

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA Nos.4100 & 4101/M/2017
Assessment Years: 2008-09 & 2009-10**

M/s. Shakti Share Shoppee Pvt. Ltd., B-302, Rangoli Vasant Utsav, Thakur Village, Kandivali (East), Mumbai – 400 101 PAN: AAACS 9220 K	Vs.	The Income-Tax Officer, Ward-13(2)(3), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vishnu Agarwal, A.R.
Revenue by : Shri T.S. Khalsa, D.R.

Date of Hearing : 15.12.2020
Date of Pronouncement : 23.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the order dated 16.03.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2008-09 & 2009-10.

ITA No.4100/M/2017 A.Y 2008-09

2. The assessee has raised two effective issues in the various grounds of appeal. The first issue is jurisdictional issue challenging the order of Ld. CIT(A) whereby the Ld. CIT(A) has confirmed the action of the AO in initiating the reassessment proceedings under section 147 read with section 148 of the Act. The second issue raised by the assessee is against the

confirmation of addition of Rs.1,80,00,000/- by Ld. CIT(A) as added by the AO under section 68 by treating the share premium money received by the assessee as unexplained cash credit. First we would like to adjudicate the issue raised by the assessee on merit.

3. The assessee has challenged the order of Ld. CIT(A) on merit vide ground No.4 to 10 wherein the assessee has prayed before the Bench that the addition as confirmed by Ld. CIT(A) of Rs.1,80,00,000/- is wrong and against the facts of the case as the assessee has satisfied the necessary three conditions as envisaged by provisions of section 68 of the Act and the AO has not examined the documents/information furnished during the course of assessment proceedings. The assessee has also challenged that the assessment so framed by the AO as bad in law as the AO has failed to bring on record any concrete evidence regarding the money changing hands and also ignored the fact that Shri Pravin Kumar Jain and others have retracted statements given during search. Besides the assessee also challenges the assessment order on the ground of non granting of cross examination to the assessee despite specific request moved by the director of the assessee Shri Dipak Singhvi and also that the amendment to section 56(2)(vii)(b) is applicable from 2013-14. The assessee filed the return of income for the year on 19.09.2008 declaring a total income of Rs.28,740/- which was processed under section 143(1) of the Act. Thereafter the case of the assessee was reopened under section 147 by issuing notice under section 148 of the Act on 28.03.2015 and statutory notices were duly issued and served upon the assessee. The assessee is engaged in investments in shares,

securities and also trading in shares as mentioned in para 2 of the assessment order. The AO observed that the intrinsic value of the share of the company as on 31.03.2007 was Rs.10 and as on 31.03.2008 Rs.10.57, if the share premium is not included in the capital. The case of the assessee was reopened on the ground that assessee has received share premium of Rs.1,80,00,000/- during the year from group companies belonging to Shri Pravin Kumar Jain as per detail herein under:

Sr. No.	Name of the Company	Amount
1.	Alka Diamond Industries Ltd.	Rs.15,00,000/-
2.	Nakashtra Business Pvt. Ltd.	Rs.30,00,000/-
3.	Triangular Infocom Ltd.	Rs.45,00,000/-
4.	Vanguard Jewel Ltd.	Rs.60,00,000/-
5.	Yash-V Jewels Ltd.	Rs.1,80,00,000/-

4. During the course of search proceedings on Shri Pravin Kumar Jain and related entities, it was revealed that Shri Pravin Kumar Jain and his associate concerns were engaged in providing accommodation entries in the form of share application money cum share premium, unsecured loans and also bogus share sale and purchase in penny stocks. It was also revealed that all these entities connected with Shri Pravin Kumar Jain are not doing any genuine business such as trading, manufacturing or financing etc and are rendering accommodation services. The AO discussed in detail the modus operandi of Shri Pravin Kumar Jain in the assessment order from page No.2 to 19. During the course of assessment proceedings the AO called upon the assessee to furnish the evidences/documents relating to the investors and prove their genuineness which was replied by the assessee by filing copies of the letter sent by the investors, payment details by account payee cheques and details of shares issued at a face value of 10

at a premium of 390, copies of confirmation of the investors, copies of ledger account in the books of the investors, copies of the bank statements, IT returns, annual audited accounts in respect of all the investors. Besides the AO has also issued summon under section 131 of the Act. However, in some cases these were served and in some cases the inspector reported that the entities were not available at the available addresses. The investor filed the copies of their balance sheet and ITRs etc. Finally, the AO came to conclusion that the assessee has failed to prove the test of genuineness and treated the same as non genuine and added the same to the income of the assessee as unexplained cash credit under section 68 by framing assessment under section 143(3) read with section 147 of the Act vide order dated 18.02.2016.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

“5.8. I have considered the submissions and facts on record carefully. The distinguishing feature in this case noted is that the director of the appellant company was summoned and statement recorded at the time of the assessment proceedings itself. The statement -is reproduced in the assessment order. It is highly improbable that the director Shri Deepak Singhvi could not name the person who was contacted for investing in the appellant company when such investors are the largest shareholder in the appellant company. If such large investment was made, it is again unbelievable that such investor will not nominate/its own director and not attend the AGM of the appellant company. When queried why it had to obtain details of investors from ROC, it turned out that the investors had since then transferred the shares to Singhvi family, the promoters. Details were called including copy of share transfer memo and the purchasers bank statement, return of income and computation of income. This was not submitted though from details filed it is clear that all shares invested to by these 5 investors have been purchased by the Singhvi family and at par. Why would any investor invest Rs 400/ share only to sell it to the original promoter family for Rs 10 per share? All these peculiar facts, show that the transactions are not genuine.

5.9. In the facts of the case, the additions made are confirmed and grounds of appeal no 4 to 7 are dismissed.”

6. The Ld. A.R. vehemently submitted before the Bench that the order passed by Ld. CIT(A) has no basis and the appeal of the assessee has been dismissed without considering the facts on record and various judicial citations. The Ld. A.R. submitted that assessee has filed copies of confirmations, PAN numbers, board resolutions, copies of bank statements, IT returns and audited annual accounts of the investor entities duly reflecting the investments made in the assessee company, however, the AO has not brought any material on record to prove that these transactions were non genuine. The Ld. A.R. submitted that assessee has proved all the three ingredients of section 68 i.e. identity and creditworthiness of the investors and genuineness of the transactions by furnishing various evidences as stated hereinabove before the AO, however, the AO failed to bring any substantive material to prove that the said transactions were non genuine. The Ld. A.R. submitted that the authorities below have only relied on the statement of Shri Pravin Kumar Jain which was recorded during the course of search proceedings on Shri Pravin Kumar Jain and his related entities wherein the Shri Pravin Kumar Jain admitted that he was doing the business of providing the accommodation entries only but the AO has overlooked the fact that the said statement recorded under section 132(4) of the Act stood retracted by Shri Pravin Kumar Jain and by various other persons afterwards. The Ld. A.R., therefore, submitted that the assessment so framed by the AO is bad in law and addition made of Rs.1,80,00,000/- deserved deletion on this count. In defence of his arguments the

Ld. A.R. relied on the decision of the co-ordinate bench of the Tribunal as follows:

1. ACIT 30(3), Mumbai. v/s. Shreedham builders (ITAT Mumbai)
2. Arceli Realty Limited v/s. Income Tax Officer - 15(1)0, Mumbai. (ITAT Mumbai)
3. Anil Chhaganlal Jain v/s. ACIT - 18(1), Mumbai. (IT AT Mumbai)
4. Income Tax Officer, 13(2)(3), Mumbai. v/s. M/s Shreedham Construction Pvt. Ltd. (ITAT Mumbai)
5. M/s Shree Laxmi Estate Pvt. Ltd. v/s. ITO, Wd. 15(3)(3), Mumbai. (ITAT Mumbai)
6. ACIT 24(3), Mumbai v/s. Shri Ramesh Ramswarupdas Jindal. (ITAT Mumbai)
7. DCIT - 12(1)(2), Mumbai. v/s. Bairagra Builders P Ltd. (ITAT Mumbai)
8. M/s. Komal Agrotech P. Ltd. v/s. The Income Tax Officer, Ward - 2(1), Hyderabad. (ITAT Hyderabad)
9. ITO - 4(2)(4), Mumbai. v/s. M/s. Kushboo Exports Pvt. Ltd. (ITAT Mumbai)
10. Income Tax Officer - 3(2)(4), Mumbai. v/s. M/s. Pyramid Realty Pvt. Ltd. (ITAT Mumbai)
11. Aim Properties & Investment Pvt. Ltd. v/s. Income Tax Officer, 5(1)(1), Mumbai. (ITAT Mumbai)
12. Sudhanshu Suresh Pandhare v/s. ITO Ward 21(3)(2), Mumbai. (IT AT Mumbai)
13. ITO - 10(2)(3), Mumbai. V/s. J J Multitrade Pvt Ltd. (ITAT Mumbai)
14. M/s. SDB Estate Pvt Ltd. v/s. ITO - 5(3)(2), CIT(A) 10, Mumbai. (ITAT Mumbai)
15. Bharti Syntex Ltd. v/s. Deputy Commissioner of Income Tax, Jaipur, (ITAT Jaipur)
16. ITO vs M/s Ahaan Financial Services Pvt Ltd IT A No. 5904/Mum/2017

7. The second plea of the assessee is that the share capital has been raised at a premium by issuing shares with face value of Rs.10 at a premium of Rs.390 was in fact on the basis of balance sheet of the assessee as on 31.03.2007 according to which the intrinsic value of the share works out to Rs.411 per share. Therefore, objection of the AO as per para 2 of the assessment order that the value of the share is only Rs.10 is wrong and against the facts of record. The Ld. A.R. submitted that the findings recorded for forming belief as to the escapement of income by recording reasons under section 148(2) is wrong and fallacious. The Ld. A.R. also submitted that the assessee has filed all the evidences as stated hereinabove before the AO evidencing the issue of shares, confirmations of investments by the investors, evidence of payments received by

the assessee and payments made by the investors through banking channels as is clear from the bank statements filed before the AO as well as before the Ld. CIT(A) and therefore the said issue of shares at a premium can not be added under section 68 of the Act. In defence of his argument, the Ld. A.R. relied on the following decisions:

1. PCIT, Panji v/s. Paradise Inland Shipping (P.) Ltd. 93 taxmann.com84 (SC)
2. CIT v/s. Gagandeep Infrastructure (P.) Ltd. 80 Taxmann.com 272 (HC-Bom)
3. CIT v/s. Green Infra Ltd. 78 Taxmann.com 340 (HC-Bom)
4. Vodafone India Services (P.) Ltd. v/s. Union of India. 50 Taxmann.com 300 (HC-Bom)
5. CIT v/s. Orchid Industries (P.) Ltd. 88 taxman.com 502 (HC-Bom)
6. CIT v/s. Lovely Exports (P) Ltd. 216CTR195(SC)
7. CIT v/s. Steller Investment Ltd. 115Taxman99(SC)
8. CIT v/s. Creative World Telefilms Ltd. 15 Taxman.com 183 (HC-Bom)
9. CIT v/s. Goa Sponge and Power Ltd. Tax Appeal No. 1 6 of 20 1 2 (HC-Bom)
10. CIT v/s. Gujarat Heavy Chemicals Ltd. 256 ITR 795 (SC)
11. CIT v/s. Aquatic Remedies Pvt. Ltd. ITA No. 904 of 2016(HC-Bom)
12. CIT v/s. GP International Ltd. 186 Taxman 229 (HC- Punjab & Haryana)
13. CIT v/s. Electro Poiychem Ltd. ITR 661 (HC-Madras)
14. CIT v/s. AKJ Granites P. Ltd. 501 ITR 298 (HC- Raj)
15. CIT v/s. Oasis Hospitalities (P.) Ltd. 298 Taxman 247 (HC - Delhi)
16. CIT v/s. Supertech Diamond Tools (P.) Ltd. 44 Taxmann.com 460 (HC-Raj)

17. Pr. CIT 5 v/s. Laxman Industrial Resources Ltd. ITA 169/2017 CM Appl. 7385/2017(HC - Delhi)
18. CIT v/s. Value Capital Services (P.) Ltd. ITA No. 348 of 2008 (HC-Delhi)
19. Nathu Ram Premchand v/s. CIT 49 ITR 561 (HC-Allahabad)
20. CIT v/s. Expo Globe India Ltd. 51 Taxmann.com (HC-Delhi)
21. CIT vs Victory Spinning Mills Ltd. 50 taxmann.com 416 (HC- Madras)
22. CIT v/s. Dwarkadhish Investment (P.) Ltd. 1 94 Taxman 43 (HC-Delhi)
23. CIT v/s. M/S. Nishan Indo Commerce Ltd. ITA No. 52 of 2001(HC-Calcutta)
24. CIT v/s. Vacmet Packaging (India) (P.) Ltd. 45 Taxmann.com 204 (HC-Allahabad)
25. CIT v/s. Gangeshwari Metal (P.) Ltd. 30 taxmann.com 328 (HC-Delhi)
26. ACIT v/s. Venkateshwar Ispat (P.) Ltd. 3 1 9 ITR 393 (HC-Chhattisgrah)
27. CIT v/s. Nav Bharat Duplex Ltd. 35 Taxmann.com 289 (HC-Allahabad)
28. CIT v/s. Samir Bio-Tech (P.) Ltd. 325 ITR 294 (HC-Delhi)
29. Mod Creations (P.) Ltd. v/s. ITO 13 Taxmann.com 1 14 (HC-Delhi)
30. CIT v/s. Jay Dee Securities & Finance Ltd. 32 taxmann.com 91 (HC-Allahabad)
31. Jaya Securities Ltd. v/s. CIT 166 taxman 7 (HC- Allahabad)
32. Pr. CIT vs Apeak Infotech 397 ITR 148 (Bom-HC)
33. Pr. CIT vs. Veedhata Tower Pvt Ltd 403 ITR 415(Bom-HC)
34. Pr. CIT vs . Vaishnodevi refoils & Solvex 96 Taxmann.com 469 (SC) & 100 CCH 228 (Guj-HC)

8. The Ld. A.R. also argued that amendment in section 56(2) (vii)(b) was effective from A.Y. 2013-14 and therefore not applicable to the instant year and the assessee was at liberty to issue share at a premium as this was a business decision of the assessee and tax authorities have no role to play in the said

decision as these are taken in the interest of business and out of commercial expediencies. Finally the Ld. A.R. submitted that the assessment was framed by the AO without granting opportunity to assessee to cross examine the persons of whose statements the AO relied to make the addition. The Ld. A.R. referred to page No.170 and 172 in the paper book wherein the director Shri Dipak Singhvi specifically appeared on 15.02.2017 and 03.03.2017 before the AO to cross examine the witnesses Shri Pravin Kumar Jain & ors. but they did not appear before the AO and consequently could not be cross examined. The Ld. A.R. submitted that the established and settled position of law that any material relied by the authorities without affording a cross examination to the assessee is bad in law. In defence of his arguments the Ld. A.R. relied on the following decisions:

1. Kishinchand Chellaram vs. CIT (1980) 4 Taxman 29 (SC)
2. M/s. Andaman Timber Industries vs. CCE, Kolkata-II Civil Appeal No.4228 of 2006 (SC)
3. H.R. Mehta vs. ACIT, Mumbai (2016) 72 Taxmann.com 110 (HC-Bom)
4. Shri Sunil Prakash vs. ACIT – 15(2), Mumbai. ITA 6494/Mum/2014 (ITAT Mumbai)

9. The Ld. A.R. finally submitted that in view of the aforesaid submissions the addition may kindly be deleted by reversing the order of Ld. CIT(A).

10. The Ld. D.R., on the other hand, strongly controverted the argument of the Ld. A.R. by submitting that the assessee undisputedly availed the accommodation entries from entities belonging to Shri Pravin Kumar Jain and the investment was made in the assessee company in the form of share capital and share premium. The entire modus operandi of Shri Pravin

Kumar Jain and his associated concern was found to be a bogus and sham, systemic and organized mode of providing entries to various entities in the market by accepting cash and issuing cheques. The assessee is also one of the beneficiaries of the same and therefore the arguments of the assessee that these investments were genuine are devoid of truth and has rightly been added by the AO and confirmed by the Ld. CIT(A). The Ld. A.R. submitted that the mere fact that the statement given by Shri Pravin Kumar Jain and others during the course of search have been retracted later on will not affect the bogus nature of the transactions. The Ld. D.R. submitted that the shares were issued at an exorbitant rate of Rs. 390/- per share of the face value of Rs. 10 each despite the fact that assessee has not carried out any business and has very meager income. The Ld. D.R. also pointed out that the investors who purchased the share for Rs.400 per share have sold the same back to the promoters at Rs.10 per share and this fact has been mentioned by the Ld. CIT(A) in para 5.8 of the appellate order and the assessee failed to place on record the necessary evidences and information qua the purchase and sale of shares by the promoters of the assessee company despite being specifically asked by the appellate authority which shows that the intentions of the assessee were not good and assessee wants to conceal the information from the authorities below. The Ld. D.R. also tried to distinguish the case laws relied upon by the Ld. A.R. by submitting that in the present case the money has been received through accommodation entries and therefore these investments are not genuine and rightly confirmed by the Ld. CIT(A) by upholding the order of AO.

11. In the rebuttal, the Ld. A.R. referred to the page No.11 of the paper book in A.Y. 2008-09 and drew the attention of the Bench to the balance sheet placed at page No.11 to 15 and pointed out that even prior to issue of shares to these entities, the book value per share was Rs.411.80 and therefore the arguments of the Ld. D.R. that share value was issued at a very high price is wrong and against the facts on record. The Ld. A.R. submitted that the decision to buy shares back from these investors is a commercial decision and can not be doubted by the tax authorities.

12. We have heard the rival submissions of both the parties and perused the material on record including the impugned order. We find that assessee has filed the necessary evidences as stated hereinabove in support of its claim before the AO as well as before the Ld. CIT(A). The evidences filed comprised of copies of ITR, annual accounts, bank statements, PAN numbers, application from share applicants, copies of board resolutions etc and even in response to summons issued under section 131, these investors filed their audited statements, ITRs and bank statement before the AO. The AO has also proceeded on the basis of the statement of Shri Pravin Kumar Jain and others recorded during the course of search to doubt these transactions and has not brought on record any substantive material to prove these investments as non genuine whereas the assessee has filed all the evidences. We also find that the director Shri Dipak Singhvi has presented himself before the AO in order to examine Shri Pravin Kumar Jain and others, however, the same did not attend before the AO and cross examination could not be

performed. Besides, the amendment to section 56(2)(vii)(b) of the Act is applicable from A.Y. 2013-14 and not to the year under consideration and therefore the question of issuing shares at a premium can not be examined in this year and also addition can not be made. Moreover, we find that on the date of issue of shares, the intrinsic value of the share as on 31.03.2007 was 411.80 and therefore the observation of the AO that shares were issued at a very high price is wrong and against the facts of the case. We have also perused the decisions referred to and relied by the Id. AR of the assessee in support of his arguments and found them to be squarely applicable to the assessee's case. In this case, the assessee has discharged the onus cast upon it by filing the necessary documents before the AO as well as CIT(A). Moreover in absence of cross examination of the persons whose statements were relied by the AO, the addition can not be made in view of the fact that specific prayers to the AO to this effect were made before the AO. In view of the above discussion and facts of the case, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

13. The appeal of the assessee is allowed.

ITA No.4101/M/2017 A.Y 2009-10

14. The issue involved in the present appeal is identical to the one as stated above in ITA No.4100/M/2017 A.Y 2008-09. Therefore, our finding in ITA No.4100/M/2017 A.Y 2008-09 would, mutatis mutandis, apply to this appeal as well. Accordingly the appeal of the assessee is allowed.

15. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 23.12.2020.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 23.12.2020.

* 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.