

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “D” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.2250/Kol/2018**  
Assessment Year :2012-13

Titan Engineering Co. Pvt. Ltd., Sanjibi Sarani, Durgapur-713210 <b>[PAN No.AABCT 4321 K]</b>	<b>V/s.</b>	DCIT, Circle-1(2), Aayakar Bhawan, P-7, 7 <sup>th</sup> Floor, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri H.V. Bhardwaj, FCA
प्रत्यर्थी की ओर से/By Respondent	ShriShankar Halder, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	07-05-2019
घोषणा की तारीख/Date of Pronouncement	17-05-2019

**आदेश / O R D E R**

**PER S.S.Godara, Judicial Member:-**

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-1, Kolkata's order dated 05.09.2018 passed in case No.18161/CIT(A)-1/Kol./Cir.-1(2)/2015-16, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. Learned counsel representing assessee does not press for first substantive ground raised in the instant appeal challenging liquidated damage disallowance of ₹85,099/- made in both the lower proceedings keeping in mind smallness of the amount.
3. This first substantive ground is rejected as not pressed.
4. Next comes the estimated *ad hoc* disallowance of site expense amounting to ₹4,74,241/- in both the lower proceedings. The CIT(A)'s detailed discussion to this effect reads as follows:-

“Ground No. 3: That the A.O. has, likewise, further erred in making at ad hoc addition of Rs.5,00,000/- without any basis or material on record only on basis of surmise and conjecture.

This ground is against the ad hoc addition of Rs.5,00,000/- made by the A.O. only on the basis of surmises and conjectures. This issue was dealt with by the A.O. as under:

"The assessee company claimed Site Expenses amounting to Rs.1069081/- but no nature of expenses was furnished nor applicable TDs has been deducted. The A/R of the assessee company has been asked to furnish copy of Bills for expenses incurred but the same was not produced. As the assessee fails to furnish the detail and evidence called for, A sum of Rs.5,00,000/- has been disallowed for want of detail and evidence, hence added back. "

The appellant has made written submission as under:-

"We had to take material at site of the client, deliver there and where contract so demand installation is done. Full details of site expenses were filed. Out of total claim of Rs.10,69,081/- A.O. has disallowed Rs.5,00,000/- i.e. almost 50%. No basis has been given as to how he has arrived at that disallowance @ 50% is reasonable and not 10% or 60%. This is an ad hoc addition and only basis is surmise and conjecture."

I have considered the material before me. The AO found that the appellant claimed Site expenses of Rs.10,69,081/-. However, the A.O. observed that the appellant was unable to submit details and copies of vouchers in support of its claim and disallowed Rs.5,00,000/- for want of evidence.

On careful consideration of the submissions, it is observed that the expenses were incurred for installation of the Bokaro Site and although details of expenses were filed, no basis for disallowance was given by A.O. I am of the view that it is well settled that the onus to establish genuineness of expenses lies squarely upon the assessee which was not discharged as only break-up of "Bokaro Site Expenses vide copy of ledger a/c has been filed. However, expenditure of Rs.1,55,182/- and Rs.7,93,336/- were claimed as Bokaro Site Expenses and labour charges. The other expense as Rs.62,890/- i.e. Machine Rent, Security Expenses, Tea & Tiffin expenses. Since the appellant ought to have incurred some essential expenses for material at the site, it would be reasonable to restrict full disallowance of 50% out of Rs.9,49,518/- for Bokaro Site and labour charges i.e. Rs.4,74,759/- which I confirmed. The appellant gets relief to the extent of rs.25,241/- (Rs.5,00,000 minus Rs.4,74,241/-). This ground is partly allowed."

5. It is therefore clear that the CIT(A) has restricted full disallowance to 50% for Bokaro site and labour expense without any drawing comparison or with similar head(s) of expenditure in earlier or succeeding assessment year as well as not pin-pointing any specific defect in the relevant details. We

therefore deem it appropriate in larger interest of justice keeping in mind the fact that assessee has also not able to prove each and every details of the impugned claim to restrict this disallowance in issue of a lump sum amount of ₹50,000/- with a rider that shall not be treated as a precedent in any other assessment year. The second substantive ground is treated as partly allowed in above terms.

6. Next come to correctness of sec. 68 addition of share capital account in the nature of contribution made by the assessee's managing director. The CIT(A)'s finding to this effect reads as follows:-

*"Ground No. 4: This ground is against the A.O. has likewise further erred in treating conversion of Rs.32,50,000/- loan of a Director into share capital an unproved credit and adding said sum u/s, 68 of the Act.*

*The A.O found that an amount of Rs. 32,50,000/- was shown as outstanding on account of share application money credited during the year. The A.D asked the appellant to furnish full Name & current address, identity of directors also with present residential address, copy of PAN, IT return acknowledgement of the said company & principal Director who applied for shares, relationship with those parties, share application form, share certificate issued to substantiate the claim for subscription to the share capital. However, the A.O observed that no detail was furnished by the appellant company to substantiate the genuineness of its claim apart from stating that it had take share application money from I. Sengupata, with copy of Bank statement and share certificate form. However, the appellant was unable to produce the director of the appellant company with relevant details to examine the genuineness of he said claim as details of fee paid to ROC for increase of share capital or rate of premium charged were not furnished no the directors produced to verify the genuineness and creditworthiness .Accordingly the A.D. concluded that the share application money of Rs.32,50,000/- credited to the books of accounts of appellant company was unexplained income of the appellant company, which was brought to tax as unexplained cash credits u/s. 68 of LT. Act, 1961.It was thus concluded by the A.O that as the identity of the creditor was not established, the genuineness and creditworthiness of the said share subscriber/allottee was not satisfactorily explained and added back the amount of Rs. 32,50,000/- u/s. 68 of the IT. Act.*

*The appellant has made written submissions as under.*

*"Perhaps due to ongoing decision of Department to add share capital addition, mostly on premium, from bodies corporate, whose credit worthiness and identity is doubtful. A.O has made this addition without total lack of application of mind.*

In our case we took loan from time to time from our Managing Director, since the formation of the company. Due to Bank's requirement, for

increase in capital we I had to increase share capital. Hence, entire amount received during the year Rs.32,50,000/- by cheque Rs.30.00 Lacs and Rs.2.50 Lacs converted into share capital. His identity, credit worthiness and genuineness of transaction are proved beyond doubt. A.O. asked to produce a Director, one Director appeared as well. But A.O never asked to produce the Director who contributed Rs.32,50,000/- with relevant evidences. “

*The appellant's A/R had mainly contended through the written submissions that it had taken loan from time to time from our Managing Director, since the formation of the company. Due to Bank's requirement, for increase in capital the appellant had to increase share capital. Hence, entire amount received during the year Rs.32,50,000/- by cheque Rs.30.00 Lacs and Rs.2.50 Lacs converted into share capital. His identity, credit worthiness and genuineness of transaction are proved beyond doubt. A.O asked to produce a Director, one Director appeared as well. But A.O never asked to produce the Director who contributed Rs.32,50,000/- with relevant evidences. “*

*However, on appraisal of the material on record, it is found that although the appellant had filed copies of documentary evidences to establish the identity of the share subscriber, it had failed to produce the directors/share subscriber for verification before the A.O during the assessment proceedings. This combined with the fact the appellant is a closely-held private company and the share subscribers were closely related person to the director of the appellant company, it was therefore incumbent upon the appellant to produce the share subscriber for verification of the genuineness of the transactions for share allotment in view of the specific requisition by the Assessing Officer.*

*As regards the issue of establishing the genuineness of an amount credited to the books of accounts of the appellant company, it is well established that the onus to prove his explanation satisfactorily to the Assessing Officer was on the assessee. The appellant has miserably failed to discharge such onus. From the above decision, it is apparent that the genuineness of the impugned transactions of receipt of the impugned share subscriber/allottee as Unsecured loans totaling Rs.32,50,000/- as detailed in the above paragraphs cannot be determined without looking into the human probability aspects, surrounding circumstances such as relationship of the entities i.e. companies shown as cash creditors and the recipient i.e. appellant company. It is also pertinent to mention that if the assessee fails to establish any of the essential ingredients of a cash credit i.e identity, mode of receipt and credit-worthiness / sources of the cash creditors, the impugned transactions i.e. Unsecured loans cannot be treated as genuine.*

*On the issue in dispute, the hon'ble The Supreme Court in Vijay Kumar Talwar v. CIT [2011] 330 ITR 1/ 196 Taxman 136 [2010] 8 taxmann.com 264 (SC) the same principle was applied in the following observations:*

*"24 .... All the authorities below, in particular the Tribunal, have observed in unison that the assessee did not produce any evidence to rebut the presumption drawn against him under Section 68 of the Act, by producing the parties in whose name the amounts in question had*

been credited by the assessee in his books of account. In the absence of any cogent evidence, a bald explanation furnished by the assessee about the source of the credits in question viz., realisation from the debtors of the erstwhile firm, in the opinion of the assessing officer, was not satisfactory. It is well settled that in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same may explanation offered by the assessee about the nature and source thereof is, in the opinion of the assessing officer, not satisfactory." In respect of the reliance by the AIR on the decision of the Apex Court in the case of Lovely Exports (P) Ltd (supra), the Division Bench of the Delhi High Court has observed in the case of CIT v. Oasis Hospitalities (P.) Ltd.[2011] 331 ITR 119/ 198 Taxman 247/ 9- taxmann.com 179 (Delhi), that the initial burden must be upon the assessee to explain the nature and source of the share application money received. In order to discharge this burden, the assessee is required to prove: (a) Identity of shareholder; (b) Genuineness of transaction; and (c) Credit worthiness of shareholders. As far as the creditworthiness of the subscriber is concerned, that can be proved by producing a bank statement of the subscriber showing that it has sufficient balance in its account to enable it to subscribe to the share capital. The Delhi High Court held that once the initial burden has been discharged, the observations of the Supreme Court in the case of Lovely Exports (P.) Ltd. (supra) would suggest that the Department is free to proceed to reopen the individual assessments in the case of alleged bogus shareholders in accordance with law and is not remediless. This would be more so when the assessee is a public limited company and has issued share capital to the public at large as in such cases the company cannot be expected to know every detail pertaining to the identity and financial worth .of the subscriber. However, the initial burden on the assessee would be somewhat heavy in case the assessee is a private limited company where the shareholders are closely related as in the instant case, because in such a case the assessee cannot feign ignorance about the status of the parties. The Division Bench of the Bombay High Court in CIT v. Creative World Telefilms Ltd. [2011] 203 Taxman 36 (Mag.)/ **333 ITR 100 / 15 taxmann.com 183** (Bom.) is along the same lines. Therefore, in the case of the appellant company which is an unlisted closely- held private company, with the share subscriber companies are also closely connected entities, the ratio of the decision in Lovely exports (P) Ltd(supra) is not found to be applicable to the facts and circumstances of the instant case.

*In this regard, it is pertinent to refer to the decision in Sajan Dass and Sons v. CIT [2003] 264 ITR 435 (Delhi) wherein the Hon'ble Delhi High Court held that mere identification and showing movement through banking channels is not sufficient. Similar view was taken in Sandeep Kumar v. CIT (293 ITR 294) (Del), Jaspal Singh 290 ITR 306 (P & H), Yash Pal Goel , 310 ITR 75/76(P&H) and Rajeev Tandon vs. Assistant Commissioner of Income Tax in ITA No. 77 of 2007 dated 13.7.2007 as also in Subhash Chander Sekhri v. Deputy CIT [2007] 290 ITR 300 (P&H).In the present case also, it is not*

established that two subscribers to the share capital of the appellant company by the two companies which were found to have meagre cash balances/capital in their books of accounts had capacity to make the loans. Therefore, the A.O was justified in upholding the addition of the amount claimed as impugned unsecure loans. In *Ram Lal Agrawal v. CIT* [2006] 280 ITR 547 (All), the Hon'ble Allahabad High Court held that where there is a finding given by the Income-tax authorities that creditworthiness of depositors was not proved, the amount could be assessed as income of the assessee. In *Sunil Siddharthbhai v. CIT* [1985] 156 ITR 509 (SC), the Hon'ble Supreme Court held that it is the right of the Income-tax authorities to consider genuineness of the transactions and to penetrate the veil and ascertain the truth. It is within their power to consider whether a particular transaction was to evade tax. In *K. Ramasamy v. CIT* [2003] 261 ITR 358 (Mad), it was held that veil can be pierced in exceptional circumstances. The Income-tax authorities are entitled to look at the reality of the transaction. Moreover, the decisions in *ITO v. Diza Holdings P. Ltd.* [2002] 255 ITR 573 (Ker); *Raunaq Ram Nand Lal v. CIT* [2002] 254 ITR 617 (P&H); *Smt. Iva Gogoi v. CIT* [2002] 254 ITR 576 (Gauhati); *CIT v. Precision Finance Pvt. Ltd.* [1994] 208 ITR 465 (Cal); *Rajshree Synthetics Pvt. Ltd. v. CIT* [2002] 256 ITR 331 (Raj); *R. B. Mittal v. CIT* [2000] 246 ITR 283 (AP) ; *CIT v. United Commercial and Industrial Co. P. Ltd.* [1991] 187 ITR 596 (Cal); *M. A. UnneeriKutty v. CIT* [1992] 198 ITR 147 (Ker); *Nemi Chand Kothari v. CIT* [2003] 264 ITR 254 (Gauhati); and *Hindusthan Tea Trading Co. Ltd. v. CIT* [2003] 263 ITR 289 (Cal) support the view that Revenue authorities are entitled to consider genuineness of the transactions and to penetrate the veil in order to ascertain the truth. They are entitled to look into the surrounding circumstances to find out the realities of the transactions shown to have been entered into by the parties

In view of the above discussion, I am of the view that considering the inferences drawn from materials on record by the A.O., it is held that the appellant was unable to establish the genuineness of the impugned subscribers to the share capital as their genuineness of the transactions and credit-worthiness/sources of income could not be established satisfactorily. Therefore, I hold that there is no infirmity in the finding of the A.O in treating the impugned share allotment money from the two companies amount of share application money including the premium amounting to Rs.32,50,000/- as unexplained cash credits u/s 68 of the IT. Act, 1961. As a result, the impugned addition on account of treating the cash credits amounting to Rs. 32,50,000/- is confirmed. This ground is **not allowed.**"

7. We have given our thoughtful consideration to rival contentions. The Revenue strongly supports both the lower authorities' findings making the impugned sec. 68 addition. It fails to dispute the most crucial fact that the assessee had incurred received the amount in issue from its director by way of two cheques involving sums of ₹30 lac and ₹2.05 lac which stood controverted into share capital. It also produced the said director alongwith

this copy of account, balance-sheet income-tax return. There is further no quarrel that they are assessed in the same jurisdiction. The assessment order dated 23.03.2015 in this regard indicates that Assessing Officer nowhere dealt with all these details before terming the amount in issue to be non-genuine levying to sec. 68 addition. We therefore take into consideration all these peculiar facts to hold that the assessee has duly proved identity, genuineness and creditworthiness of the impugned share capital to have come from its director / managing director. The same is ordered to be deleted.

8. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court 17/05/2019

Sd/-

(लेखा सदस्य)

(Dr.A.L. Saini)

(Accountant Member)

Kolkata,

\*Dkp, Sr.P.S

दिनांक:- 17/05/2019

कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Titan Engineering Co. Pvt. Ltd., Sanjib Sarani, Durgapur-713210
2. प्रत्यर्थी/Respondent-DCIT, Cir-1(2), Ayakar Bhawan, 7<sup>th</sup> Fl, P-7, Chowringhee Sq. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।