

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA Nos.264 & 344/Hyd/2022		
Assessment Year: 2013-14		
M/s.Ramesh Hydro Power Private Ltd, Hyderabad PAAN:AAGCR5918M	Vs.	Income Tax Officer Ward 3(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri K.C. Devdas, CA	
Revenue by:	Sri N. Raja Kumar, DR	
Date of hearing:	29/12/2022	
Date of pronouncement:	29/12/2022	

ORDER

Aggrieved by the order date 6/5/2022 by the National Faceless Centre (“learned CIT (A)” in the case of Ramesh Hydro Power Private Limited, Hyderabad (“the assessee”) for the A.Y 2013-14, the assessee preferred these appeals.

2. Brief facts of the case, insofar as for the purpose of this appeal is concerned, are that while scrutinizing the return of income , the Assessing Officer found that the assessee had shown a sum of Rs.1,09,49,375/- towards share application money received and on inquiries learned Assessing Officer found that confirmation/evidences for an amount to the extent of Rs.82,42,111/- are explained satisfactorily and therefore, while accepting the same learned Assessing Officer proceeded to add the balance amount of Rs.27,07,265/- to the returned income of the assessee.

3. Assessee preferred appeal before the CIT (A) and produced certain additional evidence in the form of confirmation letters, bank a/c statement and passport of two of the persons. Learned CIT (A) however, having called for the remand report from the Assessing Officer reached a conclusion that there was no new material which goes contrary to the findings of the Assessing Officer and on that premise, the learned CIT (A) upheld the addition and dismissed the appeal.

4. Assessee is therefore, before me in this appeal contending that the learned Assessing Officer, for that matter the learned CIT (A), failed to consider the material that was produced in the form of Bank Account and passport to establish NRI status of the two share applicants and also the Bank Account statements submitted on behalf of Smt. D. Sushma in whose favour certain shares are allotted for the expenditure she incurred on behalf of the assessee. The documents that were produced before the learned Assessing Officer are produced before me also in support of the contention of the assessee. Learned AR placed reliance on the remand report dated 23.2.2018 mentioning which is not to be found in the impugned order.

5. Learned DR submits that in so far as the impugned order is concerned, learned CIT (A) placed reliance on the remand report dated 24.6.2020 and there is no whisper about the remand report dated 23.01.2018 and therefore, the remand report dated 23.01.2018 cannot be considered. Secondly, he submits that in order to escape from the clutches of the section 68 of Act, the assessee has to prove consistently the identity of the share applicants and their creditworthiness apart from the genuineness

of the transaction. According to the learned DR, the assessee failed to prove on all these three aspects by bringing on record the relevant material.

6. I have gone through the record in the light of the submissions made either side. It could be seen from page No.25 & 26 of the impugned order that the learned CIT (A) tabulated the various share applicants along with the amounts that have been invested in the assessee company. It consists of six names. I shall deal with each of the share applicant hereafter in detail.

7. So far as the share applicants Tunga Swarajya Lakshmi and Tunga Shalini who have invested Rs.5.00 lakhs each in the assessee company are concerned, learned Assessing Officer declined to take the transaction into consideration as genuine on the ground that the income returned by the two investors is not matching and that is why the same cannot be accepted. Learned Assessing Officer however, in the remand report dated 23.1.2018 opined that out of the total amount of Rs.27,07,265/- amount of Rs.5.00 lakhs each said to have been invested by Smt. Tunga Swarajya Lakshmi and Smt. Tunga Shalini are concerned, they are reflected in the Bank A/c statement of the assessee and therefore, they can be treated as explained. However, for the reasons not known at this stage, the learned Assessing Officer took a different view in the remand report dated 24.6.2020 to say that because of the mismatch between the income of the two incumbents with their investments, the same cannot be taken as explained.

8. This discrepancy is not satisfactorily explained before me and therefore, I direct the learned Assessing Officer to go through both the remand reports and if there are no compelling reasons to deviate from the remand report dated 23.1.2018 the view taken in the remand report dated 24.6.2020 shall be taken as a change of opinion and it is not permissible under law. Therefore, the Assessing Officer is directed to verify the genuineness of the remand report dated 23.02.2018 as produced before me and if it is a genuine document, he will delete the addition to the extent of Rs.5.00 lakhs each against these two individuals.

9. Now coming to the share applicants at S.No.4 to 6 are concerned, it could be seen from the remand report dated 24.6.2020 forming basis for the opinion of the CIT (A) in the impugned order, the objection of the Assessing Officer was that though the remittance of the dollars and transfer thereof is established to the satisfaction of the learned Assessing Officer, there was lack of material to show that these 3 share applicants are NRI for the A.Y 2013-14. So, it is the only basis for the Assessing Officer to object, but according to the learned AR this cannot be factually correct, because the assessee had already submitted bank accounts of the 3 persons which will go to establish the identity of these 3 share applicants. Apart from that it is brought to my notice that the passport of Shri Ramesh & Shri Sandeep were available before the authorities but it seems that they missed the consideration of the learned Assessing Officer while returning a finding that the NRI status of all the 3 persons is not established. Learned AR submits that the assessee is ready to submit copy of the passport of Shri Satish Kumar also.

10. Inasmuch as the satisfaction of the Assessing Officer as to the identity of the parties is subjective one and according to him the Bank Account did not establish such NRI to the satisfaction, it is open for the learned Assessing Officer to consider the passport in that pursuit, and return a factual finding on that aspect. If the learned Assessing Officer is satisfied about the NRI status of the 3 applicants basing on the Bank Statement as well as the Passport, it remains that these amounts also properly explained and liable to be deleted. This issue is restored to the file of the Assessing Officer for consideration of the matter after giving an opportunity to the assessee.

11. Now coming to the remaining share applicant by name Smt. D. Sushma, learned Assessing Officer recorded in the remand report dated 24.6.2020 that such an amount was not actually received as share application money but it represents TDS on behalf of the assessee company. Learned Assessing Officer, however, did not accept this amount stating that the expenditure incurred by Smt. D. Sushma through her Bank A/c is not established. Learned AR brought to my notice that in respect of Smt. D. Sushma, the bank statements of Andhra Bank, HDFC Bank along with challans are submitted before the authorities and forming part of the record. Apart from this, the assessee also submitted IT returns of Smt.Sushma along with computation of total income and supported by her affidavit.

12. Since this material claims to have been furnished by the assessee before the authorities below and it missed the attention of the learned Assessing Officer, it is just and proper to require the learned Assessing Officer to go through it again and to

take a view basing on such material. So, this issue is also restored to the file of the learned Assessing Officer to consider the evidence that is on record and also if any evidence that the assessee desires to produce before the Assessing Officer. Needless to say, that in this exercise, the learned Assessing Officer will afford an opportunity to the assessee.

13. In this view of the matter, I set aside the impugned order and restore the issue for the limited purpose as indicated above to the file of the learned Assessing Officer to consider the material available on record as well as the material, if any, the assessee produces before him and to take a view in accordance with law. In view of my findings in the appeal, I deem it fit to set aside the order of the authorities below and restore the issue to the file of the learned Assessing Officer to take a view in consonance with the main issues itself.

14. In my view of my findings in the preceding paragraphs directing the learned Assessing Officer to consider the material to decide the quantum, I deem it just and proper to set aside the impugned order in the penalty appeal also and to send it back to the file of the Assessing Officer to decide it along with the question of addition.

15. In the result both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 29th December, 2022

Sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Hyderabad, dated 29th December, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. Ramesh Hydro Power (P) Ltd, Plot No.226, Phase III Road 78, Jubilee Hills, Hyderabad 500096
2	Income Tax Officer Ward 3(2) Hyderabad
3	CIT (A)-NFAC, Delhi
4	Pr. CIT - Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order