

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

**ITA No.506/AHD/2017**

(Assessment Year: 2012-13)

(Virtual hearing in Virtual Court)

Raghav Madhav Filaments Pvt. Ltd., Shop No.4, 2 <sup>nd</sup> Floor, Akshay Shopping Center, B/S Udhana Railway Station, Udhana, Surat.  <b>[PAN : AAFCR4666P]</b>	Vs	The ITO, Ward-2(1)(1), Surat.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Sapnesh Sheth, CA
Respondent by	Ms Anupama Singla, Sr. DR
Date of hearing	15/07/2021
Date of pronouncement	26/07/2021

**ORDER**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal filed by assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals)-2 [in short “the CIT(A)-2”], Surat dated 28.11.2016 for the Assessment Year (AY) 2012-13. The assessee has raised the following grounds:

*“1. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in passing appellate order without providing reasonable opportunity of hearing to assessee.*

*2. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer of making addition of Rs.54,00,000/- on account of share capital & share premium money*

*received by assessee as unexplained cash credit u/s 68 of the I.T. Act, 1961.*

*3. On the facts and circumstances of the case as well as law on the subject, Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in treating share premium money of Rs.52,92,000/- as income of assessee by placing reliance on section 78(2) of the Companies Act & on the decision of apex court in case of Bharat Fine Insurance Co. Ltd. V. CIT. [Separate addition of this amount is not made as the same is covered by the addition of Rs. 54,00,000/- made as above.*

*4. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.54,000/- u/s 69C of the I. T. Act, 1961 by presuming that assessee paid commission @ 1%.*

*5. It is therefore prayed that above addition made by assessing officer and confirmed by learned Commissioner of Income-tax (Appeals) may please be deleted.*

*6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*

2. Brief facts of the case are that assessee-company is engaged in the business of processing of yarn into sized yarn. The assessee filed its return of income for AY.2012-13 on 26.10.2012 declaring 'Nil' income. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that assessee has received share capital and share application from three companies. The Assessing Officer in order to verify the genuineness of transaction issued notice under section 133(6) of seeking confirmation of investor-company. The Assessing Officer noted that notice issued to investor companies return back, unserved from the postal authorities with a remark "Not known". The Assessing Officer in

order to investigate the matter issued commission under section 131(d) of the Act to Additional Director of Income Tax (Inv.) Unit-1, Kolkata. The ADIT (Inv.) Unit-1 furnished its report wherein it was reported that all three investor companies are being operated through Hawala Operator and providing in accommodation entry. The Assessing Officer after serving show cause notice made addition of share application and share premium under section 68 of the Act. The Assessing Officer also made addition under section 68 of the Act on account of commission on such kind of transaction.

3. On appeal before, the learned CIT(A), the action of Assessing Officer was confirmed. The ld. CIT(A) has confirming the action of Assessing Officer in making addition under section 68 & 69C was upheld. The learned CIT(A) while upholding the action of assessing officer held that assessee was given as many as ten opportunities to furnish the details but no compliance was made on all occasions rather the representative of assessee sought adjournment on one reason and the other. The ld. CIT(A) took his view that the assessee is not interested in filing details and submissions. Thus, the ld. CIT(A) proceeded to decide the appeal on the matter available on record in *ex-parte* proceedings. The ld. CIT(A) held that all the three investor-companies are operating from the common address but the address is not traceable. No fixed asset is found in the balance sheet of the investor-company. The total income in the return of income was very nominal. No real source of income of business activities but all the persons have invested equity shares of

companies. The nature of business as per Memo of Understanding (MOU) is almost same of all investors. The Id. CIT(A) held that identity, creditworthy of investor and genuineness of transaction has not been proved by the assessee and dismissed the appeal of assessee. Further aggrieved, the assessee has filed present appeal before this Tribunal.

4. We have heard this submission of Id. Authorized Representative (AR) of the assessee and the Id. Departmental Representative (DR) for the Revenue. At the outset of hearing the Id. AR of the assessee submits that Id. CIT(A) passed the impugned order in *ex-parte* proceedings. The AR for the assessee could not represent its case before Id. CIT(A) as there was *inter-se* dispute among the directors of assessee-company. There was litigation in Civil Court and no business activities were carried out during the relevant time. The Id. AR submits that it is not a case of Id. CIT(A) that assessee has not attended the date of hearing before Ld. CIT(A). Rather due to inter-se dispute among the Directors, the AR of the assessee was seeking adjournment as complete information in absence of coordination between the directors, was not made available to the representative. The fact regarding seeking of dates are duly recorded by Id. CIT(A) in para no.6.1.1. The Id. AR of the assessee submits that he investigated on behalf of the assessee to be more vigilant in attending and making compliance before the Id. CIT(A).
5. On the other hand, the Id. Senior Departmental Representative (Sr. DR) for the Revenue submits that during the first appellate stage, the assessee was granted as many as ten opportunity of hearing has

recorded in para no.6.1.1 of the impugned order. The assessee instead of making proper compliance, was seeking dates only. Therefore, the ld. CIT(A) has proceed to decide the case on the basis of material available on record by considering the merits of the case. The ld. DR for the Revenue submits that the assessee has no case on merit as well. The assessee has availed accommodation entry from Hawala Operator, which were indulging in providing share capital, share premium and other similar other entries.

6. In the rejoinder submission, the ld. AR of the assessee submits that he reiterates the prayer for restoring the matter back to the file of ld. CIT(A) with the opportunity to assessee to furnish necessary details to substantiate grounds of appeal, raised before ld.CIT(A). The ld.AR of the assessee submits that assessee has good case on merit as the ld. CIT(A) passed order without considering the submission of assessee. The Ld. AR for the assessee submits that he undertake to filed the evidences related to the inter se dispute and litigation between the Directors.

7. We have considered the rival submissions of both the parties and gone through the order of authorities below. We have also seen the various documentary evidences, furnished before us. We find that the Assessing Officer made addition under section 68 while taking that assessee is beneficiary of bogus entry and made addition under section 68 with regard to share premium. The Assessing Officer also made addition at the rate of 1% of share premium under section 69C. The ld. CIT(A) upheld the occasion of Assessing Officer by taking view that the assessee

has given sufficient opportunity, the assessee has not substantiated by filing necessary details to prove the identity of investor, creditworthiness of investor and genuineness of transaction. Before us, the ld. AR of the assessee vehemently submitted that the assessee representative attended almost all the hearings and sought adjournment, he could not furnish necessary details due to *inter se* dispute among the directors of assessee-company to support his submission. The ld. AR of the assessee has placed on record.

8. On perusal of order of ld. CIT(A) shows that the hearing of the appeal was fixed on ten occasions and out of ten occasions, the representative of assessee sought adjournment of eight occasions. The last date of hearing before the ld. CIT(A) was fixed on 22.11.2016. The AR of the assessee sought adjournment, however, the same was declined by holding that it was last opportunity as no compliance is made accordingly, the ld. CIT(A) proceeded to decide the appeal on material available on record. Apart from merit or demerit of the case, we find that substantially rights of the assessee are involved in the present appeal. No doubt, the ld. CIT(A) granted sufficient opportunity, however, the fact remains the same date, the order was passed in *ex parte* proceeding. Before us the learned AR of the assessee has filed the Copy of Complaint made to local Police on 13.01.2014, by Ankushbhai Sanjabhai Gupta against Ruchir Radhamohan Mittal, Ishaben Ruchirbhai , Radhamohan Mittal and others under section 406, 420,465/ 467/468/471/477A/ 506(2)/120B and 34 of Indian Penal Code (IPC) and copy of FIR (first

information report) No. 170/2016 dated 14/12/2016 registered by local Police on 14/12/2016 under section 406/ 419/120B of IPC.

9. Considering the facts that there was inter-se dispute among the Director as evident from the copy of police complaint and police report, we find merit in the submissions of the learned AR that there is sufficient cause for not making proper compliance before the Ld. CIT(A). Keeping in view of the aforesaid facts, the assessee was not having a fair chance to explain the grounds of appeal. We find that vital requirement of *audi alteram partem* is conspicuously missing in the order, which is impugned before us. The adjudicatory process has to be in consonance with the doctrine of *audi alteram partem*, i.e., no one should be condemned unheard or *nemo debet esse judex in propria causa sua*, i.e. no one should be judge in his own case
10. Considering that the principle of *audi alteram partem* and keeping the principle of natural justice, the preliminary submission of ld. AR of the assessee is accepted and the matter is restored back to the file of ld. CIT(A) to consider it afresh. Needless to direct that before passing the order, the ld. CIT(A) shall grant reasonable opportunity to hearing to the assessee. The assessee is also directed to be more vigilant and in future to make proper compliance on the date fixed and not to seek adjournment without any valid reason. The assessee is also directed to provide all information and evidence on first date of hearing or as soon as possible before the ld. CIT(A).

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on 26.07.2021 by placing result on notice board.

**Sd/-**  
**(DR. A. L. SAINI)**  
**ACCOUNTANT MEMBER**  
Surat, Dated: 26/07/2021  
SAMANTA  
Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By order

Asstt. Registrar, ITAT, Surat