

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 340/Del/2020 : Asstt. Year : 2016-17

Copore Industries Pvt. Ltd., C-44, West Jyoti Nagar, North West Delhi, New Delhi	Vs	ACIT, Circle-6(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAHCA0578R		

**Assessee by : Sh. Suresh K. Gupta, CA
Revenue by : Sh. Jagdish Singh, Sr. DR**

Date of Hearing: 24.11.2020	Date of Pronouncement: 22.12.2020
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ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-16, New Delhi, dated 12.12.2019.

2. Following grounds have been raised by the assessee:

"1. The Id. CIT (A) has erred both in law and circumstances of the cases in upholding the addition of Rs.1,80,00,000/- u/s 68 of the IT Act holding the acceptance of share capital as unexplained cash credit ignoring the fact that the assessee has discharged its initial onus u/s 68 of the IT Act explaining nature and source of the credits and source of the source by filing requisite documents proving identity and creditworthiness of the shareholder and the ultimate source and also to establish genuineness of the transaction during assessment proceedings.

2. The Id. CIT (A) has erred both in law and circumstances of the cases in upholding action of the AO, in making addition u/s 68 of the IT Act of

Rs.1,80,00,000/- is erroneous as the evidences filed by the appellant in support of cash credit of Rs.1,80,00,000/- have been rejected by the AO without conducting any enquiry thereon in discharge of onus shifting on the revenue after the initial onus discharged by the appellant."

3. The assessee filed the return of income declaring an income of Rs.47,12,400/- on 30.09.2016. The AO found that the assessee company has received share capital and share premium of Rs.1,80,00,000/-. These amounts have been received from one Sh. Nitin Gupta who is also the Director of the company. The assessee company was asked to prove creditworthiness and genuineness of the share capital received. Before the AO, the assessee filed confirmation from the share holder, E-filed ITRV of shareholder for A.Y. 2016-17, relevant period bank statement, share application form, detail of share application money and valuation of shares as per Rule 11UA of IT Rules, 1962.

4. The AO based on the details filed by the assessee observed that Sh. Nitin Gupta who was the recipients of the shares has in turn received unsecured loan from one entity namely, Ridhi Sidhi Enterprises (hereinafter called "RSE") which was utilized for purchase of the shares from the assessee company.

5. In order to prove the genuineness of the loan received from RSE, the assessee has further submitted confirmation of account of Riddhi Siddhi Enterprises, confirmation between shareholder and RSE, E-filed ITR-V for A.Y. 2016-17 of RSE alongwith computation of income, audited financial statement of RSE as on 31.03.2016, relevant period bank statement of RSE, E-filed ITR-V for A.Y. 2015-16 of RSE alongwith computation of income and audited financial statements of RSE as on 31.03.2016.

6. Not satisfied with the details filed, the AO made addition u/s 68 of the amounts received by the company from the Director. The reasons given by the AO while making the addition are as under:

1. The assessee failed to discharge the onus of proving creditworthiness and genuineness of the share capital received from Sh. Nitin Gupta.
2. Sh. Nitin Gupta mainly received funds from RSE and transferred the assessee company.
3. The bank statement of Sh. Nitin Gupta shows several high value transactions which were immediately transferred through Nitin Gupta's account to several other entities.
4. The return of income of Sh. Nitin Gupta is only Rs.2,76,970/-.
5. The return of income of RSE is only Rs.5,89,880/-.
6. RSE has got no reserves & surplus
7. The AO placed reliance on the judgments in the case of CIT Vs P. Mohanakala 161 Taxman 169 (SC) and Sumati Dayal Vs CIT 80 Taxman 89 (SC).

7. The matter further travelled to the Id. CIT (A) who has confirmed the addition made by the Assessing Officer holding that the details were not very convincing and the loans disbursed to the shareholder Director, Sh. Nitin Gupta were preceded by transfer of funds into the account of RSE a day before disbursement of loans. The Id. CIT (A) also held that the assessee was unable to establish the transfer of funds on account of sale proceeds which were given as loan to Sh. Nitin Gupta.

8. Before us during the hearing, the Id. AR has relied on the documents filed before the authorities below. The Id. DR supported the orders of the revenue authorities.

9. Heard the arguments of both the parties and perused the material available on record.

10. The correctness of the findings of the AO has been examined based on records.

1. *The assessee failed to discharge the onus of proving creditworthiness and genuineness of the share capital received from Sh. Nitin Gupta.*

The assessee has submitted all the documentary evidences alongwith valuation report of shares under Rule 11UA. Hence, it cannot be said that the assessee failed to discharge the onus.

2. *Sh. Nitin Gupta mainly received funds from RSE and transferred the assessee company.*

Fact undisputed. The AO could not make a case for addition u/s 68 by bringing any collusive arrangement between Sh. Nitin Gupta and RSE.

3. *The bank statement of Sh. Nitin Gupta shows several high value transactions for certain entities which were immediately transferred through Nitin Gupta's account to several other entities.*

Fact disputed. All the amounts received by Sh. Nitin Gupta have been given to the assessee company only there were no evidence of transfer of funds from the account of Sh. Nitin Gupta to other entities or use of this account to transfer funds to other account as per the bank statement.

4. *The return of income of Sh. Nitin Gupta is only Rs.2,76,970/-*

Fact on record. However, cannot be the sole reason for making addition u/s 68 when the sources have been proved to be of loan received.

5. *The return of income of RSE is only Rs.5,89,880/-.*

Fact on record. However, cannot be the sole reason for making addition u/s 68 when the sources have been proved to be of sale receipts.

6. *RSE has got no reserves & surplus*

RSE is a firm. Hence, reserves & surplus are not to be reflected in the balance sheet rather profits of the year are taken into capital account. Hence, the AO's contention that since RSE has no reserves & surplus, the transactions are sham cannot be held to be correct. We find from the bank statement that the assessee and RSE has also got regular business transaction throughout the year to the tune of Rs.49.95 crores on account of sale of goods. The total capital of the partners and RSE is Rs.22.37 lacs with cash at bank of Rs.1.42 crores as on 31.03.2016. It was also proved from the bank statement that the loans given to Sh. Nitin Gupta was out of sale proceeds received from various entities as can be seen from table below:

<i>Date</i>	<i>Unsecured Loan remitted</i>	<i>Source of Funds</i>	<i>Amount of source funds received</i>
17.02.2016	15,00,000	Shri Pashupati Enterprises (Debtors)	14,00,000
18.02.2016	9,00,000	Nishi Wires and Cables (Debtors)	30,00,000
18.02.2016	5,00,000		
19.02.2016	14,00,000		
19.02.2016	10,00,000	Plaza Wires Pvt. Ltd. (Debtors)	16,35,837
19.02.2016	10,00,000		16,00,000
20.02.2016	12,00,000		
22.02.2016	4,00,000	A V Infraproject (Debtors)	14,35,413
22.02.2016	24,00,000	Shri Pashupati Enterprises (Debtors)	50,00,000
22.02.2016	21,00,000		
23.02.2016	5,00,000		
24.02.2016	12,00,000	Bright Metals Pvt. Ltd. (Debtors)	15,00,000
24.02.2016	9,00,000	Arnav Armoured Cables (Debtors)	6,00,000
26.02.2016	8,00,000	Plaza Wires Pvt. Ltd. (Debtors)	18,55,350
07.03.2016	22,00,000	KM Enterprises (Debtors)	36,85,000

11. From the above, it can be said the assessee has given the complete details of the sources of funds i.e. Sh. Nitin Gupta and also the sources of funds to Sh. Nitin Gupta which signifies that the assessee has discharged the onus to prove the amounts received are genuine by submitting the details of the shareholders and also by submitting the details of the loans received by the shareholder who in turn purchase the shares of the assessee company.

12. Now, having gone through the discharge of onus by the assessee, we have also tried to examine how the revenue disproved the claim of the assessee. The revenue mainly held that Sh. Nitin Gupta and RSE are low taxpayers and hence the genuineness of the transaction cannot be accepted. Other than this theoretical preposition, we find that the revenue has not brought any tangible material to prove that the transactions are bogus or fake or in the nature of any accommodation entry operation. Thus, revenue absolutely failed to rebut the contentions of the assessee by bringing on record any primary, secondary or tertiary enquiry or evidences either by the way of investigation, information collected u/s 133(6) or statements recorded u/s 131. The reliance place by the AO on the judgments in the case of CIT Vs P. Mohanakala 161 Taxman 169 (SC) and Sumati Dayal Vs CIT 80 Taxman 89 (SC) found to be not applicable to the instant case as the explanation of the assessee in the instant case is based on tangible evidences. Hence, the addition made by the AO cannot be sustained.

13. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 22/12/2020.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 22/12/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR