

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER  
AND SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.3004/Del/2017 for A.Y. 2012-13

M/s. Aarya Organic Foods & Ayurvedic Industries Pvt. Ltd., 504, Pratap Chamber-2, Saraswati Marg, Karol Bagh, New Delhi - 110005  PAN- AAHCA 9363 J <b>(APPELLANT)</b>	Vs.	ITO Ward - 1(1), New Delhi       <b>(RESPONDENT)</b>
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Assessee by	Shri Ved Jain, Adv.
Revenue by	Smt. Alka Gautam, Sr. DR

Date of hearing:	27/01/2021
Date of Pronouncement:	05/02/2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 09.03.2017 of the Commissioner of Income Tax (A)-I, New Delhi relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a company who electronically filed its return of income for A.Y. 2012-13 on 30.09.2012 declaring income of Rs.3220/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) vide order dated 31.03.2015 and the total income was determined at Rs.93,55,220/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 09.03.2017 in Appeal No.222/2015-16 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

1. *“On the facts and circumstances of the case, the order passed by learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition to the extent of Rs.62,82,500/- made by AO on account of share capital received by assessee, under Section 68 of the Act.*
3. *(i) On the fact and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition despite assessee bringing ample evidences on record to prove the identity and creditworthiness of the share applicants as well as the genuineness of transaction.*  
*(ii) That the addition has been confirmed without pointing any defect in the documents and evidences brought on record by the assessee.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition despite the shareholders themselves having confirmed the transaction to the Assessing Officer in reply to notice under section 133(6) issued to them.*
5. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

5. Before us, Ld. AR submitted that though the assessee has raised various grounds but the sole grievance is with respect to the addition to the extent of Rs.62,82,500/-.

6. During the course of assessment proceedings, AO noticed that assessee has enhanced share capital and share premium to the tune of Rs.57,52,800/- and Rs.2,30,07,200/- respectively. The assessee was asked to furnish necessary confirmations and explanation to which assessee *inter alia* submitted that during the year only Rs.93,52,000/- was increased in share capital and balance amount was pending share application money which were received in earlier year. AO issued notice u/s 133(6) to the parties on the addresses furnished by the assessee from whom the share capital was stated to have been received by the assessee and in response to which AO noticed that in some of the cases replies was received. AO noted that since the case was getting time barred on 31.03.2015 and in the absence of confirmations from all the parties he considered Rs.93,52,000/- as being unverifiable and accordingly made its addition u/s 68 of the Act.

7. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). The CIT(A) after considering the material on record, the remand report received from AO and assessee's submission to the remand report granted partial relief to the assessee. With respect to the parties wherein the action of the AO has been upheld, CIT(A) noted as under:

**“Sh. Sanjeevji:** *He has paid Rs.4,34,400/- as share application money and premium thereon. The amount has been paid by way of cash. Though he has got Permanent Account Number as AIJPK5734C, however, he has not filed return of income for AY 2012-13. In the remand proceedings, he has filed confirmation and copy of the landholding record which is not at all legible. It is also seen that Sh. Sanjeev has invested Rs. 18,15,600/- as share application money for which he has been allotted shares. He has claimed to have been received income from agricultural activities, however, no substantial evidence has been filed by the applicant in support of its claim, therefore, source of the investment is not established. Further, the amount has been received by way of cash by the appellant company. In view of the above facts, the identity, creditworthiness and genuineness of the transaction has not been established. Hence, the share application money received from Sh. Sanjeevji remains unexplained.*

**Smt. Suman Arya:** *The appellant company claimed to have received Rs.3,00,000/- as share application money from the Smt. Suman Arya / Suman Rana. However, in her confirmation filed before the Assessing Officer she has stated that she has invested Rs. 1,00,000/- in the shares of the appellant company and Rs.75,000/- has been paid by way of cheque on 28.04.2011 and same has been debited in the account of Smt. Sumar Arya / Sumar Rana. She has also stated that she has paid Rs.25,000/- which has been withdrawn from her account maintained with Oriental Bank of Commerce, Bawana. In support of the same, she has filed copy of her bank account wherein Rs,25,000/- has been withdrawn on 28.04.2011. She is working as a teacher with Education Department, Nerala Zone. In support of her employment she has filed Form No.16 issued by the Education Department wherein the total income has been*

shown at Rs.3,26,334/-. In view of these facts, the source of investment of Rs.1,00,000/- has explained however the appellant has shown Rs.3,00,000/- in the name of Suman Rana / Suman Arya, therefore, the balance amount of Rs.2,00,000/- is treated as unexplained investment.

**Sh. Jasbir Singh:** From Sh. Jasbir Singh, the appellant company has received share application money of Rs.5,00,000/- during the year. During the course of remand proceedings, he has filed confirmation and copy of the bank statement wherefrom the money has been given to the appellant company. The amount has been given by way of bank transfer. However, the applicant has not given any details of the source of the money paid to the appellant company, therefore, identity, creditworthiness and genuineness of the transaction has not been established.

**Sh. Ajay Singh:** He has claimed to have paid Rs.3,00,000/- in cash to the appellant company as share application money and premium thereon during the year. He has filed reply in response to notice u/s 133(6) whereby he has sent his confirmation and copy of the landholding documents. However, it is seen from the document that jamabandi is not in the name of Sh. Ajay Singh but same has been shown in the name of Sh. Pratap Singh his father. Hence, the source of the share application money, identity of the applicant and genuineness of the transaction has not been established.

**Sh. Hanumat Prasad Nautiyal:** The applicant claimed to have given share application money of Rs.10,07,000/- to the appellant company during the year in cash. He has stated that he has invested in the shares of the appellant company and source of the money is agriculture income. In support of his contention, the applicant has filed copy of jamabandi wherein the landholding has been shown in the name of the applicant. The land is situated in Uttarkashi. On going through the land records, it is also not specified by the appellant as how much agriculture income he is receiving every year. Sh. Hanumat Prasad Nautiyal has filed copy of the ration card to prove his identity, however, there is no photograph or document to support the same. Hence, the identity, creditworthiness and genuineness of the transaction is not established.

**Sunil Shastri:** He has claimed to have given share application money of Rs.3,00,000/- during the year to the appellant company in cash, in the remand proceedings, he has filed confirmation before Assessing Officer in response to notice u/s 133(6) of the I. T. Act stating that he has given share application money of Rs. 3,00,000/-. He has stated that he is receiving income from agricultural activities. Looking to the landholding of the applicant it is not possible to save this much money. Further, the applicant has not filed any identify proof in support of his identity, therefore, identity, creditworthiness and genuineness of the transaction is not established.

**Sh. Virender Arya:** The applicant claimed to have given share application money of Rs.10,99,000/- to the appellant company during the year in cash. He has stated that he has invested in the shares of the appellant company and source of the money is agriculture income. In support of his contention, the applicant has filed copy of jamabandi and land is situated at Badli, Bahadurgarh. On going through the land document, it is seen that land is in the name of applicant's wife. However, except the land holding records nothing has been filed to prove that appellant is receiving income from agriculture activities. In support of the identity, the appellant has filed copy of the driving license of Sh. Virender Arya which is placed on record. The applicant has not filed any proof to support that he is receiving agriculture income and how much agriculture income he is receiving. In view of these facts, the creditworthiness and genuineness of the transaction has not been established.

**Sh. Sulekh Arya:** The applicant claimed to have given share application money of Rs.86,150/- to the appellant company during the year in cash. During the course of remand proceedings, he has filed confirmation before the AO stating that he has invested Rs.86,150/- during the year and Rs.5,13,850/- in the earlier years. He has stated that he is a farmer and having agriculture land. He has filed copy of share certificate issued to him. There is no other document filed by the applicant. In view of these facts, the identity, creditworthiness and genuineness of the transaction has not been established.

**Sh. Suresh Arya:** The applicant claimed to have given share application money of Rs.3,00,000/- to the appellant company during the year in cash. The notice sent to him u/s 133(6) was received back un-served. However, he has sent the confirmation to

the AO alongwith copy of share certificate in his name during remand proceedings wherein he has stated that he has invested Rs.3,00,000/- during the year and Rs.3,00,000/- in the earlier years. He has also stated that he is receiving income agriculture and in support of his contention he has filed details of the landholding which is in the name of his father. Therefore, the identity, creditworthiness and genuineness of the transaction has not been established.

**Sh. Narendra Arya:** The appellant company has received Rs.10,56,000/- as share application money from the applicant through cash deposit. The share applicant has filed his reply dated 20.12.2016 before the AO wherein he has submitted that looking into the growth prospects of the appellant company he has invested Rs. 10,56,000/- in the shares of the appellant company. He has also submitted a copy of share certificate issued by the appellant company. In respect of source of income in his hands he has submitted that he has is a farmer earning agricultural income. In support of his contention, he has also submitted the copy of land paper i.e. khasra and girdawari. Applicant has not specified as how much agriculture income he is receiving. There is no other source of Income in the case of appellant. Hence the identity, creditworthiness and genuineness of the transaction have not been established.

**Sh. Mahendra Arya:** He has given Rs.10,00,000/- as share application money to the appellant company in cash. During the course of remand proceedings, he has filed confirmation before the AO in response to notice u/s 133(6) wherein he has stated that he has invested Rs. 10,00,000/- during the year and Rs. 15,50,000/- in the earlier years. He has stated that he is receiving income from agriculture activities. In support of the landholding he has filed nakal jamabandi wherein 1/3<sup>rd</sup> land has been shown in the name of the father of the applicant and his brothers. There is no other source of income of applicant. The applicant has not filed any bills of sale bills of agriculture produce. In view of these facts, the identity, creditworthiness and genuineness of the transaction have not been established.

In view of the facts discussed above about the share applicants in the appellant company, it is held that share application money received from Sh. Sushil Kumar Garg of Rs.5,00,000/-, Madhulika of Rs.3,00,000/-, Suman Arya of

*Rs.1,00,000/-, Devender Singh of Rs.4,50,000/-, Jai Kishan Gehlaut of Rs.9,00,000/- Sardar Lal of Rs.2,00,000/-, Sanjay Kumar of Rs.3,00,000/- and Jagbir Singh Arya of Rs.3,02,450/- totaling Rs. 30,52,450/- is treated as received from explained sources and the investors as well as the appellant have discharged their onus cast upon them u/s 68 of the I.T. Act.*

*However, share application money received from Sanjeev Arya of Rs. 4,34,400/-, Suman Arya of Rs.2,00,000/-, Jasbir Singh of Rs.5,00,000/-, Ajay Singh of Rs.3,00,000/-, Hanumat Prasad Nautiyal of Rs. 10,07,000/-, Sunil Shastri of Rs.3,00,000/-, Virender Arya of Rs. 10,99,000/-, Sulekh Arya of Rs.86,150/-, Suresh Kumar of Rs.3,00,000/-, Narender Arya of Rs. 10,56,000/- and Mahender Arya of Rs. 10,00,000/- has not found to be explained. The investors as well as the appellant were not able to substantiate the source of the investments made by them, therefore, the share capital to the extent of Rs.62,82,150/- has been found to be unexplained. Therefore, the addition made by the AO to the extent of Rs.62,82,150/- is upheld. As a result, the appellant gets a relief of Rs.30,52,450/-.”*

8. Aggrieved by the order of CIT(A), assessee is now before us. Before us, Learned AR reiterated the submissions made before the AO and CIT(A) and further submitted that CIT(A) has upheld the addition of Rs.62,82,150/- without considering the document and evidences produced and has erred in coming to the conclusion that the genuineness, creditworthiness and identity of share applications have not been proved by the assessee. He submitted that assessee has discharged onus cast upon it by providing the necessary details to the AO but merely on account of nonappearance on the part of the share applicant, the transaction could be treated as bogus. He also submitted that low income or low profit cannot be criteria of addition. He further submitted that AO and CIT(A) has not brought any tangible



material to show that assessee has routed its own money as share application money. He pointed to the documents filed before the AO and CIT(A). He also submitted that the persons who have invested the money are the relatives of the directors. He therefore submitted that the additions upheld by CIT(A) be deleted.

9. Learned DR on the other hand supported the order of CIT(A) and further relied on the decision of Hon'ble Apex Court in the case of NRA Iron & Steel Pvt. Ltd. reported in (2019) 412 ITR 161 (SC). She relying on the aforesaid decision of Apex Court submitted that in a case where Share Capital/Premium is credited in the books of account of the Assessee company, the onus of proof is on the assessee to establish by cogent and reliable evidence the identity of the investor companies, the credit-worthiness of the investors, and genuineness of the transaction to the satisfaction of the Assessing Officer. She submitted that considering the aforesaid decision of Hon'ble Apex Court, no interference to the order of CIT(A) is called for.

10. We have heard the rival submission and perused materials on record. The issue in the present case is with respect to the addition of Rs.62,82,150/- u/s 68 of the Act. It is an undisputed fact that assessee has received share premium and share capital during the year from 18 parties aggregating to Rs.93,52,000/-. AO treated the entire amount of Rs.93,52,000/- as being unexplained. When the matter was carried before the CIT(A), he

granted relief to the extent of Rs.30,52,450/- and upheld the addition to the extent of Rs.62,82,150/-. The reasons for upholding the additions are reproduced hereinabove.

11. As far as the additions in the case of Sh. Sanjeevji, Sh. Ajay Singh, Sh. Hanumat Prasad Nautiyal, Sunil Shastri, Sh. Virender Arya, Sh. Sulekh Arya, Sh. Suresh Arya, Sh. Narendra Arya and Mahendra Arya are concerned, CIT(A) has *inter alia* noted that in all the aforesaid case, the amounts was received in cash and the other documents like the contention of income being from agricultural activities was not supportive of their contentions. He has also noted that the documents furnished did not prove the creditworthiness and genuineness of transactions. Considering the aforesaid factual findings, which has not been found to be incorrect/ false, we find no reason to interfere with the order of CIT(A) to that extent.

12. As far as addition of the amount of Rs. 2 lakh from Sh. Suman Arya is concerned, we find that CIT(A) has given a finding that the amount was paid by cheque/ bank transfer, she was employed as a teacher and had total income of Rs.3,26,334/-. In such a situation we find there was no justification for holding only Rs.1 lakh to be explained and balance Rs.2 lakh to be unexplained. We therefore, hold that the addition of Rs.2 lakh was not warranted in this case. We therefore direct its deletion.

13. As far as addition of Rs.5 lakh of amount received from Sh. Jasbir Singh is concerned, we find that CIT(A) has given a finding that his confirmation, bank statement evidencing bank transfer is on record but since he had not given source of the money, the conditions stipulated u/s 68 have not been complied. We do not agree with the reasoning of CIT(A). When the fact of confirmation, bank transfer and bank statement of the lender of the money has not been found to be incorrect, it cannot be concluded the genuineness of transaction to have not been established. In such a situation we are of the view that no addition was called for in his case. We therefore, direct the deletion. **Thus the assessee gets relief to the extent stated hereinabove.**

14. **In the result, appeal of the assessee is partly allowed.**

**Order pronounced in the open court on 05.02.2021**

**Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 05.02.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI