

**आयकर अपीलीय अधिकरण “ऐ” 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)**

आयकर अपील सं./ I.T.A. No.952/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>M/s. Abhijavala Developers Pvt. Ltd.</b> 11/1, Sharada Centre Erandwane, Pune-411 004.	<b>बनाम/ Vs.</b>	<b>Income tax Officer-9(1)(1)</b> Room No.205, Income tax Office Churchgate, Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAKCA-0303-R</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Gaurav Bansal- Ld. AR
<b>Revenue by</b>	:	Shri Brajendra Kumar - Ld.Sr.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	09/11/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/12/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 As per the provisions of Section 68 of the Income Tax Act, 1961, where any sum is found credited in the assessee’s books and assessee offers no explanation about the nature and source thereof or the explanation furnished is found to be unsatisfactory, the sum so credited may be charged to Income-Tax as the income of the assessee of that previous year. A proviso has been inserted to the said section by

Finance Act, 2012 w.e.f. 01/04/2013 to provide that where the assessee is a company and the sum so credited consists of share application money, share capital, share premium etc., the explanation furnished by the assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded also offers an explanation about nature and source of sum so credited and such explanation is found to be satisfactory. However, this proviso is applicable only from AY 2013-14 and the same is not retrospective in nature as held by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]**. The said position has also been reiterated by Hon'ble Bombay High Court in its recent decision titled as **Gaurav Triyugi Singh V/s ITO (ITA No.1750 of 207, dated 22/01/2020)** which also consider its earlier decision of **Pr.CIT V/s Veedhata Towers Pvt. Ltd. (2018 403 ITR 415)**. More pertinently, the said proviso is not, at all, applicable in case of unsecured loans or deposits.

1.2 It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders / investors to advance such monies and genuineness of the transactions. Once these three ingredients are shown to be fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of **Lovely Exports P. Ltd. [319 ITR 5]**, dismissing revenue's appeal, observed as under: -

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequently in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. The Hon'ble Delhi High Court followed the said decision in **Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84]** against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in **Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72]** against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in **Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47]** against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in **Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020]** which has been rendered after considering the principles laid down by Hon'ble Supreme

Court in its recent decision titled as **Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161]**.

1.3 Proceeding further, it is trite law that no additions could be made on the basis of mere doubts, conjectures or surmises. Once the primary onus to substantiate the transactions is discharged by the assessee, it would be incumbent upon revenue to dislodge the assessee's claim and substantiate the allegations with corroborative evidences. Until & unless this exercise is undertaken, the additions would not be sustainable in the eyes of law. Lastly, as a principle of natural justice, the adverse material being used against the assessee must be confronted to the assessee and an opportunity to rebut the same was to be provided to the assessee. The failure to do so would result into violation of assessee's substantive rights to defend his stand in the matter.

2.1 Keeping in mind the aforesaid legal position, we find that the present assessee is in appeal before us for Assessment Year [in short referred to as 'AY'] 2012-13 and contest the order of Ld. Commissioner of Income-Tax (Appeals)-16, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.CIT(A)-16/ITO-9(1)(1)/IT-402/2015-16* dated 28/02/2018 in sustaining certain additions u/s 68. The grounds raised by the assessee along with Form No.36 has been revised vide letter dated 11/03/2020 which have been taken on record. The revised grounds raised by the assessee read as under: -

1. On the facts and circumstances of the case and in law, the learned Assessing Officer has erred in not following the instruction of CBDT and has scrutinized and made addition on the issue which was not covered under the CASS while selecting the case under Scrutiny. Therefore Addition u/s. 68 of the Income Tax Act 1961, on account of Share Capital Money of Rs.6,00,000/- and Unsecured Loans of Rs.2,44,00,000/- has to be deleted.

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in adding the share capital money of Rs.6,00,000/- and Unsecured Loans of

Rs.2,44,00,000/- u/s. 68 of the Income Tax Act 1961, without considering the facts of the case.”

As evident, the assessee is aggrieved by certain additions u/s 68 on account of Share Application Money of Rs. 6 Lacs and unsecured loans of Rs.244 Lacs.

2.2 We have carefully heard the arguments advanced by both the representatives. The Ld. Authorized Representative for Assessee (AR), drawing out attention to the documents as placed in the paper book, assailed the additions as sustained by Ld. first appellate authority. Reliance has been placed on various judicial pronouncements, the copies of which have been placed on record. The same has duly been deliberated and the settled legal position has already been enumerated by us in the opening paragraphs. The Ld. DR relied upon the findings of lower authorities and pleaded for dismissal of appeal. In the above background, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The assessee being resident corporate assessee is stated to be engaged in civil construction. It was assessed for year under consideration u/s 143(3) on 28/03/2015 wherein it was saddled with aggregate additions of Rs.250 Lacs as unexplained cash credit u/s 68 and the same form subject matter of present appeal before us. During assessment proceedings, it transpired that the assessee was in receipt of unsecured loans as well as share application money from 6 corporate entities as per the following details:-

No.	Name of the Lender / Investor	Unsecured Loans (Rs.)	Share application Money (Rs.)
1.	Kurmi Developers Pvt.Ltd.	99,00,000	1,00,000
2.	Nirvana Clothing Pvt.Ltd.	14,00,000	1,00,000
3.	Asan Investment & Finance Services Pvt.Ltd.	34,00,000	1,00,000
4.	Khushi Industries Ltd.	9,00,000	1,00,000
5.	Kings Merchants Pvt.Ltd.	29,00,000	1,00,000
6.	Rishi Automation P.Ltd.	59,00,000	1,00,000
	<b>TOTAL</b>	<b>2,44,00,000</b>	<b>6,00,000</b>

Accordingly, the assessee was asked to prove the identity of the parties, creditworthiness of loan creditors and genuineness of transactions in terms of the requirement of Sec.68 of the Act. In defense, the assessee submitted account confirmations of these parties, their relevant bank statement showing transfer of funds through banking channels and also copies of return of income as well as financial statements of the investor / lender entities. However, summons issued u/s. 131 by Ld. AO to these entities were returned back by postal authorities with remarks like *not known / incomplete address*. The assessee was unable to produce any of these parties. In the above background, Ld. AO proceeded to examine the documents furnished by the assessee in support of the transactions.

3.2 After going through documents of M/s Asan Investment & Finance Services Private Limited, it was observed that huge funds were received and transferred at regular intervals by this entity and there was no genuine business activity. Another reason to doubt the genuineness of the transactions was that the summons sent to the said party was un-served but still the reply was received in *Tapal* and therefore, it was to be concluded that the said party deliberately avoided attending in-person and submitting relevant evidences in support of the transactions.

Therefore, monies received from said entity were held to be non-genuine. More or less, similar was the findings in respect of entities listed at serial nos. 4 to 6. Similar was the findings in respect of entities listed at serial nos. 1 to 2 wherein additional facts were that certain information was received from DGIT (Inv.) Kolkata that one Mr. Prakash Jajodia was involved in providing bogus accommodation entries of varied nature. The entity listed at serial no. 1 i.e. M/s Kurmi Developers Private Limited was stated to be one of the paper company floated by the said group. The directors of M/s Kurmi Developers Private Limited admitted to be engaged in providing accommodation entries in lieu of commission. The entity listed at serial no.2 i.e. M/s Nirvana Clothing Private Limited was stated to be another similar paper entity floated by the said group. It was alleged that all such entities of the group were engaged in providing accommodation entries to various beneficiaries.

3.3 In the above background, the unsecured loans as well as share application money received from all the 6 entities was held to be non-genuine and a sham claim made by the assessee. Therefore, these amounts were added to the income of the assessee u/s 68 of the Act.

4. Upon further appeal, Ld. CIT(A) primarily going by the findings of Ld. AO and relying upon various judicial decisions concluded that the assessee failed to explain the credits which would justify addition thereof u/s 68 and accordingly, the assessee's appeal was dismissed. Aggrieved, the assessee is in further appeal before us.

5. We have carefully considered the rival submissions and perused relevant material on record including documents placed in the paper book. After going through the documentary evidences as submitted by the assessee before lower authorities to substantiate these transactions,

we find that the assessee had furnished following documents with respect to all the investor /lender entities: -

- (i) Copy of confirmation of Accounts by lender / investor
- (ii) Copy of PAN Card of each of the lender / investor
- (iii) Copy of Bank Statement of lender / investor
- (iv) Copy of ITR Acknowledgement of each of lender / investor
- (v) Copy of financial statements of all investor / lender entities

Upon perusal of documents pertaining to M/s Asan Investment & Finance Services Private Limited, we find that this entity is assessed to Income Tax vide PAN AAGCA6526N and has filed return of income for the year under consideration after paying taxes of Rs.0.46 Lacs. It has duly confirmed the transactions carried out with the assessee. The perusal of its bank statement would show that all the funds have been transferred to the assessee through banking channels and there was no immediate cash deposit before transfer of funds to the assessee. The financial accounts of this entity have duly been audited as per The Companies Act. The transactions carried out with the assessee have duly been reflected in its financial statements. This entity has Reserves & Surplus of Rs.632.39 Lacs which have been used to make further investments.

Similar are the documents in the case of M/s Khushi Industries Limited. This entity has also filed confirmation of account and it holds valid PAN which is evident from its return of income. The transactions carried out with the assessee are through banking channels and there is no immediate cash deposit before transfer of funds to the assessee. This entity has paid taxes of Rs.2.08 Lacs during the year. Its financial statements have duly been audited and this entity has Reserves & Surplus of more than Rs.2281.70 Lacs.

Another entity i.e. M/s Kings Mercantile Private Limited has also filed confirmation of account. This entity has paid taxes of Rs.0.34 Lacs. Its financial statements have duly been audited and it has Reserves & Surplus of Rs.710 Lacs besides short-term borrowings. These funds have been used to advance loans and advances.

M/s Rishi Automation Limited has also filed confirmation of accounts and it has paid taxes of Rs.0.34 Lacs which is evident from its Income Tax Return for the year under consideration. The perusal of bank statement would reveal that the funds have been transferred to the assessee through banking channel, there being no immediate cash deposit before transfer of funds to the assessee. Its financial statements are likewise audited and it has Reserves of more than Rs.159.37 Lacs.

M/s Nirvana Clothing Private Limited has also filed confirmation of accounts and it has paid taxes of Rs.0.55 Lacs which is evident from its Income Tax Return for the year under consideration. The perusal of bank statement would reveal that the funds have been transferred to the assessee through banking channel, there being no immediate cash deposit before transfer of funds to the assessee. Its financial statements are likewise audited and it has sufficient reserves to make further investments.

The last entity i.e. M/s Kurmi Developers Private Limited has also filed confirmation of accounts and it has paid taxes of Rs.12.42 Lacs which is evident from its Income Tax Return for the year under consideration. The perusal of bank statement would reveal that the funds have been transferred to the assessee through banking channel, there being no immediate cash deposit before transfer of funds to the assessee. Its

financial statements are likewise audited and it has sufficient reserves of more than Rs.579.50 Lacs to make further investments.

Upon perusal of above documents, we find that the primary onus of establishing the identity of the investor entities, proving their respective creditworthiness and to establish the genuineness of the transactions was duly been discharged by the assessee. The assessee was not required to prove the source of source for this year. Therefore, the onus was on revenue to rebut these evidences by bringing on record cogent material to dislodge assessee's evidences. However, except for the fact that summons remained un-served, there is nothing in the armory of revenue to unsettle the assessee's claim. The allegations are not supported by any corroborative evidences. Once the initial onus was discharged by the assessee, it was incumbent upon revenue to carry out further investigation to support the allegation that the credits were unexplained. However, nothing of that sort has been shown to have been carried out. So far as the information of DGIT (Inv.) is concerned, we find that these were merely third party statements which were never confronted to the assessee and those statements on standalone basis could not form the basis of making additions in the hands of the assessee. It is trite law that no additions could be based merely on doubts, conjectures or surmises. Therefore, the additions as made by Ld. AO, in our considered opinion, are not sustainable in the eyes of law. The settled legal position as enumerated by us in the opening paragraphs duly support the said conclusion. Therefore, we delete the impugned additions as sustained by Ld. CIT(A). The grounds, thus raised, stand allowed.

6. The Ld. AR, during the course of hearing, advanced arguments for the submissions that the case of the assessee was selected for scrutiny under CASS for the reason that there was large interest expenses relatable to exempt investments u/s 14A. However, no such additions were made by Ld. AO in the assessment order and therefore, the scope of scrutiny could not be enlarged to make additions of unexplained cash credit u/s 68. However, these arguments do not convince us much since upon perusal of page no. 17, it is quite evident that the type of scrutiny was complete and it was not a limited scrutiny case. Therefore, Ld. AO was quite empowered to make correct assessment of assessee's income considering all the facts and issues. There is nothing on record which would show that there was any defect in the jurisdiction of Ld. AO, in any manner. We do not find any such material on record. Therefore, this plea was to be rejected.

7. In the result, the appeal stands partly allowed in terms of our above order.

*Order pronounced on 03<sup>rd</sup> December, 2020.*

**Sd/-**

**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/12/2020  
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.