

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1465/Kol/2014

(निर्धारणवर्ष / Assessment Year: 2010-11)

M/s GDA Cement Industry Pvt. Ltd. Chowdhury Market, S.N. Sarkar Road, MunsiffDanga, Purulia – 723101.	Vs.	ACIT, Cir-3, Asansol
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. : AADCG 4934 F		
(Appellant)	..	(Respondent)

Appellant by : Shri U. Dasgupta, Advocate

Respondent by : Shri Ajay Singh CIT(DR) & R. Choudhary, Addl-CIT

सुनवाई की तारीख/ Date of Hearing : 13/12/2018

घोषणा की तारीख/ Date of Pronouncement : 19/12/2018

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2010-11, is directed against an order passed by the Commissioner of Income Tax (Appeals)-, Asansol, in Appeal No.256/CIT(A)/Asl/Cir-3/Asl/12-13, dated 22.05.2014, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the I.T. Act, 1961 (hereinafter referred to as the 'Act') dated 14.02.2013.

2. The grounds of appeal raised by the assessee reads as under:

"1. For that the order of the Ld. CIT(A) is arbitrary, excessive, hence bad in law.

2. For that on the facts of the case, the Ld. CIT(A), was not justified in sustaining the addition of Rs. 44,50,000/- u/s 68 of the Act, 1961 (without giving cognizance to the written submissions filed) when the identity, credit worthiness and genuineness of share applicants were established beyond doubt and the addition made may please be deleted.

3. For that on the facts of the case, the Ld. CIT(A), was not legally justified in sustaining the addition u/s 68 of the Act, 1961 on the basis of ADIT report (conducted through A.O. during remand), without any opportunity of rebuttal, without any opportunity of cross examination and without any infra departmental verification through concerned assessing officer even though all concerned particulars has been filed on record.

4. For that on the facts of the case, the Ld. CIT(A), was not justified in sustaining the addition of Rs. 4,00,000/- on account of loan creditors, when the identity, credit worthiness and genuineness of loan creditors were established beyond doubt and the addition made may please be deleted.

5. For that the appellant craves leave to add, alter, amend any further grounds of appeal before or at the time of hearing.”

3. Ground Nos.2 & 3 raised by the assessee relate to addition of Rs.44,50,000/- u/s 68 of the Income Tax Act, on account of share application money.

4. The facts apropos this issue are that the assessee filed its return of income for the A.Y 2010-11 on 26.09.2010. The assessee's case was processed u/s 143(1) of the I.T. Act. Later, the assessee's case was selected for scrutiny u/s 143(2) of the Act and the AO completed the assessment u/s 143(3) by making addition on account of unexplained share capital / share premium to the tune of Rs.44,50,000/- and on account of bogus loan creditors to the tune of Rs.5,00,000/-. The AO noted that the assessee has issued 317800 shares @ Rs. 10 each out of 10,00,000 authorized shares. Notices u/s 133(6), dated 21.08.2012, were issued to the alleged shareholders calling for the following documents/information: (i) Brief Note on business, (ii) Copy of Form of share application, (iii) Copy of the share allotment certificate, if allotted, or other relevant documents, if not pending, (iv) Mode of payment of share application money, (v) Copy of the ITR-V for the relevant Assessment Year and Copy of balance sheet along with its annexure. The shareholders to whom notices u/s 133(6) were addressed are as follows:

Name of the Shareholders	No. of share allotted	Date of allotment	Share application money
Adonis Vanijya Pvt. Ltd.	2000	31.03.2010	200000.00
Jain Agency Pvt. Ltd.	8500	31.03.2010	850000.00
Rajshree Traders Pvt.	3000	31.03.2010	300000.00
SalujaVyapar Pvt. Ltd.	9000	31.03.2010	900000.00
Silver Point Infratech Ltd.	5000	31.03.2010	500000.00
Versatile Vyapar Pvt. Ltd.	7000	31.03.2010	700000.00
VirgeVyapar Pvt. Ltd.	5000	31.03.2010	500000.00
Kolkata Vanijya Pvt. Ltd.	5000	31.03.2010	500000.00
Total	44509		4450000.00

Since, the assessee company could not prove the identity, creditworthiness and genuineness of these transactions, therefore, AO held that these shareholder companies were provided accommodation entries and the amount of money credited in the books of the assessee, belonged to the assessee which was channelizing through banking account therefore, the AO made the addition of Rs.44,50,000/-.

5. Aggrieved by the addition made by the AO, the assessee filed an appeal before the Id. CIT(A) who has confirmed the addition made by the AO. Aggrieved, the assessee is in appeal before us.

6. We have given a careful consideration to the rival submissions and perused the materials available on record. At the outset itself, the Id Counsel submitted before us that share application money received from the following share subscribers pertain to the previous year 2008-09, relevant to assessment year 2009-10:

<i>SalujaVyapar Pvt. Ltd.</i>	<i>9000</i>	<i>Rec.in AY 2009-10</i>	<i>9,00,000</i>
<i>Silver Point Infratech Ltd.</i>	<i>5000</i>	<i>Rec.in AY2009-10</i>	<i>5,00,000</i>
<i>VirgeVyapar Pvt. Ltd.</i>	<i>5000</i>	<i>Rec.in AY 2009-10</i>	<i>5,00,000</i>
<i>Kolkata Vanijya Pvt. Ltd.</i>	<i>5000</i>	<i>Rec.in AY2009-10</i>	<i>5,00,000</i>
	<i>Total</i>		<i>24,00,000</i>

The Id Counsel submitted that since the said amount of Rs. 24,00,000/-, was received from the above mentioned four share subscribers in the previous year 2008-09, relevant to assessment Year 2009-10, therefore, said cash credit amount is not assessable in the assessment year 2010-11, under consideration. The Id DR for the Revenue has fairly agreed with the proposition canvassed by the Id Counsel for the assessee that the said amount of Rs.24,00,00,000/-, which belong to four share subscribers and pertain to assessment year 2009-10, and therefore, addition on account of cash credit U/s 68 of the Act, should not be made in the assessment year 2010-11, under consideration.

7. During the course of hearing, the Id. Counsel for the assessee submitted before us a chart showing the payment received from shareholders by account payee cheques and other details, which is given below for ready reference:

Name of Share Applicants	PAN	Mode of payment	Amount	Dated	Remarks
Adonis Vanijya Pvt. Ltd. 5 Council House Street, Kolkata – 700001	AAHCA1770H ITO Ward – 12(1)	Cheque A/c Payee Bank Statement filed	200000.00	30.01.2010	One cheque of Rs. 7,00,000/- received from Grace Dealers Pvt. Ltd. on 27.01.2010 out of which Rs. 2,00,000/- invested in GDA Cement on 30.01.2010 (Source of source stands explained)
<i>Supporting documents filed: (Bank Statement, ITR-V Receipt, Copies of audited accounts, share application form)</i>					
Jain Agency Pvt. Ltd., 20, Synagoue Street, 2 nd Floor, Kolkata – 700001	AAACI7584M ITO Ward – 6(2), Kolkata	RTGS A/c trf. Bank Statement filed	350000.00	16.02.2010	Cheque from third party deposited in A/c and thereafter RTGS made in favour of GDA (Source of source stands explained)
			500000.00	13.03.2010	Cheque from third party deposited in A/c and thereafter RTGS made in favour of GDA (Source of source stands explained)
<i>Supporting documents filed: (Bank Statement, ITR-V Receipt, Copies of audited accounts, share application form, Board Resolution)</i>					
Rajshree Traders Pvt. Ltd. 5, Council House Street, Kolkata – 700001	AADCR8010K ITO Ward – 4(1) Kolkata	RTGS A/c trf. Bank Statement filed	300000.00	03.03.2010	Cheque of Rs. 8,00,000/- transferred from third party on 02.03.2010, out of which RTGS made for investment in GDA Cement Rs. 3,00,000/- (Source of source stands explained)
<i>Supporting documents filed: (Bank Statement, ITR-V Receipt, Copies of audited accounts, share application form)</i>					
SalujaVyapar Pvt. Ltd. 6A, Raja Subodh Mullick Square, 11 th Floor, Kolkata – 700013	AAKCS7274D	A/c payee cheque, Bank Statement filed	500000.00	03.10.2008	Cheque of Rs. 6,00,000/- transferred from third party on 03.10.2008, out of which cheque for investment in GDA Cement Rs. 5,00,000/- (Source of source stands explained)
		A/c payee cheque, Bank Statement filed	400000.00	24.12.2008	Cheque of Rs. 4,00,000/- transferred from third party on 23.12.2008, out of which cheque for investment in GDA Cement Rs. 4,00,000/- (Source of source stands explained)
VerstileVyapaar Pvt. Ltd. 5 Council House Street, Kolkata - 700001	AACCV7869H ITO Ward 6(1)	A/c Payee Cheque	300000.00	31.12.2009	Cheque of Rs. 36 lacs transferred from third party on 29.12.2009, out of which investment made in GDA Cement Rs. 7,00,000/- (Source of source stands explained)

		A/c payee cheque Bank Statement filed	400000.00	12.01.2010	explained)
Virgo Vypar Ltd., 13/A Dakers Lane, Kolkata	AACCV4497M	A/c payee cheque Bank statement filed (Asst. Year 2009-10)	500000.00	08.12.2008	Cheque of Rs. 5,00,000/- trf. From third party on 04.12.2008 out of which cheque for investment in GDA Cement Rs. 5,00,000/-. (Source of source stands explained)
Kolkata Vanijya Pvt. Ltd.	AADCK3571C	A/c payee cheque, Bank Statement filed (Asst. Year 2009-10)	500000.00	13.02.2009	Cheque of Rs. 10,00,000/- trf from third party on 13.02.2009, out of which cheque for investment in GDA Cement Rs. 5,00,000/-. (Source of source stands explained)
Silver Point Infratech Pvt.Ltd			500000.00	13.02.2009	cheque for investment in GDA Cement Rs. 5,00,000/-.

From the above chart it is abundantly clear that assessee company received the share application money from the share subscribers, namely: SalujaVyapaar Pvt. Ltd., Virgo Vypar Ltd, Kolkata Vanijya Pvt. Ltd, and Silver Point Infratech Pvt Ltd. in the previous year 2008-09, relevant to assessment year 2009-10. **Therefore, the only question that needs to be addressed in the assessee`s case under consideration is whether the cash credit under section 68 of the Act can be added and assessed in the hands of the assessee for the A.Y.2010-11?** We note that the Hon`ble Supreme Court in the case of ITO Vs. CH. Atchiaiah (1996) 218 ITR 239 (SC) has held that the income should be assessed on the right person, right year and it should be on the right income. The relevant observation of the Hon`ble Supreme Court are given below:

“4. In our opinion, the contention urged by Dr. Gauri shanker merits acceptance. We are of the opinion that under the present Act, the ITO has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By "right person", we mean the person who is liable to be taxed, according to law, with respect to a particular income. The expression "wrong person" is obviously used as the opposite of the expression "right person". Merely because a wrong person is taxed with respect to a particular income, the AO is not precluded from taxing the right person with respect to that income.....”

From the aforesaid decision of the Hon`ble Supreme Court only the right income alone is liable to be taxed in the right assessment year and in the hand of right assessee. Since the cash credit amount of Rs. 24,00,00,000/- belongs to assessment Year 2009-10, and does not belong to A.Y.2010-11 under consideration, hence we delete the

addition to the extent of Rs. 24,00,00,000/-, and balance addition on account of cash credit of Rs.20,50,000/- (Rs.44,50,000 Rs. 24,00,00,000) is hereby confirmed. Therefore, we direct the assessing officer to make addition to the tune of Rs.20,50,000/- only.

8. Ground Nos.1 & 3 raised by the assessee are supportive to Ground No.2, hence, do not require adjudication.

9. Ground No.4 raised by the assessee relates to addition of Rs.4,00,000/- on account of loan creditors.

10. The facts apropos this issue are that during the previous year 2009-10, the assessee has taken unsecured loan of Rs.5,00,000/- from the following persons:

Name & Address of the loan creditors	Amount of loan	Date of transaction	Mode of Transaction
Chanda Agarwal Court Road, Near M M High School, Purulia – 723101.	1,00,000.00	26/08/2009	Bank
Gobind Prasad Agarwal (HUF) Court Road, Near M M High School, Purulia – 723101.	1,00,000.00	15/10/2009	Bank
Sangita Agarwal Court Road, Near M M High School, Purulia – 723101.	1,00,000.00 1,00,000.00	02/05/2009 26/08/2009	Bank
Sanjay Kumar Agarwal (HUF) Court Road, Near M M High School, Purulia – 723101.	1,00,000.00	15/10/2009	Bank
Total	5,00,000.00		

During the assessment proceedings, the AO sent notices u/s 133(6) to these creditors to verify the genuineness, identity & creditworthiness of the loan creditors. The loan creditors have sent the requisite documents/information which have been examined by the AO. However, the AO noted in some cases, that the creditworthiness of providing loan to the assessee company was seemed to be doubtful. Hence, they had been issued summons u/s 131 of the Act for their personal appearance with certain documents like nature of business, bank statements, copy of balance sheet/profit & loss account etc. During the assessment proceedings, except Shri Sanjay Kumar Agarwal none appeared before the assessing officer. However, all the loan creditors had sent the

requisite documents and information to the assessing officer. The AO held that loan creditors did not explain the source of their income and assessee had tried to inject black money by channelizing his money through their respective bank accounts and therefore, the AO made the addition of Rs.5,00,000/- u/s 68 of the Act.

11. Aggrieved by the addition made by the AO, the assessee filed an appeal before the Id. CIT(A) who has partly deleted the addition. The Id. CIT(A) held that loan given by Shri Sanjay Kumar Agarwal is to be treated as genuine and the tests of genuineness and creditworthiness in respect of other loan creditors had failed. Therefore, the Id. CIT(A) deleted, the addition partly at Rs. 1,00,000/- and confirmed the balance addition of Rs.4,00,000/- (Rs.5,00,000 -Rs.1,00,000).

12. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us. The Id Counsel relied on the submissions made before the Id CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

13. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that all the transactions were done by the assessee through banking channel and respective loan creditor has submitted Confirmation, Income Tax Return, PAN Card, ledger account, copy of bank statements,(Vide paper book page 105 to 165), during the assessment proceedings. During the assessment proceedings, Shri Sanjay Kumar Agarwal, one of the creditors appeared before the assessing officer and explained the documents submitted by him before the AO. The assessing officer did not doubt the loan given by Shri Sanjay Kumar Agarwal, to the assessee and did not bring any evidence on record to show that loan given by Sanjay Kumar Agarwal is bogus. However, other four loan creditor had sent the requisite documents and information to the assessing officer and did not appear personally before him.

14. We note that all loan creditors have submitted the required documents before the AO and it is also important to note that neither the AO nor the Id. CIT(A) has

examined the Confirmation, Income Tax Return, PAN Card, ledger account, copy of bank statements submitted by the respective loan creditor. Both the authorities below did not comment whether documents submitted by creditors are false and untrue. We also note that both, Id AO as well as Id CIT(A), failed to bring any cogent evidence on record to show that these documents submitted by the respective creditors are false and untrue and do not carry any weight. Except physical appearance, the respective loan creditors has produced documents and information and these documents and information have not been verified and no comments were given by the AO, during the assessment stage. That is, AO had not dealt with the issue judiciously and consistently with the evidence adduced during the course of the assessment proceedings by the assessee and the replies of the creditors in respect of the borrowed amount, do not warrant the inference that such monies received from creditors is unaccounted cash credit. **There is no material brought on record to that effect and wild speculation of this genre cannot be passed off as gospel truth.**

All the transactions with the loan creditors were done through banking channel, and assessee has proved the genuineness creditworthiness and identity by submitting Confirmation, Income Tax Return, PAN Card, ledger account, copy of bank statements, and therefore, addition made by the assessing officer needs to be deleted, accordingly, we delete the balance addition sustained by Id CIT(A) to the tune of Rs.4,00,000/-.

15. In the result, the appeal filed by the assessee (in Ground No.4) is allowed.

Order is pronounced in the open court on 19.12.2018.

Sd/-
(A.T.Varkey)
न्यायिक सदस्य / JUDICIAL MEMBER
कोलकाता/Kolkata;
दिनांक Dated 19/12/2018
(RS, SPS)

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकी प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant –M/s GDA Cement Industry Pvt. Ltd.
2. प्रत्यर्थी/ The Respondent-ACIT, Cir-3, Asansol

3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/** DR, ITAT,
Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

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