

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

Before Shri Vijay Pal Rao, Vice President
and
Shri Madhusudan Sawdia, Accountant Member

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

Dy. Commissioner of Income Tax Circle-2(2) Hyderabad	Vs.	Good Health Agro Tech Pvt.Ltd. Hyderabad [PAN:AAACG7494F]
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri A.V.Raghuram, AR	
राजस्व द्वारा/Revenue by:	Shri Rahul Singhanian, DR	
सुनवाई की तारीख/Date of Hearing:	05/05/2025	
घोषणा की तारीख/ Date of Pronouncement:	07/05/2025	

आदेश / ORDER

PER VIJAY PAL RAO, VICE PRESIDENT:

This appeal filed by the Revenue is directed against the order dated 30.11.2016 of Commissioner of Income Tax (Appeals) ["Ld.CIT(A)] for the A.Y.2011-12.

2. Earlier, this appeal of the revenue along with cross appeal of the assessee in ITA No.390/Hyd/2017 was disposed of by this Tribunal vide order dated 06.01.2022. Thereafter, on the Miscellaneous Application filed by the department in MA

No.149/Hyd/2022, this Tribunal vide order dated 23.08.2024 recalled the earlier order to the extent of non-adjudication of ground No.1 of the Revenue's appeal relating to addition of Rs.4,20,00,000/- made by the Assessing Officer ("the AO") and deleted by the Ld.CIT(A) towards unexplained share capital/share application money received from Hyderabad based companies. While deciding the MA of the department, in para 3 of the order dated 23.08.2024, the Tribunal held as under :

"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.”

3. Thus, this appeal of the Revenue is placed before us for hearing and adjudication. This Tribunal while passing the earlier order dated 06.01.2022 has culled out and summarized the issue raised by the Revenue in the grounds of appeal in para 3 of the said order as under :

“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.

4. The brief facts resulting to this controversy are that the assessee received an amount of Rs.15,03,25,100/- during the year under consideration as investment towards share application money from various persons/concerns. Out of this total investment received by the assessee, a sum of Rs.8,05,00,000/- was received from five Kolkata based companies and the balance was received from local parties/concerns. The AO made disallowance/addition of the entire investment made by the Kolkata based companies/persons of Rs.8,05,00,000/- and an addition of investment made by the Hyderabad based companies of Rs.4,38,10,000/- u/s 68 of the Income Tax Act, 1961 (“the Act”). On appeal, the Ld.CIT(A) has deleted the addition to the

extent of Rs.7,05,00,000/- out of total addition of Rs.8,05,00,000/- on account of investment received from Kolkata based parties. Thus, the addition of Rs.1,00,00,000/- was sustained by the Ld.CIT(A) in respect of the investment made by the Kolkata based companies. As regards the investment made by the Hyderabad based parties, the Ld.CIT(A) deleted the addition to the extent of Rs.4,20,00,000/- out of total addition made by the AO of Rs.4,38,10,000/-. Hence, the Ld.CIT(A) confirmed the addition of Rs.18,10,000/- out of total addition made by the AO of Rs.4,38,10,000/-. Aggrieved by the impugned order of the Ld.CIT(A), both the Revenue as well as the assessee filed cross appeals. In the Revenue's appeal, the order of the Ld.CIT(A) was challenged to the extent of deletion of addition of Rs.7,05,00,000/- on account of investment received from Kolkata based parties and Rs.4,20,00,000/- on account of investment made by the Hyderabad based parties. The assessee challenged the additions sustained by the Ld.CIT(A) of Rs.1,00,00,000/- towards investment made by the Kolkata based parties and Rs.18,10,000/- towards investment made by the Hyderabad based parties. The issue of addition deleted by the Ld.CIT(A) in respect of the investment made by the Kolkata based parties has been decided by the Tribunal vide order dated 06.01.2022 in para 7 as under :

“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."

5. Thus, the Tribunal has adjudicated only one part of the Revenue's appeal regarding the addition deleted by the Ld.CIT(A) on account of investment made by the Kolkata based companies. The other part of the Revenue's appeal thus remained unadjudicated, i.e., the addition made by the AO and deleted by the Ld.CIT(A) towards the investment made by the Hyderabad based parties. Since the Ld.CIT(A) has confirmed the addition to the extent of Rs.18,10,000/-out of Rs.4,38,10,000/-, therefore, the grievance of the Revenue was only in respect of Rs.4,20,00,000/- deleted by the Ld.CIT(A).

6. Ld.DR has referred to the assessment order and submitted that the assessee has claimed the investment in the share capital of the assessee received from five Hyderabad based parties, out of which, an investment of Rs.18,10,000/- made by Smt.Susheelbai Rungta has been confirmed by the Ld.CIT(A) as

well as by this Tribunal in the earlier order. Therefore, the grounds of appeal of the Revenue are in respect of the investment made by the remaining four parties namely, (i) M/s Hyderabad Constructions Company Pvt.Ltd. (ii) M/s Jagadambha Cotton Industries Pvt.Ltd. (iii) M/s Premium Foods and (iv) M/s SanjayUdyog.

7. M/s Hyderabad Constructions Company Pvt. Ltd.

Ld.DR has submitted that the AO has given a finding that the investment received from M/s Hyderabad Constructions Company Pvt. Ltd. to the tune of Rs.70,00,000/- is not a genuine transaction, as the assessee failed to produce any supporting evidence of having any source with the said company to make investment in the shares of the assessee company. The said company has not filed the return of income for the last eight years and the last return of income filed by the said company for the A.Y.2005-06. Therefore, once, the company has closed its operations eight years back and not earning any income for the last eight years, then in the absence of any supporting evidence to prove the source of the said investment, the credit worthiness of the investor company and genuineness of the transaction has not been proved. He has relied upon the order of the AO.

8. On the other hand, Ld.AR has submitted that the assessee has received the investment through banking channel and the AO has doubted the genuineness of the transaction, only

because of the reason that the said company has not filed the return of income, whereas the source of investment can be other business income of the investor company. The assessee has filed confirmation and balance sheet of the investor companies / concerns to show the source of investment made by them. The assessee has produced PAN and confirmation of the investor company and therefore, the identity and genuineness of the transaction cannot be disputed. The assessee also explained the reasons for the said investing company not operational, however, when the company with its own fixed asset is located in Hyderabad itself and the source of fund of the same are verifiable from the financials of the said company, then, merely because the said company has not declared any income cannot be a ground for making the addition. He has supported the impugned order of the Ld.CIT(A) and submitted that the Ld.CIT(A) has given a finding that when the directors of the assessee as well as the said company i.e. Hyderabad Constructions Company Pvt. Ltd. are the relatives, then the identity and genuineness of the transaction cannot be disputed. Further, money was received through banking channel and the AO has not brought any material on record to show that the assessee's own fund has travelled back to the assessee in the shape of share application money. Thus, the Ld.AR has submitted that the Ld.CIT(A) has rightly deleted the addition made by the AO in respect of the investment made by the Hyderabad Constructions Company.

9. We have considered the rival submissions as well as the material on record. The AO made addition in para 6.1 and 6.2 as under :

6.1. During the year under consideration, from the details of Share application money received by the assessee company, it is noticed that M/s. The Hyderabad Constructions Company Ltd. has invested an amount of Rs.70,00,000/- in the assessee company in the form of Share Application money. During the assessment proceedings the assessee company was asked to furnish the evidence to prove the genuineness of the investment received and identity and creditworthiness of the investing company to make such a huge investment. The assessee company even after availing many opportunities did not furnish any evidence. The PAN no. of M/s. The Hyderabad Constructions Company Ltd. is AABCT3053C. On verification it is found that the said company has not filed its Returns of Income for the last 8 years. The latest Return of income filed by M/s. The Hyderabad Constructions Company Ltd. is for the A.Y.2005-06 subsequent to which it has not filed any Return of income for any assessment year. It clearly shows that the said investing company has closed its operations 8 years back and it is not earning any income for the last 8 years including for the A.Y.2011-12, in which it had made investment of Rs.70,00,000/-. Hence, the company does not have any sources to make the investment in the assessee company. The assessee also failed to furnish any evidence to prove the genuineness of the investment.

6.2. In view of the above discussion, the investment to the tune of Rs.70,00,000/- made by M/s. The Hyderabad Constructions Company Ltd. In the assessee company is treated as unexplained cash credit u/s.68 of the I.T.Act and added to the income of the assessee company.

10. Thus the AO has given reasons for making the addition that this company has not filed return of income for the last eight years, therefore in the absence of any income for the last eight years, the source to make investment of Rs.70,00,000/-

has not been explained. On appeal, the Ld.CIT(A) has called for remand report from the AO and after considering the submissions of the assessee, the addition was deleted by the Ld.CIT(A) in para 7.9 as under :

“7.9. I have considered the facts on record and the submissions of the AR. It is undisputed that all the investing entities have invested in the share capital / share application money of the assessee and the money so invested was made through proper banking channels. The assessee has submitted the information as called for during the assessment proceedings. In all the issues under consideration, the investors are assesseees or related to the directors of the assessee and in some cases the directors and their relatives are directors in the investing entities. The assessee has proved their identity and creditworthiness and the genuineness of the transaction. Further as all the investors are based either in Hyderabad or the nearby locations and mostly are those of the relatives of the directors of the assessee company it is appropriate that the investment can be assessed in the hands of the investors and need not be taxed in the hands of the assessee. In the circumstances and based on the various judicial pronouncements, I am of the considered view that the AO’s action in making additions totaling to Rs. 4,20,00,000/- on account of the investments made by the above mentioned entities excluding Smt.Susheelabhai Rungta u/s. 68 of the Act, is not justified. Further, with regard to the investment of Rs. 18,10,000/- in the case of Smt.Susheelabhai Rungta, the evidence could not be produced in support of the claim of the assessee and hence, the AO’s action in making the addition of Rs. 18,10,000/- is justified: Out of the total addition of Rs.4,38,10,000/-, addition to the extent of Rs.4,20,00,000/- is directed to be deleted and the balance amount of Rs.18,10,000/- is hereby confirmed. As a result, the grounds raised are partly allowed.”

11. Thus, it is clear that the Ld.CIT(A) has not given any finding or fact regarding the source of investment made by this

company, which is the main controversy. The creditworthiness of the creditor is an essential condition u/s 68 of the Act. Therefore, in the facts and circumstances of the case when the AO has clearly pointed out that the assessee has failed to produce supporting evidence to show the source of the investment made by the said company, then the addition deleted by the Ld.CIT(A) without giving a finding on the available source of fund with the said company is not sustainable. We further note that this Tribunal in the earlier order has already set aside the issue of investment made by the Kolkata based companies as well as the issue of investment made by one of the Hyderabad based parties namely, Jagadamba Cotton Industries Pvt.Ltd. under the assumption that the said addition was confirmed by the Ld.CIT(A) in respect of Jagadamba Cotton Industries and therefore, the said order of the Tribunal was subsequently recalled in the MA proceedings. Accordingly in the facts and circumstances of the case and in the interest of justice, we set aside the issue to the record of the AO for ascertaining the source of investment in the hands of Hyderabad Construction Company Pvt.Ltd. for making investment of Rs.70,00,000/-. The assessee is directed to produce all supporting evidences to prove the source of investment in the hands of the said company.

12. **M/s Jagadamba Cotton Industries Pvt. Ltd.** This company has made an investment of Rs.1,00,00,000/-. The AO has made addition in para 7.1 as under :

“7.1. During the year under consideration, from the details of Share application money received by the assessee company, it is noticed that M/s.Jagdambha Cotton Industries Pvt Ltd. has invested an amount of Rs.1,00,00,000/- in the assessee company in the form of Share Application money. During the assessment proceedings the assessee company was asked to furnish the evidence to prove the genuineness of the investment received and identity and creditworthiness of the investing company to make such a huge investment. The assessee company was specifically asked to furnish the confirmation letter, Copy of the bank account of the investing company and any other evidence to prove the creditworthiness of the investing company. The assessee company even after availing many opportunities did not furnish any evidence to prove the genuineness of the investment, identity and creditworthiness of the investing company. As the assessee failed to explain the share application money received from M/s Jagdambha Cotton Industries Pvt Ltd., the investment to the tune of Rs.1,00,00,000/- made by M/s Jagdambha Cotton Industries Pvt Ltd. in the assessee company is treated as unexplained cash credit u/s.68 of the I.T.Act and added to the income of the assessee company.”

13. The AO has given a finding that the assessee failed to furnish any evidence to prove the genuineness of investment, identity, credit worthiness of the investing company. Before the Tribunal, the assessee has produced the return of income, acknowledgement, as well as confirmation of the said party. The Ld.DR has relied upon the order of the AO.

14. On the other hand, Ld.AR has submitted that the supporting evidence filed by the assessee is required to be verified at the level of the AO.

15. Having considered the rival submissions, we find that even in the earlier order, this Tribunal has observed that the assessee has filed ledger account as well as bank account statements to establish genuineness of the transaction, which prima facie shows that the amount was received in the year under consideration, shown as opening balance and it was repaid in the subsequent year. Since, these documents were not produced by the assessee before the authorities below, therefore, we are of the considered opinion that the relevant supporting evidences filed by the assessee along with further evidences, if any is required to be verified and examined at the level of the AO. Hence this issue is remanded to the record of the AO for fresh adjudication after verification and examination of the supporting evidences filed by the assessee.

16. **M/s Premium Foods.** The AO has made this addition in para 9.1 and 9.2 as under :

“9.1. During the year under consideration, from the details of Share application money received by the assessee company, it is noticed that M/s.Premium Foods has invested an amount of Rs.1,50,00,000/- in the assessee company in the form of Share Application money. During the assessment proceedings the assessee company was asked to furnish the evidence to prove the genuineness of the investment received and identity and creditworthiness of the investing company to make such a huge investment.

The assessee company has furnished the copies of Balance sheet for the F.Y.2010-11, copy of ITR-V for the A.Y.2011-12 and confirmation from the investing firm. From the details furnished by the assessee company it is noticed that the Gross total income of the investing firm during the F.Y.2010-11 was Rs.26,08,925/- only. Hence, the investing firm did not have sufficient sources of its own, to make huge investment to the tune of Rs.1,50,00,000/- in the assessee company. On examination of the copy Balance sheet of M/s.Premium Foods as on 31-03- 2011, it is noticed that there are no investments made by M/s. Premium Foods as on 31- 03-2011. In case of investment by M/s. Premium Foods in the assessee company during the F.Y.2010-11, the same would have been reflected in the Balance sheet as investments, but the same is not reflected in the Balance sheet of M/s.Premium Foods. Thus the assessee company has failed to prove the genuineness of the investment and the creditworthiness of the investor.

9.2. As the assessee failed to explain the share application money received from M/s.Premium Foods, the investment to the tune of Rs.1,50, 00,000/- made by M/s.Premium Foods in the assessee company is treated as unexplained cash credit u/s.68 of the I.T.Act and added to the income of the assessee company.”

17. Ld.DR has relied upon the impugned order and submitted that the AO has given a finding that the said company has not shown the alleged investment in the balance sheet and therefore, the assessee failed to prove the genuineness of the investment, creditworthiness of the investor.

18. On the other hand, Ld.AR has referred to the balance sheet and notes on account and submitted that the said company has not shown this amount as investment, however, it is duly shown under the wrong categorization of “Sundry

Creditors” as a debit balance, which means that the amount was paid to the assessee. He also submitted that once the transaction is verifiable from the bank account of both the parties and there is a mistake in the financials of the said company regarding wrong categorization of the said investment, the matter may be remanded to the record of the AO for proper verification of the fact.

19. Having considered the rival submissions and careful perusal of the orders of the authorities below, we find that the AO has made this addition on the ground that the said company has not shown this investment in the balance sheet. We find from the balance sheet of M/s Premium Foods that the said amount is shown in the name of the assessee under wrong head and not under category of investment. Therefore, the amount of Rs.1,50,00,000/- is duly reflected in the financial statement of the said party, but it appears that there is a mistake in reporting the transaction in the books of accounts. Thus, once the assessee has produced the confirmation of the said party and also claimed that the transaction is genuine, duly reflected in the bank accounts of both the parties, then this issue requires a proper verification on this point at the level of the AO. Accordingly, this issue is also set aside to the record of the AO for fresh examination and adjudication after considering the relevant record filed by the assessee.

20. **M/s SanyajUdyog.** The AO has made addition in respect of the investment of Rs.1,00,00,000/- in para 10.1 and 10.2 as under :

“10.1. During the year under consideration, from the details of share application money received by the assessee company, it is noticed that M/s SanjayUdyog has invested an amount of Rs.1,00,00,000/- in the assessee company in the form of Share Application money. M/s SanjayUdyog is the proprietary concern of Shri Sanjay Omprakash Dalmia. During the assessment proceedings the assessee company was asked to furnish the evidence to prove the genuineness of the investment received and identity and creditworthiness of the investor to make such a huge investment. The assessee company has not furnished any evidence except the copies of P&L account, Balance sheet of the investor for the F.Y.2010-11 and confirmation from the investor. From the details furnished by the assessee company it is noticed that the net profit earned by M/s.Sanjay Udyog during the F.Y.2010-11 was Rs.9,38,329/- only. Hence, the investing concern did not have sufficient sources of its own, to make huge investment to the tune of Rs.1,00,00,000/- in the assessee company. On examination of the copy Balance sheet of M/s.Sanjay Udyog as on 31-03-2011, it is noticed that the investments made by M/s.Sanjay Udyog as on 31-03-2011 is Rs.1,26,600/- only out of which the Share application was Rs.600/- only. In case of investment by M/s.Sanjay Udyog in the assessee company during the F.Y.2010-11, the same would have been reflected in the Balance sheet as investments, but the same is not reflected in the Balance sheet of M/s.SanjayUdyog. Thus the assessee company has failed to prove the genuineness of the investment and the creditworthiness of the investor.”

10.2. As the assessee failed to explain the share application money received from M/s.SanjayUdyog, the investment to the tune of Rs.1,00,00,000/-made by M/s.SanjayUdyog in the assessee company is treated as unexplained cash credit u/s.68 of the I.T.Act and added to the income of the assessee company.”

21. The Ld.DR has submitted that the AO has given a finding that as per the balance sheet of the said party, the investment of Rs.1,26,600/- is shown, out of which, the share application of Rs.600/- was reflected in the balance sheet. Therefore, investment claimed by the assessee is not reported in the balance sheet of the said party, M/s SanjayUdyog.

22. On the other hand, Ld.AR has submitted that the confirmation was filed before the AO, wherein, the said party has accepted the investment of Rs.1,00,00,000/- in the capital of the assessee. He has further submitted that in the balance sheet, this party has shown this investment under the category of debtors and therefore, a mistake in the books of the other party cannot be a ground for making addition when the assessee has furnished all the supporting evidences before the AO.

23. Having considered the rival submissions and careful perusal of the orders of the authorities below, we find that the AO has made addition on the ground that the said company has not shown this investment in the balance sheet. However, on careful examination of the financials of the said party, we find that an amount of Rs.1,00,00,000/- has been shown in the

Schedule 'C' of loan, advances and deposits forming part of the balance sheet.

24. Thus, in view of the facts and circumstances, when the amount is shown under the head "loan and advances" instead of "investment", then this fact requires proper verification and examination to ascertain the correct nature of transaction. Accordingly, we set aside this issue to the record of the AO to conduct a proper enquiry on the basis of the record to be filed by the assessee and ascertain the correct facts and then decide this issue as per law.

25. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the Open Court on 7th May, 2025.

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE PRESIDENT
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Sd/-

Hyderabad,
Dated 7th May, 2025

L.Rama, SPS

ITA No.355/Hyd/2017
Good Health Agro Tech Pvt.Ltd. 

Copy to:

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2	M/s Good Health Agro Tech Pvt. Ltd., 1-8-663, Azamabad Industrial Area, Azamabad, Hyderabad
3	The Pr.Commissioner of Income Tax, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order