

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.5441/DEL/2017
Assessment Year: 2012-13

M/s. Ajanta Infrabuild (P) Ltd., 100, Kaka Building, Satha, Bulandshahr	v.	ITO, Ward-3(1), Bulandshahr.
TAN/PAN: AACCR 8432Q		
(Appellant)		(Respondent)

Appellant by:	Shri Somil Aggarwal, Adv.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	15	11	2018
Date of pronouncement:	30	01	2019

ORDER

The aforesaid appeal has been filed by the Assessee against the impugned order dated 02.03., passed by the Commissioner of Income Tax (Appeals), Ghaziabad for the quantum of assessment passed u/s.143(3) of the IT Act, for the Assessment Year 2012-13. In the grounds of appeal, the assessee has challenged the addition of Rs.5 lac made u/s.68 on account of share application money.

2. The facts in brief are that the assessee-company is engaged in the business of commission as well as it is member of two AOPs, namely, 'Classic Country Liquor' and 'Regal Foreign Liquor'. The assessee in its balance sheet has disclosed share application money received during the year of Rs.5 lac from M/s. Banney Khan. The assessee was required by the Assessing Officer to prove the identity, genuineness and creditworthiness of all the persons who have contributed

towards share application money. In response, the assessee filed their confirmation and ID proof. In so far as the share application money of Rs.5 lac received from M/s. Banney Khan, assessee filed his confirmation and Income Tax particulars and also brought on record that he was member in AOP, M/s. Ahmad Traders, from where he has withdrawn the amount out of his capital and invested the same as share application money with the assessee company. Not only that, he was also produced before the Assessing Officer. However, the ld. Assessing Officer held that share application money of Rs.5 lac is not genuine, on the ground that the assessee company did not produce supporting evidence and Shri Banney Khan accepted that he has made payment in cash in financial year 2011-12 for share application money and he could not prove the genuineness of the transaction as M/s. Ahmad Trades had no any business activities.

3. Ld. CIT (A) has confirmed the said addition after observing and holding as under:

“5.3 Ground no. 2: The appellant has challenged addition of Rs. 5,00,000/- allegedly share application money received by the appellant from Shri Banney Khan u/s 68. According to the appellant it had furnished identity, creditworthiness and genuineness of the transaction by furnishing the copy of Aadhar Card, copy of ITR and statement of affairs and confirm copy of account in support of the above three mentioned tenets of section 68. Examination of facts reveal that appellant had submitted during assessment proceedings that he has withdrawn the above said amounts out of his capital account in M/s Ahmed Traders. During appellate proceedings appellant enclosed three documents i.e. copy of acknowledgement of ITR for AY 2012-13, unsigned copy of

account of Shri Banney Khan in the books of 'Ahmad Traders 09-10' and a letter written to AO on 12.01.2015. The computation of income attached with the acknowledgement for ITR of Shri Banney Khan reflected a profit of Rs.75 from Ahmed Traders. The appellant contended that creditworthiness of Shri Banney Khan was proved.

5.3.1. However the contention of the appellant was not supported by affairs of M/s. Ahmed Traders as stated by AO in the assessment order and since the transaction was made in cash thus neither during assessment proceedings nor during appellate proceedings appellant could furnished the genuineness of transaction and creditworthiness of the investor within the provisions of section 68. Keeping in view the above facts it is held that mere furnishing of copy of return/statement of affairs does not prove the creditworthiness of appellant to the satisfaction of the AO within the provision of section 68. Thus, action of the AO making an addition of Rs.5,00,000/- u/s.68 is upheld and ground of appeal is dismissed.”

4. After considering the rival submissions and on perusal of the relevant material placed before us, I find that sole addition is made on account of share application money of Rs.5 lac received by the assessee from Shri Banney Khan. The assessee to prove the nature and source of share application money has discharge of its onus, by furnishing the identity of the said person by producing his Aadhar Card, copy of acknowledgment of his Income Tax return for the Assessment Year 2012-13, statement of affairs, confirmed copy of account and also to prove the creditworthiness and genuineness of the transaction, it was brought on record that the said person has withdrawn the amount of Rs. 5,00,000/-out of his capital account in M/s. Ahmad Traders alongwith copy of account of

Shri Banney Khan in the books of M/s. Ahmad Traders. All these details were directly given to the Assessing Officer by the said person vide letter dated 12.01.2015. The return of income of Shri Banney Khan reflected the profit of Rs.75 lac from M/s. Ahmad Traders. All these documents have been filed in the form of paper book, which has been extensively referred at the time of hearing. From the perusal of these details, I find that Shri Banney Khan in response to notice u/s. 133(6) by the Assessing Officer has duly confirmed that he has invested sum of Rs.5 lac in the assessee-company on account of share application money and also given the details of his income tax particulars along with computation of income and balance sheet wherein he has shown amount of Rs.5 lac invested in the said company towards share application money. Apart from that, the computation of income of Shri Banney Khan shows that he has a capital of Rs.14,02,925/-. Once, all these documents have been filed along with ledger account of Shri Banney Khan in M/s. Ahmad Traders clearly showing that he has withdrawn sum of Rs.5 lac and same has been invested in the assessee company as share application money. In wake of these documents it cannot be held that share application money remains unexplained or is any unaccounted money of the assessee. The onus cast upon the assessee stands duly discharged. Thus, addition made by the AO cannot be sustained. Simply because the payment of share application money has been made in cash, it does not mean that said transaction is not genuine especially when the share applicant has shown to have withdrawn the money from his firm out of his capital in

cash and the same has been advanced and given to the assessee; and not only that he has duly reflected this amount in his balance sheet filed along with return of income. Accordingly, I delete the addition of Rs. 5,00,000/- and consequently the appeal of the assessee is allowed.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 30th January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 30th January, 2019

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