

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

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 2565/MUM/2018 (A.Y. 2010-11)

M/s. Network Synthetics Pvt. Ltd., 4 th Floor, Silver Metroplis Jaicoach Compound Opposite Bimbisar Nagar Western Express Highway Goregaon (E), Mumbai – 400063 PAN: AAACN3404E	v.	DCIT – Central Circle – 5(1) 19 th Floor, Air India Building Nariman Point Mumbai – 400 021
(Appellant)		(Respondent)

Assessee by : Shri Ritu Kamal Kishor

Department by Amrita Singh

Date of Hearing : 20.10.2020

Date of Pronouncement : 06.11.2020

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 53, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 07.03.2018 for A.Y. 2010-11 in sustaining the addition made u/s. 68 of the Act in respect of share capital/share premium received from shareholders.

2. At the outset, Learned Counsel for the assessee submitted that identical issue came up before the Tribunal in assessee group concerns emanating from the very same search and seizure operation conducted in Anand Rathi Group along with the group concerns on 24.09.2013 and the Tribunal in ITA.No. 2569 to 2573/Mum/2018 and ITA.No. 2563 & 2564/Mum/2018 dated 29.08.2019 deleted the similar addition made by the Assessing Officer u/s. 68 of the Act.

3. On the other hand, Ld. DR submits that the Tribunal decided the issue in favour of the assessee in group concerns.

4. Heard rival submissions, perused the orders of the authorities below and the decision of the Tribunal in assessee group cases. On a perusal of the order of the Tribunal in assessee's group concerns case in the case of Aqua Proof Wall Plast Pvt. Ltd., v. DCIT in ITA.No. 2569/Mum/2018 dated 29.08.2019 I find that on identical facts the Tribunal deleted the addition as the assessee has discharged its initial onus to prove identity, genuineness of the transaction and creditworthiness of the parties by filing numerous documents. The addition was made without carrying out further enquiries in order to ascertain the claim of the assessee, the Assessing Officer jumped into conclusion on the basis of financial

statements of subscribers that none of them had enough sources of income to establish creditworthiness, thus, the Tribunal deleted the additions. In the case on hand before us the assessee submitted the following information to prove the identity, genuineness of the transaction and creditworthiness of the shareholders.

S.No.	Particulars
1.	<i>Letter dated 27.10.2015 filed in response to notice u/s. 142(1) along with following documents:-</i>
2.	<i>Details of share application money received along with name, address, PAN and No. of shares allotted</i>
3.	<i>Details of Ken Securities Limited as per ROC records</i>
4.	<i>Copy of PAN Card of Ken Securities Limited</i>
5.	<i>Certificate of commencement of business of Ken Securities Limited</i>
6.	<i>Certificate of Incorporation of Ken Securities Limited</i>
7.	<i>Memorandum and articles of association of Ken Securities Limited</i>
8.	<i>Acknowledgement of return of income of Ken Securities Limited</i>
9.	<i>Bank statement of Ken Securities Limited highlighting payment for share application to appellant</i>
10.	<i>Application for shares of Ken Securities Limited</i>
11.	<i>Details as per ROC records of Network Synthetics Pvt. Ltd.</i>
12.	<i>Certificate of Incorporation of Network Synthetics Pvt. Ltd.</i>
13.	<i>Memorandum and articles of association of Network Synthetics Pvt. Ltd.</i>
14.	<i>Application for shares of Network Synthetics Pvt. Ltd.</i>
15.	<i>Bank statement of Network Synthetics Pvt. Ltd. highlighting payment for share application to appellant</i>
16.	<i>Details of directors of Ken Securities Ltd. and Network Synthetics Pvt. Ltd.</i>
17.	<i>Form 2 - Return of allotment of shares filed by appellant before ROC</i>

S.No.	Particulars
18.	Bank statement of appellant showing receipt of share application money from Ken Securities Ltd. and Network Synthetics Pvt. Ltd.
19.	Justification for issue of shares at share premium submitted during the course of assessment proceedings
20.	Resolution passed by appellant company for issue of shares
21.	Letter dated 04.03.2016 filed before AO

5. On a perusal of all these documents it is observed that the assessee has discharged its initial onus to prove the identity, genuineness of the transaction and creditworthiness of the parties by filing all these documents. The Tribunal in assessee's group cases while deleting the additions made u/s. 68 of the Act observed as under: -

"17. In the case of PCIT vs. Hi-Tech Residency Pvt. Ltd. (2018) 257 Taxman 335, Hon'ble Supreme Court has considered identical issue and held that where an assessee company had discharged the onus of establishing identity, genuineness of transaction and creditworthiness of investors, no additions could be made u/s. 68 of the I.T. Act, 1961. We, further, noted that although the Apex Court has not expressed any opinion, because of dismissal of SLP filed by the assessee, the fact of the matter is that this issue has been considered by the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd (supra), where the issue has been thoroughly examined in the light of provisions of section 68 of the Act, and held that if the share application money is received by the assessee company from alleged bogus share holders, whose names are given to the AO, then the department is free to proceed to reopen their assessment in accordance with law, but sum received from share holders cannot be regarded as undisclosed income of the assessee.

18. In this view of the matter and considering the facts and circumstances of this case and also taking into consideration various case laws as discussed hereinabove, we are of the considered view that the assessee has discharged its initial onus to prove identity, genuineness of transactions and creditworthiness of the parties by filing various documents. The AO, without carrying out further inquiries in order to ascertain the claim of the assessee, jumped into conclusion on the basis of financial statements of the subscribers

that none of them had enough source of income to establish creditworthiness. Therefore, we are of the view that the AO was erred in making additions towards share capital u/s 68 of the Income Tax Act, 1961. The learned CIT(A) without appreciating relevant facts has confirmed additions made by the AO towards share capital u/s 68 of the Income Tax Act, 1961. Hence, we reverse findings of Id. CIT(A) and direct the AO to delete the additions made towards share capital u/s. 68 of the Income Tax Act, 1961.

19. Insofar as, additions towards probable commission payment to entry provides, we find that since, we have deleted additions made by the AO towards share capital, consequent additions made towards probable commission @ 0.75%, on total transactions is also incorrect and accordingly, direct the AO to delete additions made towards commission estimation."

6. Respectfully following the above said decision, Ground Nos. 2 and 3 of grounds of appeal of the assessee are allowed.

7. Coming to Ground No. 4 i.e. with respect to disallowance made u/s.14A of the Act, I find that the Tribunal considered identical issue and deleted the disallowance in the absence of any seized materials for making the disallowance u/s. 14A while completing the assessment u/s.143(3) r.w.s. 153A of the Act, the Tribunal observed as under: -

"20. The next issue that came up for our consideration from ground No.4 of assessee's appeal is additions towards disallowances of expenditure incurred in relation to exempt income. We find that the AO has made additions towards disallowances of expenditure in the assessment framed u/s 143(3) r.w.s. 153A of the I.T.Act, 1961, without reference to any incriminating material found as a result of search. It is settled position of law that in order to make any additions in the assessments, which are framed u/s 153A, the additions qua incriminating material is a must. Unless, the AO has incriminating material in his possession to prove that any item of addition is supported by incriminating material found, as a result of search, no additions could be made in the assessments framed u/s

153A, if such assessment has been completed /unabated as on the date of search. In this case, the facts with regard to no reference to incriminating material, in respect of additions towards disallowances of expenditure u/s 14A r.w.Rule 8D is not disputed by the revenue. When, the bench has specifically asked the Ld. DR about incriminating material, the Ld. DR failed to prove that the additions made by the AO towards disallowances of expenditure is supported by any incriminating material. Therefore, we are of the considered view that in absence of any incriminating material found as a result of search, no additions could be made in the assessment framed u/s 153A of the I.T.Act, 1961. This legal proposition is supported by the decision of Hon'ble jurisdictional Bombay High Court in the case of CIT vs Continental warehousing corporation (Nhava Sheva Ltd. (2015) 374 ITR 645, where the Hon'ble High Court clearly held that in absence of incriminating material no additions could be made, in respect of assessment which become final and no proceedings is pending, as on the date of search. Therefore, we are of the considered view that the AO was erred in making additions towards disallowances of expenditure, in relation to exempt income u/s 14A r.w.Rule 8D(2), in absence of seized materials. The Ld. CIT(A) without appreciating the facts simply upheld the additions made by the AO. Therefore, we reverse the findings of Ld.CIT(A) and delete additions made by the AO towards disallowance of expenditure incurred in relation to exempt income u/s 14A of the I.T. Act, 1961."

8. Facts being identical respectfully following the said decision the disallowance made u/s. 14A of the Act is hereby deleted.
9. In the result, appeal of the assessee is allowed.

Order pronounced on 06.11.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai / Dated 06/11/2020
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum