

IN THE INCOME TAX APPELLATE TRIBUNAL "A"

(Virtual Court Hearing), BENCH KOLKATA

BEFORE SHRI P. M. JAGTAP, V.P & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A No.238/Kol/2020

(निर्धारण वर्ष / Assessment Year: 2012-13)

JCIT(OSD), Circle-3(1), Kolkata	Vs	M/s. Shivm Iron & Steel Company Pvt. Ltd. 20B, Abdul Hamid Street, East India House, 9 th Floor, Kolkata.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAECs1926J		
(Appellant)	..	(Respondent)

Appellant by : Shri Ram Bilash Meena, CIT

Respondent by : Shri A. K. Tulsian, CA

सुनवाईकीतारीख/ Date of Hearing : 07/10/2020

घोषणाकीतारीख/Date of Pronouncement : 22/10/2020

आदेश / O R D E R

Per Shri S. S. Godara:

This Revenue's appeal for assessment year 2012-13 arises against the Commissioner of Income-tax (Appeals)-17, Kolkata's order dated 08.03.2019 passed in case No...371/CIT(A)-17/Kol/17-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961; (in short 'the Act').

Heard both the parties. Case file persued.

2. The Revenue's sole substantive grievance pleaded in the instant appeal challenges the CIT(A)'s lower appellate order deleting section 68 addition of unexplained cash credits of Rs.8,50,40,000/- made by the Assessing Officer in assessment order dated 29.03.15.

3. We advert to the basic relevant facts. This assessee is a company manufacturing and dealing with in M.S. Ingots, M.S. Bar, Flat angle, Channel,

silico Manganese, Ferro Manganese, M.S. Billets, S.S. Flats etc. It filed return on 25.09.12 stating income of Rs.39555100/- . The Assessing Officer took up scrutiny. He noticed assessee's share application/allotment amount of Rs.8,50,40,000/- coming from three entities i.e. M/s Set Square Holdings Pvt. Ltd., M/s Almal Financiers & Consultants Pvt. Ltd. & M/s Dherar Textiles Private Ltd. in lieu of 7,02,800, 4,10,000 and 5,88,000 units of shares for Rs.3,51,40,000/-, Rs.2,05,00,000/- and 2,94,00,000/-; respectively. He was of the view that it had become a common practice to introduce undisclosed income in the guise of share application / share allotment to various investors without paying tax. He therefore appears to have issued a letter dated 23.03.2015 to the assessee seeking to verify identity, genuineness and creditworthiness of the three investor concerns. We notice from a perusal of page 3 in the assessment order that the Assessing Officer quoted the assessee's failure in producing any of the investors during the course of scrutiny to add its share application money of Rs.85,040,000/- unexplained cash credits lacking of genuineness/creditworthiness u/s 68 of the Act.

4. The CIT(A) has deleted the impugned addition observing vide following detailed discussion:

"7. I have considered the finding of the AO in the assessment order and the submissions made by the AR of the appellant in during the course of the appellate proceedings.

7.1 Ground No. 1 is regarding the addition of Rs. 8,50,40,000/- u/s 68 of the Act on account of share application money received by the appellant.

The AR during the course of appellate proceedings submitted that the money has been received by the appellant from its group companies having common directors and shareholders or directors being the relatives and family members of the directors of the appellant. Also, in the paper book submitted. the AR has submitted all the documents relating to the share applicants to prove the 3 ingredients of section 68 i.e. the identity, creditworthiness of the applicants and genuineness of the transaction. I have examined the submission of the appellant. The documents submitted in the paper book running into pages 1-216 were also perused and examined and the following details with regard to each of the shareholders were observed.

7.2 In respect of the share applicant M/s Almal Financiers & Consultants Pvt. Ltd., the relevant details and documents were given at page nos. 1-57 of the paper book submitted

by the appellant. The applicant has invested Rs. 2.05,00,000/- in the appellant company. From the details submitted. I find that the directors of the appellant company i.e. Mr. Arun Kumar Agarwal and is also the director of the applicant company. Also, there are many shareholders of the appellant company also holding shares in this company. Thus, both the companies belonged to the same group having common directors and shareholders.

This company was incorporated on 22.03.1993 and was having company identification number U65999WB1993PTC058191. On examination of the Audited accounts available at the paper book at page 26-28. it was seen that the company was having a paid up capital with free reserves and surplus of Rs. 19.56 crores as on 31/03/2012. On examination of the ITR Acknowledgement and the copy of PAN Card submitted in the paper book it was seen that the company duly filed its return of income before ITO Ward 4(3), Kolkata and was having PAN AACCA7604H. Also, I find that the share application was made through banking channel. The copy of the bank statement of the Company is duly available in the paper book. The details of source of funds from which this company had made the share application are also available from a perusal of the bank statement and other documents filed in the paper book.

An affidavit has also been given by the director of this company affirming the investments made in the appellant company and source and mode of investments made by them in the appellant company

Also, all the above mentioned documents were claimed to be filed before the AO including the affidavit. The AO has not made any comment on the documents or the affidavit filed before him as evident from the assessment order.

7.3 In respect of the share applicant M/s Set Square Holdings Pvt. Ltd., the relevant details and documents were given at page nos. 58-113 of the paper book submitted by the appellant. The applicant has invested Rs.3,51,40,000/- in the appellant company, From the details submitted, I find that the directors of the appellant company i.e. Mr. Shiv Kumar Agarwala Is also the directors of the applicant company, Also, there are many shareholders of the appellant company also holding shares in this company. Thus, both the Companies belonged to the same group having common directors and shareholders.

This company was incorporated on 09.02.1987 and was having company identification number U01134WB1987PTCO41856. Through the Audited accounts available at the paper book at page 74-87, it was seen that the company was having a paid up capital with free reserves and surplus of Rs. 45.89 Crores as on 31/03/2012. The ITR Acknowledgement and the copy of PAN Card submitted in the paper book it was seen that the company duly filed its return of income before ITO Ward 5(4), Kolkata and was having PAN AADCS4693P. Also, I find that the share application was made through proper banking channel. The copy of the bank statement of the Company is duly available in the paper book. The details of source of funds from which this company had made the share application are also available from a perusal of the bank statement and other documents filed in the paper book.

An affidavit has also been given by the director of this company affirming the investments made in the appellant company and source and mode of investments made by them in the appellant company.

Also, all the above mentioned documents were claimed to be filed before the AO including the affidavit. The AO has not made any comment on the documents or the affidavit filed before him as evident from the assessment order.

7.4 In respect of the share applicant M/s Dherar Textiles Pvt. Ltd., the relevant details and documents were given at page nos. 114-169 of the paper book submitted by the appellant. The applicant has invested Rs. 2,94,00,000/- in the appellant company. From the details submitted, I find that the directors of the appellant company i.e. Mr. Shiv Kumar Agarwal and is also the directors of the applicant company. Also, there are many shareholders of the appellant company also holding shares in this company, Thus, both the companies belonged to the same group having common directors and shareholders.

This company was incorporated on 07.10.1996 and was having company identification number U51311WB1996PTC081614. Through the Audited accounts available at the paper book at page 139-151, it was seen that the company was having a paid up capital with free reserves and surplus of Rs. 24.14 Crores as on 31/03/2012. The ITR Acknowledgement and the copy of PAN Card submitted in the paper book it was seen that the company duly filed its return of income before DCIT Central Circle 3(XVI). Kolkata and was having PAN AABCDO906G. Also, I find that the share application was made through proper banking channel. The copy of the bank statement of the Company is duly available in the paper book. The details of source of funds from which this company had made the share application are also available from a perusal of the bank statement and other documents filed in the paper book.

An affidavit has also been given by the director of this company affirming the investments made in the appellant company and source and mode of investments made by them in the appellant company.

Also, all the above mentioned documents were claimed to be filed before the AO including the affidavit. The AO has not made any comment on the documents or the affidavit filed before him as evident from the assessment order.

7.5 On going through the submissions made by the appellant and the assessment order, the following facts are emerged:

A] All the share applicants listed in the table at Page No. 3 of this order are Group companies and person related to the group of the appellant or it can be said that the investment is within the group and all the investors and its director and shareholders are closely related persons to each other as detailed from page No 3 to o1 this order. As such there is no doubt about the genuineness of the transaction involved. There are also common shareholders in the said group companies. The nature of relationship is explained from the table presented.

B] The Ld. AO has made the addition merely based on his vague assumptions and contending that the appellant did not make proper compliance to the notice served on it and also was not able to prove the identity and creditworthiness of the shareholders and genuineness of the transaction. However, during the course of assessment proceedings, Ld. AO issued notice to the appellant Company seeking details about the shareholders of the appellant company and the reply along with all the relevant documents as required by the AO were submitted. Ld. AO himself has agreed to this fact in his assessment order (Page 2) that the replies to the notice issued to the appellant company regarding the

details of the shareholders were received but without considering the documents submitted, passed the assessment order making the addition of the entire amount to the income of the appellant. The AO has not pointed out any irregularities.

C) The share applicants were having sufficient net owned funds for making investments in the appellant company. The details of the net owned funds of the applicants and the investments made by them as depicted in the table below:

<i>Name of the company</i>	<i>Net Worth of Applicant</i>	<i>Investment made by them in appellant</i>
<i>M/s. Almal Financiers & Consultants 19.56 Crores (P) Ltd.</i>		<i>2.05 Crores</i>
<i>M/s. Set Square Holdings Pvt. Ltd.</i>	<i>45.89 Crores</i>	<i>3.51 Crores</i>
<i>M/s.Dherar Textiles Pvt. Ltd</i>	<i>24.14 Crores</i>	<i>2.94 Crores</i>

is clearly indicate that the share applicants were having sufficient owned funds with them to invest in the appellant company and hence their creditworthiness cannot be doubted at all. All these facts were before the AO at the time of assessment proceedings. However, he chose not to consider the same.

D] The ld. AO made the addition in the hands of the appellant on the basis of some allegations which are discussed as follows:

i] On the first issue, the A.O. alleged that the appellant company entered into a sham transaction with the investor to introduce the unaccounted income in form of share application/allotment.

It is seen that the share applicant company had readily provided with all the documents as required by the AO. The appellant has already proved the identity and credit worthiness of the applicants and genuineness of the said transactions. The copy of Audited Accounts, IT Acknowledgement and Computation for A.Y. 2011-12 to 2013-14 has already been submitted. Moreover, the copy of the bank statements of all the three investor companies highlighting the payments made in respect of the share application money has also been submitted. With this, the identity and credit worthiness of the appellant company and genuineness of the transactions are proved. In addition, the appellant company has also filed copy of Affidavit before the notary public Kolkata dated 10.03.2015 relating to share application money given by its new shareholders and copy of IT Return acknowledgement, computation of total income, balance sheet and profit & Loss account of the directors of the shareholders company for A.Y. 2011-12 to 2013-14. During the course of appellate proceedings also the copies of all the above mentioned documents have been submitted by the appellant to prove the identity and credit worthiness of the directors. It is seen from the above documents that all the share applicants are body corporate, assessed to income tax and the share application money was received through proper banking channels. However, the A.O. ignored the documents submitted by the shareholders and made addition of the share capital.

ii] On the second and fourth issue, the A.O alleged that the appellant company does not have any regular business transaction or regular acquaintance with the investor.

It is observed that there is no such provision under the Companies Act or Income Tax Act that the business activities of the shareholding companies should be considered before issuing shares to them. Hence, the allegation made by the AO in this respect is baseless.

iii] On the third issue, it is alleged that the investor has no reason to invest such huge amount in the business of the appellant.

The appellant submitted that it is the wisdom of the share holders whether they want to subscribe to such a heavy premium and it is a prerogative of the Board of Directors of a company to decide the premium amount and it. The Revenue authorities cannot question the charging of such of huge premium without any bar from any legislated law of the land. Therefore, the inference drawn by the AO is not relevant under the facts and circumstances. In this regard it is also submitted that the appellant has issued 17,00,800/- shares at Rs. 50/- per share with Face value of Rs. 10 and premium of Rs. 40/- per share. The company was incorporated on 16.09.1998 with a vision to become a leading manufacturer of Iron & Steel and has raised funds time to time as per the requirements of the company. Further. the turnover of the company is around 325 crores in the relevant year. Hence, considering the turnover as well as future prospects of the company premium demanded by the company should have been considered by the A.O.

The appellant has justified huge investment in the business of the appellant as issuance of shares i.e. on F.Y 2011-12 the Net Assets Value (NAV) of the company was around Rs. 49/- per share and therefore issuance of shares at a premium of Rs. 40/- per share is very much justified.

iv] On the fifth issue, the AO alleged that the appellant would not have been able to withstand the cross examination. if any.

It is observed that the AO made a baseless allegation without giving any opportunity to the appellant which is completely bad in law and should have been considered. The Ld. AO has made general allegations based on his own assumptions. The impugned order seriously lacks specific findings. The A.O has used serious allegation like "shelter of corporate veil to channelize the undisclosed income to support his contentions but did not point out any material that has been found during the course of assessment proceedings. The AO had all the documents available with him to verify the genuineness of the transactions as well as the credit worthiness and identity of the directors.

The appellant further also relied on the following judicial decisions where it is held that non-compliance to summons u/s 131 or non appearance before the AO cannot be a base for making the addition:

a) Income Tax Officer. Wd-12(3)/Kol Vs. M/s Harshwardhan Gems Pvt. Ltd in ITA No.1337/Kol/2010 vide order dt. 03.02.2016 (ITAT Kolkata Bench)

b) M/s Commissioner of Income Tax Vs. Orissa Corporation (P) Ltd. (Hon'ble Supreme Court) in 159 ITR 078 dt. 19.03.1986.

c) M/s Commissioner of Income Tax Vs. Kamdhenu Steel & Alloys Ltd. & Ors. (Hon'ble Delhi High Court) in 361 ITR 220 dt. 23.12.2011.

d) M/s A-One lousing Complex Ltd. Vs. Income Tax Officer (Hon'ble ITAT Delhi) in 110 ITD 361 d. 18.05.2007.

E) It is established that the Ld. A.O. proceeded with a biased intention to make addition u/s 68 of the Act. Moreover, the AO did not have any specific finding due to which the amount was added to the income of the appellant. He just made the addition based on his generalized assumptions and without considering the explanation offered by the appellant during the course of assessment. Therefore the allegation the Ld. A.O. on this count is not correct.

F] In the instant case, the A.O failed to take into cognizance the details and documents submitted in the course of assessment proceedings. The documents submitted were good enough to satisfy all the three precedents as laid down u/s 68 of the Act with regard to the identity and credit worthiness of the share applicant. and genuineness of the transactions. The basic ingredients for any cash credit are as under:-

1) Identity: - The share applicants who are body corporate, registered with the ROC and they were available at the given address. The share applicants including individual have furnished copy of PAN and the companies are registered with ROC having CIN, therefore the identity should not be under the scanner in the instant case.

2) Genuineness & creditworthiness:- a) The share application money was received through proper banking channels. b) the share holders had sufficient fund for the purpose of investment & the investments are reflected in their books of account and c) Bank A/c of the shareholders confirms the transactions.

All the documents relating to the share transaction like their bank statements, Audited Accounts and TT Acknowledgement. etc. proving the genuineness of the transaction were duly submitted before the A.O. This fact is itself evident from the assessment order. But the AO did not consider the documents submitted.

It is the requirement of natural justice that one must examine the documents submitted in Support of share capital raised and if do not find any defect in the documents submitted, then merely on the basis of non appearance of the directors, no addition is permissible in law. Assessment of a particular year must be based on legitimate material from which a reasonable inference of income earned during the year could be drawn.

The facts worth considering in this context are (i) That the purported amount was credited adopting proper banking channel. i.e. through account-payee cheques. The same tact has been confirmed by the party through account confirmation statement. (ii) That the above parties are body corporate registered with Registrar of Companies and individual who are also assessed to income-tax under the Income-Tax Act. 1961.. which the AO has disregarded.

7.6 I have considered the submission of the AR and all, the facts and details brought on record by the AR. I find merit in the contention of the AR. All the share applicants as discussed above are group companies of the appellant having common directorship and shareholding and directors being relatives. The appellant relied in this regard ITAT Ahmedabad, CIT vs. Gyscoal alloys Ltd., ITA NO.102/Ahd 2014 dated 06.04.2018. The money received by the appellant belongs to the appellant group only. Also, all the transactions are made through proper banking channels and the applicants were having sufficient owned funds to make investments in the appellant company. Also, on going through the Master details of the companies on the MCA Site, it was noticed that all the

companies are active as on date and are having common directors as per their signatory details as discussed above. Thus, the identity as well as the creditworthiness of the applicants has been duly proved by the appellant.

Therefore, all the 3 ingredients of section 68 i.e. identity, genuineness and creditworthiness have been duly established by the appellant company.

7.7 I further find that it has been time and again reiterated by various courts that if the appellant has proved the ingredients of the section by proper and satisfactory documentary evidences. the burden shifts on the revenue to prove that the transaction entered by the appellant is not genuine.”

The above extracted lower appellate discussion on facts has been followed by the CIT(A) taking note of a catena of case law to hold that the evidences placed on record had very well satisfied all the three limbs i.e. identity, creditworthiness and genuineness of the investor parties who happen to be assessee's group concerns only. This leaves the Revenue aggrieved.

6. We have given our thoughtful consideration to rival pleadings against and in support of the CIT(A)'s action deleting the impugned addition. Learned CIT-DR vehemently contended during the course of hearing that the Assessing Officer had rightly held the assessee not to have been able to produce any of the three investor concerns sufficiently indicating the same to lack genuineness/creditworthiness of the impugned share application money. We find no merit in Revenue's instant sole substantive grievance. The clinching fact, that has remained un rebutted from the Revenue side, is that the assessee had credited the impugned sum in lieu of share allotment issued to its three group concerns (supra) not only having common directors and shareholders but also they have the same address i.e. 20, Abdul Hamid Street, 9th Floor,Block-7A,Kolkata-69 and assessed in the same jurisdiction. We notice from a perusal of the assessee's paper-book running into 216 pages that it had placed the three sister concerns' copy of master data details available in the Ministry of Corporate Affairs Portal, regular audited accounts for financial year 2010-11, IT Acknowledgements for

assessment year 2011-12, audited accounts not only of the said assessment year but for the succeeding assessment year 2012-13 as well as 2013-14, bank statements as well as the three directors' affidavits confirming the impugned allotment followed by the very details regarding the tax-payer itself before the Assessing Officer during the course of scrutiny. All this sufficiently indicates that the Assessing Officer's action holding the assessee to have failed in filing the necessary details in support of the impugned share allotment money goes against the case records. Coming the Revenue's argument that the assessee had never produced any of the three investor parties, we find no merit since there was no such direction from the Assessing Officer's side to this effect. Be that as it may, we make it clear that the impugned share capital has come from the three group concerns only having the common directors/shareholders, address as well as assessment jurisdiction. We hold in view of these overwhelming facts and circumstances supporting the assessee's case that the CIT(A) has rightly deleted the impugned addition. Hon'ble Gujarat high court's decision in PCIT vs. Gyscoal Alloys Ltd. Tax Appeal No.1180/2018 decided on 01.10.18 has declined the Revenue's identical stand seeking to justify similar section 68 addition of cash credits in the nature of share application/premium coming from group entities as under:

"Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal, Ahmedabad Bench {"Tribunal" for short} raising the following substantial question for our consideration :

"Whether Appellate Tribunal has erred in law and on facts in deleting the addition made by the Assessing Officer on account of Rs. 9,99,99,900/= as per the provision of Section 68 of the Income-tax Act, without properly appreciating the facts of case and the material brought on record ?"

C/TAXAP/1180/2018 ORDER The issue pertains to the share application money received by the respondent-assessee-company. The Assessing Officer added a sum of Rs. 9.99 Crores [rounded off] in the hands of the assessee with the aid of Section 68 of the Income-tax Act, 1961 ["the Act" for short]. CIT [A] deleted such addition primarily on the ground that the assessee had established the source, genuineness of the transactions and the creditworthiness of the investors. In further detailed consideration, the Tribunal confirmed the view of CIT [A], making the following observations :-

"I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The appellant has received an amount of Rs. 9,99,99,900/- on account of share capital and share premium from M/s. General Capital and Holding Co. Pvt. Ltd, Ahmedabad during the year. The AO held that the creditworthiness and the genuineness of the transaction were not proved by the appellant and accordingly made the addition under Section 68 of the Act for the above amount. The appellant has submitted that all three ingredients such as, credit worthiness, genuineness and the identity of the share applicant have been proved and therefore, the addition should not have been made by the AO.

C/TAXAP/1180/2018 ORDER During the course of appellate proceedings, the assessment records were also obtained from AO and the same have also been examined by me to ascertain the facts correctly. The share applicant company M/s. General Capital has been duly confirmed the fact of making investment in the appellate company. The amounts have been received through banking channel. The same are duly reflected in the annual accounts of that company. The extracts of the bank statement which have been filed before me during the course of appellate proceedings as well as before the AO clearly show that there are no cash deposits as mentioned by the AO in the assessment order. The observation of the AO that the cash has been deposited and subsequently cheques were issued is factually incorrect. The director of the company also attended before AO and confirmed the fact. It is also noted that both the companies, that is the appellant company as well as the share applicant are managed by the same group of persons.

Honourable High Court of Gujarat has consistently held that if the assessee has given sufficient proof in respect of the share application, no addition can be made in the hands of the assessee. If the AO has any doubt about the source of the share applicant further investigation can be made in the hands of the share applicant, but not in the case of the appellant. ."

C/TAXAP/1180/2018 ORDER It can thus be seen that the entire issue is based on appreciation of material on record. CIT [A] and the Tribunal concurrently came to the conclusion that the assessee had discharged its basic onus. The investors have confirmed the transactions. Such transactions were carried out through the banking channel. The director of the investing company had also appeared before the Assessing Officer and also confirmed the transactions. The CIT [A] and the Tribunal also did not confirm the Assessing Officer's finding that the assessee failed to establish the creditworthiness or genuineness of the transactions.

No question of law arises. Tax Appeal is dismissed."

9. Learned authorized representative at this stage took us tribunal's coordinate bench's order in ITA 2445/Kol/2019 M/s Satyam Smelters Pvt. Ltd. vs. DCIT dated 29.05.2020 treating one of the investor entity(ies) i.e M/s Set Square Holdings Pvt. Ltd. to be a genuine investor as well. Be that as it may, we reiterate in line with our preceding observations to conclude that once the assessee had sufficiently proved the impugned sum to have coming from the group concerns

(supra), we are of the opinion that the Revenue's case law PCIT vs. NRA Iron & Steel Pvt. Ltd. (2019) 103 taxmann.com 48(SC) does not apply in peculiar facts of the case. The CIT(A)'s order under challenge deleting the impugned addition stands upheld therefore.

10. This Revenue's appeal is dismissed.

Order is pronounced in the open court on 22.10.2020.

Sd/-
(P.M. Jagtap)
VICE-PRESIDENT

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 22/10/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- JCIT(OSD), Circle-3(1), Kolkata
2. The Respondent- M/s. Shivm Iron & Steel Company Pvt. Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.