

**आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**JODHPUR BENCH**

**माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.279/Jodh/2018

(निर्धारणवर्ष / Assessment Year: 2015-16)

<b>DCIT- Bhilwara Circle</b> Shastri Nagar, Bhilwara Rajasthan.	<b>बनाम/</b> Vs.	<b>M/s. Saileela Synthetics Pvt. Ltd.</b> 147, New Cloth Market Pur Road, Bhilwara Rajasthan-311 001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AADCS-1103-N</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Rajendra Jain (Advocate) & Ms. Raksha Birla (CA)–Ld.ARs.
<b>Revenue by</b>	:	Shri A.S. Yadav- Ld. CIT- DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	04/11/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	21/12/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2015-16 contest the order Ld. Commissioner of Income-Tax(Appeals), Ajmer, [in short referred to as 'CIT(A)'],

Appeal No.557/2017-18, dated 13/03/2018 on following effective grounds:-

On the facts and in law, the Ld. CIT(A), Ajmer erred in :-

- 1) deleting the addition on account of allotment of shares of Rs.3,04,39,780/- without appreciating that genuineness thereof has not been proved as provided u/s.68 of the I.T. Act, 1961.;
- 2) deleting the disallowance of late deposit of employee's contribution towards ESI amounting to Rs.5,540/- made by the AO u/s. 36(1)(va) of the I.T. Act, 1961 without appreciating the facts of the case.
- 3) Restricting the disallowance of expenses from Rs.1,50,000/- to Rs.75,000/-, without appreciating the facts of the case that the AO specifically pointed out the defects in the bills and vouchers;
- 4) Deleting the addition made on account of unsecured loan of Rs.25,00,000/- from M/s. Inox Buildcon Pvt.Ltd. and interest paid of Rs.24,658/- thereupon, without appreciating the facts of the case.

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3.1 Facts on record are that assessee being resident corporate assessee stated to be engaged in manufacturing and trading of synthetic fiber was assessed for the years under consideration u/s. 143(3) vide order dated 29/12/2017 wherein the returned income of Rs.114.56 Lacs was determined at Rs.420.76 Lacs after certain additions.

3.2 During assessment proceedings, it transpired that the assessee issued certain shares on two occasion during the year at issue price of Rs.55/- & Rs.60/- per share. In total 522481 numbers of shares were issued for Rs.304.39 Lacs to fifteen (15) corporate

entities, the details of which have already been extracted in para-3 of the assessment order. During assessment proceedings, the assessee filed complete details of share allotment including Permanent Account Number (PAN) of the share applicants. However, upon perusal of details so filed, it was noted that eleven (11) entities were located at the same or nearby addresses. Notices u/s 133(6) were issued to confirm the transactions, however, the same did not elicit any satisfactory response. Accordingly, the assessee was required to demonstrate the fulfillment of ingredients of Section 68 by proving the identity as well as creditworthiness of the investor entities along with genuineness of the stated transactions.

3.3 The assessee submitted that all the share applicants were regular Income Tax Return filers and have sufficient source of income to make the investment in the assessee entity. The following documentary evidences were furnished in support of the transactions: -

- a) *Copy of the share application*
- b) *Copy of Bank statement of shareholder to verify the creditworthiness*
- c) *Copy of Income Tax Return*
- d) *Copy of PAN Card*
- e) *Copy of Balance sheet confirming complete details of source of funds and investments made*
- f) *Copy of balance confirmation to verify the genuineness*
- g) *Copy of Memorandum and copy of resolution*
- h) *Copy of bank statement of the company*
- i) *ROC Share allotment form along with complete annexures*
- j) *Ledger copy of share application money, Share capital and share premium*
- k) *Party wise share issue chart*

The relevant financial statements of the investor entities have also been extracted in the assessment order. However, upon perusal of the same, Ld. AO opined that all these entities did not carry out any significant business activities during the year and the profits as well as reserves of those entities were low. Therefore, the source of investments so made by them remained unexplained.

3.4 To fortify the submissions further, the assessee furnished affidavits of all shares applicants and supplied latest communication address with a request for re-confirmation of accounts. In the said background, it was submitted that the assessee proved the identity, creditworthiness and genuineness of all share-applicants by filing all the requisite details. All the investor companies were having sufficient sources to make investments and therefore, invocation of provisions of Sec. 68 was unjustified. Reliance was placed, inter alia, on the decision of Hon'ble Supreme Court in **CIT V/s Lovely Exports Pvt. Ltd. 216 CTR 195** to oppose any addition u/s 68. However, not convinced, Ld. AO treated the share money so received by the assessee as unexplained cash credit u/s 68 and added the same to the income of the assessee.

3.5 The assessee had debited certain expenses under the head printing & stationery, office expenses, vehicle expenses, repair maintenance & telephone expenses etc. Since the expenditure was not fully verifiable, Ld. AO estimated an addition of Rs.1.50 Lacs against the same.

3.6 It also transpired that the assessee deposited employee's contribution of ESI amounting to Rs.5,540/- after due date as

prescribed in the respective Act and hence, the same was to be disallowed u/s 36(1)(va) r.w.s. 2(24)(x).

3.7 The assessee was in receipt of unsecured loan of Rs.25 Lacs from an entity namely M/s Inox Buildcon Private Limited which was one of the share-applicant and for which addition u/s 68 was already made by Ld. AO. Accordingly, the said loan as well as interest paid therefore aggregating to Rs.25.24 Lacs was disallowed and added to the income of the assessee u/s 68 in the same manner.

4.1 Aggrieved, the assessee contested all the additions successfully before Ld. CIT(A) vide impugned order dated 13/03/2018. With respect to addition of share application money, the assessee placed on record complete details of share allotment including PAN of the investor entities and source of source of investments so made in the assessee company. The attention was drawn to the documentary evidences submitted by the assessee during assessment proceedings in support of the genuineness of the transactions, It was submitted that all the investor entities had sufficient sources to make investment and therefore the conclusion drawn by Ld.AO were erroneous & baseless. The details of funds as available with the investor entities were also placed on record. It was further submitted that Ld. AO did not serve new notices u/s 133(6) at the new addresses even after having the same.

4.2 The Ld. CIT(A) after considering the order of Ld. AO and assessee's submissions deleted the additions so made u/s 68 by observing as under: -

4.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the AO after considering the evidences and submissions of the appellant regarding identity and creditworthiness of the persons from whom the share capital and share premium of Rs.3,04,39,780/- was received and genuineness of the transactions, treated the entire share application money of Rs, 3,04,39,780/- as unexplained credit u/s 68 observing at para 3.5 and 3.6 of the assessment order as under:

*"3.5 All the submissions, furnished by the A.R of the assessee, have been considered but not found satisfactory and Assessee Company failed to furnish any explanation in this regard. To substantiate any credits the books - identity of creditors, genuineness of transactions and creditworthiness of the creditors is required to be proved. In the present case, assessee company has stated to have received amount of Rs.3,04,39,780/- towards share issued to the 11 companies. It is worthwhile to mention here that there is no business relation between the assessee company and aforesaid companies. The assessee company is a private limited company located in Bhilwara, Rajasthan. Therefore, making a huge investment of Rs.3,04.39,780/- by 11 companies situated at a far place In Mumbai raises doubt. No submission has been made in the matter that how these 11 companies came to know about issuance of shares by the assessee company Moreover, it is the intention of every person doing business to earn profit out of its business activities and to utilize the fund for maximum return. In the present case, the above companies have made huge investment in an unknown company and from which they are not getting any returns.*

*Copies of audited accounts for A.Y. 2015-16 of the investor companies furnished during assessment proceedings shows that no significant business activity has been carried out in the relevant year by these companies. Balance sheet of these companies show huge reserve and surplus which consist mainly of share premium. There is a little or negligible reserve out of business activities in these companies. Even transactions by cheque do not make the transactions genuine. This has been held by the hon'ble ITAT, Jaipur in the case of M/s. Kanchanwala Gems V/s. JC1T in ITA No. 134/JP/02 dated 10.12.2013 and affirmed by Hon'ble Supreme Court in 288 ITR 10 (SC) that even payment by account payee cheque is not sufficient to establish the genuineness of the transaction. In view of the aforesaid facts, genuineness of the transactions by these companies of making investment in shares of assessee company is not proved. Hence, source of Investment remains unexplained."*

*3.6 As per the provision of section 68 of the Act where the assessee is a company (not being a company in which public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless:-*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature tax source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

*In the instant case the assessee claimed to have received consideration towards Issuance of share from the companies as above which are having, reserve & surplus in the form of share security premium only. However, in view of the facts discussed above genuineness of the transaction is not proved. Thus, total consideration of Rs.3,04,39,780/- received against allotment of shares it hereby treated as unexplained cash credit in terms of section 68 of the Act and added to the total income of the assessee. Penalty proceedings u/s 271(l)(c) of the Act is hereby initiated for furnishing inaccurate particulars of income."*

4.4 The appellant has furnished, in respect of each person following documentary evidences to prove the identity and creditworthiness of the persons from whom the appellant has received share application money and genuineness of the transactions:

- > *Copy of the share application*
- > *Copy of Bank statement of shareholder showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital*
- > *Acknowledgement copy of Income Tax Return of shareholder*
- > *Copy of PAN card to verify the identity*
- > *Copy of Balance sheet along with audit report of the above share applicants confirming complete details of Sources of funds and Investments made.*
- > *Copy of balance confirmation cum affidavit to verify the genuineness*
- > *Copy of memorandum and copy of resolution.*
- > *Details of the immediate sources of the funds invested by the share applicants*
- > *Copy of Bank statement of the company*
- .> *ROC Share allotment form along with complete annexures*
- > *Ledger copy of share application money, Share capital and share premium*

4.5 It is seen that the appellant has filed each and every documents required for proving the identity and creditworthiness of the share applicants and genuineness of the transactions. The AO had made enquiries u/s 133(6) with 11 companies. The AO has mentioned that none of the 11 share applicant filed any reply in response to notice issued u/s 133(6). Five notices have been returned by the postal authorities with the remark 'left'. The appellant did provide current address of these five share applicants but the AO did not issue any notice u/s 133(6) to these parties, on the ground that "new address of these companies should have been provided at the first instance". The AO has also not brought on record any evidence, received from any other source/ authority, to show that the appellant has introduced its own income from undisclosed sources in the form of share application money from the 15 companies from whom the share application money of

Rs.3,04,39,7807- was received by the appellant. The appellant has filed copy of Balance Sheet of each share applicant. It can be seen from the Balance Sheet that each share applicant had more than sufficient fund for giving share application money. The reason given by the AO for treating the sum of Rs.3,04,39,7807- as unexplained credit of the appellant at the most can be described as suspicion or doubt. I am of the considered view that no addition can be made u/s 68 merely on the basis of suspicion or doubt, especially when the appellant has furnished every documentary evidence to prove the identity and creditworthiness of the share applicants and genuineness of the transactions. The appellant has discharged its onus by filing necessary documentary evidences to prove the identity and creditworthiness of the share applicants and genuineness of the transactions and the AO has not brought on record any evidence to show that the appellant has introduced its own funds from undisclosed sources in the form of share application money. Therefore, in view of the various decisions relied upon by the appellant, the addition of Rs. 3,04,39,780/-made by the AO u/s 68 is hereby deleted.

4.3 The adhoc disallowance of expenditure for Rs.1.50 Lacs was reduced to Rs.0.75 Lacs. Regarding disallowance u/s 43B on account of delayed payment of ESI, Ld. AO was directed to verify the fact that the same was deposited on or before the due date of filing of return of income and allow the same in terms of decision of Hon'ble Jurisdictional High Court in **CIT V/s Udaipur Dugdh Utpadak Sahkari Sangh Ltd. 35 Taxmann.com 616**. The addition of unsecured loan raised from M/s Inox Buildcon Pvt. Ltd. was deleted since the loan as well as interest had already been repaid by the assessee in 03/05/2016 and the addition made on account of share application money u/s 68 from the said entity was already deleted.

Aggrieved as aforesaid the revenue is in further appeal before us.

5. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, we find that the assessee has placed on record requisite documentary evidences as per the requirement of

Sec. 68 to prove the identity of share applicants, their creditworthiness and genuineness of the transactions. The onus thus casted upon him under law was already discharged. In fact, it was incumbent upon Ld. AO to dislodge assessee's claim by bringing on record adverse material against the assessee. However, except for the fact that notices u/s 133(6) were returned back, there is no material on record to draw adverse inference against the assessee. The assessee had supplied new addresses of all share applicants during assessment proceedings, however, no further action was taken by Ld.AO to obtain confirmation of the share applicants. The details furnished by the assessee were conveniently ignored. The assessee had already placed on record the confirmation of all the investor entities. Not only the source of funds was proved but even the details of source of investment so made in the assessee company were furnished. It is trite law that no additions could be made merely on the basis of conjectures, surmises or mere doubts. Therefore, Ld. CIT(A) was quite right in deleting the addition made u/s 68 by Ld. AO. Finding no infirmity in the same, we dismiss this ground of appeal.

6. So far the adhoc estimation of expenditure is concerned, we find no infirmity in the action of Ld. CIT(A) in restricting the same to half since the estimation made by Ld. AO appeared to be on the higher side and it was without any sound basis. The issue of disallowance u/s 43B has rightly been adjudicated in the light of binding judicial precedent in the shape of decision of Hon'ble Jurisdictional High Court and therefore, the same would not require

any interference on our part. Similarly, the addition of unsecured loan was also rightly deleted since the loan was well as interest thereon had already been repaid by the assessee on 03/05/2016 which is coupled by the fact that the addition of share application money as received from this entity had already been deleted, which we have also confirmed. Therefore, the impugned order would not require any interference on our part, in any manner.

7. Resultantly, the appeal stands dismissed.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.*

<b>Sd/-</b> <b>(Sandeep Gosain)</b>	<b>Sd/-</b> <b>(Manoj Kumar Aggarwal)</b>
न्यायिक सदस्य / <b>Judicial Member</b>	लेखा सदस्य / <b>Accountant Member</b>

मुंबई Mumbai; दिनांक Dated : 21/12/2020  
Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, जोधपुर / ITAT, Jodhpur.**