

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 5247/Del/2017
(Assessment Year: 2012-13)

DCIT, Circle : 8 (1), New Delhi.	Vs.	M/s. Enershell Alloys & Steel Pvt. Ltd., F-3/1, First Floor, Mrignaini Complex, Mrignaini Chowk, Dilshad Garden, New Delhi – 110 095. PAN: AACCE0034F
(Appellant)		(Respondent)

Assessee by :	Shri I. P. Bansal, Advocate; & Shri Vivek Bansal, Advocate;
Department by :	Shri Rajesh Kumar, Sr. D. R.;
Date of Hearing :	18/08/2021
Date of pronouncement :	24/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Deputy Commissioner of income tax, Circle 8 (1), New Delhi (The Learned AO) against the order passed by the Id. Commissioner of Income Tax (Appeals)-3, New Delhi, (The Learned CIT – A) for assessment year 2012-13 raising the solitary ground of appeal as under:-

“ Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.9,40,00,000/- made by the AO on account of unexplained receipts under Section 68 of the I. T. Act. “

2. Briefly stated the facts show that assessee is a company engaged in the business of manufacturing of TMT bars and ingots. It filed its return of income declaring loss of Rs 269,12,206/- on 29/9/2012. Case of the

assessee was selected for scrutiny. Necessary notices u/s 143 (2) was issued.

3. During the course of assessment proceedings, the learned AO examined the audited financial statement and the tax audit report filed by the assessee and noted that assessee has received ₹ 206,619,800/- as share capital and share premium. The assessee was asked to furnish the details of the same. The assessee furnished such detail stating the name, address, the amount received as application money, the income tax returns of the investors, annual reports, the confirmation of the parties, their bank statements.
4. Though the learned assessing officer made the addition of the all the share capital of ₹ 226,619,800/- u/s 68 of the act, the learned CIT – A deleted the total addition, the learned assessing officer is only aggrieved by the deletion of the addition to the extent of ₹ 94,000,000/-. Therefore, only the facts related to the addition in this appeal are discussed.
5. The addition of ₹ 9.40 crores comprising of ₹ 8,409,800 received from 5 farmers and the balance sum received from the two directors of the assessee company.
6. Learned AO noted that there are certain farmers (5) who have also invested in share capital to the extent of Rs 8,409,800/-. The AO was of the view that these farmers are not prolific investors, it was their one-time investment. Therefore the learned AO noted that why farmers would invest its hardened returns in a first-time entity in the share capital. If the promoters are known to those farmers then the farmer should have placed unsecured loan with them. He further examined the passbook of the farmers for the period subsequent to the year in question and found that none of them showed very substantial receipts in the subsequent period. He further noted that the farmers have shown the Mandi receipts and sugar mill statement for the sale of the product, which is according to him, is not commensurate in with the amount invested by them. He was of the view that a farmer though earn sales produce in Mandi and sugar mill, but has to reinvest substantial part of it back into farming activity for the next crop season and therefore it is not believed that how the farmers have invested in the share capital of a company. He noted that except one farmer Mr. Vijay Pal Singh, all other farmers investment in the form is more than their

annual income. Therefore, the learned AO noted that the assessee has failed to submit any credible evidence to the satisfaction of the assessing officer with respect to the creditworthiness of such farmers share application and therefore the above sum is required to be added u/s 68 of the income tax act. Consequently the assessment order was passed on 24th of March 2015 u/s 143 (3) of the income tax act wherein the addition of ₹ 206,619,800 was made u/s 68 of the act and the returned loss of Rs 2 69,12,206 was assessed at ₹ 179,707,594.

7. Aggrieved with the order of the learned assessing officer the assessee preferred an appeal before the learned CIT – A who passed the order on 29/05/2017 deleting the entire addition. Therefore the revenue is aggrieved with the order of the learned CIT – A to the extent of deletion of the addition to the extent of ₹ 9.40 crores. However it is important to note that the learned assessing officer has made an addition of ₹ 20,66,19,800 u/s 68 of the income tax act which is completely deleted by the learned CIT – A but the assessing officer is aggrieved only with respect to the addition deleted by the learned CIT – A to the extent of only ₹ 9.40 crores. Therefore the dispute before us is now only with respect to 9.40 crores added by the learned assessing officer u/s 68 of the income tax act which is deleted by the learned CIT – A.
8. The learned departmental representative supported the order of the learned assessing officer and stated that with respect to the addition of ₹ 9.40 crores received during the year under consideration. He submitted that the assessee has received a sum of ₹ 85,590,200 comprising of Rs 4,01,00,000 received from Mr. Gaurav Asseem and Rs. 4, 54,90,200 received from Mr. Kalwa Singh. He submitted that both of them are the directors of the assessee company. He further submitted that the balance amount of ₹ 8,409,800 was received from five farmers. He submitted that this is the amount, which is in dispute in this appeal. He submitted that the learned assessing officer has given detailed reason for making the addition. He referred to page number 8 of the assessment order wherein starting from serial number 38 – 42 the reference of all these farmers are given. He submitted that that the details submitted by the assessee with respect to the mandi bills and sugar mill statements do not show creditworthiness of the transaction of these parties.. He submitted that with respect to all these

five parties this is the only reason for which the addition has been made. He further stated that according to the provisions of Section 68 of the income tax act it is the duty of the assessee to prove the creditworthiness of these parties, which the assessee has failed and therefore the addition has been made. He further referred to paragraph number 3.2 of the order of the learned CIT appeal stating that the learned CIT appeal has not seen the basic argument of the learned assessing officer for making the addition that the mandi income and the sugar mill statement income of these parties are less than the amount invested by them in the above company. He therefore submitted that the learned CIT – A has erred in deleting the above addition.

9. With respect to the next addition of ₹ 85,590,200 with respect to 2 directors of the assessee company, he submitted that the learned CIT – A has deleted the addition without giving a cogent reason.
10. The learned authorised representative vehemently supported the order of the learned CIT – A. He submitted that learned assessing officer has made the total addition of ₹ 206,619,800 u/s 68 of the income tax act however, the learned CIT A has noted that a sum of ₹ 112,619,800 was received in financial year 2010 – 11 relevant to assessment year 2011 – 12 and therefore he deleted the above addition to that extent for these reasons. He submitted that the learned assessing officer has accepted the finding of the learned CIT – A to this extent and has neither reopened the case of the assessee for assessment year 2011 – 12 not contested the addition in this appeal. He therefore submitted that now the issue is to the extent of only Rs. 94,000,000. With respect to the addition of farmers he submitted that assessee has given the complete land details and details of the agricultural income of those farmers. It is further confirmed by those farmers. The only reason for making the above addition is that why a farmer will make an investment in a company in share capital and secondly the annual income of the farmers is not equal to or in excess of the amount invested by those farmers. He submitted that assessee has discharged complete onus by proving the identity of the farmers, creditworthiness of those farmers who are having adequate income to make investment in the assessee company and further the genuineness of the amount invested. He submitted that assessee has also produced the various bank accounts of the farmers, which has been examined by the learned assessing officer, and such bank

accounts adequately shows the amount available with those farmers in their bank accounts. He submitted that there is no allegation that there is any cash deposited in the account of the farmers and that money has been invested by the farmers in the assessee company. He further submitted that the share application money paid by them is duly reflected in the bank account of those farmer and the source is either from opening balance outstanding them in their name in the bank account or the amount received by them from sale of agricultural produce. It is not the case of the revenue that the land holding of these farmers do not substantially justify the amount invested by the farmers in the assessee company. He also submitted that with respect to each of the farmers the complete evidence with regard to the sale of agricultural produce and account maintained by them with cooperative can development union Ltd has also been filed. He referred to page number 1 – 9 with respect to the details furnished by the assessee with respect Mrs. Surekha Singh. He referred that the assessee has submitted the permanent account number for the identification of the creditors. He further submitted the land records wherein the holding of the land is certified by the respective authority along with the details of agricultural produce cultivated therein. He further referred to the statement of urban co-operative Bank Ltd and of the depositor wherein a sum of ₹ 25 lakhs has deposited with the assessee. He submitted that there is no cash deposit in the bank account of the assessee and all the credits that have been received in that bank account is with respect to the sale of the agricultural produce. He further produced the statement of the cooperative can development union Ltd of the depositor wherein she is shown as an agriculturist and the details of the sale of the agricultural produce showing the weight as well as evidence of the agricultural produce sold. He further referred to the sales voucher of Krishi Utpadak Mandi Samiti. He therefore submitted that identical for all these depositors who are stated to be the farmers, the assessee has submitted the complete details with respect to the source of funds available with them also. He similarly referred to the paper book with respect to all 4 other farmers. He submitted that it cannot be a criteria that the annual income of the farmers should be higher than the amount to be invested by them in the company and then only the creditworthiness of the farmers can be accepted. He submitted that such a

view taken by the learned assessing officer is not supported by law as well as by any judicial precedent. With respect to the claim of the learned assessing officer that why the farmers will invest in the share capital of the company, he submitted that these are all genuine investors and there still holding the shares of this company. For this proposition he referred to the order of the learned CIT – A where this is the specific observation made by him. He further referred to the letter dated 18 March 2015 filed before the learned assessing officer which is placed at page number 91 of the paper book where the proof of agricultural income of all the farmer depositors are submitted before the AO but which are brushed aside for no cogent reasons. He further referred to page number 93 of the paper book and stated that the agricultural investors are willing to appear before the learned assessing officer even in a shorter notice for providing their details with respect to the genuineness of the investment. The assessee also requested to summon them selectively or to call for all the investor and assessee is ready to produce them. The learned assessing officer did not act upon these request and merely made an addition on non-cogent reasons. He referred to page number 15 – 20 of the order of the learned CIT – A wherein submission has been given with respect to each of the farmers. He submitted that these information has not been controverted by the learned assessing officer, no further inquiries have been made, the request of the assessee for production of those farmers was also made before the learned assessing officer which was not acted upon but the learned AO has made the addition on flimsy ground. Therefore, he submitted that the assessee has completely discharged its onus cast upon it for proving the identity, creditworthiness, and genuineness of these cash credits.

11. With respect to the sale issued to the directors of the company for which addition of Rs 4.01 Crores Mr. Gaurav Asseem and Rs. 4,54,90,200 from Mr Kalwa Singh who both are directors in the assessee company, the assessee has also submitted the complete evidence with respect to the source of money which has been deposited by the assessee company. The assessee has also submitted the confirmation of these parties. The learned assessing officer has not raised any question with respect to these two parties however made the addition u/s 68 with respect to both the above sums. He further referred to the remand proceedings before the learned CIT – A where the

learned assessing officer has accepted the genuineness of the share application money received from these parties. For this proposition he relied on the order of the learned CIT – A dated 28th of June 2018 passed in the case of the assessee for assessment year 2013 – 14 wherein para number 3.2 the name of the directors have been mentioned and in para number 3.4 – 3.9 the CIT appeal has accepted the genuineness of the share application money with these parties. He further referred to the order of the learned CIT appeal for that year. He further submitted that the revenue has not at all filed any appeal before the higher forum against the order of the learned CIT – A for assessment year 2013 – 14 wherein the identity, creditworthiness and genuineness of these two directors have been accepted by the learned assessing officer in remand proceedings.

12. In view of this he submitted that the addition has been correctly deleted by the learned CIT – A.
13. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, in this case the assessee has issued share capital at a premium of a sum of ₹ 206,619,800. The assessee has been asked by the learned assessing officer to prove the identity, creditworthiness and genuineness of the parties from whom the assessee has accepted share capital. The assessee furnished the requisite details before the learned assessing officer. The learned assessing officer tabulated unexplained credit with respect to 42 parties. He made the addition u/s 68 of the income tax act to the extent of ₹ 206,619,800. On appeal before the learned CIT – A addition was substantially deleted for the reason that no share capital to the extent of ₹ 112,619,800 has been received in this year but in preceding year. Neither the assessment of the preceding year has been reopened by the learned assessing officer nor has this ground been contested before us. Therefore the deletion of the addition to the extent of ₹ 112,619,800 u/s 68 made by the learned assessing officer has been deleted by the learned CIT – A has now reached finality. Thus the issue before is with the respect to the balance addition of ₹ 9.40 crores comprising of the two parts, (1) a sum of ₹ 8,409,800 received from 5 farmers and (2) the balance sum received from the two directors of the company against which the share capital has been issued.

14. With respect to the first portion of the addition with respect to the 5 parties stated in serial number 38 to 42, which are farmers who have invested the sum, ranging from ₹ 10 lakhs to ₹ 25 lakhs in the share capital of the assessee company. The assessee has submitted the details of these farmers with respect to their identity, which is not in doubt. The only doubt is with respect to the creditworthiness of these farmers. To prove the creditworthiness, the assessee has submitted copies of the bank account of the farmers, copy of the land holding, details of the agricultural produce, details of the agricultural produce order to the respective unions, the respective bills of the Mandis, and the confirmation of the farmers. The learned assessing officer has taken a view that that the total receipt as per mandi bills and sugar mill statement submitted do not prove creditworthiness for the transaction of the investment made by them in the assessee company. His prima facie view is also tabulated separately wherein he states that the income of the farmers annually from sugar Mills as well as from Mandi is not exceeding the amount invested by the farmers in the assessee company. Example as for Mrs. Sulekha Singh, the learned AO stated that this farmer has invested a sum of ₹ 25 lakhs however her income for the year is only ₹ 1,563,069. Similarly, for Mr. Kishen pal Singh the income of the farmer is ₹ 780,449 for this year whereas his investment is ₹ 20 lakhs. For Mr. Vijay pal Singh, the annual income of this farmer is ₹ 1,257,677 whereas he has invested a sum of ₹ 10 lakhs. Mr. Kishen Pal Singh[Birla] has annual income of ₹ 647,689 whereas his investment in the assessee company is ₹ 15 lakhs. Mr. Ranbir Singh has invested a sum of ₹ 4,009,800 whereas his annual income is only ₹ 466,208. We do not agree with this criteria laid down by the learned assessing officer that if the annual income is less than the amount invested the transaction of investment made by the farmers in the company proves that the lenders are not creditworthy. In the present case the farmers have shown substantial income which is for one year. Further, their bank accounts have been produced before the assessing officer, which did not show that they have deposited any amount in cash or any credit in the bank statement is dubious. Despite these facts, the assessee has discharged its initial onus by proving the identity, creditworthiness, and genuineness of the transactions of these farmers of making investment in the assessee company. If the

learned assessing officer has any doubt, he should have made an enquiry and should have thrown back onus on the assessee. The learned AO has not done this. Either further, the assessee has also made a request to produce all these farmers selectively or completely before the learned assessing officer by specifically addressing a letter, such letter has remained unattended by the learned AO. Therefore, the learned assessing officer has not accepted the request of the assessee for examination of these farmers. Therefore, the reasons of the learned assessing officer for making of addition u/s 68 of the income tax act with respect to these farmers merely remains an allegation which has not been proved. Contrary to that, the assessee has produced all the details before the assessing officer, which remain uncontroverted. With respect to these five farmers where the addition involved is only ₹ 8,409,800/- the learned CIT – A has dealt with this in paragraph number 3.3 of his order as Under:-

“3.3 the counsel filed the various details to establish the identity and creditworthiness of the subscribers in the form of confirmation, copies of land holding and evidences of sale of crops et cetera. It was submitted that all the five subscribers are men of means an agriculturist. The counsel vide letter dated 16/3/2015 submitted to the assessing officer that the agriculturist are ready to attend the proceedings and if needed they may be summoned u/s 131 of the act for further verification. The assessee vide letter dated 18/3/2015 further filed the evidences regarding the means of the subscribers and the requisite details are at page number 91 of the paper book. It is further noted from the details filed during the appellate proceedings that the share capital is held by the respective subscribers till date. The assessing officer has not conducted any further enquiry/verification on the basis of evidences filed by the assessee during the assessment proceedings. There is no evidence on record to hold that the said capital is nothing but accommodation entries. The evidence filed show that the subscribers are having the requisite means to subscribe to the share capital and the money has not come into their account through the transfer entries. The details of the sale of crops have been filed before the assessing officer as well as during the appellate proceedings.”

15. With respect to the addition of ₹ 8,409,800/- we also found that there is no infirmity in the order of the learned CIT – A, the learned departmental representative also could not point out any infirmity. According to us, the assessee has discharged initial onus cast upon him to prove the identity of the depositors, creditworthiness, and the genuineness of the transaction. The learned assessing officer did not make any enquiry on the evidences filed by the assessee and further he has not also acted upon the request of the assessee for examining all the agriculturist. In view of this, we do not find any infirmity in the order of the learned CIT – capital and deleting the addition of ₹ 8,409,800 made in the hands of the assessee with respect to 5 agriculturists.
16. Now we come to the second portion of the addition with respect to the 2 directors of the assessee company itself. One director Mr. Gaurav Aseem has applied for the share capital of ₹ 40,100,000 and another director Mr. Kalwa Singh has invested a sum of Rs 45490200/- . The learned assessing officer has made the addition with respect to both these parties without giving any reasons. Admittedly there is no discussion by the learned assessing officer with respect to share investment made by the above two directors in the assessee company. The learned assessing officer has made the total addition of ₹ 206,619,800/- i.e. the total share capital issued by the assessee company irrespective of the verification with respect to the each of the parties. Certainly, these two directors are not named in the list of 42 parties mentioned by the learned assessing officer for making the above addition. With respect to both these directors assessee has produced the confirmation of the parties, their identification details in the form of their permanent account number, their balance sheets and confirmation to show that the directors have made the investment in the above companies. In the balance sheet of Mr. Gaurav Aseem share investment in the above company are shown at ₹ 53,166,000 as on 31st of March 2012. It is also important to that for assessment year 13 – 14 the identical addition with respect to the above director was made to the extent of Rs 2.25 crores further invested in this company for the year ended on 31st of March 2013 which were also added by the learned assessing officer, which was deleted by the learned CIT appeal and same has not been appealed further by the learned AO before the ITAT. In the remand report for assessment year 2013

- 14, the learned assessing officer has verified the correctness of introduction of money by the directors. The learned assessing officer further carried out the investigation and after that the learned AO has accepted that the amount invested by the directors of the company that it satisfies the condition of proving the identity, creditworthiness, and genuineness. In view of this, we do not find any reason to upset the order of the learned CIT – A with respect to the above investment made by Mr. Gaurav Aseem, director of the company in the share capital of the company.
17. With respect to another director Mr. Kalwa Singh share capital of Rs 4 54,90,200 has been deposited with the assessee company. This director was holding at the beginning of the year the share capital to the extent of Rs 238,09,800. The share capital in the earlier years issued in the name of the same director has been accepted by the learned assessing officer. The assessee also provided with the permanent account number of the above director, confirmation and also the bank account of the director as well as the certificate from the bank with respect to the above share capital issued. Assessee has also produced the balance sheet of the director wherein as on 31st of March 2012 the shares in the name of the company amounting to ₹ 79,500,000 are outstanding. Therefore, it is apparent that assessee has discharged its onus of proving the identity, creditworthiness, and genuineness of the transactions. Similarly for assessment year 2013- 14 this director introduced Rs 2. 25 crores as further said capital in the above company. During the course of assessment proceedings, the above addition was once again made by the learned assessing officer. Before the learned CIT – A in the remand report the learned assessing officer after detailed investigation accepted the above credit as genuine. Against the order of the learned CIT – A for assessment year 2013 – 14 wherein the addition with respect to the same director has been deleted by the learned CIT – A, has not been further agitated by the learned AO before the ITAT. In view of this we do not have any hesitation in upholding the order of the learned CIT – A where the learned CIT – A has deleted the above addition.
18. In view of the above facts we do not find any merit in the appeal of the learned assessing officer and confirmed the order of the learned CIT – A where the addition of ₹ 94,000,000 made by the learned assessing officer on account of unexplained receipt u/s 68 of the act has been deleted.

19. Therefore, the ground number 1 of the appeal, which is the solitary ground of appeal is dismissed. Accordingly, appeal of the learned assessing officer is also dismissed.

Order pronounced in the open court on 24/09/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 24/09/2021.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.