

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA Nos. 35, 36, 37, 38 & 39/Hyd/2017
AYs.: 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14

Dy. Commissioner of Income-tax, Circle – 2(1),
Hyderabad. vs. JR Seamless Pvt. Ltd.,
Hyderabad.

PAN – AACCCJ0648L

Appellant

Respondent

Revenue by: Shri Y.V.S.T. Sai
Assessee by: Shri Rajiv Dave

Date of hearing: 09/01/2019
Date of pronouncement: 13/03/2019

ORDER

PER S. RIFAUH RAHMAN, AM:

These appeals filed by the Revenue are directed against a common order of CIT(A) – 2, Hyderabad, dated, 30/09/2016 for AYs 2009-10 to 2013-14. As identical issues are involved in these appeals, the same were clubbed and heard together and therefore, a common order is passed for the sake of convenience.

2. The main issue in these appeals is against the action of AO in making additions of Rs. 9,17,75,000/-, Rs. 8,04,50,000/- Rs. 7,02,17,000/-, Rs. 6,97,50,000/- and Rs. 56,00,000/- for the AYs 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 by treating the increase in share capitals and share premiums received in the respective AYs.

2.1 The AO observed that the following three entities/companies invested in the assessee company in the AYs 2009-10 to 2013-14, as under:

Name of the entity	AY 2009-10	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14
Acute Vinimay Pvt. Ltd.	266.50	251.00	141.34	370.50	-
Parrot Traders Pvt. Ltd. (formerly known as IHM Pipes & Steels Pvt. Ltd.)	245.00	236.00	374.86	327.00	50.00
Penguin Barter Pvt. Ltd. (formerly known as IHM Valves Pvt. Ltd.)	406.25	317.50	185.97	-	-
	917.75	804.50	702.17	697.50	50.00

2.2 The AO investigated the transaction involved in this transaction. AO found that all these companies are registered in Kolkotta and all the directors of these companies are directors of assessee company and their relatives. Further, he found that all the investments received by these companies and also 5 to 6 layers of companies through which the investments were made are through only banking channe. Further, he observed that one Mr. Rajesh Bainwala, who is the accommodating entry operator and all these are paper companies. Hence, the AO treated the entire amount raised as share capital/premium from the above entities as 'unexplained cash credit u/s 68 of the Act and added back the same to returned income for the years under appeal. Apart from the above, the AO also disallowed an amount of Rs. 6,00,000/- received from Penguin Barter Pvt. Ltd. (formerly known as IHM Valves Pvt. Ltd.) as unsecured loans by treating this amount also as unexplained cash credit u/s 68 of the Act for AY 2013-14.

3. Aggrieved by the order of AO, the assessee preferred appeals before the CIT(A).

4. Before the CIT(A), the assessee submitted that it had received share application money by account payee cheques and the shares were allotted in accordance with the provisions of the Companies Act, 1956. The assessee also submitted the following particulars in support of its submissions:

i) Audited balance sheet of the three companies for each of the FYs 2009-10 to 2012-13.

ii) Bank statements of the three companies for each of the FYs 2009-10 to 2012-13 reflecting the sources of funds as well as investments made respectively by the three companies in the company.

iii) Return of allotment filed by the company for each of the FYs 2009-10 to 2012-13 along with Board Resolution as well as annual return filed with Registrar of Companies.

iv) Bank statements of the company for each of the FYs 2009-10 to 2012-13 wherein the investment made by the 3 shareholding companies by account-payee cheques were identified and clearly reflected.

v) Return of income for each of the assessment years 2010-11 to 2013-14 filed by the three companies.

4.1 The AR of the assessee contended that the assessee had discharged its onus with regard to the amounts received as share application money from the above entities for the years under appeal. He, therefore, submitted that the action of the AO in making addition u/s 68 of the Act with regard to these amounts is not warranted, as the transactions are all genuine and are backed by evidence.

5. After considering the submissions as well as documents submitted by the assessee and the observations made by the AO in his order, CIT(A) elaborately discussed the issue with

various case law and directed the AO to delete the additions made u/s 68 by observing, inter-alia as under:

"7.24. After going through the facts of the case and the judicial pronouncements on this issue, cited above supra, I am of the considered opinion that the assessee has discharged the initial onus of establishing the bona-fide of the transactions and the AO was not justified in ignoring various evidences provided to him by the assessee. In the facts of the present case, it is a matter of record that the assessee has produced confirmation letters along with bank statements and audited financial statements. of all the three entities wherein not only the identity of the three with their address have been furnished but income tax particulars including their Income tax returns for the relevant assessment year have been furnished. Therefore, the identity of the three entities remains established. The second ingredient which requires fulfilment is the genuineness of the transaction. As is evident the entire transaction has been through proper banking channels which is confirmed by verification of the bank statements of the assessee company and also the bank statements obtained from the three entities by the AO. The genuineness of the transaction has been therefore established by the assessee as not only transaction is through proper banking channel but the source of such credit has also been proven by the assessee. Now coming to the third ingredient, the creditworthiness of the three entities, it is noted that all three companies have not only confirmed of having given the share application money but have also proved that it is out of their own sources. In fact all the three entities have also furnished the PAN nos., of the companies from whom funds were received by them and also explained the nature of their transactions with the three entities Thus the three entities have explained their sources also. It is also not disputed that all the three entities are regular income tax assessee's filing their returns regularly. The assessee has also offered all explanations with necessary documentary evidence. The three shareholding companies have confirmed the transactions and produced their bank statements as well as books of account, income tax returns, audited balance-sheets, their sources etc to prove the genuineness and creditworthiness of the transaction. The explanations given by the assessee were also supported by the direct evidences which have all been verified by the AO, and

there were no inconsistencies between the evidences produced by the assessee and the three entities. Even after making enquiry, there was no positive evidence on record to prove that the share capital/ premium amount raised in each of the A.Ys. 2009-10 to 2013-14 and Unsecured loan of Rs.6,00,000 in the AY 2013-14 represented unexplained cash credits in terms of section 68 of the Act. Therefore, it is not correct to treat the share capital/ unsecured loan raised by the assessee during the respective assessment years as unexplained income of the assessee without bringing any positive material on record to establish such fact.

7.25. In the light of the above observations, I am of the

considered view that the AO is not justified in making the above additions u/s 68 of the Act. Therefore, the AO is directed to delete the additions of Rs. 9,17,75,000, Rs. 8,04,50,000, Rs.7,02,17,000, Rs.6, 97 ,50,000 and Rs. 56,00,000 for the A.Ys: 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively. As a result, the grounds raised in this regard are allowed.”

6. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal, which are common in all the appeals under consideration, except the quantum of addition:

" 1. The CIT (A) has erred both on facts and law.

2. (a) The Ld. CIT(A) erred on facts and in law in deleting the addition made by the Assessing Officer as unexplained credits u/s 68 of the I.T. Act, 1961 ignoring the facts that assessee failed to discharge its onus of proving necessary ingredients of section 68 i.e. the identity, genuineness and creditworthiness of the alleged shareholders to the satisfaction of the AO.

(b) The Ld. CIT(A) ought to have appreciated the fact that assessee must prove identity of credits, capacity of creditor to advance money and genuineness of transaction.

(c) The Ld. CIT(A) ought to have appreciated that the assessee also has to prove the capacity to give credit of the creditor; merely proving the identity of the creditor does not discharge the onus of the assessee if the

capacity or creditworthiness of the creditors is not proved.

(d) The Ld. CIT(A) erred in not appreciating the fact that the enquiries conducted by the department clearly established the investor companies bogus and non-existing/Paper companies.

(e) The Ld. CIT(A) erred in not appreciating the fact that the bank transactions were passed through 5-6 layers; the pattern of the transactions clearly establish that the investment was nothing but an accommodation entries provided by Mr. Rajesh Bainwala to the company.

3. Any other ground that may be urged at the time of hearing.”

7. Ld. AR filed a petition before us for filing the following additional evidence:

Sl.No.	Description	Pages
1	JR Seamless Pvt. Ltd. – Valuation of Equity Shares	1
2	Brickwork Ratings for M/s JR Seamless Pvt. Ltd., as on 10/08/2016	2-3
3	India Ratings (Ind-Ra) for M/s JR Seamless Pvt. Ltd. for the period ending August, 2015	4-8
4	India Ratings withdraws M/s JR Seamless Pvt. Ltd's ratings, on December, 2016	9
5	SEBI Circular dated 15 th June, 2011, explaining the rating symbols.	10-13
6	Relevant portion of annual report of Gandhi Special Tubes Ltd. for the FY 2012-13	14-16
7	Relevant portion of annual report of Maharashtra Seamless Ltd. for the FY 2010-11	17-20
8	Relevant portion of annual report of M/s ISMT Ltd. for the FY 2008-09	21-22
8	Relevant portion of annual report of M/s Welspun Corp Ltd. for the FY 2010-11	23-25

7.1 Ld. DR objected for admission of the additional evidence and he accepted only item No. 1 of the additional evidences as these are only historical financial information.

7.2 Since these evidences are not out of assessment records, we rejected the same.

8. Ld. DR brought to our notice Annexure - 1 - page 9 of paper book in which the details of investments made by three companies and the assessee has collected premium of Rs. 90/- per share when the assessee company was incurring losses in the year of investment with negative earning per share. Further, he brought to our notice Annexure - 2 - page 10 of paper book, as per which, the investing companies are having meagre profit or loss but made huge investments in the assessee company. He submitted that it shows these companies are nothing but paper companies. He submitted that the Directors of the assessee company, in a scheme, have taken over these three companies only before investment and AO has investigated the transactions 5. or 6 layers and found that all these investments are re-investments and made through banking channel. Therefore, he submitted that these transactions are not genuine and supported the AO in making addition u/s 68 of the Act.

9. Ld. AR objected to the DR's observation that it is a scheme and submitted that it is the suspicion of the AO and on assumptions. He submitted that assessee has established the identity and capacity of the investing companies. By submitting the confirmation letters, PAN details and the sources for the investment by these companies. They have clearly brought on record in pages 47-50 of the paper book, in which, these companies liquidated their past investments and made investment in the assessee company. With regard to genuineness, he submitted that the investments were made through banking channels and the sources for the investments are established and made through banking channel. The whole transactions are clear and properly recorded and documented.

9.1 With regard to AO's observation that these companies addresses were not traceable, he submitted that investigation was done behind the back of the assessee and it was not confronted with the assessee. All these companies are in existence and he submitted that these companies are regularly filing returns of income and also all the returns regularly required to be submitted before the Registrar of Companies are also filed. He further brought to our notice that all these companies are having new registered office in Hyderabad. These companies are in operation and filing the regular returns of income, he filed the copies of recent returns of income for the AY 2018-19 for all the three companies and department has accepted and processed the same u/s 143(3) of the Act. He further submitted that the assessee company has turned around and achieved the turnover of Rs. 423.98 crores and the investment made by these companies were properly invested in the assessee company. It clearly establishes that it is capital transaction and assessee company has clearly established the identity, capacity and genuineness of the transaction.

10. Considered the rival submissions and perused the material on record. We notice that assessee company received the investment in shares with share premium from three companies, namely, Acute Vinimay Pvt. Ltd., Parrot Traders Pvt. Ltd., (formerly IHM Pipes and Steels Pvt. Ltd.) and Penguin Barter Pvt. Ltd. (formerly IHM Valves Pvt. Ltd.). In support of investments, assessee has submitted the details of these companies with letter of confirmation, PAN details, balance sheet and bank statements. The AO made investigation on these three companies and found that the directors of these companies are the directors and relatives of the directors of the assessee company. These companies

were handled by Mr. Rajesh Bainwala and all the transactions involving sources for the three companies, and the investment in the assessee company are all routed through banking channel. The AO investigated further upto 5-6 layers of the investment in the three companies and all were through banking channel only and all were investment companies. In our considered view, the assessee in its part has clearly established the identity by submitting the PAN, Bank statement and its financial statement with return of income. With regard to capacity, the companies have sources for the investment that these were made after selling the previous investments and made the investment in the assessee company. With regard to genuineness, the assessee has invested these share application and share premium in the company in the fixed assets etc. There is no dispute on this aspect. However, these investments were through banking channel. As far as initial onus of proof on the assessee, it has submitted as per section 68.

10.1 The law of section .68 has undergone a change, the law prior to AY 2013-14. In this connection, we refer to the decision of the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd., 216 CTR 195, wherein the Hon'ble Apex Court held as under:

"Whether share application money can be treated as undisclosed income of the Assessee ? If the share application money is received from alleged bogus shareholders, whose names are given to AO, then department is free to proceed to reopen their individual assessments in accordance with law, but, it cannot be regarded as undisclosed income of the assessee. The SLP filed by department was also dismissed by Supreme Court reported in 319 ITR 5."

In various other cases also, the Courts have held that even if subscribers to the capital are not genuine, the amount received by the company as share capital could not be assessed in the hands of the company itself. Such amounts should be considered for assessment in the hands of persons who are alleged to have really advanced the money (CIT Vs. Stellar Investment Ltd., [2001] 115 Taxman 99 [SC]). Similar view was upheld in the case of CIT Vs. Divine Leasing & Finance Ltd., [2007] 158 Taxmann 440 (Delhi).

10.2 From the above decisions, the law was settled that when the assessee gives all the details of identity, capacity and genuineness before the AO and even the details furnished by the assessee which establishes that the subscribers to the share capital are bogus, the department should assess the income in the hands of the subscriber and not in the hands of the assessee as undisclosed income.

10.3 In the given case, the assessee has established the identity, capacity and genuineness of the transaction and AO has expressed his dissatisfaction in the subscribers whose registered office was in Kolkata and the investments were from the companies in which the share holders are the directors of the assessee company. Further, these three companies were taken over by the directors before investment. It shows that AO has not found any discrepancies in the original onus of proof on the assessee. The doubt on the subscribers to the share capital is mere suspicion. If at all, AO could have initiated proceedings against the subscribers. Therefore, AO cannot treat the share capital with share premium as undisclosed income u/s 68 in the context of the criteria given by the Hon'ble Supreme Court (supra). Hence, the findings of Id. CIT(A) in this aspect is not to be interfered

with. The above findings equally applicable to loan taken from the creditors/sister concern.

10.4 With regard to law subsequent to AY 2013-14, i.e. with effect from 01/04/2013, we notice that the Finance Act, 2012, has introduced new proviso in section 68, which is reproduced below:

"Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

As per the above proviso, the subscribers to the share capital are obligated to explain the nature and source of such investment. With this additional requirement, the subscribers i.e. the three companies in this case have submitted the relevant information about the sources, that is, they encashed the earlier investment, which was there in the balance sheet and made the present investment in the assessee company and all these were through only banking channel. Even the AO has not found anything wrong in the transaction. AO doubted the transaction due to the reason that the investments were through Kolkotta and it was handled by Mr. Rajesh Bainwala.

The AO at the end found that these investments were made by the companies in which the directors of the assessee company are also the directors. AO made the investigation thoroughly and it has not led to anywhere. He found the easiest way by making addition to the income of the assessee company, even though, it had clearly established the identity, capacity and genuineness of the transaction and the subscribers of the investment also have satisfied the requirement as per section 68. The assessee is not expected to establish the source of source, i.e. beyond the subscribers to the share capital. Moreover, the three companies, which are investment companies, are filing their regular returns of income and are active in the ROC records. These companies have shifted their registered office to Hyderabad and they are also regularly filing their returns of income. These returns of income were also processed by the department u/s 143(3). It clearly shows that these companies are live companies and traceable as per the records submitted before us. Therefore, these investments are through established source, which has fulfilled the requirement as per section 68. The Hon'ble Madras High Court in the case of CIT Vs. Pranav Foundation Ltd., [2014], held as under:

"In this case, Hon'ble High Court held that following the decision of CIT Vs. Lovely Exports (P) Ltd. (SC), all the 4 parties who are subscribers of shares are limited companies and enquiries were made and received from 4 companies that all companies accepted their investment. Thus, the assessee has categorically established the nature and source of said sum and discharged onus that lies on it in terms of section 68 of the Act. When the nature and source of the amounts invested is known, it cannot said to be undisclosed income. The addition of such subscriptions as unexplained credit u/s 68 is unwarranted."

Respectfully following the above decision, when the nature and source of the amounts invested is known, it cannot be said to be undisclosed income. In this case, in AY 2013-14, the source of source i.e. the company, IHM Pipes and Steels has already established the source and nature of the investment. Hence, it cannot be disallowed as undisclosed income since the source of source was already established. Therefore, considering the above discussion, we do not find any reason to interfere with the decision of Id. CIT(A). Hence, grounds raised by the department, in all the appeals, on this issue are dismissed.

11. In the result, all the appeals of revenue are dismissed.
Pronounced in the open court on 13th March, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 13th March, 2019.

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Copy forwarded to:

1. *DCIT, Circle – 2(1), 5th Floor, Room No. 514, Signature Towers, Kondapur, Hyderabad*
2. *M/s JR Seamless Pvt. Ltd., 5-4-23, Shop No. 16, Ispat Bhavan, Distillary Road, Ranigunj, Secunderabad - 03 .*
3. *CIT(A) - 2, Hyderabad*
4. *Pr. CIT – 2, Hyderabad*
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