

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.42/Bang/2014
Assessment Year: 2006-07

Sri H.S. Abdul Hafeez Sayeed Prop: M/s. Oriental Granites No.6410, A1-Habeeb, Shankar Mutt Road Hassan  <b>PAN NO : AELPS6817A</b>	<b>Vs.</b>	ACIT Central Circle-1(2) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Pranav Krishna, A.R.
<b>Respondent by</b>	:	Shri Sunil Kumar Singh, D.R.

<b>Date of Hearing</b>	:	08.08.2023
<b>Date of Pronouncement</b>	:	08.08.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of CIT(A) dated 7.10.2013. The assessee originally came in appeal before this Tribunal challenging the following additions u/s 69 of the Income-tax Act, 1961 ['the Act' for short] in respect of following parties:

- 1) M/s. H.G. Narayan Associates - Rs.11 lakhs
- 2) Sri K. Samu - Rs.50 lakhs
- 3) Shri Aaga Ahmed Ali - Rs.10 lakhs
- 4) Shri Y.S.V. Dutta - Rs.40 lakhs

2. The Tribunal adjudicated all the issues except unexplained payment to Sri H.G. Narayan Associates at Rs.11 lakhs. Against this assessee filed an appeal before Hon'ble High Court in ITA No.788 of 2018 framing the following question:-

*“Whether, on the facts and in the circumstances of the case and in law, was the Tribunal right in not considering the ground No.7 which related to Rs.11,00,000/- given to M/s. H.G. Narayan Associates?”*

2.1 The High Court adjudicated this ground vide judgement dated 31.10.2022 as follows:

*“(a) Appeal is allowed and matter is remitted to ITAT to consider ground No.7 after granting opportunity to the assessee and pass appropriate orders in accordance with law.”*

2.2 Hence, this appeal is listed for hearing of the limited issue with regard to addition made by ld. AO amounting to Rs.11 lakhs as cash paid to M/s. H.G. Narayan Associates as unexplained investments under provisions of section 69 of the Act.

3. Facts of this issue are that the learned assessing officer in the order of assessment has made an addition of Rs. 11,00,000/- as unexplained investments under the provisions of section 69 of the Act holding that the assessee has made a cash payment of Rs. 27,00,000/- to the confirming parties on various dates through H.G. Narayana Associates and the same is not reflected in the Books of Account and brought to tax a sum of Rs. 11,00,000/- being the difference between Rs. 27,00,000/- and Rs. 16,00,000/- which has been admitted in the Return of income filed pursuant to Notice u/s. 153A of the Act. The said addition made by the learned assessing officer has been confirmed by the learned CIT[A] without appreciating the evidences filed by the assessee in support of his case.

3.1 In this regard the ld. A.R. for the assessee submitted that during the course of search, a receipt for Rs. 27,00,000/- issued by M/s. H.G. Narayana Associates was found. The said receipt did not bear any signature by any of the partners of M/s. H.G. Narayana Associates. It is submitted that the Assessee during the impugned assessment year had bought

a property at Dollars Colony, Bangalore from Smt. Sujatha Narayan for a total consideration of Rs. 72,00,000/-.

3.2 He further submitted that there was no cash payment made of Rs. 27,00,000/- towards the purchase of property from Smt. Sujatha Narayan and the same has been confirmed by the confirming parties to the sale.

3.3 He further submitted that the Assessee had an opening cash balance of Rs. 11,00,000/- in his group concerns and after considering this opening cash balance, the balance amount of Rs. 16,00,000/- was offered as income for the assessment year 2006-2007. The learned assessing officer without appreciating these facts arbitrarily made an addition based on suspicion and surmises u/s. 69 of the Act bringing to tax Rs. 11,00,000/- as income of the Assessee which was not warranted, the said aspect has not been appreciated either by the learned CIT[A] nor by the learned assessing officer.

3.4 Thus, the ld. A.R. submitted that the addition made by the learned assessing officer of Rs. 11,00,000/- under the provisions of section 69 as unexplained investments is not warranted and thus the additions made by the learned assessing officer and confirmed by the learned CIT[A] deserves to be deleted for the advancement of substantial cause of justice.

3.5 The ld. A.R. further submitted that before the AO, assessee made a plea that he has not paid any amount to M/s. H.G. Narayan Associates vide reply dated 9.3.2011. These facts are recorded by the ld. AO in his assessment order in second para of page 4 and the assessee also requested the ld. AO that if he is not accepting the contention of the assessee, the ld. AO may examine M/s. H.G. Narayan Associates to verify whether they received the said payment

or not. However, he failed to examine them and the addition to be deleted.

4. On the other hand, the ld. D.R. submitted that total payment to M/s. H.G. Narayan Associates was at Rs.27 lakhs, out of this, assessee has accepted payment of Rs.16 lakhs. Hence, the balance amount of Rs.11 lakhs is to be considered as paid by the assessee to M/s. H.G. Narayan Associates and he cannot accept the part of the payment and deny another part of the payment out of Rs.27 lakhs.

5. We have heard the rival submissions and perused the materials available on record. In this case, the plea of the revenue authority is that assessee made payment of Rs.27 lakhs to M/s. H.G. Narayan Associates for purchase of property at House No.563, Dollars Colony, Army Extension, Bengaluru. Out of this, assessee declared a sum of Rs.16 lakhs in his return of income. The balance Rs.11 lakhs assessee has not accepted as paid to M/s. H.G. Narayan Associates. Hence, the AO has made addition of Rs.11 lakhs on this count. However, we find that assessee before the AO denied the fact of making payment of Rs.27 lakhs to M/s. H.G. Narayan Associates and also stated in his letter dated 9.3.2011 that the ld. AO may examine the party M/s. H.G. Narayan Associates and given its address. However, the ld. AO has not carried out the requisite enquiry and arbitrarily made addition of Rs.11 lakhs. In our opinion, it is appropriate to remit the issue to the file of ld. AO to carry out necessary enquiry with M/s. H.G. Narayan Associates and reach the logical conclusion that whether assessee made any payment to M/s. H.G. Narayan Associates? Further, we make it clear that assessee may furnish the latest address of M/s. H.G. Narayan Associates and shall cooperate with the AO to make necessary enquiry with M/s. H.G. Narayan Associates. Accordingly, the issue in dispute is remitted to the file of ld. AO for further enquiry.

6. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 8<sup>th</sup> Aug, 2023

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 8<sup>th</sup> Aug, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**