

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 279/JP/2018
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Shreenath Heritage Liquor Pvt Ltd. G-1/100, RIICO Area Jhunjhunu	बनाम Vs.	The ACIT Circle Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAICS 3950 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.L. Poddar, Advocate and
Ms. Eisha Kanoongo, Advocate
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 12/07/2018
घोषणा की तारीख / Date of Pronouncement : 19 /07/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the
ld. CIT(A)-3, Jaipur dated 24-01-2018 for the Assessment Year 2013-
14 raising therein following grounds of appeal.

“1. That under the facts and circumstances of the case, the ld. CIT(A) has erred in deciding the appeal ex-parte whereas no notice was served to the assessee or to the counsel of the assessee.

2. That under the facts and circumstances of the case the ld. CIT(A) has erred in confirming the addition of Rs. 85,23,000/- u/s 68 of the I.T. Act, 1961.

3. That under the facts and circumstances of the case, the ld. CIT(A) has erred in invoking the provisions of section 115BBE of the I.T. Act, 1961.

4. That under the facts and circumstances of the case the ld. CIT(A) has erred in not allowing the set off of carried forward losses against the income determined for the year.

2.1 During the case of hearing, the ld.AR of the assessee has not pressed the Ground No. 1. Hence, the same is dismissed being not pressed.

3.1 In the written submission, the ld.AR of the assessee has mentioned the Ground No. 3 and 4 of the assessee as consequential. Hence, the same do not require any adjudication by us.

4.1 At the outset of the hearing, the ld.AR of the assessee vide its application dated 27-06-2018 prayed hereunder to admit the additional evidence under rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963.

“1. With reference to above subject we would like submit that during the course of assessment proceedings as well as appellate proceedings due to non-availability of time we could not submit the vital and necessary evidences in support of our claim regarding share application money received from Shri Jagjeet Singh Gabha which is bank statement. At the time of assessment proceeding the share applicant was not in India and is residing abroad. Therefore we could not produce the bank statement. Now we have obtained all the bank

statement which is submitting in paper book page no. 10 & 11. Thus the additional evidences being furnished are only of supporting and supplementary nature but these go to the root of the matter in support of share application money. The additional evidences are crucial for the discharge of justice. Therefore these may kindly be admitted.

2. It is submitted that when technicalities are pitched against the substantive discharge of justice, the later has to prevail, in a case where **the bonafides are not in doubt** (Maruti Civil Works Vs. ITO [2011] 136 TTJ 448 [Pune]). It is further submitted that all the judicial institutions - the Hon'ble ITAT being one of them - are respected not on account of its power to legalize injustice on technical grounds but because these are capable of removing injustice. The assessee is only furnishing supporting evidences only. These are not cooked up or manipulated in any way. In view of this the Hon'ble ITAT is requested to admit the additional evidence and consider the same favourably. The following case laws are quoted in support for the admission of the additional evidence.

3. **Favourable case laws** –

- (i) **National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)** - Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee, notwithstanding the fact that same was not raised before the lower authorities.
- (ii) **CIT Vs. Raoraia Hanut Singh 117 Taxman 613 / 252 ITR 0528 : (Raj)** - The position is that the Tribunal can admit the additional evidence if it requires it to enable it to pass orders.
- (iii) **Electra (Jaipur) Pvt. Ltd. Vs. IAC 26 ITD 236** - If evidence produced by assessee is genuine, reliable and proves assessee's case than assessee should not be denied opportunity of it being produced even if he first time produces same before appellate authority.
- (iv) **Smt. Prabhavati S. Shah Vs. CIT 231 ITR 1 (Bom.)** - Production of additional evidence - assessee taking loans from two creditors - ITO treating loans as income from undisclosed sources as summons could not be served on creditors - Assessee wanting to prove genuineness of loan by relying on fact that amount borrowed and repaid by cheques. Assessee producing Photostat copies of cheques and certificate from Bank before AAC . AAC refusing to admit additional evidence. AAC should have considered evidence produced by assessee regarding loan.
- (v) **CIT Vs. Gani Bhai Wahab Bhai 232 ITR 900 (MP)** - There is no prohibition for taking additional evidence at the appellate stage, the

only condition being that the Department should not be prejudiced and should be given reasonable opportunity to rebut this additional evidence. In this case, no such request was made by the representative of the Department whether they disputed this certificate or not. Therefore, there is no illegality committed by the Tribunal which accepted the certificate of 46 per cent of the yield. In this view of the matter, the additional evidence entertained by the Tribunal cannot be said to be bad.

(vi) **Smt. Surinder Kaur Vs. ITO (2008) 118 TTJ 710 (Luck)** - Where additional evidence sought to be produced before Tribunal was a certificate relating to assessee's claim for deduction of a sum and if was relevant to decide claim of assessee, same was to be admitted for substantial cause and to enable tribunal to pass appropriate order in matter.

(vii) **Mascon Global Ltd. Vs. Assistant Commissioner of Income Tax (2010) 37 SOT 202 (Chennai)** - Rule 29 permits the Tribunal to admit the additional evidence for any substantial cause.

In view of the aforesaid facts and decisions the Hon'ble ITAT is requested to admit the additional evidence and decide the case favourably.''.

4.2 The Id. DR opposed the application of the assessee as to filing of additional evidence under rule 29 of the ITAT, Rules, 1963.

4.3 We have heard the rival contentions and perused the materials available on record. Through this application, the assessee wants to submit copy of bank a/c of Shri Jagjit Singh Gabha who had made share application to assessee. The share applicant was residing abroad during relevant time. Further it is supporting and supplementary evidence which supports the claim of assessee. Keeping the nature of evidence and facts of the case, the Bench observes that in the interest of equity and justice, the assessee deserves to file this additional evidence which is vital for

adjudication of this appeal. Thus the Bench allows and shall consider this additional to decide the issue in appeal.

5.1 Apropos Ground No. 2 of the assessee, brief facts of the case are that the assessee is a Private Limited Company and is engaged in the liquor business. The assessee company filed its return of income on 19-09-2013 for the Assessment Year 2013-14 declaring total income of Rs. Nil and has also declared current year loss of Rs. 50,19,763/-. The AO completed the assessment on 16-03-2016 u/s 143(3) of the Act determining total income of Rs. 85,23,000/- inter alia making the addition of Rs. 85,23,000/- u/s 68 of the Act. The relevant observations of the AO are as under:-

“4.2 The reply filed by the assessee has been gone through and is placed on record. In this regard, it is hereby stated that Shri Jagjit Singh Urf Shri Jeetji who is one of the investor for share capital and security premium amounting to Rs. 85,23,000/- in the year under consideration, the assessee company has filed that Shri Jagjit Singh owns a single Director company in the name of Quick Forex Transfer Limited wherein he is the only share holder. On perusal of the notes to the financial statement for the year ended 31-08-2013 & 31-08-2014 in the case of Quick Forex Transfer Limited, it is seen that under the head reconciliation of movements in shareholder's fund, the earned profit of the company is 12065 GBP and has shown dividends issued at 14000 GBP to Shri Jagjit Singh Gabba urf Shri Jeetji. This consistency is also seen in the previous years. These statements show that Shri Jagjit Singh urf Shri Jeetji who is also owner of Quick Forex Transfer Limited is far beyond the creditworthiness of making advance to the assessee in share capital and security premium in the year relevant to Assessment Year 2013-14. Merely proving the identity of the creditor does not discharge the onus of the assessee if the capacity of creditworthiness of the creditors is not proved. Further, the assessee

company has not filed any evidence regarding his wife's income. It is also worthwhile to say that the assessing officer when starts enquiry specifically to satisfy himself of the source of such credit and if during the enquiry he is satisfied that the entries are not genuine then he has every right to add the said sum represented by such credit entry as income of the assessee. However, satisfaction must not be illusory or imaginary but must have been derived from the relevant facts and evidences and on the basis of proper enquiry of all material before him. Hence, investment made by Shri Jagjit Singh amounting to Rs. 85,23,000/- also remains unproved in context to the section 68 of the Act and becomes eligible for addition of such amount to the returned income of the assessee company.

5.2The Hon'ble High Court has also held that the assessee is required to offer explanation about the nature and source thereof and the explanation so offered should be satisfactory in the opinion of the assessing officer.

5.3 Hence share application money received from Shri Jagjit Singh amounting to Rs. 85,23,000/-remains unproved and found infirmity in his creditworthiness and genuineness and the whole amount of Rs. 85,23,000/- credited for the share capital and premium security is liable to be taxed u/s 68 of the Act.''

In first appeal, the Id. CIT(A) has confirmed the addition made by the AO by passing the ex-parte order as the assessee was not present before the Id. CIT(A) on the date of hearing. The relevant observations of the Id. CIT(A) are as under:-

“4. The present appeal is against the assessment order passed u/s 143(3) of the Act. I have carefully perused the grounds of appeal and assessment order. As already discussed above, the appellant has failed to offer any explanation for submission in support of the grounds raised in this appeal nor any supporting evidences were produced by him despite adequate opportunity having been provided.

In this connection, reliance may be placed upon the decision of the Hon'ble Supreme Court in the case of H.M. Esufali Abdulali (1973) 90 ITR 271 wherein the Hon'ble Court has held that the appellate authority cannot substitute its own judgement in place of the judgement of the AO unless it is shown that the judgement of the AO was biased, irrational, vindictive or capricious.

In the instant case, the appellant is not able to show that the decision of the AO was arbitrary, biased, irrational, vindictive or capricious without any basis, I find no reason to interfere with the decision of the AO.

5. In the result, the appeal is dismissed. “

5.2 During the course of hearing, the Id.AR of the assessee prayed for deletion of addition sustained by the Id. CIT(A) amounting to Rs. 85.23 lacs u/s 68 of the Act for which the Id.AR of the assessee filed the following written submission.

“The assessee is a private limited company and is engaged in the liquor business. Return was filed on 19.09.2013 declaring total income of Rs. Nil. The Learned Assessing Officer has completed the assessment on 16.03.2016 u/s 143(3) of the Income Tax Act, 1961 determining total income at Rs. 85,23,000/- inter alia making the addition of Rs. 85,23,000/- u/s 68 of the Income Tax Act, 1961 in respect of share application money of Shri Jagjit Singh Gabha. The addition made by the Learned Assessing Officer and confirmed by the Learned CIT(A) is unjust, unlawful and illegal. The same is assailed as under: -

2. Share application money of Rs. 85,23,000/- of Shri Jagjit Singh Gabha is genuine: -

It is submitted that during the course of assessment proceedings the assessee submitted that the share application money of Rs. 85,23,000/-received from Shri Jagjit Singh Gabha was genuine. It was submitted before the Learned Assessing Officer that Shri Jagjit Singh Gabha was a British Citizen. In support of this a copy of passport was submitted. Copy of which is available on **paper book page number 3 to 7**. This establishes the identity of share applicant. It was further submitted that Shri Jagjit Singh Gabha was operating a company as a single director name Quick Forex Transfer Ltd. The company's principle activity during the year under consideration was money transfer and exchange bureau. In support of this copies of financial accounts for the period ending 31.08.2013 and 31.08.2014 were submitted before the Learned Assessing Officer. Copies of the same are available on **paper book page number 19 to 37**. Thus the activity which generated income in the hands of Shri Jagjit Singh Gabha was also established. This proves the source of source if at all required u/s 68 of the Income Tax Act, 1961 as the provisions of explanation source of the source are not applicable in the case of NRI. It is further submitted that the entire share application money was transferred through banking channel. In the hands of the assessee the money stood transferred from the bank account of Shri Jagjit Singh Gabha in HDFC Bank Account no. 156210660000188, Mansarover Garden, New Delhi. The copy of this bank account for the relevant period 31.03.2012 to 31.03.2014 is available on **paper book page number 10 to 11**. Assessee also submitted a detailed confirmation of Shri Jagjit Singh Gabha regarding share application money of Rs. 85,23,000/-. Copy of the confirmation is available on **paper book page number 8**. Thus to summarize the assessee furnished the following in support of the genuineness of share application money before the Learned Assessing Officer: -

(i) Copy of passport of Shri Jagjit Singh Gabha evidencing that he is a NRI R/o 55, Woodlands Road, Southall, UBI 1EJ, London Pasport No. 508223849. This establishes the existence and identity of the share applicant.

(ii) Copy of driving license of Shri Jagjit Singh Gabha available on **paper book page number 1**. Thus further supports the existence and identity of the share applicant.

(iii) Confirmation in support of share application money of Rs. 85,23,000/- which discloses that the entire

amount were through banking channels. This establishes the genuineness of the transaction.

(iv) Copy of HDFC Bank Account no. 156210660000188, Mansarover Garden, New Delhi which further establishes that the entire amount of share application of Rs. 85,23,000/- flowed/transacted through this bank account.

(v) Copies of financial statement of the company owned by Shri Jagjit Singh Gabha as one person company namely Quick Forex Transfer Ltd for the period ending 31.03.2013 & 31.08.2014 have also been furnished. These financial statements established beyond doubt that Shri Jagjit Singh Gabha was having income so as to deposit the share application money. The financial capacity and capability is proved. The company was owned by him is engaged in the activity of money transfer and exchange bureau. It is submitted that the entire funds have come from London in the account of the assessee. Thus the assessee has discharged his onus of proving the genuineness of the share application money.

In the facts and circumstances there was no case either with the Learned Assessing Officer for making the addition or with the Learned CIT(A) for confirming the same. The addition was made by the Learned Assessing Officer as he totally failed to appreciate the facts of the case. It is worthwhile to quote on the order of the Learned Assessing Officer as why he rejected the share application money received, the assessee has not filed any evidence regarding his wife

3. **Provisions of section 68 are not applicable: -**

It is submitted that in para 5.2 the Learned Assessing Officer has referred to the provisions of section 68 and provision insured by Finance Act, 2012. As per this provision the assessee is required to offer explanation about the nature and source of the person making the share application money. This is applicable only in case the person making the share application money is a resident. But the Learned Assessing Officer citing this proviso and also referring to a decision of Hon'ble Andhra Pradesh High Court in the case of Gayatri Associate vs. Income Tax

Officer (2014) 41 Taxmann.com 526 has concluded that the assessee has failed to comply with this proviso and has made the addition.

In this regard it is submitted that firstly this proviso is not applicable to the case of the assessee as the share applicant Shri Jagjit Singh Gabha is a nonresident. In support of this copy of passport of Shri Jagjit Singh Gabha has been furnished. The proviso to section 68 as cited above is applicable only in case the share applicant (person) is a resident. Secondly without admitting his applicability of this proviso it is submitted that the assessee has successfully established the source of income in the hands of Shri Jagjit Singh Gabha also by producing copies of financial statements of the company owned by him i.e. Quick Forex Transfer Ltd. Thus the assessee has also made compliance of proviso to section 68. In view of this it is submitted that the addition made by the Learned Assessing Officer has erroneously confirmed by the Learned CIT(A) deserves to be deleted.

4. **Favourable case laws: -**

The assessee further places reliance on the following decisions of the wherein in similar circumstances share application money has been accepted as genuine and additions made by the revenue were deleted: -

(i) **CIT vs. Bhaval Synthetics (2013) 84 DTR 449 (Raj)**

The learned counsel for the respondent-assessee submits that the question as formulated does not even arise in this case because it remains settled with the consistent decisions of the Courts that even in case of doubt about subscribers to the increased share capital, the amount of share capital cannot be regarded as undisclosed income of the company. The learned counsel has referred to the decision in the case of Shree Barkha Synthetics Pvt. Ltd (supra) wherein this Court has noticed that in Steller's case [(2001) 251 ITR 263], the Hon'ble Supreme Court has affirmed the view of Delhi High Court in the case of CIT Vs. Stellar Investment Limited :(1991) 192 ITR 287 (Del.) that reads as under :-

"It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names shares had been issued and the money may have been provided by some other persons. If the assessment of the persons who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself."

(emphasis supplied) The learned counsel for the appellants-revenue is not in a position to dispute the proposition aforesaid.

In view of the above, we have no hesitation in upholding the objection of the learned counsel for the respondent that the question as formulated does not arise in this case because so far as the assessee company is concerned, the amount referable to the share application cannot be attributed to it; and cannot be assessed in its hands.

It is submitted that the above decision of the Territorial High Court of Rajasthan is based on the Supreme Court decision cited therein. The position being so the addition deserves to be deleted.

(ii) CIT Vs. Supertech Diamond Tools Pvt Ltd. (2015) 229 Taxman 62 (Rajasthan High Court)

On the basis of third party statement Assessing Officer made additions u/s 68 on account of share capital. It was held that third party statement alleging the share capital purchasing company being engaged in providing accommodation entries were made behind the back and assessee had no opportunity for cross examining the same. Assessing Officer has not brought any material to disprove the genuineness of the share application money. The share applicants paid through banking channels had PAN number and registered under Companies Act. The additions were rightly deleted by the ITAT

The ratio of this decision is squarely applicable to the facts of the case of the assessee.

(iii) *Shri Barakha Synthetics Ltd vs ACIT (2006) 155 Taxman 239 (Raj)*:- It has been held that once the receipt of the confirmation letter from the creditor is proved and the identity and the existence of the investor has not been disputed, no addition on account of share application money in the name of such investor can be made in the assessee's hands. "In respect of the share application money received from investors, the assessee company has only to prove that the existence of the persons in whose name share application is received. No further burden is cast upon the assessee to prove that person himself has invested the said money or some other person made investment in his name."

(iv) *CIT vs Divine Leasing and Finance Ltd .299 ITR 268 SC* :- The assessee has to prima facie prove the (1) identify of the creditor / subscriber; (2) the genuineness of the transaction, namely whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor / subscriber; (4) if relevant details of the address or PAN identity of the creditor/ subscriber are furnished to the Department alongwith copies of the shareholders register, share application forms, share transfer register etc. it would constitute acceptable proof or acceptable explanation by the assessee (5) the Department would not be justified in drawing an adverse inference only because the creditor/ subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor / subscriber denies or repudiates the transaction set up by the assessee nor should the AO take such repudiation at face value and construe it, without more, against the assessee; (7) the AO is duty bound to investigate the creditworthiness of the creditor/ subscriber, the genuineness of the transaction and the veracity of the repudiation. It is for Parliament to introduce legislation if the duty presently resting on the Department is thought to be too onerous. The Court ought not to twist the language of a statute to remove the burden of proof altogether from the Department even though it has the necessary wherewithal to discharge it."

(v) *CIT vs Steller Investment Ltd (2001) 251 ITR 263 (SC)* :- Even if it is assumed that the subscribers to the increased capital were not genuine, under no circumstances could the amount of share capital be regarded as undisclosed income of the company u/s 68.

(vi) *CIT vs Lovely Exports (P) Ltd (2008) 216 CTR 195 (SC)*: - Even if the share application money is received by the assessee company from the alleged bogus share holders, whose

names are give to the AO then the department is free to proceed to reopen their individual assessment in accordance with law but it cannot be regarded as undisclosed income of assessee company.

(vii) Smilax Pharmaceuticals Ltd – ITA No. 208/JP/2014 dated 24-04-2016 :- From the materials available on record, it emerges that the assessee discharged its primary onus in terms of Section 68 of the Act. Relying on judgement of ITAT Mumbai Bench in the case of ITO vs Superline Construction(P) Ltd and another (supra) and various other judgements cited by the assessee, the addition in question is deleted.’’

5.3 On the other hand, the ld. DR supported the orders of the lower authorities.

5.4 We have heard the rival contentions and perused the materials available on record. In this ground of appeal, the AO made the addition of Rs. 83.25 lacs u/s 68 of the Act on the ground that creditworthiness of the creditor is not proved. The AO noted that the investment made by Shri Jagjit Singh amounting to Rs. 85.23 lacs remained unproved. In first appeal, the ld. CIT(A) has confirmed the action of the AO holding that the assessee has neither offered any explanation in support of the grounds raised before him nor filed any supporting evidence to support his contention during the course of hearing. During the course of hearing, the ld.AR of the assessee submitted that at the time of assessment proceeding, the share applicant was not in India and was residing in abroad. Therefore, the assessee could not produce the bank statement.

Now the assessee has obtained all the bank statement vide paper book pages 10 and 11 and further submitted that the additional evidence being furnished are only of supporting and supplementary nature but these go to the root of the matter in support of the share application money. The ld.AR of the assessee further submitted that the additional evidences are crucial for the discharge of justice. During the course of hearing the ld.AR of the assessee relied on the CBDT Circular No. 05 dated 20th Feb. 1969 (Direct Tax Online) wherein it is mentioned that *money brought into India by non-resident for investment or other purposes is not liable to Indian Income-tax. Therefore, there is no question of a remittance into the country being subjected to Income-tax in India (Para 2). If the money has been brought into India through banking channels or in the form of assets like plant and machinery or stock-in-trade, for which the necessary import permits had been obtained, no question at all are asked by the ITOs as to the origin of the money or assets brought in (Para 3).* It is pertinent to mention that ld.AR of the assessee relied on the decision of ITAT Delhi Bench dated 12th April 2013 in the case of Russian Technology Centre (P) Ltd. vs DCIT, Circle – 13, New Delhi (ITA No.4932, 4933, 5390 & 5391/Del/2011) wherein the bench observed as under:-

“13.....In our considered opinion the conflict between the provisions is only with reference to the onus and not to the issue of taxability of income. The onus is shifted under ss. 68 or 69 only with reference to the income which is otherwise taxable in the hands of non-resident under section 5(2). Therefore, the issue whether the income of non-resident is taxable or not is still to be decided with reference to the provisions of section 5(2) and the provisions of section 68 or 69 cannot enlarge the scope of section 5(2). What is not taxable under section 5(2) cannot be taxed under the provisions of section 68 or 69. Under sections 5(2), the income accruing or arising outside India is not taxable unless it is received in India. Similarly, if any income is already received outside India, the same cannot be taxed in India merely on the ground that it is brought in India by way of remittances. Reference can be made to the judgement of Supreme Court in the case of Kehsav Mills Ltd. (supra). If such income is shown in the books of account then it cannot be taxed in India merely because the assessee is unable to prove the source of such entry. For example, there may be appearing an entry of cash credit in the name of a person of USA by way of loan received through cheque and deposited in the bank account maintained at any city in USA. Such money, being received outside India, cannot be taxed under section 5(2) unless it is proved that such money is relatable to the income accrued or arising in India. Therefore, the same cannot be taxed under section 68 merely on the ground that assessee fails to prove the genuineness and source of such cash credit. Therefore, we are of the considered view that the provisions of section 68 or 69 would be applicable in the case of non-resident only with reference to those amounts whose origin of source can be located in India. Therefore, the provisions of section 68 or or 69, in our opinion, have limited application in the case of non-resident.”

The Id.AR of the assessee further relied on the Hon'ble Delhi High Court judgement dated 15-12-2016 on the similar issue in the case of CIT vs Russian Technology Centre (P) Ltd. (ITA No.547, 549, 555/2013) wherein the Hon'ble High Court affirmed the judgement of the Tribunal by holding as under:-

“13. In view of the above, this Court is of the view that the conclusion of the Tribunal in deleting the additions made cannot be faulted. Accordingly, the questions of law are

answered against the Revenue and in favour of the assessee. The order of the Tribunal is, therefore, affirmed.”

The Id.AR of the assessee further relied on the decision of Madhya Pradesh High Court in the case of CIT vs M/s. Peoples General Hospital (MAIT No. 27/2008 dated 27 June 2013) wherein the Hon'ble Court dismissed the appeals of the Revenue as to the matter of proving the identity and creditworthiness of the person providing share application money. The relevant observation of the Hon'ble Court is as under:-

“16. The aforesaid judgement has been followed by all the judgements relied on by the appellants relates to the period prior to the judgement of Lovely Exports. As the Apex Court has specifically held that if the identity of the person providing share application money is established then the burden was not on the assessee to prove the creditworthiness of the said person. The position of the present case is identical. It is not the case of any of the parties that M/s. Alliance Industries Limited, Sharjah is a bogus company or a non-existent company and the amount which was subscribed by the said company by way of share subscription was in fact the money of the respondent assessee. In the present case, the assessee had established the identity of investor who had provided the share subscription and it was established that the transaction was genuine though as per contention of the respondent the creditworthiness of the creditor was also established. In the present case, in the light of the judgement of Lovely Exports (P) Ltd., we have to see only in respect of the establishment of the identity of the investor. The Delhi High Court also in Divine Leasing & Finance Ltd. (supra) considering the similar question held that the assessee company having received subscription to the public/ rights through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that part of the share capital represented company's own income from undisclosed sources. The similar view has been taken by the High Courts.

17. As the Apex Court has considered the law in Lovely Exports (Supra) and in view of the law laid down by the Apex Court ,

we find that the substantial questions framed in these appeals do not arise for our consideration. Accordingly, all these appeals are dismissed with order as to costs.

Lastly the Id.AR of the assessee relied on the decision of ITAT Hyderabad Bench in the case of DCIT, Circle – 6,Hyderabad vs Shri Madhusudan Rao (ITA No.1482/Hyd/2014 dated 18-03-2015) in which the Bench dismissed the appeal of the Revenue by holding as under:-

“19. In view of the legal principles as stated above, provisions of section 5(2) are also not applicable as the amount received is from assessee's own account outside India and no income has accrued or arisen in India. These funds were also received through banking channel with necessary statutory approvals. Therefore, assessee has proved the source of receipts and discharged the onus. It is the Revenue which failed in proving that this amount is unexplained income of assessee. In view of these facts of the case, we are of the opinion that various case laws relied on by the Revenue does not apply and they are clearly distinguishable. In view of this, we have no hesitation in upholding the order of the CIT(A) and rejecting the Revenue's grounds.

20. In the result, appeal of the Revenue is dismissed.”

It is also pertinent to mention that the assessee has filed the following documents in support of his contentions.

- (i) Copy of Driving License of Shri Jagjit Singh (PBP 1-2)
- (ii) Copy of Passport of Shri Jagjit Singh (PBP 3-7)
- (iii) Confirmation of amount of Rs. 85.23 lacs with respect to share application money (PBP 8)
- (iv) Bank Statement of Shri Jagjit Singh Ghaba for the period 31-03-2012 to 31-03-2014 showing relevant transactions with HDFC Bank, Mansaravar Garden in A/c No. 15621060000188 (PBP 10-11)

- (v) Bank Statement of M/s. Shreenath Heritage Liquor Pvt. Ltd showing the relevant transactions (PBP 12-18)
- (vi) Financial Statement of M/s. Quick Forex Transfer Limited being one person company for the period 31-08-2013 and 31-08-2014. Shri Jagjit Singh Ghabad is the Director of this company. (PBP 19-27 & 28-37)

It is noted from the available records that Shri Jagjit Singh Gabha r/o of 55, Woodlands Road, Southhall UBI, 1 EJ, London having Passport No. 508223849 had paid a sum of Rs. 85.23 lacs through his Saving Bank A/c No; 15621060000188 held with HDFC Bank, Mansarovar Garden, New Delhi towards share application money to M/s. Shree Nath Heritage Liquor Pvt Ltd. having its registered office at G-1/100, RIICO, Industrial Area, Jhunjhunu (Raj) during the Assessment Year 2013-14. These payments were made to the assessee company through RTGS (PBP 8). It is noted that money had been brought into India through banking channel. Taking into consideration the above facts, circumstances of the case, case laws relied on by the assessee (supra) and the CBDT Circular No. 05 dated 20-02-1969, we find that the money brought into India by non-residents for investment or other purposes is not liable to Indian Income Tax. In this view of the matter, the Ground No. 2 of the assessee is allowed.

6.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 19-07-2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य /Accountant Member

जयपुर /Jaipur

दिनांक /Dated:- 19 /07/ 2018

*Mishra

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:

1. अपीलार्थी /The Appellant – Shreenath Heritage Liquor Pvt Ltd., Jhunjhunu
2. प्रत्यर्थी /The Respondent- The ACIT, Circle , Jhunjhunu
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.279 /JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar