Narasimham	
	Revenue by:	Shri Rajendra Kumar, DR	
	Date of hearing:	11/11/2021	
	Date of pronouncement:	06/01/2022	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

Both the captioned appeals are filed by the assessee and the Revenue against the order of the Ld. CIT (A)-2, Hyderabad in appeal No. 0235/2014-15, dated 30/11/2016 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2011-12.

2. The assessee has raised five grounds in its appeal however, the cruxes of the issues are that:

- (i) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had made addition towards notional interest charged on interest free advances extended to Directors of the assessee company.
- (ii) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had made addition aggregating to Rs. 1,18,10,000/- by treating the share application money received from M/s. Jagadamba Cotton Industries Private Limited for Rs. 1 Cr and from Smt. Suseelabai Rungta for Rs. 18,10,000/-, U/s. 68 of the Act.

3. The Revenue has raised seven grounds in its appeal however, the crux of the issue is that:

- (i) The Ld. CIT (A) has erred in deleting the addition made by the Ld. AO U/s. 68 of the Act towards unexplained share capital / share application money received from Kolkata and Hyderabad based companies.

Revenue's appeal:

4. The brief facts of the case are that the assessee is a Private Limited Company engaged in the business of processing and trading edible oil filed its return of income for the relevant assessment on 9/9/2011

declaring total income of Rs. 4,10,18,980/-. Subsequently, the case was taken up for scrutiny and assessment was completed U/s. 143(3) of the Act vide order dated 31/3/2014 wherein the Ld. AO made addition of Rs.8,05,00,000/- and Rs. 4,38,10,000/- towards unexplained share capital / share application money received from Kolkata based parties and Hyderabad based parties respectively.

5. **Unexplained share capital / share application money received from Kolkata based companies – Rs. 8,05,00,000/-:**

5.1. The assessee had received an amount aggregating to Rs. 8,05,00,000/- from five Kolkata based companies viz., (i) M/s. Tirumala Dealers Private Limited – Rs.7,05,00,000/-; (ii) M/s. Punctual Vincom Private Limited – Rs.25,00,000/-; (iii) M/s. Approach Trade Links Private Limited – Rs. 21,00,000/-; (iv) M/s. Elect Trade Links Private Limited – Rs. 46,00,000/- and (v) M/s. Indico Dealers Private Limited – Rs. 8,00,000/-. The above said companies were allotted equity shares of Rs. 10/- face value at a share premium of Rs. 240/- per share during the year. On query about the genuineness of the investors, the assessee furnished certain information based on which the Ld. AO made certain observations and opined that all the five entities are mere bogus and paper companies for the following reasons:

- (i) The Registered Offices of the above cited five companies are located in the same premises i.e., Flat No.21, Amartolla Street, Kolkata and the building was abandoned.
- (ii) All the above companies did not have its own source for making the investment. It was revealed that all the five entities source fund from other companies and invested the same in the assessee company in the preceding day.
- (iii) From the income tax return filed by these companies it was revealed that either they were making loss or generating meagre income viz., (i) M/s. Tirumala Dealers Private Limited – Rs.401/-; (ii) M/s. Punctual Vincom Private Limited – Rs.64,904/- (Loss); (iii) M/s. Approach Trade Links Private Limited – Rs. 3,450/-; (iv) M/s. Elect Trade Links Private Limited – Rs. 6,640/- and (v) M/s. Indico Dealers Private Limited – Rs. 5,580/-.
- (iv) It was further revealed that none of the five entities possessed any fixed assets.
- (v) The share premium collected for the issue of shares by the assessee company was exorbitant and does not justify to the net worth of the assessee company.

6. On appeal, the Ld. CIT (A) deleted the addition amounting to Rs. 7,05,00,000/- being the investment made by M/s. Tirumala Dealers Private Limited by stating that in the remand report the Ld. AO had

reported that the company is in business even till this day declaring high turnover which is evident from the VAT return filed by M/s. Tirumala Dealers Private Limited. With respect to the other four companies the Ld. CIT (A) confirmed the addition aggregating to Rs. 1 Cr. The Ld. DR vehemently argued by stating that the finding of the Ld. CIT (A) is erroneous because the Ld. AO in the remand report had once again mentioned that all the five companies are bogus. It is therefore pleaded that the order of the Ld. AO may be confirmed. The Ld. AR on the other hand argued in support of the order of the Ld. CIT (A).

7. We have heard the rival submissions and carefully perused the material on record. From the remand report enclosed in the paper book in page no. 51 to 53 it is evident that the Ld. AO had categorically held that the all the companies are bogus. Further, on perusing the balance sheet and P & L Account of M/s. Tirumala Dealers Private Limited enclosed in paper book at pages 11 to 17 it is apparent that the company is making loss. We further observed from the balance sheet of M/s. Tirumala Dealers Private Limited that the investment of Rs. 7,05,00,000/- was made from the earlier reserves and surplus amounting to Rs. 6,18,75,051/-. Therefore, the exact source of the reserves and surplus of the earlier years resulting in liquidity to the company for making investment in the assessee company is not coming out clearly. It is also not in dispute that all the five company's address are in the same building and the building is deserted. In this situation,

we are of the view that the Ld. CIT (A)'s finding is erroneous. Hence, we hereby set aside the order of the Ld. CIT(A) on this issue and uphold the order of the Ld. AO. Therefore, the issue is decided in favour of the Revenue.

Assessee's appeal

8. During the course of assessment proceedings, it was observed that the assessee had advanced an amount of Rs. 92,23,775/- to its Directors during the relevant assessment year. It was further revealed that the advances were made out of interest-bearing funds of the assessee. Since, the assessee has not received any interest from its Directors on the advance made to them, the Ld. AO computed 12% p.a on the deposits as interest to be disallowed and accordingly made addition of Rs. 11,06,853/-. On appeal, the Ld. CIT (A) confirmed the addition by agreeing with his view. Before us the assessee has not produced any evidence to show that the amount advanced to the Directors of the assessee company were out of its interest free funds. In this situation, we do not find it necessary to interfere with the orders of the Ld. Revenue Authorities on this issue. Hence ground raised in para 2(i) by the assessee is devoid of merits.

9. During the scrutiny assessment proceedings, it was observed that the assessee has received share application money from M/s. Jagadamba Cotton Industries Pvt Ltd Rs. 1 Crs and Rs. 18,10,000/-

from Smt. Susheelabai Rungta. The Ld. AO asked the assessee to furnish the confirmation letter from both the parties, copy of the bank account of the investors and evidence to prove the identity and creditworthiness of the investors. Since the assessee failed to produce the required explanation and documentary evidence, the ld. AO treated the amount of Rs. 1,18,10,000/- as unexplained cash credit u/s. 68 of the Act. On appeal, the Ld. CIT (A) confirmed the order of the Ld. AO since with respect to these parties, the assessee could not produce any evidence to establish the genuineness of the transaction and creditworthiness of the investors. Before us, the assessee has filed the income tax returns and statement of affairs of M/s. Jagadamba Cotton Industries Pvt Ltd for the relevant assessment year to establish the genuineness of the transaction. However, we find that there is no discussion about these documents in the order of the Ld. Revenue Authorities. Therefore, to verify the veracity of these documents, we remit back the issue of share application money received from M/s. Jagadamba Cotton Industries Pvt Ltd to the file of the Ld. AO for de novo verification. As regards the amount received from share application money received from Smt. Susheelabai Rungta even before us at this stage nothing is produced to establish the genuineness of the transaction. Therefore, we do not find it necessary to interfere with the orders of the Ld. Revenue Authorities. Accordingly ground raised in para 2(ii) is disposed off.

10. In the result, appeal of the Revenue is allowed and the appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 06th January, 2022.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 06th January, 2022.

OKK

Copy to:-

- 1) Good Health Agro Tech Limited C/o. Raghavachari & Co., Chartered Accountants, 6-3-596/48/5, Venkata Ramana Colony, Khairatabad, Hyderabad – 500 004.
(ii) M/s. Good Health Agro Tech Pvt Ltd., 1-8-663, Azamabad Industrial Area, Azamabad, Hyderabad-500 020.
- 2) DCIT, Circle-2(3), Signature Towers, Kondapur, Hyderabad. (ii) DCIT, Circle-2(2), R.No. 513, 5th Floor, Signature Towers, Kondapur, Hyderabad.
- 3) The CIT (A)-2, Hyderabad.
- 4) The Pr. CIT-2, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File