



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 4<sup>TH</sup> DAY OF JULY, 2023**

**PRESENT**

**THE HON'BLE MR JUSTICE P.S.DINESH KUMAR**

**AND**

**THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA**

**INCOME TAX APPEAL NO.85 OF 2020**

**BETWEEN:**

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX  
1ST FLOOR, AAYAKAR BHAVAN,  
NO.21/16, RESIDENCY ROAD,  
NAZARBAD,  
MYSORE-560032.

2. ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE-1(1), ROOM NO.113,  
1ST FLOOR, AAYAKAR BHAVAN,  
NO.21/16, RESIDENCY ROAD,  
NAZARBAD,  
MYSORE-560032.

...APPELLANTS

(BY SHRI. E.I. SANMATHI, ADVOCATE)

**AND:**

1. M/s. KHYATHI STEEL INDUSTRIES PVT. LTD.,  
D-33, 4<sup>TH</sup> MAIN,  
V.V. MOHALLA  
MYSORE-570002.

...RESPONDENT

(BY SHRI. A. SHANKAR, SR. ADVOCATE  
FOR SHRI M. LAVA, ADVOCATE)





THIS INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 07/02/2020 PASSED IN ITA NO.3258/BANG/2018, FOR THE ASSESSMENT YEAR 2012-2013 PRAYING TO 1) FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS FRAMED ABOVE AND ALLOW THE APPEAL BY DECIDING THE SUBSTANTIAL QUESTIONS OF LAW IN FAVOR OF THE APPELLANTS; 2) SET ASIDE THE ORDER DATED 07/02/2020 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, A BENCH, BENGALURU IN ITA NO. 3258/BANG/2018 FOR ASSESSMENT YEAR 2012-2013; AND ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, **P.S. DINESH KUMAR J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

This appeal by the Revenue has been admitted to consider the following questions of law recorded in the Order dated 12<sup>th</sup> October, 2020:

- "1. *Whether, in the facts of the case, the impugned Order of the Tribunal is perverse in ignoring the relevant material evidence brought out in the Assessment Order and the Order of Commissioner (Appeals) to the effect that the investor companies have opened the bank accounts in particular bank for a brief period to carry out the transactions?*
  
2. *Whether, in the facts of the case, the ITAT is correct in holding that these investors are having creditworthiness even though their total income for these years is very meagre and no evidence is available to prove their*



*capacity to make the said investment thereby leading to perversity?*

3. *Whether, under the facts and circumstances of the case, the onus cast on the assessee/respondent under proviso to section 68 of the Income Tax Act is discharged by the assessee?"*

2. After hearing Shri E.I. Sanmathi, learned standing Counsel for Revenue and learned Senior Advocate Shri A. Shankar, for the assessee, in our opinion, only the following question arises for consideration in this appeal and with the consent of learned Advocates for the parties, we have framed the following question:

"Whether the sums found credited in the assessee's books for the previous years, the assessee had offered explanation; and if so, whether the order passed by ITAT requires interference?"

3. Briefly stated, the facts of the case are that, for Assessment Year 2012-2013, the assessee filed return of income showing a profit of Rs.5,00,92,859/-. The return was processed under Section 143(1) of the Income Tax Act, 1961 (for short hereinafter referred to as "Act"). Later it was



selected for scrutiny and notice under Section 143(2) of Act was issued to the assessee. In response, the assessee appeared and explained the return. The AO<sup>1</sup> has noted that nineteen companies had invested monies with the assessee Company along with their respective share application totalling to Rs.8,64,30,300/-. The AO issued notices to the said nineteen Companies directing them to appear before the ADIT<sup>2</sup>, Kolkata. The Companies appeared through their representatives and filed their replies. On consideration of the said replies, the AO recorded his finding at paragraph 3.7 of the order and held that the share application money had remained unexplained. Accordingly, he added back the aforementioned sum in the hands of the assessee. On appeal by the assessee, the CIT(A)<sup>3</sup> enhanced the liability by Rs.35,21,000/-. On further appeal, the Income Tax Appellate Tribunal has allowed assessee's appeal and deleted the additions made by the AO and the CIT(A). Feeling aggrieved, Revenue is before this Court.

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<sup>1</sup> Assessing Officer

<sup>2</sup> Assistant Director Income Tax (Investigation), Kolkata

<sup>3</sup> Commissioner of Income Tax (Appeals)



4. Shri E.I. Sanmathi, for the Revenue urged following grounds:

- The ITAT<sup>4</sup> has deleted the additions without calling for a remand report from the AO;
- the ITAT has not given fair opportunity to the AO to explain the additions;
- the nineteen Companies which have paid money to the Assessee company, had shown a very meagre income or loss in the previous year relevant financial year;
- the investor Companies are 'shell' companies. Therefore, the addition made by the AO and further additions made by the CIT(A) are in accordance with law.

5. In support of his contentions, he placed reliance on the judgment of the Hon'ble Apex Court in the case of *Principal*

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<sup>4</sup> Income Tax Appellate Tribunal, 'A' Bench, Bangalore



*Commissioner of Income Tax (Central) v. NRA Iron and Steel Private Limited*<sup>5</sup>.

6. In reply Shri A. Shankar, learned Senior Advocate submitted that the AO had called upon the nineteen Companies in question to appear before the ADIT, Kolkata. In compliance with AO's instructions, the representatives of the respective companies appeared before the ADIT and submitted their papers. The ADIT sent his report to the AO. The copies of the papers filed by the respective Companies before the Income Tax authorities were made over by the Department to the assessee. The said papers have been filed by the assessee before the CIT(A).

7. According to Shri A. Shankar, the ITAT has considered all nineteen investments independently and recorded its opinion from paragraph 6 onwards in the impugned order. Making particular reference to the nineteenth investor, Shri A. Shankar, submitted that the Directors of the said Company and the Directors of the Assessee are one and the same. In substance, Shri Shankar's argument is that in obedience to AO's directions,

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<sup>5</sup> 412 ITR 161 (SC) paragraph 3.9



all nineteen Companies have submitted their papers before ADIT. The Revenue had all the material before it to call for further information, if any, required and to take action against the investors and in case of the nineteenth Investor, the Department has taken action and added income in the hands of that company.

8. Placing reliance on the judgment in *Commissioner of Income Tax v. Gagandeep Infrastructure Private Limited (Bom)*<sup>6</sup> he contended that the Bombay High Court has placed reliance on *Commissioner Income Tax v. Lovely Exports Private Limited* and held that the Income Tax Officer could reopen the assessment of such shareholders. In reply to this submission Shri Sanmathi, submitted that in the case of *Gagandeep Infrastructure* (supra), the matter has been remanded by the Apex Court to the AO; therefore, it is not applicable to the facts of this case.

9. We have carefully considered the rival contentions and perused the records.

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<sup>6</sup> 2017 394 ITR 680 (BOM),



10. Undisputed facts of the case are, nineteen Companies have paid money to the assessee Company along with their share applications. According to the AO, the said Companies are 'shell' companies and they did not have the required financial strength to invest money in the immediate previous relevant financial year. On this premise, the AO issued notices to the said Companies calling upon them to appear before the ADIT, Kolkata. After obtaining the report from the said authority, the AO has added Rs.8,64,30,300/- as undisclosed income in the hands of the assessee. The CIT(A), has increased the tax liability by Rs.35,21,000/-. The ITAT has deleted the additions made by the two authorities. It has recorded its reasons from paragraph 6 onwards in the impugned order. A careful perusal of the ITAT order shows that it has considered all nineteen investments individually. It has noticed that the replies given by the Companies were available in the paper books filed before the Tribunal. It has also noticed that the copies of the bank statement, income tax returns along with audited balance sheets, audited reports, etc., were also part of the records. After doing such exercise in respect of nineteen companies, only with regard the nineteenth





Company (M/s. Matajawala Investment and Infrastructure Private Limited) the ITAT has noted that the Directors of that Company were the Directors of the Assessee Company and the additions were made in the assessment of M/s. Matajawala Investment and Infrastructure Private Limited as the said Company did not have any income for Assessment Year 2011-2012 and 2012-2013. It is further noticed that once addition is made in the hands of the investor Company, addition cannot be again made in the hands of the investee Company.

11. The undisputed facts narrated hereinabove clearly show that the Revenue has issued notices to all nineteen companies. The Companies have appeared before the ADIT and submitted their papers and in the case of Matajawala Infrastructure, addition has been made by the Revenue.

12. In view of the submission made by Shri Sanmathi, with regard to *Gagandeep Infrastructure* (supra), we have perused the Order of the Apex Court in *Lovely Exports Private Ltd.*<sup>7</sup>, wherein it is held as follows:

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<sup>7</sup> 2008 216 CTR 195 (SC)



*"2. Can the amount of share money be regarded as undisclosed income under Section 68 of IT Act, 1961?. We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."*

13. In the case on hand, the identity of the investors have been established. They have appeared before the authority and submitted the records showing the source of income. In the facts of this case, additions made by the Revenue are not sustainable.

14. Insofar as the authority relied upon by Shri. Sanmathi in *NRA Iron and Steel* is concerned, in our opinion, the ITAT has rightly held that the facts in the case of *NRA Iron and Steel* are not applicable to the facts in this case. In the said authority, the investing companies had not explained the valuation and in this case, the investors have filed all the details.



15. Hence, we find no infirmity in the order passed by the ITAT. In the result, we pass the following:

**ORDER**

- i) Appeal is ***dismissed***;
- ii) Question of law, is answered in favour of the Assessee and against the Revenue.

No costs.

**Sd/-**  
**JUDGE**

**Sd/-**  
**JUDGE**