

2. The first issue raised in the Departmental appeal through Ground Nos. 2 to 4 is against the deletion of addition of Rs.6.00 crore, which was made by the Assessing Officer (AO) u/s.68 of the Act towards unexplained share capital.

3. Briefly stated, the facts of the case are that the assessee filed its return declaring Nil income, after set off of brought forward loss of Rs.41,39,617/- against the current year's income. The AO issued various notices, which remained unresponded. Eventually, the assessment order was passed u/s.144 of the Act. The AO observed that the assessee received fresh share capital amounting to Rs.6.00 crore. In the absence of the assessee participating in the assessment proceedings or furnishing any evidence in support of the claims, the AO made the addition of Rs.6.00 crore u/s.68 of the Act. The Id. CIT(A) called for the remand report from the AO. It has been noticed in the impugned order that the present Assessing Officer also participated in the proceedings before the Id. CIT(A). Based on the material available, the Id. CIT(A) deleted the addition by accepting the assessee's contention that the credit to share capital was only through journal entries.

4. Having heard the rival submissions and gone through the relevant material on record, it is seen from the assessee's Annual report for the year under consideration, whose copy has been placed on record by the Id. DR, that a note has been attached by the Auditor to the effect that the assessee-company continues to be sick industrial company and is already registered with BIFR since 29-09-2003. This Note further states that: "As on 31st March, 2013 Company has issued Equity to due Share Holders & Directors against the unsecured loan available with the Company. Due to which company's Net Worth become Positive as on 31st March, 2013 and Hence company do not remain sick as per SICA Act, 1985 as on that date". From this Note, it is apparent that the assessee company converted unsecured loans into Equity share capital worth Rs.6.00 crore. We have gone through page 132 of the paper book, which is a copy of share application money account. This page indicates transfer of Rs.6.00 crore to share application money account through 7 entries passed on 31.3.2013. Page 133 is copy of account of Ganesh Trading Company, whose opening balance was Rs.1.69 crore and a sum of Rs.1.60 crore was transferred to share application money.

Page 137 is a copy of account of Suresh Trading Company. The opening balance was Rs.1.26 crore and a sum of Rs.1.00 crore has been transferred from this account to share application money as on 31-03-2013. Page 134 is a copy of account of A1 Bottles Suppliers, having opening balance of Rs.1.15 crore out of which a sum of Rs.1.00 crore has been transferred to share application money on 31-03-2013. Similar is the position regarding the transfer of balances from Oriental Containers Ltd., Reliable Bottles Co., Pooja Trading Company and KSD Traders for a sum of Rs.1.00 crore, Rs.50.00 lakh, Rs.45.00 lakh and Rs.45.00 lakh respectively. From the above details, it is clear that the assessee transferred Rs.6.00 crore to share application money account from various accounts and all the transfers were made out of respective opening balances. Once the position is such, we fail to understand the logic of the addition u/s.68 just on the passing of transfer entries. Pages 9 and 10 of the impugned order record that Mr. Neelabh Agnihotri, ITO, Ward-1(1), Aurangabad, present AO of the assessee, appeared before the Id. CIT(A) on 29-07-2019, who: “affirmed that share capital of Rs.6,00,00,000/- was not received in the current year and unsecured loans/sundry

creditors were converted in the share capital”. Thus, it is abundantly clear that the transfer to share capital account was only by means of transfer entries, which, obviously, cannot lead to addition u/s.68 of the Act. We, therefore, uphold the impugned order on this score.

5. The next issue raised by the Revenue through Ground No.5 is against the deletion of addition of Rs.1,46,07,860/-. The facts anent to this ground are that the AO totalled up the closing balances of the creditors and the payables amounting to Rs.1,46,07,860/- and held that the provisions of section 41(1) were attracted as no business was being carried on during the year and hence the amounts ceased to be payable. The Id. CIT(A) overturned the assessment order on this score.

6. Having heard the rival submissions and gone through the relevant material on record, it is seen that the addition was made by the AO u/s.41(1) of the Act. This section gets triggered on cession of trading liability. If the amount is still payable and the assessee admits the liability to pay, no addition can be made under this provision. Here is a case in which the assessee categorically admitted before the Id. CIT(A) that the accounts with these suppliers/creditors were running and

continuous. Noting has been brought on record to controvert this submission of the assessee. If the accounts are running and continuous and the assessee admits the amounts still to be payable, obviously section 41(1) cannot be invoked. We, therefore, accord our imprimatur to the view expressed by the Id. CIT(A) on this score. This ground fails.

7. The only other issue raised by the Revenue is against the deletion of addition of Rs.6,06,14,962/-. The facts *qua* this issue are that the AO observed during the course of assessment proceedings that advances from customers amounting to Rs.6,24,39,962/- were shown to have been received. Since the assessee was not carrying on any business operations, the AO held that, in the absence of any confirmation about the genuineness of the creditors, the amount was liable to be added. He, therefore, made addition for this sum. The Id. CIT(A) examined the details furnished by the assessee and noticed that there were opening balances in these accounts to the tune of Rs.6,06,99,131/-. He directed to delete the addition to this extent and upheld the remaining addition of Rs.18,25,000/-.

8. Having heard both the sides and perused the relevant material on record, it is seen that the AO made the addition of

Rs.6.24 crore towards alleged advances received by the assessee during the year. On the contrary, the ld. CIT(A) observed that there was opening balances to the tune of Rs.6,06,99,131/- and hence, the addition was not called for to that extent. There can be no case of the Revenue for confirming the addition because the opening balances cannot be added in the assessment of the current year. Once the ld. CIT(A) has recorded that there were opening balances to the extent of Rs.6.06 crore, which finding has remained uncontroverted on behalf of the Revenue, we find no reason to disturb the same. The impugned order is, therefore, upheld on this score as well.

9. The ld. AR did not press the Cross Objection.

10. In the result, the appeal of the Revenue as well as the Cross Objection by the assessee stand dismissed.

Order pronounced in the Open Court on 01st June, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 01st June, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT-1, Aurangabad
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	01-06-2023	Sr.PS
2.	Draft placed before author	01-06-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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