

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

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

M.A. No. 149/Hyd/2022
 आ.अपी.सं / **ITA No.355/Hyd/2017**
 (निर्धारण वर्ष / Assessment Year: 2011-12)

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| Dy. CIT Circle 2(2) Hyderabad | Vs. | Good Health Agro Tech Pvt. Ltd Hyderabad PAN:AAACG7494F |
| (Appellant) | | (Respondent) |
| निर्धारिती द्वारा/Assessee by: | | N O N E |
| राजस्व द्वारा/Revenue by:: | | Shri Srinath Sadanala, DR |
| सुनवाई की तारीख/Date of hearing: | | 23/08/2024 |
| घोषणा की तारीख/Pronouncement: | | 23/08/2024 |

आदेश/ORDER

Per Manjunatha, G. A.M

The Revenue has filed the present Miscellaneous Application u/s 254(2) of the I.T. Act, 1961 against the order of the Tribunal in ITA No.355/Hyd/2017 for the A.Y 2011-12 dated 6/1/2022. The Revenue has narrated the mistake stated to be apparent on record from the order of the Tribunal dated

6/1/2022 and relevant contents of M.A. filed by the Revenue are reproduced herein below:

ITA NO. 355 & 390/Hyd/2017

Assessment Year : 2011-12

The assessee company, engaged in the business of processing and trading of edible oils, filed its return of income for the A.Y 2011-12 on 09.09.2011, declaring total income of Rs.4,10,18,980/-. The return was processed u/s.143(1) of the I.T Act on 08.03.2012. Subsequently, the case was selected for scrutiny and notice u/s.143(2) of the I.T Act was issued and served to the assessee. Subsequently, the scrutiny assessment u/s.143(3) of the I.T Act' was completed on 31.03.2014 by making the following additions/disallowances:

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| (i). | Disallowance of interest on advances to the Directors. | : Rs.11,06,853/- |
| (ii). | Unexplained share capital/share application money of Kolkata based 5 companies. | : Rs.8,05,00,000/- |
| (iii). | Unexplained share capital/share application money of Hyderabad based 5 compaies. | : Rs.4,38,10,000/- |

2. On appeal, the CIT(A)-2, Hyderabad vide order in Appeal No. 0235/2014-15 dated 30.11.2016, dismissed the assessee's appeal on 1st issue (Addition towards interest on advances to the Directors of Rs.11,06,853/-). However, the CIT(A) partly allowed the assessee's appeal on 2nd & 3rd issue (Addition towards unexplained share capital/ share application money of Rs.8,05,00,000/- of Kolkata based Companies and Rs.4,38,10,000/- of Hyderabad based Companies respectively) as under:-

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| (i). | Unexplained share capital/share application money of Kolkata based Companies. | : Rs.7,05,00,000/- |
| (ii). | Unexplained share capital/share application money of Hyderabad based Companies. | : Rs.4,20,00,000/- |

3. Against the order of the CIT(A)-2, Hyderabad, the assessee filed appeal ITAT, Hyderabad against the issue upheld by the CIT(A). Further, the department also filed appeal before the Hon'ble ITAT, Hyderabad on the following grounds:

02 *In the facts and circumstances of the case, whether the CIT(A) is correct in law in holding that the assessee had discharged its onus of establishing the bona-fide of the transactions even though the assessee nor the creditors could not substantiate their claim to the satisfaction of AO ?*

03 *In the facts and circumstances of the case, whether the CIT(A) is correct in law in deleting the addition made u/s.68 towards unexplained share capital/share application money of both Kolkata & Hyderabad based companies which has made huge investments, without considering the creditworthiness of these companies ?*

04 *The CIT(A) ought to have appreciated the facts that mere filing of income tax returns and routing the payments through banking channels will establish the identity and genuineness but not the creditworthiness of the creditors.*

05 *The CIT(A) ought to have appreciated the provisions of the section 68 wherein the creditors has to establish all the three limbs of the section i.e, identity, genuineness and creditworthiness.*

06 *The CIT(A) ought to have appreciated the facts that Sir Subhash Agarwal, one of the director of the assessee company clearly mention during survey operations that he did not know any of the directors/promoters of the investing companies.*

4. The Hon'ble Tribunal vide their order in ITA No. 355 & 390/Hyd/2017 dated 06.01.2022 allowed following issue in favour of Revenue.

- (i) Unexplained share application money - Rs.7,05,00,000/- (Department's ground)
- (ii) Interest on advances to Directors - Rs. 11,06,853/- (Assessee's ground)
- (iii) Share application money received - Rs. 18,10,000/- (Assessee's ground)
from Smt. Susheelabai Rungta

5. The Hon'ble ITAT, Bench-A, Hyderabad has set aside the order of CIT(A) on the issue of Unexplained share capital/share application money of Kolkata based 5 Companies and upheld the order of the Assessing Officer. However, the Hon'ble ITAT has not adjudicated on the issue of Unexplained share capital/share application money of Hyderabad based Companies.

7. In view of the above, it is prayed that the Hon'ble Tribunal may adjudicate the issue raised by the Revenue as the same was not adjudicated in the order of the ITAT in ITA No. 355 & 390/Hyd/2017 dated 06.01.2022.

2. None appeared on behalf of the assessee.

3. We have heard the learned DR and considered the relevant contents of M.A application filed by the assessee in light of the order of the Tribunal dated 6/1/2022 in ITA No.355/Hyd/2017. We find that the Tribunal while adjudicating Ground No.1 of Revenue's appeal has dealt with the issue with regard to unexplained share capital/share application money received from Kolkata based companies for Rs.8,05,00,000/-. However, there is no adjudication in respect of Ground No.1 of Revenue's appeal which also challenged the addition made by the Assessing Officer towards unexplained share capital/share application money received from Hyderabad based company. In our considered view, the said findings of the Tribunal in not adjudicating Ground No.1 of Revenue's appeal in relation to addition of Rs.4,20,00,000/- made by the Assessing Officer and deleted by the learned CIT (A) towards unexplained share capital/share application money received from Hyderabad based company constitutes a mistake apparent on record which needs to be rectified u/s 254(2) of the I.T. Act, 1961. Therefore, we recall the order of the Tribunal dated 6/01/2022 in ITA No.355/Hyd/2017 qua Ground No.1 of Revenue's appeal related to addition made by the Assessing Officer and deleted by the learned CIT (A) in respect of unexplained share capital/share application money received from Hyderabad based company.

4. In the result, M.A filed by the Revenue is allowed.

Order pronounced in the Open Court on 23rd August, 2024.

Sd/-

Sd/-

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| (LALIET KUMAR) JUDICIAL MEMBER | (MANJUNATHA, G.) ACCOUNTANT MEMBER |
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Hyderabad, dated 23rd August, 2024

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|--|
| 1 | Dy. CIT, Circle 2(2) Room No.513, 5 th Floor, Signature Towers, Kondapur, Hyderabad |
| 2 | Good Health Agro Tech Ltd C/o Raghavachari & Co. C.A 6-3-596/48/5 Venkata Ramana Colony, Khairatabad, Hyderabad 500004 |
| 3 | Pr. CIT – 2, Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order