

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 733/JP/2019
निर्धारण वर्ष/Assessment Year :2012-13

M/s Jajoo Rashmi Refractories Pvt. Ltd., Jaipur	बनाम Vs.	ACIT, Circle-04, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACJ8517G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Sunil Porwal (CA) &
Sh. Ram Swaroop Jaju (Adv.)
राजस्व की ओर से/ Revenue by : Ms Chanchal Meena (JCIT)

सुनवाई की तारीख/ Date of Hearing : 19/12/2019
उदघोषणा की तारीख/ Date of Pronouncement: 07/02/2020

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 25.01.2019 wherein the assessee has taken the following grounds of appeal:-

- "Under the facts & circumstances of case, the Ld. CIT(A) has erred in:-*
- 1) Confirming the addition of Rs. 80.00 lakhs (out of total addition of Rs. 1,11,42,000/-) u/s 68 of Income Tax Act, 1961 for share application and share premium money received from various entities.*
 - 2) Confirming the 50% adhoc of disallowance of various expenses (50% of Rs. 1,24,906/- being Rs. 62,048/-) without verifying the facts."*

2. Regarding Ground No. 1, briefly stated, the facts of case are that the assessee company is engaged in manufacturing and trading of chemicals, boric acid, non edible oil, mill board, Silico Manganese, Ferro Silicon etc. During the course of assessment proceedings, the Assessing Officer observed that the assessee company has received share capital from the following entities/concerns:-

S. No.	Name of company	Share application	Share premium	Total amount
1	Sesum Marketing Pvt. Ltd. 60/1, Chowringhee Road, Kolkata-200020(wb)	60,000	29,40,000	30,00,000
2	Sundram Consultants Private Limited P-41, Princeep Street, 6 th Floor, Kolkata-700072 (WB)	100,000	49,00,000	50,00,000

3. In order to verify the identity & creditworthiness of the investor company, M/s Sesum Marketing Pvt. Ltd and the genuineness of transaction, information was sought u/s 133(6) from the said investor company. No reply was received from the said company, however, the assessee company submitted the copy of the income tax return and audit report of the investor company for the A.Y 2012-13. On perusal of the same, the Assessing Officer observed that the returned income of said investor company was only Rs. 2,61,780/-. Further, income tax returns for earlier two years were also examined through ITDMS of Income Tax Department and it was observed by the Assessing officer that in view of the low returned income for the past years as well, the creditworthiness of M/s Sesun Marketing Pvt. Ltd. cannot be established. It was further observed by the Assessing Officer that the assessee company has not declared any dividend for its shareholders nor any bonus shares or interest was paid to shareholders (investor) companies and total worth of company before receiving share capital

and premium was just Rs. 9.30 crores as on 31st March, 2011. It was accordingly observed by the Assessing Officer that the investor company has been wrongly caught by making investment in the assessee company and since it has not received any return on such investments, it must have sold its shareholding either to assessee company or to some other investors, however, nothing of this sort took place. Even without receiving any returns, still investor Company had kept its hard earned money/funds blocked with assessee company which is against normal business prudence. It was accordingly held that the investment was not made with the motive of earning any profits but it must have some other purpose which was not disclosed by either assessee company or by the investor company and in view of the same, the genuineness of the transaction was not established. Further, the commission u/s 131(1)(d) was issued to ACIT at Kolkata and the inspecting authority also furnished a report stating that nobody was found at the address furnished by the assessee company. Further, the assessee was requested to produce the directors of the investor company for examination but they have not been produced for verification. It was accordingly held that the explanation offered by the assessee company regarding the genuineness of the transaction and identity and credit worthiness of the investor company is not satisfactory and hence, amount of Rs. 30,00,000 (wrongly written as 34,20,000/-) was added back to the total income of assessee as unexplained cash credit u/s 68 of the Act.

4. Similar findings were recorded in respect of the other investor company namely M/s Sundram Consultants Pvt. Ltd. which had invested Rs. 50,00,000/- by way of share capital in the assessee company though in this case, the notice u/s 133(6) was duly complied with by the investor company and necessary reply was furnished to the Assessing Officer.

5. Basis aforesaid findings/observations, it was held by the Assessing Officer that the assessee had introduced its own unaccounted cash in form of share application money/share premium through these companies based at Kolkata and the same were treated as unexplained cash credit u/s 68 of the Act and brought to tax in the hands of the assessee company. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has held that in view of the facts discussed by the Assessing Officer and basis the outcome of the enquiries conducted by the Assessing Officer, the assessee has failed to explain satisfactorily the nature and source of the credit of Rs. 80,00,000/- made by the AO u/s 68 of the Act and the addition so made by the AO was confirmed. Against the said findings, the assessee is in appeal before us.

6. During the course of hearing, the Id. AR submitted that in support the discharging initial onus cast on the assessee company, it has furnished the following documents before the lower authorities:

"S. No. Nature of documents

1. *Copy of Companies Audit Report, Tax Audit Report and Other Financial statements for year ended 31.03.2012*
2. *M/s Sesun Marketing (P) Limited*
 - (a) *Copy of Certificate of Registration with RBI for Non Banking Financial Corporation*
 - (b) *Copy of Certificate of Incorporation*
 - (c) *Copy of Memorandum & Articles of Association*
 - (d) *Copy of Annual Return, Filed under Companies Act, for Year ended 31.03.2012, 31.03.2013 & 31.03.2014 with Registrar of Companies.*
 - (e) *Copy of application for equity shares in M/s Jajoo Rashmi Refractories (P) Ltd. Dated 23.06.2011*
 - (f) *Copy of confirmation filed to ACIT u/sec. 133(6) of Income Tax Act, 1961*
 - (g) *Copy of Bank Statement (Kotak Dalhousie, Kolkata Branch) (A/c No. 11092)*

- (h) *Copy of Audit Report, Directors Report and other financial statements For year ending 31.03.2012, & Income Tax Acknowledgement*
- (i) *Copy of search report by Company secretary from the portal of Ministry of Corporate Affairs about the existence and financial activities*
- (j) *Copy of search report AOC-4, for 31/03/2017 from MCA Portal*

3. *M/s Sundrm Consultants (P) Limited*

(a) *Copy of Certificate of Registration with RBI For Non — Banking Financial Corporation*

- (b) *Copy of Memorandum & Articles of Association*
- (c) *Copy of Search report by Company secretary from the portal of Ministry of Corporate Affairs about the existence and financial activities*
- (d) *Copy of Application for equity shares in M/s Jajoo Rashmi Refractories (P) Ltd. (dated 09.04.2011)*
- (e) *Copy of confirmation filed to ACIT U/sec. 133(6) of Income Tax Act, 1961*
- (f) *Copy of Bank Statement - Karnataka Bank, Central Avenue, Kolkata*
- (g) *Copy of Audit Report, Directors Report, and other financial statements For year ending 31.03.2012, 31.03.2013, 31.03.2014*
- (h) *Copy of Annual Return filed under Companies Act for Year ended 31.03.2012, 31.03.2013*
- (i) *Copy of search report MGT-7 for 31/03/2018 from MCA portal"*

7. It was submitted by the Id AR that M/s Sesun Marketing Pvt. Ltd. is registered as a Non Banking Financial Company (NBFC) with RBI vide registration dated 10.07.2003 and also registered under the Companies Act, 1956. The registered office of the company was initially at 60/1, Chowringee Road, Flat No. 31, 2nd Floor Allexendra Court, Kolkatta (WB) and subsequently, got changed to 78, Benstick Street Unit-50, 4th Floor, Block-B, Kolkatta (W.B). The company is having PAN No. AADCB4126E and regularly filing its income tax returns and has filed a confirmation letter with the AO for the source of the funds out of which amount has been invested in the share capital of the assessee company and the fact that the amount have been paid to the

assessee company through banking channels towards subscription of share capital and in support, copy of bank statement was also submitted. It was further submitted that as per the company's audit report for year ended March, 2012, it has paid up share capital of Rs. 1,97,00,000/- besides reserves and surpluses of Rs. 12,64,25,246/- and the company's income from operation for the year under consideration is Rs. 18,01,115/-. Thus complete identity, genuineness of transaction & credit worthiness of the investor company has been proved. It was further submitted that as per share valuation of the assessee company, net worth of the assessee company is worth Rs. 500/- and accordingly the share of Rs. 10/- each have been issued at a premium of Rs. 490/- per share thus looking at high capital appreciation, the investor company has decided to invest in the assessee company and there is thus no basis for alleging that there was no basis for making investment in the assessee company.

8. Regarding M/s Sundram Consultants Pvt Ltd, it was submitted by the Id AR that it is registered as an Non Banking Financial Corporation with Reserve Bank of India vide license no. B-05-04216 dated 13.04.2001 and also with the Registrar of Companies vide incorporation certificate no. 709424 dated 19.04.1996. The registered office of the company was initially at P-41; Princep street R. No. 611, 6th Floor, Kolkata (WB) and subsequently, got changed to B/1; Lal Bazar Street Bikaner Building Suit No. 28, 2nd Floor, Kolkata (W.B). It is having PAN AAES1225L and regularly filling its return of income with the income tax authorities as well as making the necessary filings with the Registrar of the Company, Kolkatta. Therefore, there cannot be any question of its identity not been established. It was further submitted that as per the audited financial statements of the company as on 31.03.2012, it has equity funds of Rs. 1,40,37,250/- and reserves of Rs. 1,65,770,594/- and has operating income of Rs. 1,78,74,907/-. It was further submitted that the

amount has been invested through banking channels and sources of credit in investor's company's bank account have been duly submitted to the Assessing Officer along with copy of bank statement.

9. It was further submitted by the Id AR that during the course of appellate proceedings, all the details were again submitted to the Id. CIT(A) who has called for the remand report and the Assessing Officer in routine manner has submitted his report dated 24.08.2019 wherein no specific defect has been highlighted by the Assessing Officer. Regarding non verification of the investor companies at its registered address, it was submitted that the address of the said companies have changed which the AO has not tried to verifying during the proceedings u/s 131(1)(d) of the Act nor any cross examination opportunity was granted to justify the same. Regarding non-appearance of Directors of the investor companies, it was submitted that the assessee company has tried calling the Directors who were based outside of Jaipur, so it is not a case that the assessee company has not tried. It was further submitted that the Assessing officer has also not issued the summons to the Directors and had the summons being issued, the Directors would have appeared before him and mere non-appearance of the Directors cannot be held against it. It was accordingly submitted that where the complete details in form of nature of credit, identity and creditworthiness of investor companies & mode of transaction was well evidenced by assessee before the AO and mere doubt and suspicion in the mind of the Assessing officer cannot justify the addition of the share capital in the hands of the assessee company and bringing the same to tax thus defeating the whole purpose of seeking fresh investment where such funds are again blocked and cannot be used for business purposes. It was further submitted that there was no basis with the AO besides mere suspicion to hold that the amount so received is assessee's own unaccounted cash in form of share application money/share premium through these companies

based at Kolkata and thus, there was no basis to treat share capital as unexplained cash credit u/s 68 of the Act.

10. Per contra, the Id. DR relied on the findings of the Assessing Officer. It was submitted by the Id. DR that the Assessing Officer has carried out necessary verification in terms of issuance of notice u/s 133(6) and also issuing commission u/s 131(1)(d) of the Act and basis such inquiry and investigation has given a finding that the assessee company has failed to justify and provided suitable explanation regarding identity, credit worthiness and genuineness of the transactions. It was accordingly submitted that there is no infirmity in the order of the Assessing Officer which has been rightly confirmed by the Id. CIT(A). He accordingly requested for confirmation of the order of the lower authorities.

11. We have heard the rival submissions and perused the material available on record. It is a settled legal proposition that where any sum is found credited in the books of accounts maintained by the assessee company, Section 68 requires that the assessee company should offer an explanation about the nature and source of such sum found credited in its books of accounts to the satisfaction of the Assessing officer. The primary requirements, which should be satisfied cumulatively by the assessee in such cases is identification & creditworthiness of the shareholder/investor company and the genuineness of the share transaction. The explanation offered and material submitted by the assessee in support of its explanation should be wholesome, credible and verifiable. These three requirements thereafter have to be tested by the Assessing officer and it is only when the explanation and the material/documentation submitted by the assessee at this stage passes this muster that the initial onus placed on the assessee company can be said to be satisfied. Whilst it is true that the assessee cannot be called upon to adduce

conclusive proof on all these three requirements, it is nonetheless legitimate expectation of the assessment process that he would bring in sufficient proof, which is credible and at the same time verifiable, so as to discharge the initial burden placed on it. The degree of burden of proof will vary from assessee to assessee and whether initial onus stands discharged would depend upon facts and circumstances of each case.

12. In the instant case, we find that both the investor companies are in existence for past many years and registered with the Reserve Bank of India as Non Banking Financial Corporation meaning thereby they are engaged in business of financing and investment. Both these companies are regular in filling their annual returns with Registrar Companies as apparent from their annual filings for the year ended 31st March, 2012, March, 2013 and March, 2014 respectively. These companies were also regularly filling their income tax returns with the Income Tax Department and have been reporting operating revenues from their regular business activity of financing and investment. Further, information sought by the AO u/s 133(6) have been submitted by M/s Sundrm Consultants Pvt Ltd. Given the same, mere non-appearance of Directors especially where no summons was issued by the AO cannot be held against the assessee. Regarding issue of commission u/s 131(1)(d) to ACIT Circle 35, Kolkata, in his report, he has stated that the inspecting authority has reported that nobody was found at the address and basis the same, he has submitted his report stating that identity, creditworthiness and genuineness of the transaction not confirmed. In this regard, the Id AR has submitted that there has been a change in the address of these two companies as apparent from their filings with the ROC and there has been no further enquiry conducted by the Assessing officer. Therefore, as far as the identity and existence of these investor companies are concerned, their registration and regular filings with the appropriate regulatory authorities duly demonstrate the

same. Regarding genuineness of the transaction wherein they have invested in the share capital of the assessee company, it is noticed that investment is part of their core business activity and as part of such business activity, these companies have decided to invest in the assessee company and amount has been transferred through banking channels into the assessee company's bank account and basis the share application request received by the assessee company, the shares have been issued to these investor companies. Further, as per the finding of the Assessing Officer, the amount had remained invested in the assessee company as on the date of the assessment order and therefore, it is not a case that the money has been initially invested by these investor companies and thereafter, within a short period, there has been subsequent transfer or buyback of these shares by the assessee company. The issue of shares has been duly informed by way of regulatory filings with the Registrar of Companies. Regarding valuation of shares and the receiving the share premium by the assessee company, we find that the assessee company has determined share valuation as per the fair market value of its underlying assets and business, and basis the same, the investor companies have decided to invest in the assessee. Though one can debate about the valuation being higher or lower, the fact remains that the share valuation is supported by valuation done by the assessee company and has thus a reasonable and rational basis for issue of shares at premium. Therefore, we find that the shares have been duly issued by the assessee company as reflected in its filings with the Registrar of Companies, the money has been received through banking channel in assessee's company bank account and these transactions are duly reflected in the books of assessee's company as well as investor companies and therefore, the genuineness of the transaction has been duly established. Further, regarding the creditworthiness of these companies, we find that as per the audited balance-sheet of M/s Susun Marketing Pvt. Ltd as on 31st March, 2012, it has share capital of Rs. 1.97 cr and reserves and surplus of Rs. 12.64 Cr and

has operating Revenue of Rs. 18 lacs besides other income of Rs. 3 lacs which is sufficient to demonstrate the financial capability and creditworthiness to invest Rs 30 lacs in the assessee company. In respect of M/s Sundram Consultants, we find that as per its audited balance-sheet as on 31st March, 2012, it has share capital of Rs. 1.40 cr and reserves and surplus of Rs. 16.57 Cr and has operating Revenue of Rs. 1.46 cr besides other income of Rs. 3 lacs which is sufficient to demonstrate the financial capability and creditworthiness to invest Rs 50 lacs in the assessee company. The bank statements of these two companies were also submitted explaining the source of such investments. Therefore, we are unable to accept the findings of the Assessing Officer that these investors companies are not having sufficient creditworthiness to invest in the assessee company. In light of same, we are of the considered view that the assessee company has discharged the initial onus cast on it in terms of identity and creditworthiness of these two investor companies as well as demonstrating the genuineness of the transaction. The explanation offered and material submitted by the assessee company in support of its explanation is wholesome, credible and verifiable and which has not been correctly appreciated by the lower authorities and in light of the same, the addition so made by the Assessing Officer u/s 68 of the Act is not justified is hereby set aside. In the result, the ground No. 1 of assessee's appeal is allowed.

13. In ground No. 2, the assessee company has challenged the sustenance of adhoc disallowance of various expenses amounting to Rs. 62,048/- by the Id. CIT(A). We find that there are no specific findings by the Assessing Officer in terms of the expenses not been incurred for the purpose of business or bogus in nature. Therefore, in absence of specific defect been highlighted by the Assessing Officer, the adhoc disallowance so made and confirmed by the Id. CIT(A) is hereby deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 07/02/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/02/2020

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Jajoo Rashmi Refractories Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-04, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 733/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

