



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.404/CTK/2018

Assessment Year : 2013-14

Asst. Commissioner of Income Tax, Rourkela Circle, Rourkela.	Vs.	Pawanjay Sponge Iron Ltd., Y-20, Civil Township, 7-8, Area, Rourkela
PAN/GIR No.ADDPR 7405 G		
(Appellant)	..	(Respondent)

Assessee by : Shri S.C.Bhadra , AR
Revenue by : Shri M.K.Gautam, CIT (DR)

Date of Hearing : 27/10/ 2021
Date of Pronouncement : 21 /1/2022

ORDER

Per Bench

This is an appeal filed by the revenue against the order of the CIT(A) Sambalpur dated 1.8.2018 for the assessment year 2013-14 .

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

" 1. *The Ld.CIT(A) was not justified to delete the addition of Rs. 7,70,00,000/- made by the Assessing Officer towards "Bogus Share Capital", totally ignoring the findings of the Assessing Officer that the cheques paid towards share application money were not cleared during the year and the assessee failed to prove the identity, genuineness and creditworthiness of the creditor before the A.O.*

2. *The Ld. CIT(A) was not justified to delete the addition of Rs. 7,70,00,000/-made by the Assessing Officer towards "Bogus Share*

Capital", on the ground that the money paid towards share application was realised in the next year, totally ignoring the "Cash Flow Statement" (Annexure-2 to Statement of Facts), wherein the both the Directors and the Auditor have confirmed receipt of the above amount. Since it is an admitted position that the alleged share holder M/s Hytone Agency Pvt. Ltd. had not paid this amount, the natural presumption is that Rs. 7,70,00,000/- was received from undisclosed parties and therefore the addition u/s 68 was justified.

3. *The Ld.CIT(A) was not justified to delete the addition of Rs. 7,70,00,000/- made by the Assessing Officer towards "Bogus Share Capital" ignoring the fact that even the alleged shareholder M/s Hytone Agency Pvt. Ltd. had shown Rs.7,70,00,000/- as 'share application money' in its Audit Report (Annexure -4 to Statement of Facts) for the relevant previous year, whereas the assessee has shown the same as 'share capital' in its audited account, which clearly shows that the share capital of Rs. 7,70,00,000/- is nothing but the assessee's own undisclosed income introduced in the guise of share capital and hence 1st proviso to Section 68 is clearly attracted in this case. .*

4. *On the facts and in the circumstances of the case, the CIT(Appeals) has violated the terms of Rule 46A of the IT Rules, 1962 in not granting an opportunity to the Assessing Officer to rebut the additional evidence relied upon by the CIT(Appeals) i.e. the purported bank statement produced by the assessee without the stamp of the bank authenticating the same and for the subsequent financial year i.e. F.Y. 2013-14 relevant to A. Y. 2014-15 [Annexure '1 to Statement of Facts] and, therefore, in the interest of justice, the case may be remitted back to the AO for fresh adjudication."*

3. The only issue agitated by the revenue in the grounds of appeal that the Id CIT(A) was not justified in deleting the addition of Rs.7,70,00,000/- violating the provisions of Rule 46A of I.T.Rules, 1962 in not granting opportunity to the AO to rebut the additional evidence relied upon by the Id CIT(A).

4. Facts of the case are that the assessee company is engaged in the business of manufacturing of sponge iron, MS ingot and rod. During the

course of assessment proceedings, the Assessing officer noticed that the assessee had issued share capital of Rs.7.7 crores to M/s. Hytone Agency Pvt Ltd. The AO required the assessee to prove the identity, genuineness and creditworthiness of the investor M/s. Hytone Agency Pvt Ltd. In response, the assessee produced copy of the I.T.returns alongwith audit report of M/s. Hytone agency Pvt Ltd., The assessee further explained that the cheques received from M/s. Hytone Agency Pvt Ltd., against share application money were not deposited in the bank accounts of the assessee during the relevant previous year and, therefore, the amount of Rs.7.7 crores was not actually received during the year. Therefore, the Assessing Officer show caused the assessee as to why the sum of Rs.7.7 crores should not be treated as bogus liability/bogus share capital. As no satisfactory explanation could be furnished by the assessee, the AO treated the total amount of Rs.7.7 crores as bogus liability/bogus share capital and added the same to the income of the assessee.

5. On appeal, the Id CIT(A) deleted the addition, inter alia, by observing as under:

“ I have considered the matter carefully. The facts of the case have also been taken into consideration. It is a fact that the cheques received from M/s. Hytone Agency (P) Ltd., towards share capital were not presented to the bank for payment during the previous year 2012-13. The cheques are found to have been presented to the bank for payment and duly credited to the accounts of the assessee in the next previous year. The only reason for which the AO has considered the money received against share capital as bogus is that

the money was not actually received during the relevant previous year 2012-13 as is apparent from the assessment order. This reason given by the AO to treat the share capital as bogus is not at all justified and reasonable. It is not that the AO has questioned the identity or creditworthiness of M/s. Hytone Agency (P) Ltd., Apparently, the assessee has proved both these aspects by filing evidences before the AO. The AO could not treat the share capital as bogus only because the money against the same was not actually credited to the bank accounts of the assessee during the relevant previous year. In view of this, the addition of Rs.7,70,00,000/- made by the AO under the head "bogus liability and bogus share capital" cannot be sustained. Hence, the same is deleted."

6. Hence, the revenue is in appeal before the Tribunal.

7. Ld CIT DR supported the assessment order and further submitted that the assessee has failed to prove the identity, genuineness and creditworthiness of the creditor before the AO. He submitted that when in the cash flow statement, both the directors have confirmed receipt of payment in the previous year, the AO was justified in treating the same as bogus share capital. Ld CIT DR submitted that the Id CIT(A) has failed miserably to examine the audit report of M/s. Hytone Agency Pvt Ltd., He submitted that the investor company had shown the amount as "share application money" in its balance sheet as on 31.3.2013. On the other hand, the assessee company had issued and allotted 77,00,000 shares at face value of Rs.10/- each to m/s. Hytone Agency Pvt Ltd., as per cash flow statement and audit report. There is no apparent reason that once the shares had been allotted to M/s. Hytone Agency Pvt Ltd., then why it had

shown the amount as "share application money". These aspects have not been considered by the Id CIT(A) while deleting the addition. Ld CIT DR further submitted that the bank statement of M/s. Hytone Agency Pvt Ltd., was never furnished before the AO, therefore, there arises the financial capacity of the investor company. Ld CIT DR submitted that the confirmation of the investor was neither filed before the AO nor before the Id CIT(A)

8. Ld CIT DR submitted that the Id CIT(A) has accepted the additional evidences from the assessee violating the terms of Rules 46A of the I.T.Rules, 1962 in not granting an opportunity to the AO to rebut the case.

Ld CIT DR relied on the following judicial pronouncements:

- i) CIT vs Ranjt Kumar Choudhury, 288 ITR 179 (Gau)
- ii) C. Unnikrisnan vs CIT, 233 ITR 485 (Ker)
- iii) Prabhavati S Shah vs CIT, 231 ITR 1 (Bom)
- iv) CIT vs Shree Kangra Steel Pvt Ltd., 320 ITR 691(hp)
- v) CIT vs Subbu Shashank, 327 ITR 577 (Mad)
- vi) CIT vs United Towers Pvt Ltd., 296 ITR 106(Del)]
- vii) Manish Build Well PvtLtd., 16 taxmann.com 27 (Del)

Further, Id CIT DR relied on the order of the ITAT Chandigarh in the case of DCIT vs Genex Industries Ltd., (2019) 109 taxmann.com 402 (Chandigarh), wherein, the Id CIT(A) had accepted additional evidences violating the sub-rule (3) of Rule 46A without affording opportunity to the AO to rebut the case. The Hon'ble Tribunal has remanded the matter back to the AO for disposal afresh. In view of above, he urged before the bench that the

matter be restored back to the file of the AO for fresh consideration of the issue in view of the decisions relied upon (supra).

9. Replying to above, Id A.R. supported the order of the Id CIT(A). he submitted that although the amount was received in the previous year but presented to the bank in the next previous year. Therefore, it cannot be treated as bogus liability and bogus share capital.

10. We have heard rival contentions. First of all, we deal with the legal ground i.e. violation of Rule 46A of I.T.Rules. On careful perusal of assessment order as well as the order of the Id CITA) especially operative para 3.2 (supra), we find that there was no new material produced by the assessee before the Id CIT(A), which violates the provisions of Rule 46A of I.T.Rules. Before the AO, the assessee had produced the balance sheet of the assessee as well as the balance sheet of M/s. Hytone Agency Pvt Ltd alongwith return of income, audit report and bank statement for the financial year 2012-13, which were not properly considered by the AO while making the addition. Similar documents were furnished by the assessee alongwith the written submissions before the Id CIT(A). On consideration of the same, Id CIT(A) deleted the addition made by the AO. Hence, we do not find any merit in the contention of Id CIT DR that the Id CIT(A) has admitted additional evidence in contravention of Rule 46A of I.T.Rules. Thus, benefit of the prepositions relied by Id CIT DR including order of ITAT Chandigarh Bench in the case of DCIT vs Genex Industries Ltd (supra) is

not available for the revenue in the instant case. Accordingly, the legal ground i.e. Ground No.4 of the revenue is dismissed.

11. Now we proceed to adjudicate the issue on merits taken in Ground Nos. 1 to 3. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below, we observe that it is not in dispute that the share applicant in the instant case before us is assessed to income tax. We are in complete agreement with the contention of Id CIT DR that the Id CIT(A) ought to have considered the fact that as to whether the assessee has successfully discharged its onus to establish genuineness of transaction, identity, capacity and creditworthiness of share application money investor before granting relief to assessee. But this is a peculiar situation of this case that the impugned amount was not credited to the bank account of the assessee during Financial year 2012-13 relevant to assessment year 2013-14 but the same was credited to the bank account of the assessee during next financial year 2013-14 relevant to assessment year 2014-15. This factual position has not been controverted neither by the AO nor by Id CIT(DR), thus, it was not required by the Id CIT(A) to go further and examine that as to whether the assessee has discharged onus cast upon his shoulders u/s.68 of the Act. The only dispute raised by the assessee is that the money was not actually received during the relevant previous year 2012-13, thus cannot be disputed to bring into tax net u/s.68 of the Act in

F.Y. 2012-13 relevant to A.Y. 2013-14/ It is the contention of the assessee that cheques received from the investor towards share capital were not presented to the bank for payment during the previous year 2012-13 but presented in the next financial year 2013-14 relevant to assessment year 2014-15. Hence, it is proved that the money against the allotment of shares was not credited to the bank accounts of the assessee during the relevant previous year, hence provision of section 68 of the Act cannot be applicable in assessment year 2013-14. . It is not disputed that M/s. Hytone Agency Pvt Ltd., is an existing share holder and upto 31.3.2012, it was holding 20,000 nos of shares amounting to Rs.2.00 crores, as is evident from the balance sheet. On the basis of share application, the company allotted shares valuing Rs.7,70,00,000/-. These facts have not been controverted by AO or Id CIT DR during arguments.

12. In the present case at hand, the only dispute is that the cheques were not presented to the bank for payment during the previous year i.e. 2012-13 and presented to the bank in the subsequent year i.e. 2013-14 and monies were credited in the bank account of the assessee. On the basis of above facts, the Id CIT(A) has deleted the addition made in the assessment year under consideration.

13. In view of foregoing discussion, we find that the Id CIT(A) has rightly deleted the addition made by the AO and we do not find any flaw or any other valid reason to interfere with the order of the Id CIT(A). Accordingly,

we uphold the same and dismiss the grounds of appeal raised by the revenue.

14. In the result, appeal of the revenue is dismissed.

Order pronounced u/s. 34(4) of I.T.A.T.Rules, 1963 on 21/1/2022.

SD/-

(Manish Borad)
ACCOUNTANT MEMBER

sd/-

(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 21/1/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant: Asst. Commissioner of Income Tax,
Rourkela Circle, Rourkela.
2. The Respondent. Pawanjay Sponge Iron Ltd., Y-
20, Civil Township, 7-8, Area, Rourkela
3. The CIT(A)- Sambalpur
4. Pr.CIT-, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack