

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.30/PAN/2022

निर्धारण वर्ष / Assessment Year : 2011-12

Prathamik Krushi Pattin Shakari Sangh Niyamit, Keshapanatti (Earlier Name: Vyavasaya Seva Sahakari Sangh Niyamit) Chippalakatti & Co, Chartered Accountants, No.44/4, 2 nd Floor, 16 th Cross, 4 th Main Malleshwaram, Bengaluru. PAN : AABAV1550G	Vs.	PCIT (Central), Bengaluru
Appellant		Respondent

Assessee by
Revenue by

Shri Satish Chipalkatti
Shri P.S. Shivshankar, CIT DR

Date of hearing 06-10-2023
Date of pronouncement 09-10-2023

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 28.03.2022 passed by the Id. CIT(Central), Bengaluru in relation to the assessment year 2011-12.

2. Briefly stated, the facts of the case are that the assessee society is a shareholder of the Soubhagyalaxmi Sugars Ltd., Gokak. No

return was filed for the year under consideration. Search action was taken in the case of Soubhagyalaxmi Sugars Ltd. and Harsha Sugars Ltd., during which it transpired that the assessee society and eight other societies deposited huge cash in their accounts with Union Bank of India, Gokak Branch and immediately transferred the amounts through RTGS to Soubhagyalaxmi Sugars Ltd. through share application money of Rs.3,50,29,200/-. There were no other transactions in the bank account, other than the deposits and immediate withdrawals. Enquiries conducted by the Investigation wing revealed that the assessee and other societies were not in existence at the given addresses. Since the assessee had not filed any return, notice u/s 148 was issued on this score. Assessment was concluded on 23.12.2019 u/s 143(3) r.w.s. 147 with assessed income at Rs.3.15 crores after making an addition of Rs.3.15 crores u/s 68. The ld. CIT, on examination of records, observed that the total cash deposited with Union Bank of India during the financial year 2010-11 was Rs.3,50,29,200/-, out of which an amount of Rs.3,49,97,500/- was claimed from the persons who had contributed towards share application money. The assessee transferred Rs.3.15 crores to M/s. Soubhagyalaxmi Sugars Ltd. as share application money which was added by the AO. However, the remaining

amount of Rs.34,97,500/- [Rs.3,49,97,500/- (-) Rs.3,15,00,000/-] was not taken for consideration by the AO. The Id. CIT, therefore, held the assessment order as erroneous and prejudicial to the interest of Revenue on this score. Setting aside the same, he directed the AO to pass a fresh assessment order after making proper enquiries regarding the nature and source of cash deposits in the bank account of the assessee. Aggrieved by the same, the assessee is in appeal before the Tribunal.

3. We have heard both the sides and gone through the relevant material on record. The assessee received a sum of Rs.3,49,97,500/- from various persons through share capital, out of which a sum of Rs.3.15 crores was invested in the equity shares of Soubhagyalaxmi Sugars Ltd. The addition has been made by the AO u/s 68 with reference to the amount received by the assessee and not the amount invested in the shares of Soubhagyalaxmi Sugars Ltd. The fact of the matter is that the entire sum of Rs.3.50 crores was received by the assessee from the persons having doubtful identity and capacity. Initially, the AO started with the amount of Rs.3,49,97,500/- for the purpose of enquiry u/s 68. Paras 1 to 6 of the assessment order are devoted to the issue of examining the genuineness of Rs.3.50 crores. Thereafter, the AO got transferred and now incumbent came, who

started the proceedings with the unexplained cash credits in the hands of assessee to the tune of Rs.3.15 crores and eventually ended up in making the addition of the said sum. When the amount deposited by the assessee in its bank account which was received towards share capital from the outsiders to the tune of Rs.3.50 crores and if the said sum remained unexplained, the addition ought to have made for such sum only and not Rs.3.15 crores, which represented the amount invested by the assessee in shares of Soubhagyalaxmi Sugars Ltd. The assessee raised a plea before the Id. CIT that sum of Rs.29 lacs received as share capital was returned as loan to members. However, there is no mention of such a fact either in the assessment order or in any pleadings of the assessee before the AO. In our considered opinion, the Id. CIT was justified in branding the assessment order to be erroneous and prejudicial to the interest of Revenue on the ground that the AO made addition for Rs.3.15 crores as against the actual receipts of the assessee from bogus shareholders to the tune of Rs.3.50 crores without considering the assessee's submissions, made for the first time before the CIT(A), that out of Rs.3.50 crores received as share capital, sum of Rs.29 lacs was advanced as loan to certain persons. We, therefore, approve the action of the Id. CIT in restoring the

matter to the file of the AO for deciding the issue afresh as per law after allowing an opportunity of hearing to the assessee.

4. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 09th October, 2023.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 09th October, 2023

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT , Panaji
4. DR, ITAT, Panaji Bench, Panaji
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-10-2023	Sr.PS
2.	Draft placed before author	06-10-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*