

IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' MUMBAI

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1145/Mum/2017
(Assessment Year :2011-12)**

&

**ITA No.1144/Mum/2017
(Assessment Year :2012-13)**

M/s. Guru Aashish TexFab Ltd Shop No.3 Bldg 3/C, Jai Hind Estate, Dr.A.M Rd Bhuleshwar, Kalbadevi Rd. Mumbai-400002	Vs.	DCIT Cen Cir 4(3) Cen Rg 4 19 th Floor , Air India Building, Nariman Point Mumbai 400021
PAN/GIR No. AACCG1470H		
(Appellant)	..	(Respondent)

Assessee by	Shri K.Gopal
Revenue by	Shri Murali Mohan
Date of Hearing	09 /06/2021
Date of Pronouncement	09/06/2021

आदेश / ORDER

PER M.BALAGANESH (AM):

These appeals in ITA Nos.1145/Mum/2017 & 1144/Mum/2017 for A.Yrs.2011-12 & 2012-13 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-52, Mumbai in appeal Nos.CIT(A)-52/IT/DC-CC-4(3)/19/2015-16 & CIT(A)-52/IT/DC-CC-4(3)/20/2015-16 respectively dated 07/12/2016 & 6/12/2016 respectively (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s.153C of the Income Tax

Act, 1961 (hereinafter referred to as Act) dated 30/03/2015 & 31/03/2015 respectively by the Id. Dy. Commissioner of Income Tax, Central Circle-4(3), Central Range-4, Mumbai (hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds of appeal for A.Y.2011-12:-

“1. The ld. C.I.T(Appeals) erred in confirming the addition made by Ld. D.C.I.T by account of Share Application Money (Share Capital) holding the same as non-genuine.

2. The Ld. C.I.T(Appeals) erred in confirming the action of Ld. D.C.I.T of treating the Share Application Money (Share Capital) as bogus and thereby erred in making addition of Rs.50,00,000/-

3.The Appellant reserves the right to add, to alter and to amplify the Grounds of Appeal.”

2.1. The assessee has raised the following grounds of appeal for A.Y.2012-13:-

“1. The ld. C.I.T(Appeals) erred in confirming the addition made by Ld. D.C.I.T by account of Share Application Money (Share Capital) holding the same as non-genuine.

2. The Ld. C.I.T(Appeals) erred in confirming the action of Ld. D.C.I.T of treating the Share Application Money (Share Capital) as bogus and thereby erred in making addition of Rs.3,46,00,000/-

3.The Appellant reserves the right to add, to alter and to amplify the Grounds of Appeal.”

2.2. We find that assessee has also filed additional grounds of appeal for A.Y.2011-12 and 2012-13 before us together with a prayer for

admission of the same. The said additional grounds are reproduced as under:-

Additional Grounds (A.Y.2011-12)

1. *The Ld. A.O. is unjustified in treating the share application money received by the Appellant amounting to Rs.50,00,000/- as unexplained cash credit under section 68 of the Act relying on the statements of third parties without providing the Appellant an opportunity to cross examine those persons. Thus, the action of the Ld. A.O. is in breach of principles of natural justice. Thus, the assessment order dated 30/03/2015 passed under section 143(3) r.w.s. 153C of the Act is bad in law and void ab initio. Hence, the same may be quashed.*

2. *The Appellant craves leave to alter, amend or rescind any of the grounds of appeal.*

Additional Grounds (A.Y.2012-13)

1. *The Ld. A.O. is unjustified in treating the share application money received by the Appellant amounting to Rs.3,46,00,000/- as unexplained cash credit under section 68 of the Act relying on the statements of third parties without providing the Appellant an opportunity to cross examine those persons. Thus, the action of the Ld. A.O. is in breach of principles of natural justice. Thus, the assessment order dated 31/03/2015 passed under section 143(3) r.w.s. 153C of the Act is bad in law and void ab initio. Hence, the same may be quashed.*

2. *The Appellant craves leave to alter, amend or rescind any of the grounds of appeal.*

2.3. We also find that assessee has filed the petition under Rule 29 of the ITAT Rules containing additional evidence comprising of affidavit from one Shri Shirish Chandrakant Shah.

3. We have heard the rival submissions and perused the materials available on record. At the outset we find that the additional grounds raised by the assessee go to the root of the matter and does not involve verification of any facts and hence, we deem it fit to admit the same and take up for the purpose of adjudication. We also find that the affidavit

from Shri Shirish Chandrakant Shah filed by the assessee in the form of additional evidence under rule 29 of the ITAT rules deserves to be admitted as the entire addition towards share capital has been made for the A.Yrs.2011-12 and 2012-13 in the sums of Rs.50,00,000/- and Rs.3,46,00,000/- respectively, by placing reliance on the statement of Shri Shirish Chandrakant Shah.

3.1. We find that the assessee was in receipt of share capital of Rs.50 lakhs in the A.Y.2011-12 from Emporis Projects Ltd., which was stated to be a company belonging to Shri Shirish Chandrakant Shah. The Id. AO had observed that the premises of Shri Shirish Chandrakant Shah was covered u/s.132 of the Act and during the course of search proceedings, it was revealed that he, through his various concerns / entities has been engaging in providing accommodation entries in the form of loans, share capital etc., against some commission income. The Id. AO also observed that during the course of that search, various documents, loose papers, books of accounts etc., belonging to M/s.Guru Ashish Texfab Ltd., (assessee herein) were found and seized. The relevant seized material and satisfaction note was forwarded to the present Assessing Officer to take suitable action in the case of the assessee. Consequently, a notice u/s.153C was issued to the assessee on 19/08/2013 for A.Y.2011-12. In the said Section 153C proceedings, the Id. AO sought to examine the veracity of the share application money received by the assessee in the sum of Rs.50 lakhs from M/s. Emporis Projects Ltd and Rs 346 lacs from few other concerns allegedly belonging to Shirish Chandrakant Shah. The assessee furnished the following documents with supporting evidences before the Id. AO to prove the veracity of receipt of share application money:-

- a) Ledger account of M/s. Emporis Projects Ltd (EPL) as appearing in the books of the assessee from 01/04/2010 to 31/03/2011.
- b) Bank statement of the assessee duly highlighting the relevant entries on receipt of share application money from EPL.
- c) ITR acknowledgement of EPL for A.Y.2010-11
- d) PAN card of EPL
- e) Balance Sheet and Profit & Loss account of EPL for F.Y.2009-10 relevant to A.Y.2010-11.
- f) Memorandum of Articles of Association of EPL
- g) Share application form of EPL
- h) Resolution of EPL for applying shares in the assessee company.
- i) Declaration from EPL for applying shares in the assessee company.
- j) Complete address of EPL
- k) Bank statements of EPL duly highlighting the relevant investment entry made in the assessee company.
- l) ITR of EPL for A.Y.2011-12
- m) Balance Sheet and profit and loss account of EPL for F.Y.2010-11 relevant to A.Y.2011-12.

3.2. Apart from all these documents, the assessee also filed written submissions vide letters dated 19/03/2015, 20/03/2015 & 23/03/2015 before the Id. AO. The furnishing of the aforesaid documents together with the written submissions are not disputed. We find that the Id. AO completely disregarded all the documents furnished by the assessee and proceeded to treat the receipt of share application money as unexplained cash credit u/s.68 of the Act merely on the premise that EPL is a company managed and controlled by Shri Shirish Chandrakant Shah, who during the course of search had admitted in statement u/s.132(4) of the Act that he, through his entities / concerns is engaged in providing

accommodation entries to various companies in the form of bogus share capital and bogus loans etc. Merely based on this statement from a third party i.e. Shri Shirish Chandrakant Shah, the Id. AO proceeded to add the said receipt as unexplained cash credit in the hands of the assessee. This action of the Id. AO was upheld by the Id. CIT(A) for A.Y.2011-12.

3.3. We find similar addition was made by the Id. AO by treating the receipt of share application money of Rs.3,46,00,000/- as unexplained cash credit u/s.68 of the Act for A.Y.2012-13 in respect of monies received by the assessee from Parmeta Industries Ltd and Speciality Papers Ltd., both companies allegedly belonging to Shri Shirish Chandrakant Shah. This action of the Id. AO was also upheld by the Id. CIT(A) for the A.Y.2012-13.

3.4. Both the parties before us stated that both the issues in dispute in original grounds as well as in additional grounds are already covered in the decision of this Tribunal in the case of sister concerns of the Jajoo Enterprises Ltd. Vs. DCIT (sister concern of the assessee) in ITA No. 1142/Mum/2017 dated 27/10/2020 for A.Y.2012-13 wherein in respect of same fact of the receipt of share application money from companies allegedly belonging to Shri Shirish Chandrakant Shah, this Tribunal had remitted the issue to the file of the Id. AO by making following observations:-

“12. We have heard both the counsel and perused the records. Learned Counsel of the assessee Shri K. Gopal referred to the additional ground being raised. He submitted that the revenue has primarily relied upon the statement of Shri S.C. Shah from the investigation wing of the Income Tax Department. That the assessee was never given opportunity to cross examine the said Shri S.C. Shah. Learned counsel further submitted that the assessee has provided all the necessary evidences for the genuineness of the transactions. He further submitted that out of Rs. 4.45 crores added as

bogus share capital, Rs. 50 lakhs was received in the earlier assessment year. Hence, the same can never be added u/s. 68 in the present assessment year.

13. Per contra, learned Departmental Representative Ms. Samantha Nullamudi submitted that addition has been made on the basis of clear and cogent finding of the investigation wing of the Income Tax department that Shri S.C. Shah operates bogus company to provide accommodation entries. The said M/s. Speciality Papers Ltd. from whom assessee has received share capital was one of them which have provided bogus accommodation entries to the assessee company. Learned Departmental Representative further submitted that at any time during time of proceeding authorities below, the assessee has never asked for an opportunity to cross examine the said person Shri S.C. Shah. She further submitted that the assessee has managed to obtain affidavit of the said person namely Shri S.C. Shah hence no purpose is being served by asking for cross-examine. Moreover, learned Departmental Representative reiterated that the said investor company has no fund of its own to utilise for share capital and share premium. That it only has fund in the shape of share premium received from other concerns. That this supports the finding of investigation wing, that it is a part of surreptitious routing of money in shape of share capital and share premium. She placed reliance upon the Hon'ble Supreme Court decision in CIT Vs. N.R. Portfolio Pvt. Ltd. Income Tax Appeal No. 1019/2011 dated 22nd November, 2013.

14. Upon careful consideration we find that this addition for share capital and share premium has been done by the Assessing Officer upon finding of the investigation wing of the Income Tax Department that assessee was receipt of bogus accommodation entries from Shri S.C. Shah Group of companies. The Assessing Officer has issued notice u/s. 133(6) to the assessee company. There was no response from the said company. However, learned Counsel of the assessee submits before us that at no point of time the assessee was asked to produce directors of the investor company. That if the same was done the assessee would have made necessary endeavor to bring representative/director of the company before authorities below. We find that notice by the authorities below issued u/s. 133(6) has remained unresponded. Further the assessee has submitted certain documents including financial statement of the investor company, for which the authorities below have observed that these are part of surreptitious routing of money and investor company was not doing proper business. In our considered opinion for addition u/s. 68 as undisclosed income following three ingredients have to be examined :- (i) Genuineness of the transaction (ii) Identity of the payer (iii) Creditworthiness

15. In the present case we note that the lower authorities have noted that notice u/s. 133(6) has not be responded. Learned Counsel of the assessee has submitted that the assessee was not required to produce the director of the investor company. We further note that the issue of additional evidence and additional ground are no more germane to the issue at hand as the

assessee has himself produced affidavit from Shri S.C. Shah for the proposition that he is not providing accommodation entry.

16. Now the issue remains examination of the identity, creditworthiness and genuineness of the transaction. The same is not clear from the documents on record. The same is also cogently not brought out in the orders of the authorities below. Learned Counsel of the assessee submits that if the assessee is asked to produce representative/director of the investor company the same can be attempted. In the facts and circumstances of the case we deem it appropriate to remit this issue of addition u/s. 68 of the Act to the file of the Assessing Officer. The Assessing Officer shall issue necessary notices to the assessee company and shall make the necessary examination with respect to identity, creditworthiness and genuineness of the transaction. He shall properly examine the documents and financial statement being submitted by the assessee company and pass a speaking order

17. With these directions we remit this issue to the file of the Assessing Officer. Needless to add the assessee should be granted adequate opportunity of being heard the assessee is free to submit the necessary documents as it deems appropriate.”

3.5. Respectfully following the same and with the consent of both the parties, the grounds raised by the assessee for both the years are remitted to the file of the Id. AO to decide the same in the light of the aforesaid decision of this Tribunal. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 09/06/2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 09/06/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai