

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.1444/AHD/2016 (AY 2011-12)
(Hearing in Virtual Court)

Jay Visat Glass India Pvt. Ltd., C-312, Hariom Nagar, GHB, Pandésara, Surat. PAN: AACCCJ 4478 L	Vs	The Income Tax Officer, Ward-1(3), Surat.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Hemant Suthar – AR
Revenue by	Ms. Anupma Singla – Sr.DR
Date of hearing	13/01/2022
Date of pronouncement	25/02/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Surat dated 28.03.2016 for the A.Y. 2011-12.

The assessee has raised the following grounds of appeal:

- “1. *The Ld. Commissioner of Income Tax (Appeals)-1, Surat has erred in law and in facts in confirming the addition of Rs.2,07,48,000/- being share application money received from shareholders on the ground that the appellant has failed to prove the identity, creditworthiness and genuineness and treated the amount as unexplained cash credit u/s 68 of the I.T.Act. The said addition being illegal and unwarranted and against the applicable facts is prayed to be deleted.*

2. *Your appellant craves liberty to add, alter, delete or substitute any of the grounds of appeal herein above contained.”*

2. Brief facts of the case are that the assessee is a company engaged in the business of manufacturing of Glass. The assessee filed its return of income declaring Nil income. The claimed that they have not commenced the commercial production. The return of income was selected for scrutiny. On verification of return of income, the Assessing Officer (AO) noted that there is introduction of fresh capital and share premium. The AO noted that during the year, the assessee has introduced share capital and share premium of Rs.2.07 crore from 20 share subscribers. The AO in order to verify the transaction issued notice under section 133(6) of the Act to the shareholders on the address furnished by assessee. The AO recorded that all the noticed were returned back with the remark of postal authorities “left” or “not responded”. The assessee confronted with this fact and issued on the share capital and share premium and issued show cause notice as to why it should not be treated as unexplained cash credits within the meaning of section 68 of the Income Tax Act. The AO recorded that in show cause, neither the assessee, nor is represented produced any person for confirmation and for identity and creditworthiness. The AO further recorded that the assessee filed

later stating therein that company is not operating since last two years and facing huge losses and not in a position to appoint any accountant due to huge losses and notice under section 13(2) of the Act of Securitisation and Reconstruction of Financial and Enforcement of Security Interest Act, 2002 issued by the lenders bank. The AO accordingly made addition under section 68 of the Act of Rs.2.07 crore.

3. On appeal before the Id.CIT(A), the assessee filed additional evidence consisting list of shareholders and documents related to Eight (08) Shareholders, their affidavits, ID Proofs and Proof of Ownership of agricultural land. The Id.CIT(A) recorded that these affidavits were written in Gujarati Language and identically worded confirming that they had deposited 'cash' with assessee-company for share application money and share premium, out of their agricultural income and are not filing return of income. The additional evidence of assessee was admitted. The additional evidence was forwarded to the AO vide letter dated 15.02.2016 with the direction either to make spot enquiry or by issuing commission about the veracity of the affidavits and assessee was asked to produce remaining Twelve (12) shareholders. The AO furnished is interim remand report dated 10.03.2016 wherein the AO recorded that assessee has expressed his inability

to produce even a single shareholder. The assessee was again took their stand that assessee company is not operating since Four(04) Years and they are unable to produce shareholder. In absence of evidence, the Id.CIT(A) also held that assessee failed to establish the identity, genuineness and creditworthiness of share capital money and accordingly upheld the addition under section 68 of the Act.

4. Further aggrieved, the assessee has filed present appeal before this Tribunal. This appeal was filed on 31.05.2016. The assessee was served notice of hearing for more than Ten (10) occasions. Finally a notice with the clear endorsement of the last opportunity was issued and served upon the assessee for 27.05.2021. Despite warning, none appeared on behalf of the assessee. Ultimately, Shri Hemant Suthar, Id. Authorised Representative (Id.AR) of the assessee appeared on 13.01.2022 and would submit that the assessee is not providing information and in absence of complete information they are unable to properly their submission. The Id. Authorised Representative (Id.AR) of the assessee submits that in absence of proper information, instruction and evidence from assessee, they are unable to make their submission. The Id. Sr. DR for the Revenue strongly objected about the conduct of assessee. Finding

no other way, we left no option except to hear the submission of ld.Sr.DR for the Revenue and decide appeal on the basis of material available on record.

5. The ld.Sr.DR for the Revenue submits that assessee shown share application money received in cash. No documentary evidence about the identity, creditworthiness and genuineness of transaction was proved by assessee either before the AO or before the ld. CIT(A) nor they have filed any piece of document before this Tribunal. In absence of any evidence, appeal of the assessee is liable to be dismissed.
6. After hearing the submission of ld. Sr. DR for the revenue, the ld.AR of the assessee was given liberty to file their written submission in three working days. Till date that is 24/02/2021 no such written submission, or application or any piece of evidence is received.
7. We have considered the submission of ld.Sr.DR for the Revenue and perused the material available on record. As recorded above, the AO made addition in absence of any evidence about the identity, creditworthiness of shareholders and genuineness of transaction. Moreover, the share application money were shown to have received in cash. The assessee failed to file even a single document either before the AO or before the ld.CIT(A) to prove the creditworthiness of genuineness of transaction. This appeal was filed in the

year 2016 and more than Six Years have passed, the assessee has not filed piece of single piece of document in order to discharge, their onus. In absence of any explain or any evidence we have no reason to deviate from the finding of Lower Authorities. In the result, the ground of appeal raised by the assessee is dismissed.

8. In the result, appeal of the Assessee is dismissed.

Order announced on 25 February, 2022 in the open court and placing the result on the notice board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat Dated: 25/02/2022 /SGR*

Copy to:

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By Order

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Sr.Pvt.Secretary, ITAT Surat