

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Anil Chaturvedi, Accountant Member
and Shri S. S. Godara, Judicial Member**

**ITA No. 1323/Ahd/2014
Assessment Year 2005-06**

Harmony Yarns Pvt. Ltd, 2157, Raghukul Textile Market, Ring Road, Surat PAN: AAACH5895F (Appellant)	Vs	Commissioner of Income Tax-1, Surat (Respondent)
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**Revenue by: Smt. Vasundhara Upmanyu, Sr. D.R.
Assessee by: Shri Rasesh Shah, A.R.**

Date of hearing : 16-09-2015
Date of pronouncement : 30-09-2015

आदेश/ORDER

PER : S. S. GODARA, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2005-06, arises from order of the CIT-I, Surat dated 24-03-2014 in proceedings under section 263 of the Income Tax Act, 1961; in short the Act.

2. Facts of the case are in a narrow compass. The assessee-company is engaged in textile business. It filed its return on 20-09-2005 showing nil income. The same was processed. The Assessing Officer completed a regular assessment on 28-12-2007 inter alia disallowing depreciation claim to the tune of Rs. 85,005/- and added work in progress on reasonable basis of Rs 73,766/-. The Assessee does not seem to have filed any appeal. Thereafter, the Assessing Officer formed reasons to believe that its income liable to be assessed had escaped assessment. He issued section 148 notice dated 29-03-2011 as under:-

“Reasons recorded, for reopening the assessment:

The return of income was filed on 20.09.2005 declaring the income of Rs. NIL/. Order u/s!43(3) of the Act was completed on 28.12.2007 making an addition of Rs.85,005/- on account of excess depreciation and Rs.73,766/- on account of valuation of work in progress.

A search and seizure action u/s. 132 of the Income tax act was conducted in case of M/s. Mahasagar Securities Private Limited by Investigation wing of Income-tax department, Mumbai, on 25-11-2009. The search was conducted on the basis of information received in an FIU alert from New Delhi regarding suspicious transactions taking place in the bank accounts of this company and its related companies. The directors of these companies were one Mukesh M.Choksi and Jayesh K-Sampat. During the course of the search it was revealed that the Mahasagar Securities private Limited and its related group of 34 odd companies (the prominent ones being Alliance Intermediaries & Network Private Limited, M/s. Mihir Agencies Private Limited, M/s. Goldstar Finvest Private Limited etc. all run by Mukesh Choksi) were engaged in fraudulent bilting activities and in the business of providing Bogus speculation profit/loss, short term/long term capital gain/loss, Share application money, commodities profit/loss on commodity trading (Through MCX) and had been continuing this business for Many years.

In the list of clients who have taken accommodation entries from these companies, the name of this assessee i.e. Harmony Yarn pvt. Ltd. is also appearing. During the course the proceedings the statement of Shri Mukesh Choksi, main person behind this scam, was also recorded on 25-11-2009. In his statement recorded on Oath he has admitted that these transactions are bogus.

From the details submitted by the Investigation wing it is seen that the assessee has obtained the shares application money of Rs. 11,00,000/- from Mihir agency pvt. Ltd. one of company run by Mukesh chokshi, during the financial year 2004-05 (A.Y. 2005-06). In view of this new feat, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act

The approval of the CJT-I, Surat is therefore sought for issue of notice under the provisions of section 151(2) of the Act.”

3. The assessee reiterated its original return filed in its letter dated 27-11-2007. The Assessing Officer took up re-assessment and issued notices u/s. 143(2) of the Act dated 16-05-2011 and the one u/s. 142(1) dated 25-05-2011 seeking source and supportive evidence of share application money and share premium received from various entities and credited in the respective accounts. The assessee filed its reply dated 08-06-2011 placing on record form no. 2 qua allotment of shares, complete details of shares allotted during the year along with premium received and acknowledgment memorandum, balance sheet and relevant bank statements. The Assessing Officer framed reassessment on 29-08-2011 adding a sum of Rs. 26 lacs i.e. Rs. 11 lacs of share application money in case of M/s. Mihir Agency Pvt. Ltd and Rs. 15 lacs relating to M/s. Buniad

Chemical Pvt. Ltd as bogus and unreliable. He invoked section 68 of the Act and added gross sums of Rs. 26 lacs as unexplained cash credits. The assessee preferred appeal on 12-09-2011. The CIT(A) dismissed it on 26-06-2012. The assessee submits that its appeal against the CIT(A)'s order is pending before the tribunal.

4. It is to be seen post facto CIT(A)'s order, the CIT formed an opinion that above stated reassessment framed in assessee's case was erroneous causing prejudice to the interest of Revenue as under:-

"1. Please refer to the assessment order for A.Y. 2005-06 passed u/s. 143(3) r.w.s. 147 of the IT Act dated 29.08.2011 by the ITO, Ward-I(2), Surat. In this case, the assessment was reopened on the basis of information that the assessee was a beneficiary of fraudulent tilling entry to the tune of Rs. 11 lakh from M/s. Mahasagar Securities Pvt. Ltd. and its group companies run by Shri Mukesh M. Choksi, Director of the companies. During the course of re-assessment proceedings, the A.O. had found, another company also indulging in-billing entry and total addition of Rs. 26 lakh were made as under:

1) Mihir Agency Pvt. Ltd.	Rs. 11,00,000/-
2) Buniyad Chemicals Pvt. Ltd.	Rs. 15,00,000/-

Total	Rs. 26,00,000/-

2. However, from the examination of records it is found that no proper verification appears to have been made in respect of 11 other, parties from whom the assessee company had obtained share application money and share premium to the tune of Rs.56 lakh as given hereunder:

Sr. No.	Date of Allotment	Name of Party	Amount of Shares	Amount of
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				premium
1	28.02.2005	M/s. Venus Dealing Pvt. Ltd.	10,00,000	
2	28.02.2005	M/s. Kashmiral Mercantile Pvt. Ltd.	5,00,000	
3	28.02.2005	M/s. Calrion Merchants Pvt. Ltd.	5,00,000	
4	28.02.2005	M/s. Sati Traxim Pvt. Ltd	5,00,000	
5	15.03.2005	M/s. Akkal Paper Mills Pvt. Ltd.	60,000	2,40,000
6	15.03.2005	M/s. Felicity Finance & Leasing Pvt. Ltd,	60,000	2,40,000
7	15.03.2005	M/s. J.M.D. Mercantiles Pvt. Ltd.	1,00,000	4,00,000
8	15.03.2005	M/s. Sunflower Vinimay Pvt. Ltd	1,00,000	4,00,000
9	15.03.2005	M/s. Hiteshwari Marketing Pvt. Ltd.	1,00,000	4,00,000
10	15.03.2005	M/s. Sugam Commercial Pvt. Ltd	1,00,000	4,00,000
11	15.03.2005	M/s. Bhagya Laxmi Mercantile Pvt. Ltd.	1,00,000	4,00,000
			3,1,20,000	24,80,000

3. On going through the records, it is found that the assessee had failed to establish the nature, and source of credit recorded in its books of accounts in respect of these 11 parties.

4. It is further found that the assessee had made hi-seas purchases of Rs. 9,38,955/- and sales of Rs. 9,56,081/-. No details are called for and no verification appears to have been carried put on-this issue.

5. Further, no verification appears, to have been made in respect of purchase and sale of vegetables and agricultural products of Rs. 41,62,437/- and Rs. 73,51,474/-, respectively.

6. Therefore the order under reference appears to be erroneous and therefore, prejudicial to the interest of revenue within the meaning of section 263 of the I.T. Act, 1961.

7. You are therefore requested to show cause, why the assessment framed by the ITO, Wd -1(2), Surat dated 29.08.2011 should not be revised u/s. 263 of the I.T. Act. For this purpose, hearing, in your case is fixed on 19-02.2014 at 12.30 P.M. If in case, you do not wish to avail the opportunity of being heard in person or through your authorized representative, you may, if so, desired, make your submission in writing, on or before the date of hearing, which will be duly taken note of before passing any order.”

5. The assessee filed its reply pleading therein that the Assessing Officer had made all verifications before framing reassessment sought to be revised in proceedings u/s. 263 of the Act. The CIT has declined the same in the order under challenge reading as follows:

“5. The contention of the assessee is that complete details with respect to all the share applicants were submitted even in re-assessment proceedings and were verified by the A.O. For this the assessee relied on the order of the A.O, and stated that since all the required details, were submitted and accepted by the A.O, onus in respect of every share applicant with regard to the genuineness and creditworthiness had been discharged.

5.1 It would be pertinent to-mention the fact leading¹ to re-assessment proceedings and the additions. A search and seizure action U/s.132 of the Act was conducted in the case of M/s. Mahasagar Securities Pvt. Ltd., by the Investigation Wing of Mumbai on 25.11.2009. The search was conducted on the basis of information received in an FIU alert from New Delhi regarding suspicious transactions taking place, in the bank accounts of this company and its related companies. The Directors of these companies were one Mukesh M Choksi and Jayesh K Sampat.

During the course of search it was revealed that M/s. Mahasagar Securities Pvt. Ltd. and its related group of 34 odd companies were engaged in the business of fraudulent billing activities and providing bogus speculation profit/loss, short term/long term capital gain/loss, share application money, profit/loss on commodity trading which activities had been continuing, for many years. In tie statement recorded on oath on 25.11.2009, Shri Mukesh M Choksi had admitted these transactions to be bogus. The name of the assessee i.e. M/s. Harmony Yarn Pvt. Ltd was appearing in the list of parties who have taken accommodation entries from these companies.

5.2 On going through the-Assessment Order, it is noticed that the AO made additions of Rs.26,00,000/- u/s. 68 of the Act by treating only the share application money received from the following companies of Shri Mukesh M Choksi to be not genuine-

1) Mihir Agency Pvt. Ltd.	Rs. 11,00,000/-
2) Buniyad Chemicals Pvt. Ltd.	Rs. 15,00,000/-

Total	Rs. 26,00,000/-

5.3. However, in the same accounting year, the assessee has shown to have received share application money from the following parties also:-

Sr. No.	Date of allotment	Name of party	Amount of shares	Amount of premium
1.	28.02.05	M/s. Venus Dealing Pvt. Ltd.	10,00,000	
2.	28.02.05	M/s. Kashmiral Mercantile. Pvt. Ltd.	5,00,000	
3.	28.02.05	M/s. Clarion Merchants Pvt. Ltd.	5,00,000	
4.	28.02.05	M/s. SatiTraxim Pvt. Ltd.	5,00,000	

5.	15.03.05	M/s. Akkal Paper Mills Pvt. Ltd.	60,000	2,40,000/-
6.	15.03.05	M/s. Felicity Finance & Leasing Pvt. Ltd.	60,000	2,40,000
7.	15.03.05	M/s. J.M.D. Mercantiles Pvt. Ltd.	1,00,000	4,00,000
8.	15.03.05	M/s. Sunflower Vinimay Pvt. Ltd.	1,00,000	4,00,000
9.	15.03.05	M/s. Hiteshwari Marketing Pvt. Ltd.	1,00,000	4,00,000
10.	15.03.05	M/s. Sugam Commercial Pvt. Ltd.	1,00,000	4,00,000
11.	15.03.05	M/s. Bhagya Laxmi Mercantile Pvt. Ltd.	1,00,000	4,00,000
			31,20,000	24,80,000

5.4 The AO had made addition of Rs.26,00,000/- on the ground that the assessee had failed, to establish nature and source of credit recorded in its books of account in respect of M/s. Mihir Agency Pvt. Ltd. and M/s Buniyad Chemicals Pvt. Ltd. in the form of share application money and share premium. However, while finalizing the assessment order, the AO has not verified the genuineness of share application/share premium and the creditworthiness of the above mentioned 11 parties/share applicants in the light of the new evidence that the assessee was taking bogus share capital entries from various concerns.

5.5. Further, on going through the details filed by the assessee the following facts emerge, which the A.O should have investigated' in

the light of fresh evidences that the share capital entries were not genuine but the AO did not independently verify the same.

Sr. No.	Name of party	Amount	Remarks
1	M/s. Venus Dealing Pvt. Ltd	Rs. 10,00,00,0/-	The company has filed its return showing income of Rs.28,440/- only. The shares of the company is taken by one S. Das and Mrinal Chakraborty by 100 shares each. The company has shown interest income only and sources of fund as share capital and loans.
2	Kashmikal Mercantile Pvt. Ltd	Rs. 5,00,000/-	The company has filed its return showing income of Rs.784/- only. The shares of the company is taken by one Ramesh Kedia and Jatan Lai Bhansali by 100 shares each. No other details are filed in respect, of this party.
3.	M/s. Clarion	Rs. 5,00,000/-	The company

	<i>Merchants Pvt. Ltd</i>		<i>has filed its return - showing income of Rs.26,330/- only. The shares of the company is taken by one S. Das and Mrinal Chakraborty by 100 shares each. The company has shown interest income only and sources of fund as share capital and loans.</i>
4	<i>M/s. Sati Traxim Pvt. Ltd</i>	<i>Rs. 5,00,00/-</i>	<i>The company has filed its return showing loss of Rs. 10,29,605/-. The shares of the company is taken by 3 parties viz. Rajkumar Goehka, Girdharilal Parsarampuria and Jitendra Kumar Agarwal by 100 shares each.</i>
5.	<i>M/s. Akkal Paper Mills Pvt. Ltd.</i>	<i>Rs.3,00,000/-</i>	<i>The company has filed its return showing</i>

			<p>loss of Rs.6,72,167/-.</p> <p>The shares of the company is taken by one Raghbir Prasad Dudhwawala and Shankar Prasad Dudhwawala by 10 shares each.</p> <p>M/s. J.M.D. Mercantiles Pvt. Ltd.</p>
6.	M/s. Felicity finance & Leasing Pvt. Ltd.	Rs.3,00,000/-	<p>The company has filed its return showing loss of Rs.2,30,386/-</p> <p>The shares of the company is taken by one Pradip Kumar Kundu and Nikhil Jana by 10 shares each.</p>
7.	M/s J.M. D. Mercantiles Pvt. Ltd	Rs.5,00,000/-	<p>The company has filed its return showing loss of Rs. 6,00,341/-. The shares of the company is taken by one Chandra Prakash Sharma and Chanda Sharma by 100 shares each</p>

8.	M/s. Sunflower Vinimay Pvt. Ltd.	Rs.5,00,000/-	Copy of filing the return is not provided. The shares of the Company is taken by one Shakuntala Choudhary and Rakeshkumar Singhania by 10 shares each.
9.	M/s. Hiteshwari Marketing Pvt. Ltd.	Rs.5,00,000/-	The company has filed its return showing loss of Rs. 9,91,344/-. The shares of the company is taken by one Mahesh Kedia and Majit Rathi by 100 shares each
10	M/s. Sugam Commercial Pvt. Ltd	Rs.5,00,000/-	The company has filed its return showing loss of Rs.7,43,460/-. The shares of the company is taken by one Sitaram Goyal and Subhash Chandra Goyal by 100 shares each.
11	M/s. Bhagya Laxmi Mercantile Pvt.	Rs.5,00,000/-	The company has filed its return showing

	Ltd.		loss of Rs.6,00,341/-. The shares of the company is taken by one Rajesh Kumar Odaka and Shanti Kr. Ganeriwal by 10 shares each.
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5.6 On careful analysis of the above chart, it can be seen that there are many common directors in the above mentioned share applicant companies. It is apparent that all of the above companies did not have enough money of their own to apply for shares at a premium, These share applications therefore required further investigations to be carried out by the A.O., especially in the light of the statement of entry provider, Shri Mukesh Choksi, before deciding on their genuineness.

5.7. M/s Pankaj Enka Pvt Ltd. assessed with 'ITO Ward I(4), Surat had also taken accommodation entries, in the garb of share applications, from the companies mentioned in para 5.5. During the course of assessment proceedings of M/s Pankaj Enka Pvt Ltd, it was noticed by the A.O that M/s Pankaj Enka Pvt Ltd had taken share application money from the following parties in addition to share application money received from M/s Buniyad Chemicals Pvt. Ltd, Mumbai and M/s Mihir Agencies Pvt Ltd:-

Sr. no	Name of the party.	Amount
1	M/s. Hiteshwari Marketing Pvt. Ltd. Kolkata	5,00,000
2	M/s. J.M,D.,Mercantiles Pvt. Ltd., Kolkata	5,00,000
3	M/s. Sunflower Vinimay Pvt. Ltd. Kolkata	5,00,000
4	M/s. Sugam Commercial Pvt. Ltd.	5,00,000

	Kolkata	
5	M/s Edmond Commercial Pvt Ltd, Kolkata	5,00,000
6	M/s. Bhagya Laimi Mercantile Pvt. Ltd. Kolkata	5,00,000

It can be seen from the above table that 5 of the 6 parties are the same parties who have supposedly given share application money to the assessee, i.e. M/s. Harmony Yarn Pvt, Ltd and whose names are appearing in table given in paragraph 5.5.

5.7.1. During the course of assessment proceedings in the case of M/s Pankaj Enka Pvt Ltd, the identity, genuineness and credit worthiness of the share applicants were examined in detail by the A.O. It is, also noticed from the assessment folder of M/s Pakaj' Enka Pvt Ltd, that the; A.O has issued notice U/s' 133(6) in all these case, and on verification of the reply submitted by them it was noticed by the A.O that all the parties had given similar reply, which were received on the same day and that was also after reminders were sent to them. It is interesting to note that these persons have different addresses in Mumbai and Kolkata but have given similar stereo type reply and all the replies had been received by the office of the A.O on the same day. Further, most of these parties have negative or Nil income. Some of these did not have sufficient cash and bank balance during the current year as well as in the preceding year. In view of the above, show cause notice was issued by the A.O to M/s Pankaj Enka Pvt Ltd, which is reproduced as under:-

"In response to notice u/s. 133(6.) the parties mentioned at Sr. No 1,2,3,4,6,10,12,and 14 of above mentioned table has submitted their reply. On verification of the reply submitted, it is notice that all the reply received after reminder dated 03.04.2012, and also all the reply received at a time on 16:04.2012. All the party has given same reply. It is pertinent to note here that all the parties situated at different places in Mumbai and Kolkatta and how they have given same drafted reply and also on the same day. Further, all the parties

who claimed to have applied for share has negative income as per their return of income. They have not proved their creditworthiness and genuineness.

2.10 Further, in response to notice u/s. 133(6) dated 12.03.2012 and reminder dated 03.04.2012 following parties has not replied till date.

1. M/s. Ednumd Commercial Pvt Ltd.
2. M/s. Study Sales Pvt Ltd.
3. M/s Dhaval Marketing Pvt Ltd.
4. M/s. Emerald System Engg. Ltd.

2.11 Since the above mentioned parties have not given any reply in response to notice u/s. 133 (6) and reminder dated 03.04.2012 which are already served upon them.

2.12 On this basis, you are requested to go through the list and arrange to supply the Information as required from these parties along with their confirmation(s). In absence, please show-cause as if why an adverse view may not be taken and 'necessary action as per applicable provisions of the act may not be taken and the amount of share application in respect to above mentioned 12 companies of Rs. 85,00,000/- (1,0600,00- 21,00,00) for which no satisfactorily reply as well as creditworthiness, genuineness and identity proved by all the 12 parties should not be treated as unaccounted income within meaning of section 68 of the I.T. Act."

5.7.2. There was no reply to the show cause and the share application money was held as unexplained as to its nature and source and addition was made in the case of M/s. Pankaj Enka Pvt. Ltd. is an associate concern of the assessee, M/s. Harmony Yarn Pvt. Ltd. 5 of the transactions of share application held to be non genuine in the ease of M/s Pankaj Enka Pvt. Ltd are with persons who also appear in the list of 41 persons applying for shares of M/s. Harmony Yarn Pvt. Ltd (the Assessee).

6. In view of the facts narrated above and in the light of fresh evidences, it was the duty of the A.O. to investigate the genuineness of the share application transactions of the assessee with the 11 persons mentioned supra and not to accept them on the basis of the details provided by the assessee which were same as in the original assessment. Not making any independent inquiry into these transactions in the light of the fresh evidences and merely accepting the genuineness of the transactions on the basis of details already

on record in the original assessment, makes the assessment order erroneous in as much as it is prejudicial to the interest of Revenue. It is wrong on the part of the assessee to say that the documents were verified in respect of these 11 parties and only then accepted by the AO in re-assessment proceedings. It is true that the details were submitted by the assessee but the A.O did not make any independently verification to establish the identity and credit worthiness of the share applicants and the genuineness of the share transaction. The assessment order dated 29.08.2011 completed u/s. 143(3) r.w.s. 147 is therefore set aside on this issue with a direction to the A.O. to make fresh assessment after examining all the relevant facts and after-carrying out necessary enquiries w.r.t. the real identity, and creditworthiness of the 11 share applicants and the genuineness of the share application transaction. The A.O. will provide reasonable opportunity of being heard to the assessee before making the assessment.”

6. We have heard both the parties and gone through the case file. Relevant facts stand narrated in the preceding paragraphs. The CIT's sole reason for invoking section 263 jurisdiction alleges lack of verification in respect of 11 share and premium applicants to the tune of Rs. 56 lacs. This has made him to restore the matter back to the Assessing authority for carrying out necessary inquiries with reference to identity and creditworthiness of 11 of these share applicants and genuineness of the share application transactions. We find from the case file that the Assessing Officer issued section 142(1) notice dated 25-05-2011 at page 40 of the paper book. The assessee placed on record necessary details. The CIT himself acknowledges the very fact. A perusal of the reassessment framed on 29-08-2011 states these facts. That being the case the question that arises for our consideration as to whether the present case can be treated as that of no inquiry by the Assessing Officer or not. In

view of the above said facts and circumstances and specific inquiry of the Assessing Officer and equally elaborate assessee's reply, we hold that this case does not fall in the above stated category. We notice from the case file that the assessee's details forming part of discussion in reassessment led to addition of Rs. 26 lacs being made on account of bogus share application and premium. We observe in these facts that the Assessing Officer examined this issue and confirmed this addition of Rs. 26 lacs only. The hon'ble Bombay high court in case of CIT vs. Garbiel India (1993) 71 Taxman 585 (Bom) deals with a similar situation wherein the CIT revised an assessment on the ground that the same did not contain discussion in regard to a deduction claim which alleging non application of mind. Their lordship observe that the Assessing Officer had made inquiries in view of all necessary explanation. It is held that the Assessing Officer had allowed the claim on being satisfied with assessee's version and the same cannot be held erroneous merely because the assessment sought to be revised did not contain an elaborate discussion. The hon'ble Delhi high court in case of (2010) 189 Taxman 436 (Del) CIT vs. Sunbeam Auto Ltd has also rejected Revenue's arguments in identical facts and holds that the Assessing Officer in assessment order is not required to give detailed reasons in respect of each and every item. Their lordship draw a fine distinction between lack of inquiry; and inadequate inquiry and hold that if there was an inquiry even inadequate that would not by itself give an occasion to the Commissioner to invoke jurisdiction u/s. 263 of the Act. We reiterate the facts of the instant case making it amply clear that the present is

not a case of lack of inquiry. The CIT is of the opinion that no proper verification appears to have been made. We accept assessee's arguments accordingly and reject those of the Revenue's that the Id. CIT has merely directed the Assessing Officer to make an elaborate inquiry. Our these findings render the assessee's arguments propounding merger theory in view of the CIT(A)'s order (supra) and merits to be academic. The CIT's order under challenge is accordingly reversed.

7. This assessee's appeal is allowed.

Order pronounced in the open court on 30-09-2015

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Ahmedabad : Dated 30/09/2015
ak

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

आदेश का प्रतिलिपि अर्पण / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ अधिकरण,
अहमदाबाद