

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.7657/MUM/2019
Assessment Year: 2012-13**

M/s. Enso Holding and Finance Pvt. Ltd., 113, Commerce House, 140, N.M. Road, Fort, Mumbai 400 023. PAN : AACCE1142L	Vs.	DCIT 2(2), Room No.806, 8 th Floor, Pratishtha Bhavan, Old CGO Annexe, Maharshi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punamiya, A.R.
Revenue by : Shri Rajeev Harit, D.R.

Date of Hearing : 10.07.2020
Date of Pronouncement : 11.09.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 31.10.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The grounds raised by the assessee are as under:

"1. Addition u/s. 68. of the I.T. Act of Rs. 2,25,00,000/- by treating the Share Application Money as Unexplained Cash Credit just relying upon third party statement even though no incriminating documents/materials were found during the course of Search Action/Proceedings and not even relying upon the seized materials.

(a) On the facts and the circumstances of the case and in law, the learned Assessing Officer has erred in treating the Share Application Money of Rs.2,25,00,000/- received during the year as Unexplained Cash Credit and added to total income under section 68 of the Income Tax Act 1961 even though no incriminating

documents and/or material of alleged cash paid to the Share Applicants (Investor Companies) were found during the course of search action/proceedings. The learned Assessing Officer has just acted mechanically relying upon third party statement and reference many by the Investigation Wing without taking cognizance of the seized material in his possession and other details and documents submitted by the Appellant during the assessment proceeding pertaining to the share application money received which were sufficient enough to establish the identity and capacity of the share applicants and genuineness of the transactions. The learned Assessing Officer has erred in rejecting the Retraction Statement of the Director of the Group merely on the ground that it was sworn after 10 months of the original statement given by him without appreciating the reasons for delay recorded in the Affidavit and reached to conclusion just because the Appellant did not produce the Director of the Share Applicant Companies.

(b)The learned CIT(Appeal) has erred in upholding the action of the AO in making addition of Rs.2,25,00,000/- under section 68 of the Income Tax Act, being the Share Application Money received even when the identity, credit worthiness and genuineness of the transaction were explained and proved.

(c) The learned Assessing Officer/CIT(Appeal) erred in law and facts in passing the assessment orders solely on the basis of assumption, presumptions, surmises and conjectures without any cogent material or evidence. The reason given are wrong, contrary to the facts of the case and against the provisions of law, hence it is illegal and contrary to the principal of natural justice.

In view of the forgoing laws and facts, the addition made is unwarranted and not justified and it is therefore, prayed that the same be deleted.

2. The Appellant craves leave to add, amend or alter all or any of the above Grounds of Appeal.”

3. At the outset, the Ld. counsel of the assessee submitted that the present case is squarely covered by the decision of the co-ordinate bench of the Tribunal in assessee's sister concern's cases in (i) Diwali Mercantile (P) Ltd. (formerly known as Diwali Capital and Finance Ltd.) ITA No.2091/M/2018 and ITA No.3896/M/2017 A.Y. 2008-09 and 2007-08 respectively vide order dated 10.01.2019. (ii) ITO vs. Diwali Developers Pvt. Ltd. in ITA No.4723/M/2016 A.Y. 2012-13 order dated 13.04.2018 and (iii) DCIT vs. Blue Stock Investment Pvt. Ltd. ITA No.3987/M/2017 and ITA No.2090/M/2018 for A.Y. 2007-08

and 2008-09 dated 10.01.2019 wherein the similar issue has been decided in favour of the assessee on merits. The ld AR therefore prayed that the present appeal of the assessee may be allowed on merits.

4. We would first adjudicate the issue on merits which is claimed to be covered by the decision of the coordinate bench in assessee's sister concern's cases. The issue raised in ground No.1b is against the confirmation of addition of Rs.2,25,00,000/- by Ld. CIT(A) as made by the AO on account of share application money being unexplained cash credit by relying upon the third party statement despite there being no incriminating document/material found in the course of search and not referred while framing the assessment.

5. The facts in brief are that the assessee is a private limited company incorporated on 07.12.2009 registered with the Registrar of the Companies, Mumbai, Maharashtra, under The Companies Act, 1956. The assessee company is engaged in the business of investment and finance and advancing of loans, advances and making Investments. The assessee company had filed its Return of Income on 30.08.2012 declaring total income of Rs.1,34,570/-. The Return was processed u/s 143(1) of the Act 1961 accepting the returned income. The assessee company's case was then selected for scrutiny proceedings. During the course of the assessment proceedings, the assessee had furnished all the information asked for by the Ld. Assessing officer for verification of share application money received during the year. Thereafter, a search action was conducted under section 132 of the Act on 05.11.2014 at

the residential and business premises of Vardhman group. The case was then centralized with DCIT CC2(3), Mumbai on 26.08.2015 and notice under section 153A was issued. In response to notice under section 153A of the Act, the assessee filed return of income and notice under section 143(2) of the Act was issued. Subsequently the case was centralized with DCIT CC2(2), Mumbai. Since notice under section 153A of the Act was issued prior to centralization, the notice was void ab initio which was intimated to assessee through letter dated 09.09.2016. Thereafter a fresh notice under section 153A of the Act was issued on 09.09.2016 in response to which the assessee filed letter dated 14.09.2016 requesting the AO to treat the return filed on 09.10.2015 as return in response to notice under section 153A. A fresh notice dated 14.09.2016 under section 143(2) was also issued to the assessee. Thereafter, notices under section 142(1) of the Act was issued and in compliance the authorized representative attended the proceedings from time to time and submitted necessary details as required by the AO. The assessee further states that all relevant documents relating to share application money which were seized during the search action were already in the possession of the Ld. Assessing officer. The assessee through a communication had submitted to the ld. AO all documents to prove the identity, capacity and creditworthiness of the investors such as names and addresses of the share applicants, PAN, Copies of bank statements of the assessee, Copies of Audited Balance Sheets and Profit & Loss Accounts of the share applicants, copies of Share Allotment Letters, copies of the share certificates, company master data, copies of bank statements of

the investors evidencing the payments made to the assessee and Copy of Form no.2 filed with ROC etc. The Assessment u/s. 143 (3) r.w.s 153A of the Act was completed on 22.12.2016 determining total income at Rs.2,26,34,570/- after making the addition of Rs.2,25,00,000/- u/s. 68 of the Income Tax Act, 1961, towards the Share Application money. During the year under consideration, the assessee had received equity share application money from the following Investor companies:

Sr. No.	Name & Address	PAN Number	Details of Share Application Money received	Mode of Recipet	Total Payment Received	Share Cap @Rs. 10/- each	Share Prem @ Rs. 290/- each	Share Capital of Investor's companies
1	Olive Overseas Pvt. Ltd.	AACCR4512K	15,000	Cheque	4,500,000	150,000	4,350,000	19,637,000
2	Triangular Infocom Limited	AAACL5623K	15,000	Cheque	4,500,000	150,000	4,350,000	29,822,000
3	Kush Hindustan Entertainment Ltd.	AACCK3597M	15,000	Cheque	4,500,000	150,000	4,350,000	31,750,000
4	Viraj Mercantile Pvt. Ltd.	AADCV3852H	15,000	Cheque	4,500,000	150,000	4,350,000	8,000,000
5	Josh Trading Pvt. Ltd	AACCJ4233H	15,000	Cheque	4,500,000	150,000	4,350,000	5,000,000
	TOTAL		75,000		22,500,000	750,000	21,750,000	94,209,000

Sr. No.	Name of the Applicant	Olive Overseas Pvt. Ltd.
1	Olive Overseas Pvt. Ltd.	Big Three Bldg., Chamber No.6, 1st Marine Street, Mumbai - 400 002.
2	Triangular Infocom Limited	CS - 1, Silver Anklet, Yari Road, Versova, Andheri (W), Mumbai - 400 061.
3	Kush Hindustan Entertainment Ltd.	CS - 2, Silver Anklet, Yari Road, Versova, Andheri (W), Mumbai - 400 061.
4	Viraj Mercantile Pvt. Ltd.	91/93, 1st Floor Pramodchand CHSL, Girguam Road, Opera House,, Mumbai-400 004
5	Josh Trading Pvt. Ltd	91/93, 1st Floor Pramodchand CHSL, Girguam Road, Opera House,, Mumbai-400 004

During the reassessment proceedings, the AO asked the assessee to furnish certain information/explanations of the investors. In response to the same, the assessee duly filed the

following information / documents during the assessment proceedings:

- a. Name, Address, PAN, Income-tax Jurisdiction, etc. of the Investor companies;
- b. Copies of acknowledgement of the ITRS of the Investor companies;
- c. copies of forms of application for equity shares filled by the Investor companies;
- d. Copies of allotment advices given by the assessee to the Investor companies;
- e. Copies of Director Report, Audit Report, Profit & Loss Account and Balance Sheet of the Investor companies;
- f. Copies of bank statement/Confirmations of the Investor companies showing amount paid to the assessee;
- g. Copy of Form No. 2 filed with Registrar of Company towards allotment of shares

In order to prove creditworthiness assessee filed details showing financial strength of the investor companies which are reproduced as under:

Sr. No.	Name of the Investor Company	* Share Capital Rs.	* Reserves And Surplus Rs	* Total Net Worth Rs.	* Total Value of Shares Applied in the Assessee Company Rs.	Share application money paid % of Total Net worth
1	Olive Overseas Pvt. Ltd.	19,637,000	10,712,520	30,349,520	4,500,000	14.83%
2	Triangular Infocom Limited	29,822,000	57,223,802	87,045,802	4,500,000	5.17%
3	Kush Hindustan Entertainment Ltd.	31,750,000	9,051,953	40,801,953	4,500,000	11.03%
4	Viraj Mercantile Pvt. Ltd.	8,000,000	-9,102,222	-1,102,222	4,500,000	-408.27%
5	Josh Trading Pvt. Ltd	5,000,000	-12,278,087	-7,278,087	4,500,000	-61.83%
		94,209,000	55,607,966	149,816,966	22,500,000	15.02%

During the assessment proceedings, Ld. AO issued notices u/s 133(6) of the Act to all 5 share applicants asking for details with regard to share capital which were not responded by two parties and in three cases the notices were not served. The assessee also submitted further details like details of directors, shareholding pattern and details of unsecured loans & advances. The Learned AO added the share application money amounting to Rs.2,25,00,000/- received from the above Investors under section 68 of the Act on the alleged ground that it is unexplained cash credit as the assessee could not prove the ingredients/conditions of section 68 of the Act.

6. The assessee filed appeal before the Ld. CIT(A) challenging the legal as well as merits of the case. However, the same was dismissed by Ld. CIT(A) on merits as well as on legal issue.

7. We have heard the rival submissions of both the parties and perused the material on record including the written submissions filed by both the sides. After carefully considering the written submissions and the case laws relied by the assessee as well as the departmental representative, we find that the case of the assessee is squarely covered by the decision of the co-ordinate bench of the Tribunal in the following cases:

1. Diwali Mercantile Pvt. Ltd. (formerly known as Diwali Capital and Finance Pvt. Ltd.) (supra)
2. DCIT vs. Blue Stock Investments Pvt. Ltd. (supra)
3. ITO vs. M/s. Diwali Developers Pvt. Ltd. (supra)

We note that the cases were decided by the co-ordinate bench of the Tribunal in sister concerns involving the similar issue. In all the above cases the issue is decided in favour of the assessee.

For the sake of convenience, the operative part of the decision in ITA No.2091/M/2018 is reproduced as under:

“8. We have heard rival contentions and gone through the facts and circumstances of the case. We have noticed from the assessment order that the AO has issued notice under section 133(6) of the Act to the above mentioned share applicants to verify the transactions. In response to the said notice, of the share applicant filed the details called for and the relevant details are as under: -

- “i) details of investment made by them by way of share application in the appellatant company inter alia, cheque No. date of cheque, and the bank on which the said cheques have been drawn.
- ii) Basis on which the shares are applied at premium.
- iii) Copies of the bank statement of share applicants from which the account payee cheques issued to the appellatant and were debited.
- iv) Copies of the income tax return acknowledgements of share applicants for assessment year 2007-08 establishing the fact that the share applicants are regular assesseees’ and that year on year, they file income tax returns.
- v) Copies of Audited Balance sheet and Profit & Loss Account of the share applicants to prove their creditworthiness.
- vi) Copies of Share Allotment Letters issued by the Appellant to the share applicants along with copies of the share certificate issued by the Appellant on allotment of shares against the share application money to prove that the shares have been allotted and issued.”

9. These details submitted by the share applicants are also mentioned in the assessment order. We will find from the notice that the details submitted before the AO are sufficient enough to establish the identity of the share applicants and the genuineness of the transaction and creditworthiness of the parties. We are of the view that the assessee has duly discharged the primary onus casted upon it under the law to prove the identity of the share applicants and genuineness of the transactions. All the share applicants are registered with ROC (Registrar of companies) and they are assessed to income tax as the case of the assessee, which is main investment company of the Group. The only premise of the AO for making addition was that the share application money is not genuine and bogus for the reason that Shri Praveen Kumar Jain has made a statement before the Investigation Wing that he is being issued bogus share capital to various parties. We find that the AO has invalidated the balance sheet of share applicants on her own presumption without making any reference to documentary evidences produce by assessee. We find that the name of Shri Praveen Kumar Jain or his group as mentioned in respect of four parties out of five parties except the Alka Diamond Industries Ltd. Thus, it is evident that despite the fact that share applicant have responded to the notice issue under section 133(6) of the Act and details filed along with relevant documents for establishing identity of the parties and genuineness of transaction. We also noted that the AO was excessively influenced by the information received from DDIT, Investigation Wing, Mumbai regarding search action conducted in the case of one Shri Praveen Kumar Jain and his group and the statement recorded of Shri Praveen Kumar Jain. The AO has not independently proved that the share application money is bogus and not travelled through bank account. It is a fact that these companies are duly registered under the Companies Act, 1956 and still active

except one company i.e. Navlakha Agrex Pvt. Ltd., which is Amalgamated. The assessee as before us also filed the following details: -

- (i) The details of share applicants inter alia the name and addresses of the share applicants;
- (ii) PAN of share applicants;
- (iii) The copy of bank statement of the appellant of the banking account in which the account payee cheques received from share applicants were deposited and credited to its account;
- (iv) The details of investment made by share applicants inter alia, cheque No. and date of cheque, and the bank on which the said cheques were drawn;
- (v) Basis on which shares are applied at premium;
- (vi) The copies of the bank statement of share applicants from which the account payee cheques issued to the appellant and were debited;
- (vii) The copies of income tax return acknowledgements of share applicants for assessment year 2007-08 establishing the fact that share applicant files income tax returns regularly;
- (viii) The copies of audited balance sheet and profit and loss account of the share applicants to prove their creditworthiness; and
- (ix) The copies of share allotment and share certificate issued by the appellant on allotment of shares against the share applicant money to prove that the shares have been allotted and issued."

These details proved that the share applicant money received is genuine and explained in the absence of any contrary material brought in by Revenue. Hence, we are of the view that the CIT(A) has rightly quashed the reassessment and also deleted the addition on merits. We confirm the order of CIT(A). This appeal of Revenue is dismissed on both the issues."

8. Since the facts before us are materially same vis a vis the case as decided by the co-ordinate bench of the Tribunal in the cases of sister concerns, we therefore, respectfully following the same set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the addition of Rs.2,25,00,000/-. Since we have allowed the appeal of the assessee on merit, therefore, we are not considering it necessary to decide ground No.1(a) where the assessee has raised legal issue that addition made without any incriminating material is without jurisdiction.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 11.09.2020.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 11.09.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.