

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”
BENCH, MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JM&
HON’BLE SH.N. K. PRADHAN, AM**

आयकरअपीलसं./ I.T.A. No. 1703/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2010-11)

ACIT 4(2)(2) R. No. 640, 6 th floor, AayakarBhavan, Mumbai-400 020	बनाम/ Vs.	K. P. Textiles Pvt. Ltd. R. No. K, 2 nd Floor, Swadeshi Market, Kalbadevi Rd, Mumbai- Pin-
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCK7656F		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Manoj Kumar Singh, DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Rajiv Khandelwal, AR

सुनवाईकीतारीख/ Date of Hearing	:	28/08/2018
घोषणाकीतारीख / Date of Pronouncement	:	28.09.2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenueis against the order of Ld. CIT (Appeal) – 9, Mumbai dated 29.12.16for AY 2010-11.

2. The solitary ground raised by the revenue relates to challenging the order of Ld. CIT(A) in directing the AO to delete the addition of Rs. 4,00,00,000/- made u/s 68 of the I.T. Act, 1961 in view of the decision of Hon'ble Bombay High Court in the case of M/s Major Metals Vrs. Union of india(2012).

3. We have heard counsels for both the parties at length and we have also perused the material placed on record, judgment cited by the parties as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 5.3 of its order and the same is reproduced below:-

5.3 Further, the details submitted by the assessee i.e., copy of return, copy of audit report, audited accounts, copies of correspondences made by the said entities have been carefully examined. On examination of the same the following facts emerges:

> All the aforementioned parties have the common address, i.e., B- 501, Puspuk Apt., Ghartan Paula, Western Express Highway, Dahisar (E), Mumbai - 400 068 or 32,34, 5th Floor, Bombay Chambers, AnadilalPoddar Marg, DiwbiTalao, Mumbai - 400 002 (refer table above)

> All the companies are managed and controlled by same group of persons, who are of same family members residing at Kolkata with a common address (refer table above).

> The audited accounts submitted by each of the companies have been examined, which reveals similar nature of transactions i.e., reporting huge turnover, negligible profit, no financial capacity. For better understanding the accounting entries made in one of theaforesaid company i.e. M/s Oshin Investments And Finance Pvt. Ltd., (In short OIFPL)is analyzed as under:

- The aforesaid entity OIFPL is operating from B-501. Pushpak Apt., GhartanPada, Western Express Highway, Dahisar (E), Mumbai - 400 068.*
- It has two directors viz., (1) Shri Naba Kumar Pal, 22, Kankuhin Road, Kolkata - 700 029 and*

(2) Shri Aixtit Polar, 86, N. S. Road, Kolkata - 700 001. Both the directors are residing at Kolkata, however, the company has operations in Mumbai and has filed the return in Mumbai.

- From the profit and loss account filed by OIFPL for the A. Y, 2010-11, it is seen that the said entity has reported turnover of Rs. 15.12 crores, against which it Juts shown a profit of Rs. 52,379.*
- The said entity has reported purchase of Rs.14.38 crores and shown opening stock oJ14.5.37 crones and closing stock of Rs.4.65 crores.*
- Further, it has reported nominal expenditure on account of bank charges, audit fees, etc., ranging from Rs. 1811 to Rs. 54,000.*
- On carefully examination of the purchase, sale, closing stock and other expenses, it came to light that the OIFPL has reported substantial stocks i.e., opening / closing in Rs.4.65 crore / Rs.5.37 crore, however, there is no mention in respect of What type of inventories they are having. Further the auditors have reported that the inventories were physically verified by the*

management at reasonable intervals and the value of inventories have been reported at cost valued and certified by Management.

- From the above observations of the Auditor it is not ascertainable whether the OIFPL is trading in shares or else any other items, which are of physical in nature. For argument sake if it was presumed that company is in the business of investment in shares and securities, however, the same is not acceptable as the OIFPL as not claimed any expenditure on account of STI' (security transaction tax, Shown any dividend as the turnover is very high). Further, it has only claimed nominal expenditure of Rs.1,922/- on account of Demat charges and Bank charges of Rs. 1819. further, there should not be a mention in respect of inventories physical examination in respect of share trading. Thus, as per the accounts it can be concluded that the OIFPL is not into the share trading business.*

- Alternatively, if it was in to trading of any physical goods, the same is also not acceptable as the said entity has neither fixed assets nor it has claimed rent. expenditure by way of warehouse or others as it has reported substantial amount of*

inventories. In absence of any claim of rental expenditure, electricity, etc., it can be said that the said entity in engaged in trading activity genuinely. In absence of claim of rental expenditure where the said entity maintained the huge inventories of Rs.4.65 crores is not ascertainable.

- Apart from the above, there is a nominal claim of salary expenditure of Rs.54,000/-, which is very negligible when compared to the turnover of the said company. Similarly, the expenditure claimed on account of telephone is of Rs.9,450/-, conveyance expense is of Rs.9,450/-, the claims of which do not support the turnover reported by the said entity in the accounts.*

- The said entity has a total source of finds of Rs.49.99 crore consisting of share capital of Rs. 1 crore and reserves and surplus of Rs.48.99 crore. Importantly, the*

reserves and surplus consist of receipt of share capital and premium on allotment of 9,99,980/- equity shares of Rs. 10 each at a premium of Rs. 90 per share. There are no secured and unsecured loans taken by the entity.

- *Against the above source, it has reported an amount of Rs.25.92 crore as investments, loans and advances of Rs.20.65 crore and inventories of Rs.4.65 crore. There is a nominal value of debtor of Rs.4,00,000/-. further, loans and advances includes share application money of Rs. 13.40 crore.*
- *By reporting huge turnover and heavy balance-sheet figures the assessee has reported a negligible profit and accordingly, declared income of Rs.60,658/- in the return of income filed for A. Y.2010-11 on 13-10-2010.*
- *Importantly, the said entity has not claimed any major salary to run the business, despite the facts that directors of the company are residing at Kolkata and all the operations are from Mumbai as its Principal Place of Operation and the bank accounts are maintained in Mumbai.*
- *In absence of such vital links, viz., no employee expenditure, no rental expenditure, no electricity expenditure, no fixed assets the reporting of such huge turnover with a negligible turnover gives rise to the logical conclusion that the said is not doing any genuine business.. The only documents maintained by the said entity is of*

issue of cheque in the garb of share capital with high premium, the source of which again stated to be the share capital with high premium front one of the said entity which is also in the similar line of business of issue of accommodation entries to the beneficiaries.

- *Importantly, the said entity has bank account at Kotak Mahindra Bank, Prabhadevi Branch, Mumbai, through which it has issued cheques to the assessee company, the transaction of which not a genuine one because of the detailed discussed made supra.*

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities, judgments cited and submissions made by both the parties, we find that Ld. CIT(A) had rightly appreciated the facts of the present case and has taken into consideration that in the order of assessment, the additions were made on account of receipt of share premium. The three cardinal test in respect of cash credit additions i.e. identity of the party, creditworthiness of the party and the genuineness of the transactions were all dealt with. In

aggregate a sum of Rs. 55 lakhs were received by the assessee during the year under consideration and the parties from whom the amount was received were corporate entities. We have also considered page no. 59 to 254 of the paper book, which contains the detail mentioned therein, which include acknowledgement for filing return of income, audited annual accounts, bank statements among other details. From these documents, it was fairly concluded by Ld. CIT(A) that since all the parties were corporate entities and filing return of income tax department, hence the identity stands discharged. As far as audited annual accounts of the parties are concerned, same also reflects that they had creditworthiness to subscribe for the shares.

The issue with regard to genuineness of transaction is concerned, there are details which shows the name, share application form, board resolution and confirmations. The shares in the present case were issue at Rs. 10 (Face value Rs. 1 and share premium of Rs. 9). The intrinsic value has already been calculated and those calculations are already on the record, which justified the shares being issued at a premium.

Notices were issued u/s 133(6) to the applicants and respective replies were also received by the AO, but the same were ignored. The AO has not given any modus operandi for allegation of cash transfer being unaccounted monies of the assessee being introduced in the form of share capital.

Ld. AR had relied upon the judgment in the case of **Gagandeep Infrastructure Pvt. Ltd. 349 ITR 680 (Bom)**, **Ratnakar Infrastructure Pvt. Ltd (ITA No. 3843/Mum/2016)**, **Alcon Biosciences Pvt. Ltd. (ITA No. 1946/Mum/2016)** and **Wiz Tech Solutions Pvt. Ltd. (ITA No. 1162/Kol/2015)**.

On the other hand, Ld. DR relied upon the orders passed by Hon'ble Bombay High Court in the case of **Konark Structural Engineering Pvt. Ltd. Vrs. DCIT 2018 (1) TMI 1045**. The above judgment was also upheld by the Hon'ble Supreme Court in **Spl. Leave Petition No. 17215/2018 dated 06.07.18**.

We have considered the judgment cited by both the parties. In the case of **Gagandeep Infrastructure Pvt. Ltd. (supra)**, wherein it was held that *where revenue urged that assessee company received share application money from bogus*

shareholders, it was for revenue to proceed by reopening assessment of such shareholders and assessing them to tax and not to add same to assessee's income as unexplained cash credit.

While reaching to the said conclusion, the Hon'ble Bombay High Court had also relied upon the decision of Hon'ble Supreme Court in the case of **CIT Vrs. Lovely Export Pvt. Ltd. (2008) 216 CTR (SC) 195.**

The judgment relied upon by Ld. DR is not applicable to the facts of the present case as the paramateria contained in the judgment is different from the facts of the present case.

No new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the revenue stands **dismissed.**

4. In the net result, the appeal filed by the revenue stands **dismissed** with no order as to cost.

Order pronounced in the open court on 28th September.
2018

Sd/- (N. K. Pradhan)	Sd/- (Sandeep Gosain)
लेखासदस्य / Accountant Member	न्यायिकसदस्य / Judicial Member
मुंबई Mumbai; दिनांक Dated : 28.09.2018	
Sr.PS. Dhananjay	

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai