

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

**(Hearing through Video Conferencing Mode)**

आयकर अपील सं/ I.T.A. No. 398/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2008-09)

Networth Agro Services Ltd. 401, 4 <sup>th</sup> Floor, Mangal Villa- B, Tejpal Road, Vile Parle (E), Mumbai-400057.	<b>बनाम/</b> Vs.	ITO-10(3)(1) Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCN2678L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Pramita Rathi
Revenue by:	Shri Vijay Kumar Soni (DR)

सुनवाई की तारीख / Date of Hearing: 13/10/2021

घोषणा की तारीख /Date of Pronouncement: 18/11/2021

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 15.11.2019 passed by the Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2008-09.

**2.** The assessee has raised the following grounds: -

“1. On the facts and circumstances of the case and in law, the Hon’ble Commissioner of Income Tax (Appeals) (CIT(A)) has erred in upholding the reopening of assessment done by the learned Assessing Officer (‘AO’) u/s 147 of the Act.

2. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the addition of Rs.45,00,000/- 68 of the Act in respect of share application money received from M/s. Alka Diamond Industries Ltd.



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3. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the addition of Rs.41,34,000/- u/s 68 of the Act in respect of loan obtained from M/s. Topcare Trading Co. Pvt. Ltd.

4. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the addition of Rs.1,00,00,000/- u/s 68 of the Act in respect of loan obtained from M/s. New Tree Mercantile Co. Pvt. Ltd.”

3. The brief facts of the case are that the assessee filed its return of income on 22.08.2015 declaring total income to the tune of Rs.26,70,733/-. The assessment of the assessee was reopened on the basis of information received from the DGIT(Inv.), Mumbai to the effect that during search and seizure action carried out in the case of Shri Praveen Kumar Jain Group on 01.10.2013 it was found that the assessee is beneficiary of accommodation entries. It was revealed during search that Shri Praveen Kumar Jain is providing accommodation entries through his related concerns/entities which runs into thousands of crores. The assessee was one of the beneficiaries of such accommodation entries by way of share capital as per the details collected by the Investigation Wing. The assessee company has also received of Rs.45,00,000/- as Share Application Money from various entities from entities related to Shri Praveen Kumar Jain the details of which were as under:-

Sr. No.	Name of concern controlled managed by Praveen Kumar Jain	Amount of Investment
1	Alka Diamond Industries Ltd. (AAACA5236D)	15,00,000
2	Alka Diamond Industries Ltd. (AAACA5236D)	10,00,000
3	Alka Diamond Industries Ltd. (AAACA5236D)	10,00,000



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4	Alka Diamond Industries Ltd. (AAACA5236D)	10,00,000
		45,00,000

The case of the assessee was reopened as per provision u/s 147 of the Act. Notice u/s 148 of the Act was issued and served upon the assessee which on 05.03.2015. The assessee filed its e-return of income in response to notice u/s 148 of the Act on 22.08.2015. Thereafter statutory notices were duly issued and served upon the assessee. Besides the assessee also received the unsecured loans as per details below:

Sr. No.	Name of the account holder	Date of entry	Bank Account Number	Amount
1	Topcare Trading Co. Pvt. Ltd.	1.11.2007	02321300000134 in DCB nariman point branch	41,34,000
2	New Tree Mercantile Pvt. Ltd	31.07.2007	02321300000198 in DCB nariman point baranch	55,00,000
3	New Tree Mercantile Pvt. Ltd.	24.10.2007	02321300000198 in DCB nariman point branch	20,00,000
4	New Tree Mercantile Pvt. Ltd	31.07.2007	02321300000198 in DCB nariman point branch	25,00,000

The AO during the course of assessment proceedings issued notices u/s 131 of the Act to the above parties which were not complied with . The assessee during



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assessment proceedings filed the details before the AO comprising names addresses, confirmations, copies ITRs & annual audited accounts etc. of the parties however the AO was not satisfied with the genuineness of the creditors/investors. Finally, the said amount of unsecured loans of Rs.1,41,34,000/- and share capital of Rs. 45,00,000/- were added to the income of the assessee in the assessment framed u/s 143(3) r.w.s. 147 of the Act dated 31.3.216 by assessing the income at Rs.2,13,04,730/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

### **ISSUE NO.1**

**4.** At the time of argument, this issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

### **ISSUE NO.2**

**5.** Under this issue the assessee has challenged in respect of Share Application Money from M/s. Alka Diamond Industries Ltd, in sum of Rs.45,00,000/-. The



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Ld. Representative of the assessee has argued that the assessee has filed the sufficient proofs/documents to prove the genuineness and creditworthiness of the parties but the CIT(A) has wrongly dismissed appeal of the assessee and therefore, the order passed by the ld CIT(A) is wrong and can not be sustained. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. We noticed that the assessee filed the copies of ledger accounts , confirmation of Share Application Money received from M/s. Alka Diamond Industries Ltd, which is filed at page no. 3 of the paper book meaning thereby the confirmation from M/s. Alka Diamond Industries Ltd is on record. Similarly the bank account statement of M/s. Alka Diamond Industries Ltd is also furnished and lies at page no. 4 to 6 of the paper book which testifies the transfer of the said amount to the assessee. The income tax return and audited financial statements of M/s. Alka Diamond Industries Ltd, for the A.Y.2008-09 is also on record. Thus all these evidences proved the genuineness and creditworthiness of the investors. Moreover, the addition was made on the basis of the statement of Mr. Praveen Kumar Jain but Praveen Kumar Jain had retracted from his statement. Therefore addition can not be made on the



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basis of statement with has been retracted. The Hon'ble ITAT in the case of Diwali Capital & Finance Private Ltd. Vs. DCIT (ITA. No.2091/Mum/2018 dated 10 January, 2019 (ITAT Mumbai) & DCIT Vs. Blue Stock Investment Pvt. Ltd. (ITA. No.3987/Mum/2017 dated 10 January, 2019) has held that the transactions as genuine under similar facts and circumstances. The relevant finding is hereby reproduced as under:-

"8. Coming to assessee's appeal in ITA No. 2090/Mum/2018 for AY 2008-09, the issue is against the order of CIT(A) confirming the action of the AO in making addition of share application money of ₹ 1,62,50,000/- and consequently addition of adhoc expenditure on account of commission paid to obtain these bogus capital at the rate of 5% i.e. ₹ 28,12,500/-. For this assessee has raised the following two grounds: -

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of Ld. A. O. in making addition of Rs. 1,62,50,000/- on account of Shares Application Money received during the year by treating it as alleged unexplained cash credit u/s 68 of the Income Tax Act that too by recording incorrect fact and findings and without observing the principle of natural justice.

The learned CIT(A) has also failed to appreciate the fact that the appellant has discharged the onus cast upon it to establish the identity and creditworthiness of the share applicants and genuineness of the transactions.

2. In the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of Ld. A. O. in making an ad-hoc addition of estimated unexplained expenditure u/s 69C of the Income Tax Act at the rate of 5% of the amount of addition made as alleged unexplained cash credit u/s 68 of the Act."



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9. The facts and circumstances are already mentioned in ITA No. 3987/Mum/2017 for AY 2007-09, the above appeal, and in this year the assessee has received share application money from the following parties amounting to ₹ 1,62, 50,000/-:-

Name	PAN	Share application money received for AY 2007-08	Share application money received for AY 2008-09	Total consideration recd.	No. of shares applied & allotted
Artillegence Bio Innovations Ltd.	AAAC17349F	75,00,000	52,50,000	1,27,50,000	42,500
Alka Diamond Industries Ltd.	AAACA5236D	1,00,00,000	35,00,000	1,35,00,000	45,000
Clifton Securities Pvt. Ltd.	AAACC5995P	-	75,00,000	75,00,000	25,000
Navlakha Agrex Pvt. Ltd. (formerly known as Olympus Vision Pvt. Ltd.)	AAACO3898H	75,00,000	-	75,00,000	25,000
Nicco securities Pvt. Ltd.	AABCN1737D	75,00,000	-	75,00,000	25,000
Macrosoft Technology	AACCM3329H	75,00,000		75,00,000	25,000



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Pvt. Ltd.					
Total		4,00,00,00 0	1,62,50,00 0	5,62,50,000	187,50 0

10. We find that exactly identical issue has been dealt with by us in the group cases in the case of Diwali Capital & Finance Pvt. Ltd. vs. DCIT in ITA No. 2091/Mum/2018 for AY 2008-09 wherein, we have held as under: -

“11. We have heard rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that during the assessment proceedings, the assessee has submitted the following details: -

During assessment proceedings the assessee had submitted copy of income tax return along with audit report of share applicants i.e. investing companies.

Copy of form no.2 of Diwali Capital & Finance Pvt. Ltd.

Copies of bank accounts of the assessee which inter alia depicts the credit entries by way of transfer of the amounts given to the assessee company by cheque.

Confirmation of the investing company has also been filed.

Further during the course of assessment proceeding the assessee also informed that the share application form received from the investor companies and some of the other documents i.e. copy of the resolution passed by the Board of Directors of assessee company for investment in shares of these companies Covering letter forwarding there with the required documents/ papers for investment in shares of the assessee company were seized in search action u/s 132 of the Act, in the office premises in November 2014. These papers have been seized and it is still lying with the assessing officer. Copies of the same have not been given to the assessee as yet. We find from the facts of the case that the assessee has filed the relevant pages of inventory listing the documents during the course of search us/ 132 for establishing the fact that the documents mentioned above have been seized and are in the possession of the assessing officer. The



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above documents are enough to establish the credibility and the genuineness of the transactions. So far as present status of the investing companies is concerned, the assessee has filed data of Company Master Data from the website of Ministry of Corporate Affairs (MCA). Such data are in respect of investing company Alka Diamond Industries Ltd. The state of the investing company as on 25.10.2017 is active. Therefore, the company is still in existence and active. The master data also discloses that Balance sheet up to 31.03.2016 has been filed in respect of each of the companies mentioned above. Therefore, there cannot be any doubt about the identity of the company. The amounts have been received from investing company have Come through banking channel which are duly reflected in the Balance sheet of the assessee company. Therefore, there cannot be any doubt about the genuineness of the transaction. So far as credit worthiness is concerned the investing company is regularly assessed to income tax and they are disclosing sub.

12. As the facts are identical to AY 2007-08 and the reason recorded by CIT(A) while deleting the addition in AY 2007-08 are also exactly identical. In such circumstances, we have already confirmed the order of CIT(A) deleting the addition and hence, following the earlier years order as decided above, we delete the addition. The appeal of assessee is allowed.”

11. As the issue is covered in assessee’s group case in the case of Diwali Capital & Finance Pvt. Ltd. (supra), the facts being identical, we delete the addition and allow this appeal of assessee.

6. Considering the facts and circumstances of the case and the issue being covered by the decision of the Hon’ble ITAT in ITA. No.3987/Mum/2017 dated 10.01.2019, we set aside the order of Id CIT(A) on this issue and direct the AO to delete the addition. The ground no. 1 is allowed.



**ISSUE NO.3 & 4**

7. Issue no.3 & 4 is against the confirmation by CIT(A) of addition of Rs.1,41,34,000/- as made by the AO towards non genuine loans u/s 68 of the Act. These loans were taken from taken from M/s. Topcare Trading Co. Pvt. Ltd. Rs, 41,34,000/- and Rs.1,00,00,000/- from M/s. New Tree Mercantile Co. Pvt. Ltd. The Ld. Representative of the assessee has argued that the assessee has given the all documents/evidences which sufficiently proved the creditworthiness and genuineness of the loan and are on record. The ld AR also argued that reliance on the statement of Mr. Praveen Kumar Jain's retracted statement is wrong and against the provisions of the law unless some substantive evidences are brought on records by the revenue. Therefore, the addition is not justified. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions and strongly relied upon the order passed by the CIT(A) in question to prove his claim. We note that the assessee has filed the copy of ledger account , confirmation, PAN bank statement, ITR and audited annual accounts both the lenders which are also available in the paper book which showed the



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transactions in question are proved by the assessee. In this regard, we also place reliance upon the decision of CIT Vs. A.L. Lalpuria Construction Pvt. Ltd. (2013) 32 taxmann.com 384 (Raj HC) and the decision of the Hon'ble Gujarat High Court in the case of PCIT Vs. Texraj Reality Pvt. Ltd. (2018) 102 CCH 0077. The assessee has given the sufficient documentary proofs to prove the transactions which are on record. The Hon'ble ITAT in the case of Diwali Capital & Finance Pvt. Ltd. (supra) and Blue Stock Investment Pvt. Ltd. (supra) has held that the sufficient evidences have been given by the assessee qua the money raised, there is no addition towards the loan/share application money could be made. Accordingly, we set aside the finding of the CIT(A) on this issue and allow the claim of the assessee. Ground no. 3 and 4 are allowed.

8. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 18/11/2021

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 18/11/2021

Vijay Pal Singh, (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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**आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
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