

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 5440/DEL/2017
[Assessment Year: 2012-13]

ASR Wines [P] Ltd
44, Satha,
Bulandshahr.

Vs.

The I.T.O
Ward 3 (1)
Bulandshahr

PAN: AAHFB 9267 D

[Appellant]

[Respondent]

Date of Hearing : 06.11.2018
Date of Pronouncement : 13.11.2018

Assessee by : Shri Somil Aggarwal, Adv

Revenue by : Ms. Aashna Paul, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - Ghaziabad dated 02.03.2017 pertaining to assessment year 2012-13.

2. The appeal is barred by limitation by 66 days. I have gone through the prayer for condonation of delay. I am convinced that the assessee was prevented by reasonable cause for not filing the appeal in time. The appeal is condoned.

3. The solitary grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs. 8,50,000/- on account of share application money received from Shri Achchan Khan by treating it as alleged income from undisclosed sources u/s 68 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has shown share application money of Rs. 8.50 lakhs. The assessee was asked to furnish the details of share application money received from 34 persons, alongwith their confirmations and copy of their bank accounts. After considering the reply of the assessee, the Assessing Officer found that Shri Achchan

Khan, who is a share holder, invested share application money of Rs. 4.35 lakhs during the F.Y. 2009-10. He has also deposited share application money of Rs. 8.50 lakhs in F.Y. 2011-12. Accordingly, notice u/s 133(6) of the Act was issued to Shri Achchan Khan, who confirmed the transaction of share application money of Rs. 8.50 lakhs. The Assessing Officer was not convinced with the explanation given by Shri Achchan Khan and insisted for the presence of Shri Achchan Khan from whom share application money was received.

5. The assessee filed a detailed reply explaining that Shri Achchan Khan is a member in AOP M/s Ahmed Trader BSR from where he has withdrawn the amount out of his capital and invested the same as share application money with the assessee company. The assessee showed his inability to produce Shri Achchan Khan.

6. The Assessing Officer was of the firm belief that Shri Achchan Khan has no job work and he is hand to mouth and, therefore, is not a man of means to deposit Rs. 8.50 lakhs as

share application money with the appellant company. Accordingly, Rs. 8.50 lakhs was added u/s 68 of the Act.

7. The assessee agitated the matter before the first appellate authority but without any success.

8. Before me, the ld. AR reiterated what has been stated before the lower authorities.

9. The ld. DR supported the findings of the Assessing Officer.

10. I have carefully considered the orders of the lower authorities. The undisputed fact is that Shri Achchan Khan is an existing share holder of the appellant company. Therefore, his identity cannot be disputed. Moreover, the notice issued u/s 133(6) of the Act was duly served upon Shri Achchan Khan, who not only confirmed the transaction, but also furnished necessary details. The Assessing Officer has

made addition only because Shri Achchan Khan could not be produced and he was a man of no means. I fail to understand what prevented the Assessing Officer to issue summons u/s 131 of the Act on Shri Achchan Khan. Secondly, when the Assessing Officer was fully aware that Shri Achchan Khan has made investment of Rs. 8.50 lakhs as share application money with the appellant company, nothing could have prevented the Assessing Officer to ask the source of investment from Shri Achchan Khan. In my considered opinion, if the source was not properly explained, addition could have been made in the hands of Shri Achchan Khan as unexplained income. By no stretch of imagination addition can be made u/s 68 of the Act in the hands of the appellant company since it has discharged the initial onus cast upon it by virtue of provisions of section 68 of the Act. Addition is uncalled for and directed to be deleted.

11. In the result, the appeal filed by the assessee in ITA No. 5440/DEL/2012 is allowed.

The order is pronounced in the open court on 13 .11.2018.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 13th November, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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