

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No.133/RPR/2016
Assessment Year: 2012-13**

DCIT-1(1),
Raipur (CG).

(Appellant)

vs. Singhania Buildcon Pvt. Ltd.,
3rd& 4th Floor, Shyam Chamber,
Heerapur Road, Mahoba Bazar,
Raipur (CG)
[PAN – AAGCS 0166 A]
(Respondent)

Appellant by : Shri R.K. Baral, D.R.
Respondent by : Shri Veekaas S. Sharma, C.A.

Date of hearing : 11.08.2021
Date of pronouncement : 23.09.2021

ORDER

PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER :

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-I (CIT(A) in short), Raipur dated 22.02.2016 arising out of order passed by the Assessing Officer (A.O.) under section 143(3) of the Income Tax Act, 1961 (the Act in short) dated 30.03.2015 concerning Assessment Year (A.Y.) 2012-13.

2. As per its grounds of appeal, the Revenue has challenged the relief granted by the CIT(A) on account of :

- (i) addition of Rs.4,90,00,000/- made by the A.O. on account of unexplained cash credit under section 68 of the Act,
- (ii) addition of Rs.57,95,000/- made by the A.O. on account of unexplained cash credit in respect of Trade Advances received.

3. Briefly stated, the assessee is engaged in real estate business and filed its return of income for the A.Y. 2012-13 declaring total income of Rs.1,16,71,191/-. In the scrutiny assessment under section 143(3) of the Act, the A.O. *inter alia* made addition of Rs.4.90 Crores by invoking provisions of section 68 of the Act in respect of share capital and also made addition of Rs.57.95 Lakhs under section 68 of the Act in respect of trade advances.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A), after taking note of the written submissions and underlying evidences, reversed both the actions of the A.O. in question.

4.1 The relevant operative paragraph of the order of CIT(A) in respect of addition of Rs.4.90 cores under section 68 reads as under :-

“2.3 I have considered the submission of the appellant and perused the assessment order. As seen above Shri Subodh Singhania, Director of the assessee company has in its statement u/s 133A dated 24.02.2012 stated that the amount of Rs.12.65 crores was his own money which was introduced in M/s Singhania Buildcon Pvt. Ltd. as share capital through some other companies. On para-3 of the statement Shri Singhania has submitted that he accepts this amount as his income and will offer the same in his return of income and pay taxes thereon. As per computation of income for AY 2012-13, he has offered total income of Rs.5,11,20,344/- which included Rs.4.9 crores out of Rs.12.65 crores as his income from other sources. Balance Rs.7.75 crores was offered in the AY 2011-12. In the AY 2012-13 under consideration, the AO disbelieved this fact saying that the money was shown in the name of other persons, than Shri Singhania. It may be noted that the amount of Rs.7.75 crores and Rs.4.9 crores has been accepted in the hands of Shri Singhania in the AYs 2011-12 and 2012-13. Further, in case of the assessee company itself, no adverse view has been taken by the AO in the assessment year 2011-12. It may be noted that in his statement during the survey proceedings Shri Singhania has explained the fact of introducing this money in the assessee company as capital through some other companies and no further investigation was carried out by the AO to establish that this statement was not true. Therefore, once this fact has been accepted in the case of the Director, the same fact cannot be questioned in the case of the company and that too without any investigation. In view of the Hon'ble Supreme Court's decision in the case of CIT vs. Lovely Exports Pvt. Ltd., 172 Taxman 44, “if the AO had any doubt about the share capital he was free to take action in the case of subscriber companies.” As has been held by the Hon'ble Delhi High Court in the case of CIT vs. Steller Investment Limited, 192 ITR 287 share capital of the limited company cannot be brought to tax as unexplained cash credit on the same footing as spurious

loans. On the accounting principal also same amount cannot be treated as income twice and the same income cannot be taxed two times. Therefore, addition made by the A.O. is hereby deleted and the ground taken by the assessee is allowed."

5. As regards the second issue namely addition of Rs.57.95 Lakhs under section 68 in respect of trade advances, the CIT(A) similarly took note of oral and written submissions, remand report of the A.O. etc. and adjudicated the issue in following terms :

"It is seen that AO has disbelieved the fact that booking amount of flat was returned by the appellant company and, therefore, she has treated the amount of refund as unexplained cash credit. In coming to this conclusion the AO has noted that details of lands were not furnished, making of refund for payment of all amounts through a single person Shri Sita Ram Agrawal was not explained and names and addresses given in the confirmation are not the same as appearing in the data of the Department. Appellant has submitted that firstly the AO has called for the cash book which was furnished along with reply dated 08.07.2014. Then after a lapse of seven months, the AO called for account copies of persons to whom cash was returned. Appellant has, going one step ahead, instead of account copies, furnished confirmations from the persons. It was further submitted that in the cash book due to clerical mistake of copy paste, name of Shri Sita Ram Agrawal was mentioned as the person through whom all the advances were refunded. This was not the fact and this typographical error was corrected in the confirmations of respective persons.

Comments of the AO were called for vide this office letter dated 20.01.2016. AO has commented that the assessee has furnished copies just four days prior to the tie barring date. There was mismatch of PAN mentioned in confirmations. The cancellation letter given by the appellant to the parties were all similar. As per agreement in clause-7 the advances were to be forfeited if further payments were not made in due time. In the rejoinder to the AOs comments, the appellant stated that after its reply dated 08.07.2014 the AO did not take any action for 7 months and then called for account copies which was furnished well in advance on 31.12.2014. The confirmation was in addition to the account copies and if it was furnished on 26.03.2015, merely due to this reason the payment of refund should not have been doubted. Regarding the clause-7, it was explained that this clause is applicable in case of confirmed booking when further payments are not made. In the present case bookings were cancelled due to which the booking amount was to returned.

From the above flow of incidence, I find that the amount of refund of booking advances is duly appearing in cash book and the facts have been accepted by respective persons. Once account copies were furnished the AO did not make any further inquiry. Thereafter when confirmations were also filed it was for the Department to either accept the same or cause an enquiry to be made from the respective persons. The conclusion based on technicalities,

such as, payment have been returned through single persons which fact was later found not correct and names and addresses being different from the departmental datas cannot be supported. For making an addition u/s 68 once the appellant has furnished confirmations, the onus is on the AO to examine the witnesses and establish the amount in question was not actually paid or otherwise was not genuine. Therefore, the addition of Rs.57,97,000/- as unexplained cash credit is hereby deleted and grounds taken by the appellant is allowed.”

6. Aggrieved by the relief granted by the CIT(A), the revenue is in appeal before the Tribunal.

7. We have heard the rival submissions as well as perused the orders of the lower authorities and material referred to and relied upon by way of Paper Book in terms of Rule 18(6) of the Income Tax Appellate Rules 1963.

8. The first ground of the revenue's appeal concerns addition of Rs.4.90 crores in respect of share application money by invoking section 68 of the Act. It is the case of the assessee that the surrender was made on account of receipt of share application/capital from three companies namely Royal Vintrade Pvt. Ltd., Oxford Tradelink Pvt. Ltd. and Lotus Vintrade Pvt. Ltd aggregating to Rs.12.65 Crores without the presence of any incriminating material. As pointed out on behalf of the assessee and as emanates from the case records, a survey operation under section 133(A) of the Act 1961 was carried out on 13.02.2012 in the business premises of the assessee. In the course of survey proceedings, the statement of Managing Director of the assessee company Shri Subodh Singhania was recorded. During the survey operations, the survey team conducted enquiry into the genuineness of the receipt of share capital by the assessee Company amounting to Rs.7.75 Crores in A.Y. 2011-12 and 4.90 crores in A.Y. 2012-13 in question. The statement of Managing Director of the assessee company Shri Subodh Singhania was recorded in the matter. As claimed, Shri Singhania, with a view to avoid litigation and to buy peace of mind and channelize energy and resources towards productive work and to make amicable settlement with the Income Tax Department, offered to surrender a sum of Rs.7.75 crores in A.Y. 2011-12 and Rs.4.90 crores in the A.Y. 2012-13 in his own individual capacity and in his own personal return. He eventually honoured his commitment and

deposited the tax accordingly. The amounts so offered in the survey proceedings were also included in the personal Income Tax return for the respective A.Ys. and thus accepted to have invested the aforesaid sum in the assessee Company during the respective financial years. The case of Shri Singhania was subjected to scrutiny assessment in A.Y. 2011-12 and 2012-3 under section 143(3) of the Act wherein the said income was assessed as his income.

9. While finalising the assessment of the Assessee Company herein, the A.O. concluded that the offer of Rs.4.90 Crores made by the promoter Shri Singhania does not relate to the share capital credited by the assessee Company. He has thus invoked section 68 of the Act and alleged the share capital received by the assessee Company as unexplained.

10. In this regard, the assessee contends that the sum of Rs.4.90 Crores offered for taxation by the Managing Director has a direct nexus with the receipt of share capital by the assessee Company. The Learned Counsel for the assessee adverted our attention towards statement of Shri Singhania dated 24.02.2012 annexed in the Paper Book and argued that sum of Rs.12.55 Crores offered for taxation by Shri Singhania was on account of share capital received by the assessee Company only and nothing else, which is apparent from the statement itself, wherein there is a reference of the Company that had made investment in share capital of the assessee Company amounting to Rs.7.75 Crores in A.Y. 2011-12 and Rs.4.90 Crores in A.Y. 2012-13. The learned Counsel further contends that the case of Shri Singhania was subjected to scrutiny assessment in the year 2011-12 and the aforesaid amounts were duly assessed as his individual income without any *demur*. The computation of income of the Managing Director was referred to demonstrate that the aforesaid amounts already stand taxed in the individual hand. It was pointed out that the name of the Companies that were shown to have invested in the share capital of the assessee Company as mentioned by the A.O. in the assessment order matches with the final statement of Shri Singhania recorded on 24.02.2012. It was thus submitted that there being direct nexus existing in the facts of the case, the conclusion drawn by the CIT(A) cannot be faulted.

11. On perusal of the order of CIT(A) it is noticed that Shri Singhania in his statement during the survey proceedings has explained the fact of introducing his money declared in the assessee Company as capital through some other Companies. On perusal of the statement, a clear averment to the effect is observed that the aggregate sum of Rs.12.65 Crores has been routed through three Companies in the assessee Company. It is further observed that the A.O. has not carried out any query to displace such averment. In this backdrop, the CIT(A) rightly observed that once the disclosure has been accepted in the hands of the Promoter/Managing Director, the same disclosure cannot be assessed again in the hands of the assessee Company and that too without any enquiry. The CIT(A) also relied upon the decision of Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. for taking a favourable view.

12. We find merit in the plea of the Assessee that charging tax on the disclosure made in the individual capacity and bringing the same amount to tax yet again in the hands of the assessee Company would clearly amount to double taxation. Secondly, the assessment of the assessee Company for A.Y. 2011-12 has remained undisturbed where similar subscription of Rs.7.75 Crores has been obtained and declared by Shri Singhania. The source of share capital thus clearly stand proved on account of disclosure by Singhania. Hence, the A.O. was patently unjustified in making separate additions in the hands of the assessee Company for the same very disclosure. The reasoning of the CIT(A) for reversal of the action of the A.O. is on sound rationale. We see no reason to interfere therewith.

13. In the result, Ground no.1 of the revenue's appeal towards unexplained cash credit under section 68 of the Act is dismissed.

14. As noted earlier, the Ground no.2 concerns addition of Rs.57.95 Lakhs made by the A.O. on account of unexplained cash credit on account of trade advance under section 68 of the Act. In this regard, the CIT(A) after obtaining the remand report from the A.O. affirmed the fact that the booking advances received by the assessee have been duly refunded which fact has also been accepted by the prospective buyers. The A.O. has not made any attempt to rebut the claim of the assessee. The confirmations were filed by the assessee to support the factual position. The

assessee has placed the facts which are apparent in nature for which no rebuttal has been done. The Hon'ble Gujarat High Court in the case of CIT vs. Ayachi Chandrasekhar Narsangji, 42 Taxmann.com 251 (Guj), CIT s. Mahavir Crimpers, 95 Taxman.com 323 (Guj) have held that when the Department has accepted the factum of repayment, the additions under section 68 is not sustainable in law. Similar view has been expressed in CIT vs. Karaj Singh (2011) 15 txmann.com 70 (P&H) & Panna Devi Chowdhary vs. CIT, 208 ITR 849 (Bom) etc.

15. Having regard to the flow of incidents and overwhelming fact of refund of booking advances which transcends all other considerations coupled with the confirmations from prospective buyers, the CIT(A), in our view, has rightly concluded the issue in favour of the assessee. The view of the CIT(A) is based on sound legal principle in the facts of the case and cannot be dislodged. Thus, we see no merit in the grievance of the revenue.

16. In the result, Ground no.2 of the revenue's appeal is dismissed.

17. As a result, appeal of the revenue is dismissed.

PRONOUNCED ON 23.09.2021 as per Rule 34(5) of the Income Tax Appellate Tribunal Rules,1963.

Sd/-
(PAWAN SINGH)
Judicial Member

Sd/-
(PRADIP KUMAR KEDIA)
Accountant Member

True Copy

Raipur, the 23rd day of September, 2021

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Raipur Bench, Raipur*