

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणकरराव, लेखक सदस्य,
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.1434/PUN/2013
निर्धारण वर्ष / Assessment Year : 2010-11

Maharashtra Solvent Extraction
Pvt. Ltd.,
C/o. S.K. Oil Industries Compound,
Shivaji Nagar, Jalgaon-425 001
PAN : AADCM8466G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1, Jalgaon

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1640/PUN/2013
निर्धारण वर्ष / Assessment Year : 2010-11

The Deputy Commissioner of Income Tax,
Circle-1, Jalgaon

.....अपीलार्थी / Appellant

बनाम / V/s.

Maharashtra Solvent Extraction
Pvt. Ltd.,
C/o. S.K. Oil Industries Compound,
Shivaji Nagar, Jalgaon-425 001
PAN : AADCM8466G

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 14.08.2018
घोषणा की तारीख / Date of Pronouncement : 12.09.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

These are cross appeals filed by the Assessee and Revenue involving A.Y. 2010-11. They are filed against the order of CIT(A)-II, Nashik, dated 21-06-2013.

We shall first take up Assessee's appeal first.

ITA No.1434/PUN/2013 – By Assessee
A.Y. 2010-11

2. Grounds raised by the Assessee read as under :

“1. On the facts and in law the CIT(A) has erred in confirming the addition of Rs.40,00,000/- u/s. 68 on account of alleged unexplained share application money.

2. On the facts and in law the CIT(A) has erred in confirming the addition to the extent of Rs.1,81,389/- on account of disallowance of part of interest u/s.36 (1)(iii) of the Act.

3. On the facts and in law the CIT(A) has erred in confirming the addition to the extent of Rs.1,90,238/- on account of disallowance of part of interest u/s.36(1)(iii) of the Act.

4. On the facts and in law the CIT(A) has erred in confirmation the addition of Rs.50,00,000/- offered to tax by the assessee towards possible revenue leakage, alleged low yield and stock difference if any, to buy peace of mind, with the condition that no other addition shall be made and the A.O. has not kept his assurance and has made other additions.

5. On the facts and in law the CIT(A) has erred in confirming the addition of Rs.8,85,501/- on account of commission paid to Sanjay Agrawal-HUF.

6. On the facts and in law the CIT(A) has erred in confirming addition to the extent of Rs.9,95,840/- on account of disallowance of commission paid to Shri Ravi Sanjay Agrawal.

7. On the facts and in law the CIT(A) has erred in confirming the addition to the extent of Rs.6,50,000/- on account of disallowance of part of the salary paid to Smt. Santosh Sanjay Agrawal.

8. On the facts and in law the CIT(A) has erred in not allowing telescoping of the additions against each other and particularly in not telescoping the addition of Rs.40,00,000/- on account of alleged unexplained cash credit against other additions on account of alleged excessive expenditure etc.”

3. Background facts of the assessee include that the assessee filed the return of income declaring total income of Rs.4.25 crores (rounded off). AO made various additions and determined the assessed income at Rs.10.40 crores (rounded off). Details of the additions are given in Para No.11 of the assessment order and the same are extracted here as under :

“11. Considering the facts of the case and the submissions made, the total income of the assessee is computed as under:

Net taxable income as per return filed		- Rs.4,25,35,020/-
<u>Addition on account of</u>		
i) Ad-hoc addition on a/c of fall in yield as per para 2.4	5000000	
ii) Interest on borrowed funds u/s.36(i)(iii) as per Para-3.2	380476	
iii) Payment made u/s.40A(2)(b) as per para-4	3060476	
iv) Addition u/s.68 of the Share Application money as per para-6	14500000	
v) Interest on interest free advances u/s.36(1) as per para 8	362778	
vi) Consignment expenses as per para-9	5456065	
vii) Unsecured loan creditor as per para-10	32734084	<u>Rs.6,14,93,879/-</u>
	Assessed Income	Rs. 10,40,28,899/-
	Rounded off to	<u>Rs. 10,40,28,900/-</u>

From the above, it is evident that the AO made 7 additions totaling to Rs.6,14,93,879/-. The addition of Rs.3,37,34,084/- was made on accounts of unsecured loan creditors and share application money of Rs.1.45 crores (iv, and vii above) which works out to of Rs.4,72,34,084/- (Rs.1.45 crores + Rs.3,37,34,084). During the assessment proceedings, an amount of Rs.50 lakhs was offered by the assessee on these accounts. Further, AO made other additions too as mentioned at Sl.Nos. ii, iii, v, and vi of para 11 of the Assessment Order by either on account of section 36(1)(iii) or on account of section 40A(2)(b) or section 37(1) of the Act etc.

4. During the First Appellate proceedings, the CIT(A) granted part relief to the assessee. Accordingly, a sum of Rs.40 lakhs was confirmed against the addition of Rs.1.45 crores on account of the said share application money. Assessee offered Rs.50 lakhs on these accounts and the same stands also confirmed. Thus, the total addition confirmed on accounts of unsecured loan creditor and share application money works out to Rs.90 lakhs.

Regarding the other additions, the CIT(A) granted part/full relief, as the case may be. Aggrieved with this part relief, the assessee is in appeal before the Tribunal. Further, aggrieved with the relief granted by the CIT(A) the Revenue is in appeal with the grounds referred above.

5. Referring to Ground Nos. 2, 3 and 5 to 7, Ld. Counsel for the assessee brought our attention to the issues raised in these grounds and submitted that the additions on account of section 36(1)(iii) of the Act, and the disallowance of commission paid to (a) Sanjay K. Agrawal, HUF, (b) Ravi Sanjay Agrawal, (c) Smt.Santosh Sanjay Agrawal, stand covered in favour of the assessee by virtue of order of Tribunal for the A.Y. 2009-10. He also submitted that the facts are identical in this year too. In support of the same, Ld. Counsel filed a copy of the order of Tribunal in assessee's own case for the A.Y. 2009-10 in ITA No.73/PUN/2013 and ITA No.606/PUN/2013, dated 16-08-2017. Further, Ld. Counsel fairly requested to direct the AO for adopting the similar ratio laid down by the Tribunal on these issues. Per Contra, considering the said order of the Tribunal, Ld. DR for the Revenue has no objection for the said proposition and however, he relied on the orders of the AO and the CIT(A) dutifully.

6. On hearing both the sides and on perusal of the order of Tribunal in the assessee's own case for the A.Y. 2009-10 (supra), we find the issues are one and the same and stands covered in favour of the assessee. For the sake of completeness, we reproduce the finding by the Tribunal here as under :

“Finding of Tribunal on account of disallowance of part of interest u/s.36(1)(iii) of the Act :

“34. We have heard the rival contentions and perused the record. The issue of disallowance under section 36(1)(iii) of the Act and whether the same is merited or not is to be adjudicated keeping in mind the interest free funds available with the assessee and in case they are so available, then no disallowance is warranted under section 36(1)(iii) of the Act. The learned Authorized Representative for the assessee has referred to the Balance Sheet along with Annexure which are placed at pages 73 onwards. The perusal of

said details reflect that the interest free funds available to the assessee i.e. in the form of reserves and surplus with opening balance to the tune of Rs.11 crores. The case of assessee that it had sufficient non-interest bearing funds, which could take care of advances made interest free by the assessee, is correct. We find support from the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Reliance Utilities and Power Ltd. (supra) in this regard. Accordingly, we hold that there is no merit in disallowing any part of interest expenditure under section 36(1)(iii) of the Act. **Accordingly, we direct the Assessing Officer to allow the claim of assessee in entirety vis-à-vis grounds of appeal No.5, 6 and 7 raised by the assessee are allowed and grounds of appeal No.9 and 10 raised by the Revenue are dismissed.**"

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Regarding commission/salary paid to Mr. Sanjay Agrawal-HUF, Smt. Santosh Sanjay Agarwal and Mr. Ravi Sanjay Agrawal (Ground Nos. 5 to 7 of the appeal)

"Finding of Tribunal on account of commission paid to Sanjay Agrawal-HUF :

12. We have heard the rival contentions and perused the record. The issue raised is against the claim of commission paid to **Sanjay Agrawal-HUF** who was arranging purchase of Soya seeds on behalf of the assessee. The total commission paid to the said HUF was Rs. 8,80,047/-. The first issue which is raised against the assessee is that it had not proved services rendered by the HUF. However, we find that similar services were availed by the assessee in earlier years and no disallowance was made out of commission paid to him. In such circumstances, it could not be said that the said person has not rendered any services to the assessee.

13. The other aspect of the issue is that the commission paid to HUF has been included in its return of income and consequently, there is no leakage of revenue. In such scenario, the expenditure merits to be allowed in the hands of assessee in line with the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Indo Saudi Services (Travel) Pvt. Ltd. (supra). We hold so. **Accordingly, we direct the Assessing Officer to delete the addition of Rs.8,80,047/-.**

.....

14. The ground of appeal No.2 raised by the assessee is against disallowance of salary paid to Smt. Santosh S. Agarwal of Rs. 5 lakhs. The Revenue vide ground of appeal No.6 is aggrieved by deletion of Rs.4,60,000/- in respect of salary paid to Smt. Santosh S. Agarwal.

15. Brief facts relating to the issue are that the assessee had paid salary of Rs.9,60,000/- to Smt. Santosh S. Agarwal, who admittedly, was a specified person under section 40A(2)(b) of the Act. The claim of assessee was that she was attending office and doing internal checking of business transactions and was looking after other administrative work of assessee company. The Assessing Officer disallowed the expenditure of Rs.9,60,000/- on the ground that the said lady was not qualified and even the provisions of section 40A(2)(b) of the Act were applicable. The CIT(A) noted that in earlier year, sum of Rs.4 lakhs was paid as salary to the lady and he accordingly, considered salary of Rs.4,60,000/- as reasonable and the balance sum of Rs.5 lakhs was disallowed.

16. Both the assessee and the Revenue are in appeal against the same.

17. On considering the total facts and circumstances of the case, we find no merit in the claim of assessee, wherein as against salary paid of Rs.4 lakhs in the preceding year, for the year under consideration the assessee has paid salary of Rs.9,60,000/-. The assessee has failed to bring on record the necessary evidence of her having requisite qualifications to carry out the work and in any case in the preceding year, salary to the tune of Rs.4 lakhs was only paid. **Accordingly, we uphold the order of CIT(A) in allowing the salary claimed at Rs.4,60,000/- and disallowing balance sum of Rs.5 lakhs.** The plea of assessee having paid the taxes and hence, no disallowance in view of the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Indo Saudi Services (Travel) Pvt. Ltd. (supra), does not stand since the rate of taxes on the income disclosed by the assessee is on lower end. **Accordingly, the ground of appeal No.2 raised by the assessee and ground of appeal No.6 raised by the Revenue are dismissed.**

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“Finding of Tribunal on account of commission paid to Ravi Sanjay Agarwal :

23. We have heard the rival contentions and perused the record. The assessee had engaged the services of Ravi Agarwal, who was an MBA, was looking after the export business. For the year under consideration, the assessee had claimed deduction of Rs.18,50,327/-, which comprised of salary of Rs.9,60,000/- and commission of Rs.8,90,327/-. The Assessing Officer had allowed only salary to the extent of Rs.7,20,000/- and the CIT(A) had allowed total salary of Rs.9,60,000/-. Both the authorities below disallowed the claim of commission paid of Rs.8,90,327/-. We find that where the assessee has established the services rendered by the said person and since the salary paid to Ravi Agarwal has been allowed as deduction in the computation of income, hence its stands established that Ravi Agarwal has contributed his services to the assessee company.

24. Now, the question which arises is **whether the commission paid to Ravi Agarwal by the assessee** company merits to be allowed or not? In the first instance, the Assessing Officer has failed to bring on record any evidence to establish that the claim of commission paid by the assessee is not correct. The assessee is the best judge of its affairs and once it had agreed to pay the commission to a person who is providing his services to the assessee company, then unless otherwise, it is not allowable because of any restrictions put under the section, the expenditure as such is allowable in entirety under section 37(1) of the Act. Accordingly, we hold so.

25. The second aspect of the recipient having included the said income in its return of income and paying taxes and there being no losses to the Exchequer, since the rate of taxes paid are same in the hands of assessee and the recipient and applying the principle laid down by the Hon'ble Bombay High Court in CIT Vs. Indo Saudi Services (Travel) Pvt. Ltd. (supra), **we hold that the expenditure is to be allowed in entirety in the hands of assessee. Accordingly, the ground of appeal No.3 raised by the assessee is allowed and the ground of appeal No.7 raised by the Revenue is dismissed.”**

From the above order of the Tribunal, we find the issues raised in Ground Nos. 2, 3, 5 and 6, i.e.. (1) disallowance of part of interest u/s.36(1)(iii) of the Act (2) Commission paid to Sanjay Agrawal-HUF and Shri Ravi Sanjay Agrawal are held in favour of the assessee. However, the issue

raised by the assessee in Ground No.7 relating to part of the salary paid to Smt. Santosh Sanjay Agrawal stands confirmed by the Tribunal (supra).

Considering the above, we direct the AO to follow the ratio given by the Tribunal on the aforesaid issues. Accordingly, we remand these issues to the file of AO with direction to comply strictly with the decision of the Tribunal on comparing the facts of the said issues relating to interest and commission disallowance. AO shall grant reasonable opportunity of being heard to the assessee. **Thus, Ground Nos. 2, 3, 5 to 7 raised by the assessee stands covered issues. Accordingly, the Grounds No.2, 3 and 5 to 7 are allowed for statistical purposes.** That leaves Ground Nos. 1, 4 and 8 for adjudication.

7. Ground No.1 relates to the confirmation of addition of Rs.40 lakhs u/s.68 of the Act on account of unexplained share application money. Relevant facts include that the assessee raised share application money of Rs.1.45 crores during the year from 7 subscribers. Details are given in table which is extracted below :

Name of the share application money applicant	Opening Balance	Money received during the year	Money repaid during the year	Closing balance
Ajit Vora	0	7,00,000	0	7,00,000
Niranjan Bhatwal	21,00,000	0	16,00,000	5,00,000
Bhagwati Shah	0	10,00,000	0	10,00,000
Charulata A. Voja	0	8,00,000	0	8,00,000
M.. International	0	1,00,00,000	0	1,00,00,000
R. Arvindkumar	0	5,00,000	0	5,00,000
Siddhi T. Shah	0	3,00,000	0	3,00,000
Tushar P. Shah	0	7,00,000	0	7,00,000
Vijay Kumar Gwalerwala-HUF	0	5,00,000	0	5,00,000
Prerna Industries	13,00,000	0	0	13,00,000
	34,00,000	1,45,00,000	16,00,000	1,63,00,000

The AO in para 6 of his order held that the assessee failed to provide supporting evidences showing the (1) credit worthiness and (2) genuineness of the share applicants. The AO also observed that the authorized capital of the assessee is only Rs.3 crores and same was already subscribed fully. Therefore, as per AO, raising additional share application money without having extended authorized capital indicates the bogus nature of the share application money. Relevant portion of the assessment order reads as under

“In support of money borrowed during the year no supporting in respect of creditworthiness and genuineness of the share applicant is place on record, despite being specifically requested to substantiate vide question No.5 of notice issued u/s.142(1) of 01-03-2013.

Further on going through the schedule 1 of Balance Sheet it is noticed that the company’s authorized share capital is of 3000000 shares of Rs.10 each and which is fully subscribed and over and above company is calling share application money against company is not able to issue shares and convert said sum in share capital. This shows the deliberate act of the assessee to introduce the funds by way share application which it cannot convert into share capital. As the assessee is not able to prove the genuineness and creditworthiness of share application money I hereby add the said sum to the total income of Rs.1,45,00,000/-”

8. During the First Appellate proceedings, assessee filed various documents in support of correctness of the credit worthiness and genuineness of the transaction. CIT(A) handed over the papers to the AO for want of a Remand Report. On obtaining the same from the AO, after fulfilling the due process of law, the CIT(A) scrutinized the issue and held that only Rs.40 lakhs should be disallowed. Contents of Para No.6.5 of the order of CIT(A) are relevant and therefore the same is extracted here as under :

“6.5..... Keeping in view the quantum of returned income and absence of any documentary evidence for advancing Rs.3 Lac to the appellant company, I am of the view that the appellant has failed to prove the creditworthiness of the share applicant in its entirety. I therefore, uphold the addition of Rs.3 Lac out of Rs.5 Lac u/s. 68 of the Act. To sum up, addition of Rs.40 Lac (Shri Ajit Vora Rs. 7 Lac, Bhagwati Shah Rs.10 Lac; Smt. Charulata A Vora Rs.8 Lac; Shri Arvind Kumar Rs.2 Lac ; Shri Siddhi T. Shah Rs.3 Lac; Shri Tushar A Shah Rs. 7 Lac and Shri Vinaly Kumar Ghuwalewala (HUF)

Rs.3 Lac) out of the total addition of Rs.1,45,00,000/- is upheld u/s. 68 of the Act. The appellant gets a relief of Rs.1,05,00,000/- ground No. 2 is partly allowed.”

Thus, out of the total nine share application money subscribers, 7 are current subscribers and most of them are found to have no creditworthiness. The CIT(A) confirmed the addition of Rs.40 lakhs out of Rs.1.45 crores as unexplained share application money and granted relief to the extent of balance of Rs.1.05 crores. Further, it is noticed from the above extracted paragraph the relevant discussion giving reasons for allowing the said balance of Rs.1.05 crores. Further, on observing the contents of Para No.6.4, we find the CIT(A) granted relief in cases, wherever there are cash deposits before the cheques are given to the assessee towards share application money. Further, on account of various suspicious oriented finding, the CIT(A) confirmed the addition of Rs.40 lakhs made by the AO in this regard.

9. Aggrieved with the said confirmation of addition of Rs.40 lakhs the assessee is in appeal vide Ground No.1 above. Ofcourse, the Revenue is in appeal against the relief of Rs.1.05 crores granted by the CIT(A) to the assessee. Considering the nexus of the issue, we proceed to deal with the issue in a holistic manner in the succeeding paragraphs of the order.

BEFORE THE TRIBUNAL

10. Before us, on this issue of confirmation of Rs.40 lakhs, Ld. Counsel for the assessee submitted that the 7 of share application money subscribers are assessed to tax. In this regard, Ld. Counsel brought our attention to various evidences by way of PAN cards, bank statements, confirmation letters etc., and submitted that the transactions are genuine transactions and the details are on records of income-tax Department for various years.

The fact that they are assessed to tax regularly was also demonstrated before us. Ld. Counsel argued for granting relief in respect of this amount of Rs.40 lakhs considering the creditworthiness and genuineness of the transaction.

Without prejudice, Ld. Counsel submitted that the assessee voluntarily offered a sum of Rs.50 lakhs during the assessment proceedings on adhoc basis towards the discrepancies if any in matters of claim in the return of income by the assessee. For this proposition, he brought our attention to the letter of the assessee, copy of which is placed in the paper book at page No.72 of the paper book and read out the relevant lines. Further, arguing against any separate addition on accounts of share application money or unsecured loan etc. Ld. Counsel submitted that said sum of Rs.40 lakhs added u/s.68 of the Act is nothing but part of the business income earned by the assessee and the same is offered to plug any deficiencies. Therefore, as per Ld. Counsel, the assessee is entitled to telescopic benefit. Referring to Ground Nos. 4 and 8, Ld. Counsel submitted that while the Ground No.4 deals with the addition of Rs.50 lakhs offered suo moto by the assessee and the Ground No. 8 relates to the request for telescopic benefit against set off of sum of Rs.50 lakhs offered by the assessee. Further, Ld. Counsel submitted that it is not the case of the AO that the assessee has other streams of income and therefore case for separate addition of Rs.50 lakhs or said addition of Rs. 40 lakhs on account of share application money is required to be deleted and allow the benefit of telescopic benefit. He summed up by saying that, in a way, Ground Nos. 1, 4 and 8 are interlinked. Further, mentioning that assessee offered sum of Rs.50 lakhs on adhoc basis towards any discrepancies in the assessment to avoid litigation where the AO made itemized additions amounting to Rs.6,14,97,879/- constitutes double addition to the extent of Rs.50 lakhs. Ld. Counsel for the assessee submitted that only Rs.50 lakhs should be

added at the end of the assessment and the balance additions should be deleted. The fact that CIT(A) appreciated counsel's argument to some extent was also demonstrated by the Ld. Counsel. However, Ld. Counsel was critical of the order of CIT(A) in not only confirming the addition of Rs.40 lakhs but also share application money to the extent of Rs.40 lakhs and the said order constitutes an unfair one.

11. Ld. Counsel also filed written submissions on the issues raised in Ground No. 1, 4 and 8 and the same are extracted here as under :

“Ground No.1 – Addition of Rs.40,00,000/- u/s.68.

The A.O. has made addition u/s 68 of Rs. 1.45 crs. Out of this addition, the CIT(A) has confirmed an addition of Rs. 40 lacs. This issue is discussed by the CIT(A) in para 6.5 of his order, page 21. The assessee submits that the addition made is not justified since the relevant details of the persons from whom the share application money was received was duly submitted to the A.O. Accordingly, the addition confirmed of Rs. 40 lacs may kindly be deleted.

Ground No. 4 and 8 - Addition of Rs. 50 lacs and benefit of telescoping:

The assessee had offered an amount of Rs. 50 lacs in the asst. proceedings on an ad-hoc basis. The A.O. has made the said addition. The assessee submits that since other additions are made by the A.O, the addition of Rs. 50 lacs should not be made. However, without prejudice, it is submitted that in the asst. proceedings, the assessee had made an ad- hoc declaration of Rs.50 lakhs to cover for any errors/omissions. The letter making the said declaration is on page 72 of the Paper Book. The assessee submits that the A.O. and CIT(A) has taxed Rs. 50 lakhs in addition to separate individual additions. It is submitted that the addition of Rs. 50 lakhs should be telescoped against any other addition being confirmed and there is no reason to separately make individual additions and also the addition of Rs. 50 lacs offered by the assessee on an ad-hoc basis. Thus, the addition of Rs. 50 lacs should be telescoped against other individual additions finally confirmed.”

12. On the other hand, Ld. DR for the Revenue relied heavily on the orders of the AO/CIT(A) to the extent of Rs.90 lakhs (Rs.50 lakhs + Rs.40 lakhs). Further, Ld. DR was critical of the decision of CIT(A) in granting relief of Rs.1.05 crores on account of share application money, Ld. DR argued for confirming the entire addition of Rs.1.45 crores as well as Rs.50 lakhs offered by the assessee.

Further, Ld. DR for the Revenue argued in favour of remanding the entire issue to the file of the AO and argued on the CIT(A)'s failure to remand the issues to the AO. In this regard, to the significance this new demand of Ld. DR, granted 2 months time on 07-06-2018 to furnish a remand report anything from the AO. On 30-07-2018, Ld. DR filed a copy of the said remand report dated 18-07-2018 from the DCIT, Circle-1, Jalgaon. The contents of Para No.7 of the remand report relates to the share application money and the Ld. DR rely on the same on this issue of share application money. However, it is an admitted position that the AO and the DR has nothing to dispute or contribute on the issue of telescoping on the allegation of double addition.

13. We heard both the parties on this issue of share application money of Rs.1.45 crores on one side, confirming the addition to the extent of Rs.40 lakhs in the order and the request for telescoping benefit against the set off of Rs.50 lakhs offered by the assessee during the assessment proceedings. We have also considered the written submissions of the Ld. AO/DR by way of remand report and find the contents of Para No.7 are relevant. Para No. 7 reads as under :

"7. Without prejudice to above, it is seen that the assessee has collected share application money from eight persons, details of the same are as under :

1.	<i>Ajit Vora</i>	<i>Rs.7,00,000/-</i>
2.	<i>Bhagwati Shah</i>	<i>Rs.10,00,000/-</i>
3.	<i>Charulata Vora</i>	<i>Rs.8,00,000/-</i>
4.	<i>M.S. International</i>	<i>Rs.1,01,00,000/-</i>
5.	<i>R. Arvindkumar</i>	<i>Rs.5,00,000/-</i>
6.	<i>Siddhi T. Shah</i>	<i>Rs.3,00,000/-</i>
7.	<i>Tushar Shah</i>	<i>Rs.7,00,000/-</i>
8.	<i>Vinaykumar (HUF)</i>	<i>Rs.5,00,000/-</i>

*Total : -----
Rs.1,45,00,000/-
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The CIT(A) has deleted the addition in respect of following persons :

1.	<i>M.S. International</i>	<i>Rs.1,01,00,000/-</i>
2.	<i>R. Arvindkumar</i>	<i>Rs.3,00,000/- (out of 5 lacs)</i>

3. Vinaykumar (HUF) Rs.1,00,000/- (out of 5 lacs)

The CIT(A) has held that the creditworthiness of amount of Rs.1,05,000- is proved by the assessee. In this, major amount pertains to M.S. International. Following cheques are credited in the bank account of the assessee.

Date	Amount
15-07-2009	Rs.14,00,000/-
16-01-209	Rs.16,00,000/-
20-08-2009	Rs.20,00,000/-
22-08-2009	Rs.10,00,000/-
06-10-2009	Rs.40,00,000/-

The assessee has submitted confirmations from share applicant, copy of return of income and bank account statement of the share applicant. The CIT(A) has satisfied on the submission of the assessee and deleted the addition on the ground that the entries in the bank account of share applicant are through cheque only. However, creditworthiness of the lenders cannot be genuine solely on the basis of movement of cheques in the bank account. The source of share applicant requires to be thoroughly examined. Though the identity is proved, but creditworthiness and genuineness of transaction is not proved by the assessee. On perusal of bank account of share applicant, it is seen that the amounts are credited by RTGS transfer before remitting the same to the assessee Co. The sources of such RTGS amount are remained to be verified. Similarly, sources of other two share applicants to whom partial relief is granted are also remained to be verified. Similarly it is also seen that authorized share capital of the assessee Co. is fully subscribed, hence there is no scope to accept further share application money. In addition to this, no resolution of Board of Directors is furnished to accept further share application money. It is also seen that though the Co. has reserve in balance sheet but never has declared any dividend. Even after these circumstances, the investor has invested the amount of Rs.1 Cr. The investor has got no benefit. He was not allotted the shares and he was given the money back without any interest. Thus the circumstantial evidence leads to the conclusion that share application money received is not genuine and addition of Rs.1.05 Cr requires to be confirmed.”

13.1 Further, on this issue, the case of the assessee is that the decision of the CIT(A) is hypertechnical in confirming the said sum of Rs.40 lakhs on the reasoning that the cash was found deposited in the bank accounts of the share application subscribers just before the cheques are issued to the assessee. In the process, he ignored the fact that the said subscribers were examined and their financial statements were scrutinized. It is a finding of the CIT(A) that the identity of the said individuals as well as the creditworthiness of the same are beyond doubt. In such circumstances, disbelieving the part payments towards the subscribers cannot be sustained

on merits. Further, he did not disturb the claims of the subscribers in their individual returns. Further, we considered the assessee's offer of round-sum of Rs.50 lakhs towards the unspecified discrepancies if any, such as share application money, unsecured loans etc. and find that the offer stands even today. In such circumstances, making separate addition of Rs.40 lakhs on account of specific discrepancies in share application money account is not legally sustainable as the same amounts to double taxation. As per Ld. Counsel, the CIT(A) also ignored the fact that the said offer of Rs.50 lakhs was also earned out of business activities of the assessee and making separate addition on account of Rs.50 lakhs, in addition to the said Rs.40 lakhs, is not proper. It is the claim of the Ld. Counsel for the assessee that the assessee is entitled to telescoping benefit to the extent of Rs.40 lakhs out of the said offer of Rs.50 lakhs.

14. Per Contra, on this issue of addition of Rs.40 lakhs, addition of Rs.50 lakhs and the claim of telescoping benefit, Ld. DR for the Revenue has nothing to say except relying on the written remand report of the AO. The said remand report of the AO dated 18-07-2018 is also silent on this part of claims of the assessee. In any case, it is the general case of the Revenue that entire amounts of Rs.1.45 crores as well as Rs.50 lakhs needs to be confirmed.

15. We heard both the parties on the issue of confirming of Rs.40 lakhs above for which the assessee is in appeal. We find there is no dispute on the facts. The core reason for confirming the said addition of Rs.40 lakhs involving 7 share application subscribers is depositing of cash in their bank accounts before the cheques are issued to the assessee towards share application money. Otherwise, AO did not give any finding of fact with regard to the absence of adequate cash flow and positive cash balances in

the accounts of respective subscribers. Notwithstanding the above argument, we find that the assessee still abide by the disclosure of Rs.50 lakhs made by the assessee during the assessment proceedings. No case is made out by the AO that the said Rs.50 lakhs is not earned by the assessee from the existing business operations of the assessee. On this issue of telescoping, it is settled legal proposition that the telescoping benefit needs to be granted so long as no separate source of income is discovered by the AO. Therefore, we are of the opinion that the claim of the assessee for grant of telescoping benefit against the disclosure of Rs.50 lakhs should be allowed. Thus, Ground No.1 is partly allowed and Ground No. 8 is allowed. Accordingly, we order.

Consequently, the CIT(A) decision of making double addition of Rs.40 lakhs as well as Rs.50 lakhs stands reversed. The overall addition should be restricted to only Rs.50 lakhs as offered by the assessee. Thus, Ground No.4 is partly allowed.

16. In the result, the appeal of the assessee is partly allowed for statistical purposes.

We shall now take up the appeal of the Revenue.

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A.Y. 2010-11

17. Grounds raised by the Revenue read as under :

“1. On the facts and in the circumstances of the case, the Hon'ble CIT(A), Nashik has erred in deleting the additions made u/s.68 and holding that the creditors have established their creditworthiness.

2. On the facts and in the circumstances of the case, the Hon'ble CIT(A), Nashik has erred in deleting the additions made on a/c of alleged unexplained

share application money and holding that the share application money as genuine.

3. On the facts and in the circumstances of the case, the Hon'ble CIT(A), Nashik has erred in deleting the addition made u/s.37 on account of Consignment Expenses and holding that the consignment expenses are genuine.

4. On the facts and in the circumstances of the case, the Hon'ble CIT(A), Nashik has erred in deleting the additions made on a/c of disallowance of interest on interest free advances u/s.36(1)(iii) and holding them as genuine.

5. The appellant craves leave to add, alter, modify, delete amend any of the grounds with prior permission of the Hon'ble CIT, as per the circumstances of the case.

6. The appellant prays to file any of the additional evidence appropriate to the grounds taken in appeal.”

18. At the outset, Ld. DR for the Revenue submitted that Ground No.4 of the appeal is connected to Ground No. 2 and 3 of the assessee's appeal. Consequently, the said Ground No.4 is required to be considered as covered by the order of the Tribunal in the assessee's own case for the A.Y. 2009-10 (supra). We order accordingly. Thus, Ground No.4 raised by the Revenue is dismissed.

19. Ground Nos. 5 and 6 by the Revenue are general in nature and therefore they are dismissed as such. That leaves Ground Nos.1 to 3 for adjudication.

20. Ground No.1 relates to deletion of addition of Rs.3,27,34,084/- on account of unsecured loans. Relevant facts include that the AO called for the details of supporting documents in respect of said claim of unsecured loans. AO granted couple of opportunities before assuming that the said loan creditors are bogus and non-genuine. Relevant lines from Para No.10 are extracted here as under :

“10. Unsecured loan creditors addition u/s. 68 of the Act.

On this issue assessee was given opportunity 2 times to submit the details and supportive documents in respect of unsecured loan borrowed during the year. Assessee was asked to prove the creditworthiness and genuineness of

the lenders from whom the assessee has borrowed the funds during the year. After giving sufficient time assessee again on 05-03-2013 filed on account statement of unsecured loan holders and has stated in its submission that they will be submitting the documents proving the creditworthiness and genuineness of the lenders in due course. The same is also not filed till date, which apparently proves that the amount borrowed during the year is bogus and non genuine. Further as per companies act Pvt. Ltd company can borrow the funds only form its shareholders and closed relative of shareholders only and non submission of creditworthiness documents and confirmation of the same has caused me to a basis for making of addition of the loan fund borrowed during the year as an bogus borrowing and liable to added u/s 68 of the Act. During the year company has borrowed to Rs.9,98,34,114/- from various person other than banks/financial institutions as per tax audit report, out of which a sum of Rs.6,71,00,030/ - was repaid to one party and balance of Rs.3,27,34,084/- is still outstanding which is added to the total income of the assessee.”

21. During the First Appellate proceedings, the CIT(A) analysed all the unsecured loan creditors and tabulated the creditworthiness of the said lenders, their income-tax particulars, their gross income return particulars, bank details, creditworthiness details of each and every case in Page Nos. 9 to 12 of the order of CIT(A). Further, the CIT(A) considered the remand report from the AO on each of the lenders and held that the AO is unjustified in making additions by giving the statements. Contents of Para No.5.8 of the order of CIT(A) are relevant and the same are reproduced here as under :

“5.8. In view of the above facts noticed on verification of the submission and enclosures filed by the appellant, I am of the considered view that the creditworthiness of the creditors in respect of which addition has been made by A.O. u/s. 68 of the Act stands satisfactorily proved. Further, if necessary the A.O. can take action against the lenders after due verification if necessary, as the addresses and PANs of the lenders are available in the submission filed by the appellant. The comment of the A.O. that the creditworthiness of the creditors has not been proved is not justified in view of any supporting evidence on record especially in the light of availability of the balance sheets, bank statements, computation of income and acknowledgment of returns of lenders on record. The said details filed by the appellant have been reproduced in the preceding paragraphs. The sweeping comment of the A.O. about creditworthiness of lenders in the remand report has been made without bringing on record any evidence showing that the lenders were not creditworthy, particularly in view of the fact that the lenders are assessed to tax and their addresses and PANs and also ackn. of I.T. returns showing the Ward/Circle where the lenders are assessed are filed by the appellant. In view of the above facts and discussion, I am of the considered view that the appellant has satisfactorily proved the genuineness of the transactions, identity of the creditors and their and creditworthiness. The AO is, therefore, not justified in making additions of Rs.3,27,34,084/- u/s 68 of the Act on account of unexplained unsecured loans. The addition of Rs.3,27,34,084/- is therefore, deleted. The A.O. is directed accordingly. Ground Nos.1 is allowed.”

22. Aggrieved with the above decision of CIT(A) in favour of the assessee, the Revenue is in appeal raised Ground No.1.

23. Before us, Ld. DR for the Revenue explained the above developments on this account of unsecured loans and submitted that the CIT(A) has not given sufficient time to the AO for conducting scrutiny of accounts of the lenders qua the creditworthiness and genuineness of the transaction and requested for grant of one more opportunity. He also referred to the additional time granted by the Bench for furnishing the remand report and enquiry report if any within the specified time for adjudicating the issue.

24. On the other hand, Ld. Counsel for the assessee brought our attention to the discussion given by the CIT(A) in Para Nos. 5.3 to 5.8 of his order and brought our attention to the tabulation given therein. Ld. Counsel highlighted the fact that in most of the cases the banks have provided cash credit facility to the lenders. The fact of (1) income returned by the lenders is more than Rs.10 lakhs; (2) cash credit limit appearing in the bank statements is substantial; and (3) the net worth/capital account balance considering the value of the assets only at cost are also highlighted. Bringing our attention to Para Nos. 5 and 6 of the order of CIT(A). Ld. Counsel mentioned that the AO was very casual and careless in giving adverse findings against the assessee without applying his mind during the assessment proceedings when the same is called for by the CIT(A). Thus, Ld. Counsel submitted that the order of CIT(A) is fair and reasonable and the same should not be disturbed.

25. We heard both the parties on this issue of addition u/s.68 of the Act and perused the orders of the Revenue. AO made addition of Rs.3,27,34,084/- raising the issues relating to creditworthiness of the

creditors. The CIT(A) examined this issue and scrutinized the documents relating to the creditworthiness of the creditors. Thus, he was satisfied about the documentation furnished by the assessee and granted relief to the assessee. Further, CIT(A) held that, in case of any requirement of taking action on these credits, the same can be taken up only against the lenders after due verification and due process of law.

25.1 We have also examined the remand report furnished by the AO/CIT-DR, in particular, and contents of Para No.8, in particular relating to the unsecured loan creditors and find the AO merely enlisted/discussed the various groups of lenders and commented by stating that there are certain pending verifications to be done at the end of the AO and therefore, requested for confirming the additions if not remanded to his file. Otherwise, the AO did not bother to examine the creditors by invoking the provisions of section 131, 132, 133A etc., in the 2 months time given by the Tribunal at the time of calling the remand report on 07-06-2018. This inaction of the AO is unsustainable legally and it constitutes unacceptable passiveness of AO. Requesting the Tribunal for further remanding the entire issue to the file of AO without having credible reasons amounts to granting of one more opportunity to the Revenue. Any remand of an issue amounts to causing heavy inconvenience to the assessee in matters of attending to the AO's office, explaining/evidencing etc., during such remand proceedings. How many times the assessee shall undergo this rigour? Therefore, we find the law does not permit such liberal grant of request of the AO. As such, it is a case of calling for restoring the issue to the file of AO for one more round without having any concrete evidences at his end.

In our view, it is a case of mere doubts and surmises of the AO that led him to make additions on account of unsecured loans of

Rs.3,27,34,084/- . Further, we also examined Para Nos. 5.3 to 5.8 of the order of CIT(A) which are already extracted above. We find the CIT(A) has undertaken the scrutiny of the creditors in a systematic manner and deleted the additions on finding that there is no issue relating to the identity, creditworthiness and the genuineness of the transactions. In our view, the said order of the CIT(A) is fair and reasonable and it does not call for any interference. Accordingly, Ground No.1 raised by the Revenue is dismissed.

26. Ground No.2 of the Revenue relates to the issue of share application money and the relief granted by the CIT(A) to the extent of Rs.1.05 crores. This issue has already been dealt with while adjudicating the assessee's appeal vide Ground Nos. 1, 4 and 8. In that appeal, we confirmed the addition of Rs.50 lakhs (Ground No.4) and allowed the benefit of telescoping to the confirmed sum of Rs.40 lakhs out of Rs.1.45 crores added by the AO. Further, we have also examined the manner of relief granted by the CIT(A) to the extent of Rs.1.05 crores and find the order of the CIT(A) is fair and reasonable as the relief was granted after scrutinizing the evidences furnished by the assessee, as discussed in Para No.5.8 of the order of CIT(A). Considering the same, this Ground raised by the Revenue is dismissed.

27. Ground No.3 relates to the relief granted by the CIT(A) in connection with the addition of Rs.54,56,065/- on account of consignment expenses. Relevant facts on this issue include that the assessee claimed said expenses as allowable expenditure. For the reasons given in Para No.9 in the assessment order, the AO disallowed the same. Contents of the said reasons are extracted here as under :

“9. Disallowance u/s.37(1) - Consignment expenses.

Even after requesting the assessee more than once for clarification regarding consignment expenses paid assessee has failed to put on record conclusive supporting evidences in respect of payment made for consignment expenses. Although it is claimed by the assessee that it is reimbursement to the

consignment agent no documents in submitted for the same. For claiming any expenditure as revenue expenditure it is has to be incurred for the running business and in the course of business. The assessee has failed to prove the same and accordingly the consignment expenses of Rs.54,56,065/- is hereby disallowed for want supportive document.

28. During the First Appellate proceedings, the CIT(A) deleted the addition.

Aggrieved with the order of CIT(A), the Revenue is in appeal before the Tribunal vide Ground No.3.

29. Ld. DR for the Revenue relied heavily on the order of the AO.

30. Per Contra, Ld. Counsel for the assessee filed the following written submissions in support of his arguments :

“Ground No. 3 – Disallowance on account of consignment expenses :

2.1] This issue is discussed by CIT(A) in paras 7 - 7.3, pages 23 - 25 of his order. The learned A.O. had made a disallowance of consignment expenses of Rs.54,56,065/- on the ground that the said expenditure was not incurred for the business of the assessee. The learned CIT(A) has noted the fact that the assessee has sold goods outside the state of Maharashtra through agents/ depots. The A.O. had made the disallowance on the ground that proper evidences were not furnished by the assessee. However, before the learned CIT(A), detailed evidences were submitted which is noted by the CIT(A) in para 7.3 of his order. He has also noted that the assessee has sold goods worth Rs.14.70 Crs. outside Maharashtra state and the expenditure incurred earn freight, sales commission, loading and unloading of goods was required to be incurred for making the said sales. Considering the detailed evidences furnished by the assessee, the learned CIT(A) has deleted the addition made. The assessee submits that the addition has been rightly deleted by the learned CIT(A) and the entire expenditure is incurred for the purpose of business of the assessee.”

31. We heard both the sides and perused the orders of the Revenue on this issue. We find contents of Para No.7.3 of the order of CIT(A) are relevant and therefore, the same are extracted here as under :

“7.3 I have carefully considered the facts of the case and rival contentions and gone through the copies of bills, sales tax returns, ledger a/c of consignment sales etc. filed by the appellant before me. On perusal of the same it has been noticed that the A.O has disallowed the total consignment expenditure of Rs.54,56,065/- which has been incurred by the appellant in respect of the goods sold out of Maharashtra State through agents/depots outside Maharashtra. The A.O. has disallowed the consignment expenditure claimed by the appellant for want of documentary evidence. The abovementioned evidence filed by the appellant was forwarded to the AO for his comments vide letter dt. 30/04/2013. The AO, has filed his comments stating that during assessment proceedings the assessee has not properly

*linked and substantiated the consignment expenses and sales and hence the addition was made. He further stated that a report will be sent after due verification of the issue after 9/6/2013. The AO has however, not sent any report till date. It is more than 45 days since the reference was made to AO i.e. on 30/04/2013. It is also not clear from his interim report as to what sort of enquiries he is making. It has been noticed from the submission filed by the appellant that during appellate proceedings the appellant has filed submission which has supported and established the consignment expenditure incurred which was not filed before the A.O. during assessment proceedings, as stated by the A.O. in his comment reproduced above. From the above evidences filed by the appellant, such as VAT returns filed with Sales tax department, Govt. of Maharashtra and Form No. F issued by depots located outside the State obtained from their State Government departments; **it is evident that the appellant has sold goods to the extent of Rs.14.70 crores outside the Maharashtra State. Further, for selling the said goods the expenditure towards freight, sales commission, loading and unloading charges etc. are required to be incurred. The said expenditure is supported by bills issued by the depots. Further, the appellant has maintained regular books of accounts in the course of business and the same are audited and the auditor has also not mentioned any adverse comment in regard to the said expenditure. The A.O in his comments submitted during appellate proceedings, on the submission of the appellant, has not brought on record any evidence to prove that the expenditure incurred and claimed is bogus or non genuine. In view of the above facts the A.O is not justified in disallowing the consignment expenditure amounting to Rs.54,56,065/- . The addition of Rs.54,56,065/-is therefore, deleted. Ground No.3 is allowed.***

From the above, we observe that the CIT(A) has rightly appreciated the fact that the assessee incurred the expenses on account of goods sold out of Maharashtra State and the same are supported by bills. Revenue could not establish anything against the assessee by bringing any contrary material to prove that the consignment expenses incurred by the assessee are bogus. Therefore, we uphold the order of CIT(A) as fair and reasonable. Ground No.3 raised by the Revenue is dismissed.

32. In the result, the appeal of the Revenue is dismissed.

33. To sum up, appeal of the assessee is partly allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced on 12th day of September, 2018.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12th September, 2018.

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeal)-II, Nashik.
4. The CIT-II, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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