

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.508/Ind/2018
Assessment Year: 2012-13**

M/s. Chhatrachhaya Nirman Pvt. Ltd. 28/2, Janki Nagar Extension Indore	बनाम/ Vs.	ACIT-2(1) Indore
(Appellant)		(Revenue)
P.A. No.AAACC7055L		

Appellant by	Shri Manish Vaid, A.R. & Shri Priti Patwa, A.R.
Respondent by	Shri Punit Kumar, Sr. D.R.
Date of Hearing:	21.01.2020
Date of Pronouncement:	23.01.2020

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A)-1, Indore dated 20.3.2018 pertaining to the

assessment year 2012-13. The assessee has raised following grounds of appeal:

1. *That the Ld. CIT(A) erred in upholding the addition made by the A.O. of Rs.15,00,000/- u/s 68 as unexplained cash credit and interest thereon of Rs.63,123/-. That on the facts and in the circumstances of the case and in law, the said addition being wrong, uncalled for and unjustified, it is prayed that the addition u/s 68 of Rs.15,00,000/- and interest thereon of Rs.63,123/- may very kindly be deleted and the order of the Ld. CIT(A) may very kindly be quashed.*
2. *That the Ld. CIT(A) erred in upholding the addition of Rs.15,00,000/- without taking into consideration the submissions and the evidences filed before him. That on the facts and in the circumstances of the case and in law, the upholding of said addition of Rs.15,00,000/- and the interest thereon of Rs.63,123/- is bad in law.*
3. *That the Ld. CIT(A) erred in not considering the fact that the A.O. had collected and used certain material behind the back of the assessee without supplying the same to the assessee and neither giving an opportunity of being heard nor providing an opportunity of cross examination to the assessee which is against the principles of natural justice.*
4. *That the appellant craves leave to add, to alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arises.*

2. The only effective ground is against sustaining addition of Rs.15 lakhs and interest thereof of Rs.63,123/-

The facts in brief are that the assessee had filed his return through electronic media on 21.9.2012 declaring total income of Rs.48,96,104/-. The case was selected for

scrutiny assessment and thereafter the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed. Thereby, the A.O. made addition of Rs.15,63,123/- in the income disclosed by the assessee. The basis of making such addition was that the A.O. observed that the assessee had taken unsecured loan of Rs.15 lakhs from M/s. Jayant Securities and Finance Ltd., Vadodara treating the same as explained in genuine transaction. The A.O. also made addition of Rs.63,123/- being the interest expenses on account of disallowance of interest expenses. Aggrieved against this, the assessee preferred appeal before Ld. CIT(A), who after considering the submissions and material placed before him dismissed the appeal. Now the assessee is in further appeal before this Tribunal.

3. Ld. Counsel for the assessee submitted that the authorities below have grossly failed to appreciate the facts.

He further contended that adverse information, if any related to transaction was collected by the A.O. and assessee was not given opportunity to rebut the same. No opportunity of cross examination was granted. He further contended that before Ld. CIT(A), additional evidences were filed in support of the claim of the assessee. However, these evidences were not considered, therefore, he prayed that matter may be restored to the A.O. for a decision afresh.

4. Ld. D.R. opposed these submissions and supported the orders of the authorities below. Ld. D.R. submitted that the A.O. has given a categorical finding that M/s. Jayant Securities and Finance Ltd. has been involved in giving bogus accommodation entries.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The Ld. CIT(A) has decided this issue by observing as under:

“4.1.2 On examination of the fact, it was found that, this company was having merger/nil income and not doing any business activity but only engaged in giving accommodation entries. The appellant had shown total receipt of Rs.15,00,00/- in the garb of unsecured loan from this entity. Since, the transaction with this entity was

not found to be genuine, therefore, the AO made addition of Rs.15,00,000 /- under section 68 of the IT Act.

4.1.3 I have considered the facts and circumstances of the case, submission of the appellant and perused the assessment order. From the perusal of the details/document filed by the appellant, it is clear that the lender was not having any business activity. It was having loss from which it is clear that it was paper/shell company of meager means and engaged in giving accommodation entries to the beneficiaries in the garb of unsecured loan.

4.1.4 Onus was on the appellant to prove genuineness of the transactions shown by them but they failed to do so. The above mentioned company was not doing any business activities and it was engaged in giving accommodation entries. In this regard, judgements of Hon'ble Delhi High Court in the cases of CIT Vs. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del) and CIT Vs. N.R.portfolio Pvt. Ltd.(2014) 264 CTR 258 (Del) are relied upon. Further, the judgement of Hon'ble Kolkata High Court in the case of Rajmandir Estate Pvt. Ltd. (2016) reported in 70 Taxmann.com 124 (Cal) and the judgement of ITAT, 'D' Bench, Mumbai in ITA no.1835/Mum/2014 dated 24.8.2016 in the case of Royal Rich Developers Pvt. Ltd. are also relied upon. In view of above facts, I am of the considered view that this is not sufficient to discharge the onus cast on the appellant as contemplated u/s.68 of the Act just giving addresses and PAN of the company concerned when the AO has doubted the credit worthiness/capacity of the company having meager means



and known sources of income to have invested huge amount in lending. The genuineness of the transaction was also doubted by the AO wherein the lender did not have any business/project in hand and is merely a person of meager means, as it is brought on record that this lender is person of meager means declaring loss and their Balance Sheet/statement of affairs revealed that they have otherwise insignificant assets other than investment in the appellant company. Section 68 of the Act cast onus on the appellant to satisfy the ingredients of Section 68 to establish the identity and creditworthiness of the creditors and to establish the genuineness of the transactions. Once appellant filed the basic details such as name and address of creditor, PAN, income tax return, confirmation and bank statement, the initial onus gets discharged but since, the AO has doubted the creditworthiness of the lender and genuineness of the transaction as per the reasons cited and set out above, the onus shifts back to the appellant company to offer an explanation to the satisfaction of the AO as contemplated u/s 68 of the Act which could have been discharged by producing the lender before the AO so that truth behind the smokescreen could have been unraveled by the AO by interrogating him. The burden/onus is cast on the appellant and the appellant is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditor along with the genuineness of the transaction. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s

68 of the Act as an income. The fact remains that the appellant is Private Limited company, the Private limited companies are mostly family controlled for which the onus as required u/s 68 of the Act is very heavy to prove identity and capacity of the lenders and genuineness of the transaction. In view of the above discussion, I am of the considered view that merely submission of the name and address of the lender, income tax returns, Balance Sheet/statement of affairs of the lender and bank statement is not sufficient as the AO is to be satisfied as to their identity and creditworthiness as well as to the genuineness of the transaction entered into. The alleged lender was not found to be in existence and thus, the onus shifts back to the appellant to produce the lender before the AO and if the appellant falters, the additions can be made u/s 68 of the Act. Section 68 of the Act has been amended by Finance Act, 2012 w.e.f. 01-04-2013 whereby the onus is cast upon the appellant to justify the source of unsecured loan, to explain the source of the source of raising the unsecured loan which has been held to be clarificatory in nature. In the present case, the appellant company could not prove the identity and credit worthiness of the alleged lender and the genuineness of the unsecured loan. Being Private Limited company, it was therefore, viable and proper and duty on the part of the appellant to prove genuineness of the transaction but the fact remains that the appellant could not prove the same. The lender was having loss. This company is having loss for the period under consideration and hence his creditworthiness is also not established. The M.P. High Court held in the case of

CIT v. Rathi Finlease Ltd wherein considering the judgment of Hon'ble Supreme Court in the case of CIT v Steller Investment and the judgment of Hon'ble Supreme Court in the case of Lovely Export Ltd., Hon'ble High Court has held that each and every transaction of share application money involving application of provisions of section 68 in matter of contribution of share application/share capital and whether this onus on the assessee has been discharged or not has to be appreciated on totality of evidences available on record and surrounding facts and circumstances of the case.

The creditworthiness or genuineness of transactions depends on whether the parties are related or known to each manner or mode by which parties approached each other, whether transaction was entered into through written documentation to protect investment, whether investor professes and was an angel investor, quantum of money, creditworthiness of recipient, object and purpose for which payment/investment was made, etc. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The lender is not having creditworthiness to invest to the tune of Rs.15,00,000/-. This company is hardly earning any income to invest such an amount as loan to the appellant company. Therefore, it is held that transaction is not genuine. This company had no creditworthiness, financial worth or regular resources to justify, short term borrowings. The appellant has not discharged the genuineness of the transaction. The appellant has not established the

ingredients of section 68 of the I.T. Act. Therefore, the credits are not acceptable. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances requires that there should be some more evidence of positive nature to ensure that the subscriber had made genuine investment. In the following cases ITAT, Indore bench and other Judicial Authority held as under:-

1. Assessee has to establish identity of subscribers to share capital and prove their creditworthiness and genuineness of transaction; furnishing of income-tax file numbers may not be sufficiency to discharge the burden - *CIT v. Nivedan Vanijya Niyojan Ltd. [2003] 130 Taxman 153 (Cal.)*.
2. **Share Application Money - Addition is called for** - Assessee obtained loan and also received share application money - AO doubted the identity, genuineness and creditworthiness of these credits - AO made addition for same u/s. 68 - CIT(A) held that the ingredients of section 68 are not satisfied . However, in one of the cases, CIT(A) held that addition, shall be made substantively in the hands of assessee and protectively in the hands of alleged investors in terms of ITAT Judgement in *Asst. CIT v. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore)* - HELD - Assessee has not established the ingredients of section 68; credits cannot be accepted - Also, in *Asst. CIT v. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore)*, it was found that additions has already been made in the hands of investor - In the present case, assessee is unable to establish the ingredients of section 68 - Addition is



called for. *Pramila Investment and Finance Ltd. v. ITO (2013) 22 ITJ 149 (Trib. - Indore).*

3. **Share Application Money - Assessee has not discharged the genuine of the transaction - Additions justified -** Share Application money - The AO noticed that bank bank statement furnished during the original assessment proceedings was fabricated and misled the AO. The AO found that the Assessee had adopted unfair practice by adducing false evidence to get undue advantage of giving colour of genuineness to bogus entries through fabricated bank accounts - The AO held that the said companies had no creditworthiness, financial worth or regular resources to justify their subscription of share capital money - The assessee has not discharged the genuine of the transaction and therefore, the AO made additions - The Delhi High Court held that the Assessee has not discharged the onus satisfactorily and therefore, the additions made by AO was justified - Against the decision of Delhi High Court, SLP has been dismissed by the Supreme Court. *N. Tarika Property Invest. (P.) Ltd. v. CIT (2016) 27 ITJ 149 (SC) : (2015) 12 STD 17 : (2014) 227 Taxman 373.*

4. **Share Application Money - Identity and creditworthiness not proved -** Share application - Assessee received share application money from "MPFPL" - Identity of said company was not proved - HELD - Addition u/s. 68 shall be made. *Saaj Plastic Industries Pvt. Ltd. v. ITO (2012) 20 ITJ 103 (Trib. - Indore).*

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- Share Application Money - In case of Pvt. Ltd. Company, even transaction through cheque some more**

evidence required to prove genuine investment – Share Application Money – It was held by the Delhi High Court that in case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call money, dividends, warrants, etc. have to be sent and the relationship remains a continuing one. Therefore, an assessee cannot simply furnish some details and remain quiet when summons issued to shareholders remain un-served and uncomplies. As a general proposition, it would be improper to universally hold that the assessee cannot plead that they had received money, but could do nothing more and it was for the AO to enforce shareholders' attendance in spite of the fact that the shareholders were missing and not available. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances requires that there should be some more evidence of positive nature to show that the subscribers had made genuine investment – SLP against this decision of Delhi High Court has been dismissed. *Navodaya Castle (P) Ltd. v. CIT (2015) 25 ITJ 552 (SC) : (2015) 12 STD 463 : (2015) 230 Taxman 268.*

6. **Share Application Money – There is evidence and material to show that subscriber was paper company and not a genuine investor –** Share application money – It was held by the Delhi High Court that Certificate of incorporation, PAN etc. are relevant for purchase of identification, but have their limitation when there is

evidence and material to show that the subscriber was paper company and not a genuine investor – SLP against this decision of Delhi High Court has been dismissed. *Navodaya Castle (P) Ltd. v. CIT (2015) 25 ITJ 552 (SC) ; (2015) 12 STD 463 ; (2015) 230 Taxman 268.*

7. **Share Capital and Loan – Assessee not able to establish identity of investor – Merely filing PAN, IT returns, Certificate of incorporation, Balance Sheet etc. do not establish the identity** – Share Capital and Loan – “HCL” and “OTIL” had subscribed in shares of assessee company – In some cases, “HCL” and “OTIL” had given loans to assessee company – AO required assessee to prove transaction – Assessee furnished various documents to prove the transaction – On inquiry, the companies were found to be non-existent – Noticed issued to them were returned unserved – HELD – Assessee is not able to establish identity of investors – Merely filing PAN, IT returns, Certification of incorporation, Balance Sheet etc. do not establish the identity of subscribers or produce them – Addition u/s. 68 shall be made. *Agrawal Coal Corporation P. Ltd. v. Addl. CIT (2011) 18 ITJ 717 (Trib. – Indore) ; (2012) 135 ITD 270 ; (2011)142 TTJ 409 ; (2012) 13 ITR(T) 531.*
8. **Share Premium – Rs.10 share subscribed at a premium of Rs.90 per share – In first year it is doubtful – Established that transaction is not genuine – Credits in form of share premium are not acceptable** – Share Premium – First year of business – Assessee issued shares having face value of Rs.10 per share at a premium of Rs.90 per share – Assessee contended that the premium was

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received based on the vast experience of promoter of 30 years; and also that the investors were known to him - Letter sent by AO to these parties were returned unserved - AO himself visited Kolkotta, from where the money was received, but the parties were not traceable at the address - AO also visited bank and verified that the amounts had been deposited immediately before issue of cheques for investment in shares - Shares were brought back at a low price in next year - HELD - It is pertinent to note that in the first year, how could the assessee manage such share application on a premium of Rs.90 without doing any business or without creating goodwill - AO has conducted detailed inquiry, which establish that the transaction is not genuine - Credits in form of share premium are not acceptable. *Vaibhav Cotton Pvt. Ltd. v. ITO (2012) 20 ITJ 422 (Trib.-Indore)*.

Following the decision of above Judicial Authorities, it is held that the lender company is paper company without any means.

The appellatant company was obliged to prove:-

- (a) The identity of the alleged share holders.
- (b) The credit worthiness of the share holders.
- (c) The genuineness of the transactions.

But it is clear from the facts as discussed above that the appellatant could not prove the same; therefore, in the light of above facts and case laws as discussed above, I am of the considered view that the AO was justified to make addition u/s 68 of the IT Act. Therefore, the addition made by the AO amounting to Rs.15,00,000/- is **Confirmed**. Therefore, the appeal on these grounds is **Dismissed**.

[No.58/2015-16, Chhatrachhaya Nirman P.Ltd., Indore, A.Y. 2012-13]

4.2 **Ground No. 2:** Through this ground the appeal, appellant has challenged the addition of Rs. 63,123/- on account of interest paid on unsecured loans. The loan received from the party has been found bogus and same has been adjudicated in the ground No. 1. Therefore, interest payable by appellant is not an allowable expenditure. Therefore, the addition made by the AO amounting to Rs.63,123/- is **Confirmed.** Therefore, the appeal on this ground is **Dismissed.**

6. We find that the A.O. has based his finding purely on the basis of the findings of the other officers and the material gathered at the back of the assessee. In our considered view, the assessee should have been confronted with the material so gathered and the assessee was ought to have been given opportunity to cross examination. Considering these facts, the impugned assessment order is set aside to the file of the A.O. to be decided afresh. The A.O. would verify the claim of the assessee, which he had filed in the form of additional evidences before Ld. CIT(A)

and would also make independent enquiries, if he so deem fit while framing the assessment afresh. The grounds raised in the appeal are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order was pronounced in the open court on 23 .01.2020.

Sd/-

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 23/01/2020

VG/SPS

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

By order

Assistant Registrar, Indore