

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.1059/Ind/2016
Assessment Year: 2004-05**

M/s. Righill Electricals H-5/123, Industrial Area Govindpura, Bhopal (Appellant)	बनाम/ Vs.	ACIT-3(1) Bhopal (Revenue)
P.A. No.AAACR7150R		

Appellant by	Shri S.S. Deshpande, A.R.
Respondent by	Shri K.G. Goyal, Sr.D.R.
Date of Hearing:	17.01.2019
Date of Pronouncement:	13.02.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A)-2, Bhopal dated 27.2.2016 pertaining to the

assessment year 2004-05. The assessee has raised following grounds of appeal:

1. *“That on the facts and in the circumstances of the case of the assessee the learned CIT(A) was not justified in confirming addition of Rs.20,00,000/- with regards to receipt of share capital from M/s. Preswell Industries Ltd. specially when the director of the company had appeared before the AO and have confirmed the transaction.*
2. *That on the facts and in the circumstances of the case of the assessee the learned CIT(A) was not justified in confirming addition of Rs.10,00,000/- with regards to receipt of share capital from M/s. Sab Computing P Ltd. specially when the assessment of the relevant period in the case of the share holder was completed u/s 153C of the Act.*
3. *That on the facts and in the circumstances of the case the learned CIT(A) was not justified in confirming the addition of Rs.70,00,000/- u/s 68.”*

2. The facts giving rise to the present appeal are that the assessee filed its return of income declaring income of Rs.7,61,660/- on 31.10.2004. This is second round of litigation. In the earlier round, the matter travelled up to this Tribunal. This Tribunal was pleased to sustain reopening of the assessment. However, on merit matter was restored to the A.O. for deciding afresh as per law. In pursuant to the said directions, assessing officer again made addition of Rs.70 lakhs in respect of the share

application money received from Shreerevar Overseas Ltd.,
Nanadan Mercantile Pvt. Ltd. & Presswell Industries Ltd.

3. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A) who after considering the submissions sustained the addition. The only effective ground in this appeal is sustaining addition of Rs.70 lakhs. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions, which are reproduced as under:

May it please your honours,

The assessee is a Private Limited company doing the business of manufacture and supply of Electrical panels & Transformers. The sale is mainly to the big Companies and also exports. The return is filed declaring the income of Rs. 7,61,660/-. The books are audited and TAR is filed.

During the course of original assessment proceedings the Ld. AO raised number of queries about proving the genuineness of the share application at a premium. And accepted the same (pg 11 of PB). Subsequently, the assessment was reopened on the ground that the introduction of share capital has escaped assessment. In the reassessment proceedings the Ld. AO added the sum of Rs. 70,00,000/- being the share capital receipts from four companies as not genuine (pg 15 of PB). He has no where challenged the identities of the companies.

It was submitted before the Ld. CIT (A) that there was a dispute and an arbitrator was appointed for solving the disputes of the shareholders. The buyback was done on the basis of award given by the arbitrator. However, the Ld. CIT (A) has upheld the decision of Ld. AO on the same reasons (pg 21 of PB).

An appeal was taken before the Hon'ble Tribunal and the Hon'ble Tribunal at page 9 of the order observed that the AO has not made the proper enquiry to establish the identity of the share holders and should have called the subscribers. There is no finding in the order of the lower authorities to the effect that identity of the shareholders are not established. On this ground the matter was set aside on the file of the Ld. AO.

In the set aside proceeding the Ld. AO asked the assessee to produce the subscribers of the share capital. The statement of the director M/s Presswell Industries was recorded who accepted the investment made in the assessee's company. In the case of Shrereevan Overseas Ltd. the notices were served and the company gave reply positively about the subscription of the shares. The company also supplied the copies of the return, audited accounts and the bank accounts with the **proof of identity** of the present directors, and requested for exempting the personal attendance (pg. 53-73 and 182 of PB). The necessary details were filed by M/s Sub Computing Pvt. Ltd, Varanasi (pg 74-90 of PB) and they submitted the copy of the

assessment order framed u/s 153C (pg 165-180 of PB). In the case of Nanadan Mercantile the Ld. AO observed that the summon was return back unserved. It is submitted that they had already submitted the necessary details (pg 91-115 of PB). However, the company vide its letter dated 28.02.2014 submitted the details requesting the Ld. AO to exempt from personal presence. The letter was dispatched by speed post on 18.03.2014 and the copy of the acknowledgement is also given on the said letter. The Ld. AO repeated the addition on the ground that the director did not attend.

The Ld. CIT dismissed the appeal on the same ground.

It is humbly submitted that these companies have contributed for the share capital and have confirmed the transactions. In this connection attention is drawn to the following judgments.

1. CIT vs Lovely Exports 216 CTR 195
2. Peoples Hospital vs CIT 356 ITR 65 (MP)
3. CIT vs ETL Extraction 333 ITR 269 (MP)
4. CIT vs Gangadeep Infrastructure 394 ITR 680 (Bob)
5. CIT vs GP International Ltd. 325 ITR 25 (P&H)
6. P CIT vs Softline Creations 387 ITR 636 (Del)
7. CIT vs ARL Infratech Ltd. 394 ITR 383 (Raj)

It is humbly submitted that the identity of company is proved beyond doubt. In the case of M/s Presswell Industries

the director appeared and affirmed the contribution of share capital. In the case of Shreewar Overseas the complete details were filed in compliance to notice u/s 131 and the order u/s 153C was also furnished. In the case of Sub Computing the complete details were filed in compliance to notice u/s 131 and a request was made to exempt the personal presence of the directors. Similarly, the Nandan Mercantile Pvt Ltd. also submitted the complete details and a request was made to exempt the personal presence of the directors thus the direction of the Hon'ble Tribunal was fully complied by all the assessee's. It is further submitted that all these companies have substantial capital and have confirmed the transactions with the bank statements and the identity of the directors. ॥

In view of the above submission it is humbly submitted that the additions maintained by the Ld. CIT(A) may please be deleted.

4. On the contrary, Ld. D.R. opposed the submissions and supported the order of the A.O.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The A.O. was directed to make

enquiry to verify the veracity of transactions in question.

The objections of the A.O. with regard to the explanation of the assessee are reproduced as under:

In the case of Presswell Industries, the assessee has submitted a copy of annual return as on 30.09.2010 under companies Act. Income-tax return and audit report for F.Y. 2003-04 were filed which were also filed before the then Assessing Officer. The assessee has also furnished an affidavit of Mr. Alok Awadhiya, Director and Shri Sunil Johri, chartered accountant and arbitrator. Shri Alok Awadhia, Director of M/s Presswell Industries attended the office of the undersigned and confirmed that the shares were bought back by the Assessee company but he could not give a satisfactory explanation as to why the shares of a normal profit making company were bought at the premium of Rs. 90/- per share and which were sold after a few months at the face value of Rs. 10/-.

During the set aside proceedings, the assessee has furnished current status of the investor company and Director, acknowledgement of share and confirmation, form 2 regarding allotment of share, application for shares, search report, detail of buy back of shares.

In response to summons 131(1) of the Act, the investor company M/s Shreevar Overseas Ltd. has furnished copy of audited accounts, return of income and copy of bank accounts for A.Y. 2004-05. It has also furnished the PAN card of the Director. All the above details were also furnished by the assessee before the then Assessing Officer except PAN card of the Director.

In response to summon u/s 131(1) of the Act the investor M/s Sab Computing Pvt. Ltd. has furnished the written submission. He has also furnished all the documents which were furnished before the then Assessing Officer except the photo identity of present director Shri Ramesh Choudhary.

- Most of the documents are the same which were furnished by the assessee before the then Assessing Officer and which were taken into consideration by the then Assessing Officer before passing order u/s 147 r.w.s 143(3) dated 24.12.2009. The assessee has furnished copy of memorandum of understanding with the investor companies. The only evidences filed during the set aside proceedings are the search reports of the investor companies as a proof that the companies are functional at present as claimed by the assessee.
- All the reasoning given by the then Assessing Officers regarding the above mentioned four investor companies clearly established that these companies exist but merely on papers. All these companies have been created for routing of funds.
- In the case of Nandan Mercantile Pvt. Ltd., the summons u/s 131(1) of the Act returned un-served and in the case of Sab Computing Pvt. Ltd. and Shreevar Overseas Pvt. Ltd., Directors never attended the office of the undersigned.
- It is highly abnormal that a private ltd, normal profit making company is receiving huge share application money, that too, not from relatives or friends but from unknown, unrelated, unconnected distant companies at a premium of Rs. 90 per share and after a few months, selling it back to the assessee company at a huge loss.
- The existence of the company on paper was never denied by the then Assessing Officer also but merely existence on papers or does not make any transaction sacrosanct. Merely filing of any ID proof and bank statement are not enough to establish the identity or genuineness of any transaction.

6. We do not see any infirmity into the assessment order.

Admittedly, the assessee could not explain as to why these shares were brought back at such a lower price. We are of the considered view the genuineness of any transaction is to be decided on the basis of the surrounding circumstances. There is no dispute so far the contention that a decision for allotment of share by the assessee is

purely in its domain. The consideration of transaction on the stand point of taxability would be certainly subject to scrutiny by the assessing authority. The transactions made in cash remains under dark without any record. The assessee therefore has to offer a logical explanation that such transaction(s) is bonafide and not a device to evade tax. The certain transactions where shares have been purchased at a high premium and sold within a short time at a throw away price, such transaction could cause suspicion, hence, it is incumbent upon the transacting parties to dispel such suspicion by placing material evidence before the A.O. In the absence of such explanation, A.O. would be justified to make addition. Merely, the identity of the parties, in our view would not be sufficient to come to conclusion that the transaction of receiving share capital was genuine and no undisclosed consideration had exchanged hands. In the present case,

the explanation offered by the assessee is without supported by the material evidence to prove the genuineness of the shares being sold back to the directors of assessee company at a very lower price. Our view is also fortified by the judgements of the Hon'ble Delhi High Court in the case of CIT Vs. D.K. Garg (2017) 84 Taxmann.com 257 (Delhi), CIT Vs. Ultra Modern Exports Pvt. Ltd. (2013) 40 Taxmann.com 458 (Del), Seema Jain Vs. ACIT Circle-59(1), New Delhi (2018) 96 taxmann.com 307 (Delhi) and rendered in the case of CIT Vs. Nova Promoters & Finlease (P) Ltd.(2012) 18 Taxmann.com 217 (Del.) Hence, no interference is called for. Grounds raised by the assessee are dismissed.

6. In the result, appeal filed by the assessee is dismissed.

Order was pronounced in the open court on 13.02.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 13/02/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore