

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1360/AHD/2017
निर्धारण वर्ष/Asstt. Year: 2012-13

D.C.I.T, Circle-1(1)(1), Ahmedabad.	Vs.	Alpha Nippon Innovatives Ltd., (formerly known as Tim Engineering Technologies Pvt. Ltd.) Survey No.310, VII, Bhamsara, Bavla, Bhamsara, Gujarat-382230. PAN: AACCT5088N
---	-----	--

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by	:	Shri Prakash D. Shah, A.R
Revenue by	:	Shri Vijaykumar Jaiswal, C.I.T.D.R

सुनवाई की तारीख / **Date of Hearing** : **20/12/2021**
घोषणा की तारीख / **Date of Pronouncement**: **14/02/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-1, Ahmedabad, dated 23/03/2017 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

2. The Revenue has raised the following grounds of appeal:

" That the Id.CIT(A) erred in law and on facts in deleting the addition of Rs.3,13,00,000/- made u/s 68 of the I.T. Act on account of alleged share application money.

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.

3. The only issue raised by the Revenue is that the Ld. CIT(A) erred in deleting the addition made by the AO for Rs. 3,13,00,000/- representing the unexplained cash credit u/s 68 of the Act.

4. The facts as emerging from the order of the authorities below are that the assessee in the present case is a limited company and filed its return of income declaring total loss of Rs. 2,08,03,959/-. The AO during the assessment proceedings found that the assessee has received share application money from a company based in Kolkata namely M/s Lynx Plywood Suppliers Pvt. Ltd. amounting to Rs. 3,13,00,000/-. The assessee during the assessment proceedings failed to file the necessary documents in support of such share application money. Therefore, the AO treated the same as unaccounted cash credit u/s 68 of the Act, and added the same to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that it has not received any share application money from the company as alleged by the AO in the year under consideration. Accordingly, the question of making any addition on account of unaccounted cash credit does not arise.

6. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

3. *I have given careful consideration to the written submission filed by the appellant and have also carefully perused the assessment order under appeal. In this case, the assessment was finalized at the total income of Rs. 1,08,13,4087- as per order u/s. 143(3) of the Act dated 18/03/2015 as against the returned loss of Rs.2,08,03,959/-after making the additions of Rs.3,17,367/- u/s. 50C of the I.T. Act and Rs.3,13,00,000/-u/s. 68 of the I.T. Act. The major addition of Rs.3,13,00,000/- was made on the basis of information received from the Director of Income-tax (Investigation), Kolkata. It is communicated that during the course of search in the case of Shri Anand Sharma, Kolkata, one of the leading entry operators of Kolkata, had accepted to have provided bogus entries of share application money to various companies spread all over India. In the course of assessment proceedings it was observed by the assessing officer that the assessee company was shown as a beneficiary company in the list supplied by the DIT(Investigation), Kolkata who had received share application money amounting to Rs.3,13,00,000/- from Lynx Plywood Suppliers Pvt. Ltd., the company involved in providing entries only. According to the AO the appellant did not comply with the notices and show cause letters issued and ultimately the Assessment order came to be passed u/s 144 r.w.s.147 wherein the AO has made addition for a sum of Rs.3,17,367/- u/s 50C of the Income Tax Act and another sum of Rs.3,73,00,0007- u/s 68 with respect to the Share Application Money received from M/s Lynx Plywood Suppliers Pvt. Ltd.*

3.7. *The AR of the appellant had explained the circumstances under which the documents could not be furnished before the AO in the course of assessment ' proceedings. The additional evidence introduced by the appellant in the course of appellate proceedings is admitted and the assessing officer had not objected to the same in his remand report referred to above. I find considerable force of merit in the appellant's contention that it has not received any share application money or deposits from Lynx Plywood Suppliers Pvt. Ltd. during the F.Y.2011-12, corresponding to the assessment year under appeal. The following additional evidences adduced by the assessee were perused:-*

1. *Ledger account of Share Application Money.*
2. *Ledger account of Share Capital.*
3. *Ledger account of Share Premium.*
4. *Shareholders list during the year under appeal.*
5. *Return of allotment filed during the year.*
6. *Audit Report of the appellant company.*
7. *Bank Statements of all the accounts maintained by the appellant.*

Upon perusal of the additional evidence adduced by the appellant, it is found as a fact that there is no entry in the books of accounts regarding receipt of any share application money or deposits from Lynx Plywood Suppliers Pvt. Ltd. So being the factual position, there being no entry in the books of accounts with respect to the alleged receipt of share application money from Lynx Plywood Suppliers Pvt. Ltd. during the year under appeal, question of any unexplained credit within the meaning and scope of section 68 of the Income Tax Act does not arise. The appellant has submitted that identical issue arose for consideration of the Hon'ble High Court of Gujarat in the case of Sunbarg Tradelink (P) Ltd. v ITO reported in 2017 146 DTR (Guj) 182. In that case on the basis of the information received from the investigation wing of the Income Tax department to the effect that the companies and

entities owned and controlled by Pratik R Shah are involved in providing accommodation entries and that the assessee had availed such accommodation entry by way of share application money/share premium to the extent of Rs. 20,00,000/- during A.Y. 2008-09. The AO reopened the assessment u/s 147 and issued notice u/s 148. That assessee objected to the reassessment proceedings stating that it has not received any share application or share premium from any of the companies connected with Pratik R Shah. However, the AO brushed aside the assessee's contention of non-receipt of any share application money/share premium from companies/entities connected with Pratik R Shah during the period relevant to A.Y. 2008-09. The AO finalized the ex-parte assessment order dated 23/03/2016 on total income of Rs. 8.49 crores as against the returned income of Rs. 15,94,430/-. In the said order, the AO had made addition of Rs.20 lacs on account of share application/share premium received from companies connected with Pratik R Shah. On writ petition filed by that assessee, the Hon'ble high court while judgment and order dated 07/09/2016 accepted the assessee's contention that it has not received any share application/share premium during A.Y. 2008-09 from any company connected with Pratik R Shah. The Hon'ble High Court cancelled the notice u/s 148 and also the assessment order passed pursuant to such notice.

3.8. In the case of the appellant assessee before me the company had from the beginning stated that during the year under appeal it has not received any share application money from Lynx Plywood Suppliers Private Limited. The AO has not controverted this version of the assessee whereas the appellant had produced documentary evidence in support of his claim and established that it has not received any share application money from the said company before the A.O. at the time of assessment proceedings as well as appellate proceedings. The appellant company has not received any share application money from Lynx Ply Woods Pvt. Ltd. A certificate to this effect was duly furnished by the appellant before the AO under letter dated 18/03/2015 received in the AO's office on 19/03/2015. During the Remand Report, the A.O. has got verified the facts from the ITO at Kolkata. In the report of the ITO of Kolkata, it is also confirmed that there is no party as Lynx Ply Woods Pvt. Ltd. at the given address. As already stated fact of the matter is that during the year under appeal, there is no credit in the books of the appellant company in the name of Lynx Ply Woods Pvt. Ltd. So being the factual position, section 68 of the I. T. Act does not come into play. When **there is no credit in the books of accounts of the company in the name of the said party, the questions in relation to the genuineness of the transaction, creditworthiness of the party etc. does not arise at all.** Taking into account the totality of facts and circumstances of the case and respectfully following the ratio of the judgment of the Gujarat High Court in the case of Sunbarg Trade Link Private Limited cited supra, I have no hesitation to hold that the addition of Rs.3,13,00,000/- made by the AO u/s 68 of the Income Tax Act on account of alleged receipt of Share application money from Lynx Plywood Suppliers Pvt. Ltd is therefore not sustainable in the eyes of Law. It is seen that in the next assessment year (A.Y. 13-14) there are share application received from some other parties and not from this party (Lynx Plywood Suppliers Pvt. Ltd.) Accordingly, the addition of Rs.3,13,00,000/- made by the AO u/s.68 of the I.T. Act on account of alleged share application money received from Lynx Plywood Suppliers Pvt. Ltd is hereby directed to deleted. The ground of appeal is allowed.

7. Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

8. The Ld. DR before us filed a paper book running from pages 1 to 175 and contended that the assessee failed to discharge its onus imposed u/s 68 of the Act, with respect to the share application money received by it. Accordingly, the Ld. DR, submitted that the impugned amount of share application money represents unaccounted cash credit as provided u/s 68 of the Act.

9. On the other hand, the Ld. AR before us contended that the assessee has not received any share application money from the company as alleged by the AO. Therefore, no addition is warranted under the provision of section 68 of the Act.

10. Both the Ld. DR and Ld. AR before us vehemently supported the order of the authorities below as favorable to them.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of section 68 of the Act treats the amount credited in the books of accounts for the previous year as unaccounted cash credit if the assessee offer no explanation about the nature and source thereof or the explanation offered by the assessee is not satisfactory. In the present case the Ld. CIT(A) has given very categorically findings, elaborated above that there was no money received by the assessee from the company namely M/s Lynx Plywood Suppliers Pvt. Ltd whereas it was alleged by the revenue that the assessee has received share application money from the so called company. However, we find that the allegation of the AO has not been substantiated based on the documentary evidence justifying the receipt of money from the impugned company for the year under consideration.

11.1 At the time of hearing the Ld. DR has not brought anything on record contrary to the findings given by the Ld. CIT(A). In view of the above discussion, we hold that there cannot be any addition of Rs.3,13,00,000/- in the year under consideration for the simple reason that there was no money credited in the books

of accounts of the assessee from such company. Thus we find no infirmity in the order of the Ld. CIT(A) and thus we dismiss the ground of appeal of the Revenue.

12. In the result, the appeal of the Revenue is **dismissed**.

Order pronounced in the Court on 14/02/2022 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
14/02/2022