

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.438 OF 2017

M/s. Royal Rich Developers Pvt. Ltd. ... Appellant
versus
Principal Commissioner of Income Tax-7 ... Respondent
WITH
INCOME TAX APPEAL NO.439 OF 2017

M/s. Royal Rich Developers Pvt. Ltd. ... Appellant
versus
Principal Commissioner of Income Tax-7 ... Respondent

Mr. Riyaz S. Padvekar with Mr. Tanzil R. Padvekar I/by Mr. Mandar Vaidya, for Appellants.

Mr. Ashok Kotangale with Ms. D.M.Kapadia, Mr. Prabhakar Ransur, for Respondent.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 22nd JULY, 2019

P.C.:

1. The facts being common, we may record those arising in Income Tax Appeal No.438 of 2017.

2. These Appeals are filed by the assessee to challenge the judgment of the Income Tax Appellate Tribunal (“the Tribunal” for short). The following questions are presented for our consideration :

“(a) Whether on the facts and in the circumstances of the case and in law the Hon’ble Tribunal was right in sustaining the addition u/s. 68 of the Act, in the

hands of the Appellant, even though the Appellant was incorporated on 17th March, 2006 i.e. at the fag end of the year immediately preceding the relevant financial year and undisputedly, no activity was carried out by the Appellant.

(b) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was right in holding that the proviso to section 68 inserted by Finance Act, 2012, effective A.Y. 2013-14 is retrospective in operation and was applicable to the facts of the Appellant.

(c) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was right in holding that the Appellant had not discharged the onus cast upon him by section 68, even though the Appellant had given all the relevant details of the shareholders, including their confirmations and PAN no.

(d) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal misdirected itself in sustaining the addition without entering upon an inquiry as to whether the Appellant was capable of earning such income.

(e) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal was right in relying on a statement made u/s. 132(4) of the Act, in search proceedings of one of the directors and sustaining the addition contrary to admission/affirmation made under that statement.”

3. Though the multiple questions have been presented, the issue is single namely of the correctness of the additions made in the hands of the Appellant-

Assessee under Section 68 of the Income Tax Act (“the Act” for short).

4. The Appellant-Assessee is a Private Limited Company. The Assessee had filed the return of income for the assessment year 2007-08. The residential premises of one of the directors of the assessee company one Mr. Vinod Faria was subjected to search action under Section 132 of the Act on 30th May, 2018. Simultaneously, the return of the assessee was taken in scrutiny. It was noticed that during the period relevant to the assessment year in question, the assessee had issued 9,37,500 equity shares at a face value of Rs.10 with a premium of Rs.30 per share and thus total collection of Rs.3.75 Crores was made by way of share application money. The assessing officer examined the source of his receipt and held that the said represented nothing but the assessee’s unexplained cash credit. Matching additions were made under Section 68 of the Act. The assessee carried the matter in Appeal. The Commissioner of Income Tax called for detailed demand report. On the basis of materials on record and after considering the remand report, he confirmed the additions. Upon which the assessee carried the matter before the Tribunal. The Tribunal by a detailed judgment, dismissed the assessee’s appeal. Thereupon, the present Appeal has been filed.

5. We have heard the learned Counsel for the parties and perused the documents on record. In our opinion, the entire issue is based on appreciation of evidence and record and does not give rise to any substantial question of law. We

notice that during the original assessment as well as the remand proceedings, the assessee was given ample opportunities to produce the share investors which the assessee failed to do. The Assessing Officer thereupon issued the summons to the share purchasers calling upon them to supply necessary details and documents. Only some of them have responded to such notice. Even they did not or could not supply necessary details and documents to establish their genuine investment in the assessee company. The Assessing Officer recorded that there was no reason for high premium of Rs.30 per share being paid by the investors. The assessee company had carried out no business during the entire period, except for collection of share application money. The responding investors also could not explain the source of their investments. It was noticed that before issuance of payment by them, deposits were made in their bank accounts and immediately the investments in purchase of the assessee's shares were made. The investors could not provide photocopies of the share certificate issued by the Company and did not submit the share numbers which were allotted to them.

6. During the search action against the Directors of the Company, the statement of Mr. Faria was recorded which showed that he was the main person actively involved in the Company. He admitted that the entire investment was bogus. Blank receipts were obtained from the share holders. Their signatures were obtained on blank transfer forms. There was no evidence to show that such share certificates

were issued. He also admitted that the share subscription is nothing but the book entries obtained from various persons against cash payments. Such a statement was never retracted.

7. In view of such evidence, when two Revenue authorities and the Tribunal concurrently came to the conclusion that the assessee failed to discharge the initial burden envisaged under Section 68 of the Act and that therefore, it is a fit case where the additions should be confirmed, we do not find any perversity in such findings. No question of law made out and the Appeals are dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)