



M/s. Amirashmi Finstock Private Limited
Assessment Years :2010-11 & 2011-12

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ ITA Nos. 4558-4559/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

Income tax Officer-6(1)(2) Room No.508, 5 th Floor Aaykar Bhavan, M.K. Road Mumbai-400 020.	बनाम/ Vs.	M/s. Amirashmi Finstock Private Ltd. 205, Kailash Plaza, Vallabh Baug Lane Ghatkopar (E) Mumbai-400 077.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAICA-2050-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

C.O. Nos.305-306/Mum/2018

(Arising out of ITA Nos. 4558-4559/Mum/2017)

(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

M/s. Amirashmi Finstock Private Ltd. 205, Kailash Plaza, Vallabh Baug Lane Ghatkopar (E) Mumbai-400 077.	बनाम/ Vs.	Income tax Officer-6(1)(2) Room No.508, 5 th Floor Aaykar Bhavan, M.K. Road Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAICA-2050-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Neeraj Mangla, Ld. AR
Revenue by	:	Shri Michael Jerald-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12/10/2020
घोषणा की तारीख / Date of Pronouncement	:	22/10/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. The revenue is under appeal against separate appellate orders for Assessment Years (AY) 2010-11 & 2011-12 both dated 17/04/2017. It is



admitted position that facts are pari-materia the same in both the years and adjudication in any one year would equally apply to other year also and therefore, the appeals were heard together and are now being disposed-off by way of this consolidated order for the sake of convenience and brevity.

2. The revenue's appeal for AY 2010-11 contest the order of Ld. Commissioner of Income Tax (Appeals)-12, Mumbai [CIT(A)], Appeal No. CIT(A)-12/ITO-6(1)(2)/369/15-16 on following grounds: -

1. On the facts and circumstances of case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.1,95,00,000/- u/s. 68 of the Act, on account of share capital and share premium as Unexplained cash credit.
2. On the facts and circumstances of case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.1,95,00,000/- being the amount received by the assessee on account of Share Application Money/Share Capital and Share Premium from M/s. Advance Technologies Ltd. Prabhav Industries Ltd. and Yantra Natural Resources Ltd., without appreciating the fact that neither the genuineness of the share premium amount nor the creditworthiness of the above companies has been established by the assessee company.
3. On the facts and circumstances of case and in law, the Ld. CIT(A) erred in not appreciating the fact that Mr. Shirish C. Shah, in his statement recorded on oath u/s. 132(4) of the Act, stated that the above listed companies are managed and controlled by him and he had used these companies for providing accommodation entries of share Capital/Premium, share application and unsecured loans.
4. The Appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer be restored."

As evident, the revenue is aggrieved by deletion of certain addition u/s 68 as made by Ld. AO in the assessment order.

3. The learned Authorized Representative for assessee (AR), at the outset, submitted that similar additions made by Ld. AO in AY 2012-13 but deleted by Ld. CIT (A), were under challenge by revenue before this Tribunal vide ITA No. 3164/Mum/2017 order dated 30/01/2019. The coordinate bench, in the said order, set-aside the appellate order and restored the matter back to the file of Ld. AO for *de novo* assessment. Pursuant to the same, the consequential assessment was framed by Ld. AO vide order dated 30/12/2019 wherein the assessee demonstrated the



fulfilment of primary ingredients of Sec. 68 and no addition was made by Ld. AO. Therefore, these being the earlier years and facts being identical, the additions would not be sustainable and the appellate order would require no interference on the facts and circumstances of the case. The copies of the Tribunal order for AY 2012-13 as well as assessment framed consequent thereto have been placed on record.

The Ld. Departmental Representative (DR), Shri Michael Jerald, on the other hand, submitted that the investor parties were different in AY 2012-13 and therefore, the said assessment could not form the basis to confirm the deletion of additions.

4.1 We have carefully heard rival submissions and perused relevant material on record including documents placed in the paper-book. The facts on record would show that an assessment was framed for the year under consideration u/s 143(3) r.w.s. 147 on 17/02/2016 wherein the assessee was saddled with addition of unexplained cash credit u/s 68 for Rs.195 Lacs. The reassessment proceedings were triggered during the course of assessment proceedings for AY 2012-13, wherein it transpired that the assessee received huge share premium of Rs.195 Lacs during FY 2009-10 from 3 parties viz. (i) Avance Technologies Ltd.; (ii) Prabhav Industries Ltd.; (iii) Yantra Natural Resources Ltd. (earlier known as Ganesh Spinners Ltd.).

4.2 To examine the said receipts, the assessee was subjected to reassessment proceedings and a notice u/s 148 was issued on 10/04/2015. The statutory notices u/s 143(2) and 142(1) were issued as per due process of law in due course of time wherein the assessee was,



inter-alia, directed to prove the identity as well as creditworthiness of the share applicants & also the genuineness of the transactions.

4.3 In response, the assessee filed various documents viz. Form-2-Return of Share allotment filed by the assessee with Registrar of Companies (ROC), details of entities to whom the shares were allotted and compliance certificate from Company Secretary regarding share allotment compliances. To prove the identity, genuineness & creditworthiness of the 3 investor entities, the assessee filed copies of share application forms, relevant extracts from bank statements of 3 entities showing movement of funds from banking channels. The assessee also filed copies of Board resolutions passed by respective investor entities authorizing them to make the aforesaid investment. Further, the assessee also filed copies of Income Tax Return acknowledgements as well as audited financial statements of the investor entities to demonstrate fulfilment of primary ingredients of Sec.68. The confirmation of accounts was also placed on record. The aforesaid documents have also been placed before us also in the paper-book and we have perused the same. The perusal of bank statements of investor entities would show that the share application money was routed through banking channels and there were no immediate cash deposits in the bank accounts before making the aforesaid investments. The perusal of Income Tax Returns would show that M/s Avance Technologies Ltd. has returned income of Rs.39.66 Lacs whereas M/s Prabhav Industries Ltd. has returned income of Rs.2.89 Lacs. M/s Shri Ganesh Spinners Ltd. has paid taxes on Book Profits u/s 115JB. The perusal of financial statements of these entities would reveal that these



entities have sufficient own funds in the shape of Share Capital and Reserves to make the stated investments. The investments so made with the assessee has duly been reflected in their audited financial statements. Upon perusal of the same, it could safely be concluded that the assessee had not only proved the identity of the share applicant but also their respective creditworthiness to advance share application money to the assessee.

4.4 However, Ld. AO observed that the aforesaid three entities were being managed & controlled by one Shri Shirish Chandrakant Shah and Mr. Devang Dinesh Chandra Master, alleged bogus entry providers. Shri Shirish Chandrakant Shah was subjected to search proceedings on 13/04/2013 wherein, in sworn statement u/s 132(4), he admitted that various listed companies were being managed and controlled by him. He also admitted that these entities were used for proving accommodation entries of share capital, share premium, share application and unsecured loans. The three entities who had advanced share application money to the assessee formed part of that group.

4.5 In the said background, Ld. AO proceeded to make an addition of share application money u/s 68 as unexplained cash credit. The assessee assailed the same by submitting that the transactions were genuine and there was no record whatsoever which indicated that the assessee had entered into alleged bogus transactions. The assessee also sought cross-examination of the said entities. The attention was drawn to the fact that Shri Shirish Chandrakant Shah was neither a director nor shareholder in any of the three entities. Reliance was placed



on host of judicial precedents to submit that the additions could not be made.

4.6 However, the assessee's submissions could not find favor with Ld. AO who opined that the plea of cross-examination would not hold good as the assessee had already been asked to produce the parties to prove the genuineness of the transactions but the assessee failed to discharge the obligation. It was the duty of the assessee to prove the genuineness of the transactions. Finally, disregarding assessee's documentary evidences as well as explanation, the aforesaid amount was added back to the income of the assessee u/s 68 as unexplained cash credit.

4.7 Upon further appeal, Ld. CIT(A) deleted the same by noticing that upon receipt of share application money, shares were ultimately issued to the applicants and the share applicants became shareholders as per record of Registrar of Companies. All required details vis. Share application, details of payment received, shares issued, copies of annual return filed with ROC was placed on record. Further, in terms of the decision of Hon'ble Bombay High Court in **CIT V/s Gagandeep Infrastructure P. Ltd. (ITA No. 1613 of 2014 dated 20/03/2016)**, proviso to Sec.68 requiring assessee to prove the source of source was applicable only from AY 2013-14 onwards only and therefore, the additions so made by Ld. AO were to be deleted.

Aggrieved as aforesaid, the revenue is in further appeal before us. The assessee, in its cross objections, has merely assailed the stand of Ld. AO in making additions u/s 68 and therefore, the same is merely in support of impugned appellate order.



5. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, particularly documentary evidences submitted by assessee to prove the identity, creditworthiness and genuineness of transactions and appraised by us in preceding para 4.3, it is quite evident that the assessee had discharged the initial onus of proving the fulfilment of primary ingredients of Sec.68. The onus, thus, shifted on Ld. AO to rebut the assessee's stand as well as documentary evidences by bringing on record cogent material to dislodge the same. However, except for relying on a third-party statement, which was never confronted to the assessee, there is no other material to support the conclusion that the said transactions were unexplained cash credit. No opportunity of cross-examination was ever provided to the assessee and in fact, no further investigations were done by Ld. AO to support his conclusion. Therefore, additions could not be sustained in the eyes of law.

6. As rightly noted by Ld. CIT(A), in terms of the decision of Hon'ble Bombay High Court in **CIT V/s Gagandeep Infrastructure P. Ltd. (ITA No. 1613 of 2014 dated 20/03/2016)**, proviso to Sec.68 requiring assessee to prove the source of source was applicable only from AY 2013-14 onwards only and therefore, the assessee could not be obligated to prove the source of source for AY 2010-11. We concur with the reliance of Ld. CIT(A) on this binding judicial precedent for the said proposition.

7. Proceeding further, we find that the assessee was saddled with similar additions in AY 2012-13 but the same were deleted by Ld. CIT(A). Upon further appeal to Tribunal, the appellate order was set aside and Ld.AO was directed to reframe the assessment. Upon perusal



M/s. Amirashmi Finstock Private Limited
Assessment Years :2010-11 & 2011-12

of cited order of the Tribunal, we find that the assessee, in that year, had received similar share premium from certain entities which were allegedly being managed and controlled by Shri Shirish Chandrakant Shah. Relying on the statement of Shri Shirish Chandrakant Shah, the same were added as assessee's income u/s 68, in similar manner. The Ld. CIT(A) deleted the same by observing that the assessee had established the identity, creditworthiness and genuineness of share application money. Upon further appeal to Tribunal, the matter was restored back to Ld. AO for fresh assessment after examining the aforesaid parties and allowing the assessee an opportunity to cross-examine the same. Pursuant to the said directions, an assessment was framed u/s 143(3) r.w.s. 254 on 30/12/2019. During the course of fresh assessment proceedings, the assessee had filed an affidavit dated 20/12/2019 of Shri Shirish Chandrakant Shah in support of the transactions. In the said affidavit, Shri Shah, inter-alia, denied having provided any accommodation entries to the assessee. The assessee had relied upon favorable decision of Hon'ble High Court of Madhya Pradesh in the case of **Pr.CIT V/s Chain House International Ltd. (408 ITR 561)**. The special leave petition (SLP) filed by the department against the same was dismissed by Hon'ble Supreme Court vide SLP No. 1992/2109 dated 18/02/2019. After due consideration of assessee's submissions, Ld. AO chose not to make any additions in the hands of the assessee. Similar are the facts in this year since there is allegation by Ld. AO that the three entities were being managed as well as controlled by Shri Shirish Chandrakant Shah whereas the said party, in the sworn



affidavit, has already denied having advanced any accommodation entry to the assessee.

8. In the above background we are of the considered opinion that the additions made Ld. AO u/s 68 could not be sustained in the eyes of law and hence, rightly deleted by Ld. CIT(A). The impugned order would not require any interference on our part. Resultantly, the revenue's appeal stands dismissed. The assessee's cross-objections which are merely supportive in nature, would not require any specific adjudication and hence, dismissed.

ITA No. 4559/Mum/2017 & CO No. 306/Mum/2018, AY 2011-12

9. As stated earlier, facts are pari-materia the same in this year. The assessee has been saddled with similar additions, being share premium received from certain entities allegedly being controlled by Shri Shirish Chandrakant Shah. The assessment has been framed on similar lines. The Ld. CIT(A) deleted the same, inter-alia, by observing that Id. AO did not establish any connection of Shri Shirish Chandrakant Shah with the listed entities and the additions were merely on the basis of third-party statement. As against this, the assessee had established the identity, creditworthiness and genuineness of the share application by furnishing complete details and documentary evidences which is also evident from similar documents placed before us in the paper-book for this year.

Aggrieved, the revenue in in further appeal before us. The assessee has filed similar cross-objections which is merely supportive of impugned order.

10. Since the facts are pari-materia the same, our adjudication for AY 2010-11 shall *mutatis-mutandis* apply to this year also. The impugned



M/s. Amirashmi Finstock Private Limited
Assessment Years :2010-11 & 2011-12

order would not require any interreference on our part. The revenue's appeal as well as assessee's cross-objections stands dismissed.

Conclusion

11. The revenue's appeals as well as assessee's cross-objections stands dismissed.

Order pronounced on 22nd October, 2020.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 22/10/2020

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**