

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'DB' : NEW DELHI)

**BEFORE SH. R.K.PANDA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6241/Del/2017
(Assessment Year : 2014-15)

Dy. Commissioner of Income Tax, Circle , Haridwar D-29 & 30, Old Industrial Area, Haridwar	Vs.	M/s. Glass Tech India, Khsara No. 162-164, Viii- Raipur Roorkee Dehradu Highway Haridwar, Uttaranchal PAN- AAFFG4233Q
(APPELLANT)		(RESPONDENT)

Revenue by	Shri N.C.Upadhyay, Sr. DR
Assessee by	Shri Rohit Aggarwal, Adv.

Date of hearing:	21.03.2022
Date of Pronouncement:	25 .03.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the revenue against order dated 24.07.2017 in appeal no. 10497/CIT(A)/DDN/2016-17 in regard to assessment year 2014-15 passed by Commissioner of Income Tax (Appeals) Dehradun (hereinafter referred to as the "First Appellate Authority or in short FAA) in appeal preferred against order dated 23.11.2016 u/s 143(C) of the Income Tax Act,

1961 (hereinafter referred to as the “Act”) passed by the Dy. Commissioner of Income Tax, Circle, Haridwar (hereinafter referred to as the “Ld. AO).

2. The facts in brief are, the case of assessee, which is a partnership firm, was selected through CASS for scrutiny and statutory notice u/s 143(2) of the Act was issued. The partners of the assessee had issued capital of Rs. 2 crore each in the firm for which explanation was sought to explain the source of the amount of Rs. 4 crores introduced by the partners in the firm. The assessee informed the Ld. AO that amount was introduced by way of cheques by the two partners but the cheques could not be cleared and were returned by the assessee within two days. The assessee also submitted that this exercise was done to improve the bank ratio to satisfy the bankers of the assessee from which credit facilities were obtained.

2.1 However, the Ld. AO observed that the explanation is not acceptable as there is no concept of such notional entries. It was observed that the reversal of entry was in the next financial year and the books of accounts of the assessee as existed on 31.03.2014 were to be taken into consideration. Thus, finding the explanation to be not satisfactory according to accounting parameters and on the basis of Income Tax Provisions the amount of Rs. 4 crores shown in the books of accounts as capital contribution by the two partners was considered as unexplained cash credit and added to the income of the assessee u/s 68 of the Act.

3. However, in appeal by the assessee the Ld. F.A.A. had taken note of the fact that entry was fictitious and there was no movement of cash, therefore, relying the judgment of Hon’ble Calcutta High Court in case of **Jatia Investment Company Ltd. vs. CIT (1994) 206 ITR 718 (Cal)** and further considering that in any case the amounts could have been taxed in the hands of partners as there unexplained investment, the Ld. F.A.A deleted the addition.

4. Now before the Tribunal, Revenue has raised following grounds of appeal as under :-

“1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 4,00,00,000/- (4 crore) made by AO on account of unexplained unsecured loan ignoring the facts that loan shown from the two partners were fictitious and never received by the assessee and as such the balance sheet of the assessee was projecting this fact.

2. The Ld. CIT(A) has erred in law and on facts in holding that no funds have actually been received by the assessee in respect of the credit by both partners.

3. That the order of ld. CIT(A) be set aside and that of the A.O. be restored.”

5. Heard the Ld. Sr. DR for the revenue / appellant and counsel for the assessee. On behalf of the revenue the Ld. Sr. DR submitted that the findings of ld. AO are relied as Ld. AO has taken into consideration the fact that amount was introduced in the form of capital and which stood thereby at the closing of year on 31.03.2014 was considered unexplained.

5.1 On the other hand, Ld. Counsel for the assessee submitted that as for the banking norms and for improved current ratio the partner's capital was increased by Rs. 4,00,00,000/- and on 01.04.2014, the entries of Rs. 2 crores each were reversed and there was no movement of funds. Thus, relying the judgment of Hon'ble Calcutta High Court in Jatia Investment Co. vs. CIT (Supra) it was submitted that Ld. F.A.A. has rightly deleted the addition.

6. Now giving thoughtful consideration to the arguments and going through the matter on record and to understand the scope of section 68 of the Act, the

judgment of Hon'ble Rajasthan High Court in **CIT v. Kishorilal Santoshilal [1995] 216 ITR 9** is relevant where in Hon'ble High Court has held in para 11 *“on the basis of the language used under Section 68 and the various decisions of different High Courts and the Apex court, the only conclusion which could be arrived at is :*

- (i) that there is no distinction between the cash credit entry existing in the books of the firm whether it is of a partner or of a third party,*
- (ii) that the burden to prove the identity, capacity and genuineness has to be on the assessee,*
- (iii) if the cash credit is not satisfactorily explained the Income-tax Officer is justified to treat it as income from "undisclosed sources",*
- (iv) the firm has to establish that the amount was actually given by the lender,***
- (v) the genuineness and regularity, in the maintenance of the account has to be taken into consideration by the taxing authorities,*
- (vi) if the explanation is not supported by any documentary or other evidence, then the deeming fiction credited by Section 68 can be invoked.*

6.1 Then particularly in case of fictitious entries where there is no actual flow of cash, the Coordinate Bench in **ITO Vs Zexus Air Services Pvt. Ltd.** (ITAT Delhi) Appeal Number : ITA No.2608/Del/2018 vide order dated 23/04/2021 has observed;

“12.1 We find, the Delhi Bench of the Tribunal in the case of ACIT vs. Shri Suren Goyal (ITA No.1767/Del/2011, order dated 1st December, 2011; has held that where the assessee has received loan of Rs.20 lakhs from his father through a journal entry in the books of account and there was no physical transfer of money from the account of his father, addition of the same u/s 68 of the Act is not justified and accordingly the Tribunal dismissed the appeal filed

by the Revenue against the order of the CIT(A) deleting the addition made by the AO u/s 68 of the IT Act on account of the journal entry.

13. We find the Kolkata Bench of the Tribunal in the case of ITO vs. Bhagawat Marcom Pvt. Ltd., reported in 178 ITD 684 while deciding somewhat similar case has held that where the assessee company, during the year under consideration issued shares at premium to certain companies in lieu of shares held by the said companies and the said transactions were entered in the books of account of the assessee company by way of journal entries and it did not involve any credit to cash account, therefore, the amount of entry could not be treated as unexplained cash credit u/s 68 of the IT Act.

13.1 We find, the Jaipur Bench of the Tribunal in the case of ACIT vs. Mahendra Kumar Agrawal 23 taxmann.com 285 has held that in provisions of section 68, the words used are “where any sum is found credited in the books of an assessee.” In this connection, the word ‘sum’ is of paramount importance. The words “any sum” cannot be taken as parallel to “any entry.” The provisions of section 68 are deeming provisions and therefore, onus is on the Department to prove that any sum was credited to the books of the assessee.”

7. Thus, what can be concluded is that it is not just entry of cash credit in the books of accounts that would create liability of explanation from the assessee, but there should be an actual flow of funds. Once the flow of funds is established then the question of explanation from the assessee actually arises. Where the books of accounts on its own establish that the entry was fictitious and sham for window dressing, then as such the initial burden on the revenue is not discharged to shift onus on the assessee to explain further identity, capacity and genuineness of the source.

8 It can be seen in present case that the Ld. AO had observed from the books of accounts that the entry was fictitious and was reversed immediately in next FY on 1/4/2014, without any actual cash flow. But Ld AO was carried away by morality of accounting practices by holding that there is no concept like notional entries in the preparation of books of accounts and to which more pragmatic view was taken by the Ld FAA by accepting the plea of assessee and

observing in para 11 of its order that “ *the entire story is one of series of entries passed with a view of shoring up its current ratio for showing the same to the bank for better interest on loans raised.*”

9. Even otherwise the onus on the assessee was discharged with the explanation that there was no actual flow of funds and that explanation being factual could not have been rebutted on deemed fiction. Thus Ld. FAA was correct in following the ratio laid by Hon’ble Calcutta High Court in **Jatia Investment Co. Ltd. V. CIT(1994) 206 ITR 718 (Cal)**, that fictitious entry not backed up by funds may not be taxable as “Cash Credit”.

10. Then Ld FAA has also taken into consideration the fact that the entries were not from strangers but from the partners by way of introduction of capital so the correct course would have been to bring the capital introduced to tax in the hands of the partners as their unexplained income.

11. Thus there is no substance in the ground no 1 and 2 as raised and the order of Ld FAA requires no interference. **The appeal of Revenue is accordingly Dismissed.**

Order pronounced in open court on this 25th day of March, 2022.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 25.03.2022

Binita, SR.P.S

Copy forwarded to:

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