

IN THE INCOME TAX APPELLATE TRIBUNAL A BENCH, PUNE

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

ITA No. 1111/PUN/2016
(Assessment Year: 2000-01)

M/s. Satyaraj Oil Company Deputy Commissioner of
Pvt. Ltd. Income Tax
9/639, Station Road Vs. Ichalaranji Circile
Ichalkaranji Ichalkaranji
Dist. Kolhapur

PAN – AAICS2911D

Appellant

Respondent

Appellant by: Shri Pramod S. Shingte
Respondent by: Shri S.P. Walimbe

Date of Hearing: 29.04.2022
Date of Pronouncement: 06.05.2022

ORDER

Per S.S. Godara, JM

This assessee's appeal for AY 2000-01 is directed against the CIT(A)-2, Kolhapur's order dated 02.03.2016 passed in case No. ICH/527/11-12 involving proceedings under Section 143(3) r.w.s. 254 of the Income Tax Act, 1961 (in short the Act).

Head both the parties. Case files perused.

2. The learned counsel stated at the outset that the assessee does not wish to press for its first foremost substantial ground raising limitation issue regarding validity of the impugned assessment. Rejected accordingly.

3. Next comes the assessee's latter substantial grievance seeking to reverse both the learned lower authorities' action making Section 68 unexplained cash credits addition of Rs.60,55,000/- in the course of assessment dated 29.12.2011 as upheld in the CIT(A)'s order vide following detailed discussion:

"3. In this case originally action u/s 147 was taken after recording proper reasons and the assessment was completed u/s 143(3) r.w.s. 147 on 22.03.2005 determining total income of Rs. 60,55,000/- [50,50,414/- on protective basis and Rs. 10,04,586/- on substantive basis]. Subsequently, the assessee went in appeal before the CIT(A) , Kolhapur, and the appeal was partly allowed as per CIT(A) 's order dated 31.01.2007 in ITA No. Ichal/9/56. Subsequently, the appellant and the Department went in further appeal to the ITAT and the ITAT, Pune Bench "B" Pune in their order in ITA No. 795/PN/2007 and 528/PN/207 dated 21.12.2009 have set aside the matter to the file of the AO for fresh adjudication and after giving reasonable opportunity of being heard to the appellant. Assessing Officer, after giving proper opportunity of being heard to the appellant passed the assessment order u/s 143(3) r.w.s.254 on 29.12.2011. Aggrieved by the action of the Assessing Officer, the appellant is in appeal raising the following grounds:

1. The Dy. Commissioner of Income Tax, Ichalkaranji Circle, Ichalkaranji (here in after referred to as the "DCIT") erred in adding a sum of Rs. 60,55,000/- (Partly on protective basis and Partly on substantive basis) being the share application money collected by the appellant company during the year under appeal, as unexplained credit under Section 68 of the Income Tax Act, 1961.

The appellant company submits as under, without prejudice to each other.

a)The appellant having the produced entire evidence regarding share application money collected by it, the DCIT ought not have made the addition as unexplained credit u/s 68.

b)DCIT ought not to have solely relied on the income stated on the ration card of various share applicants in as much as the income stated on ration cards have not authenticity and it is mentioned at the time of issue ration card it does not reflect the current situation of the card holder.

In view of this appellant company submits that DCIT ought not to have made the addition.

c)The appellant having discharged the burden cast on him u/s 68, no addition is called for under this section in respect of share application money.

The appellant company prays that DCIT be directed to delete the addition.

The Appellant craves leave to add to, amend, alter, modify, change or delete all or any of the grounds of appeal or add new ground of appeal before or at the time of hearing.

d)According to the information of the appellant company many of the subscribers have confirmed the amounts paid to the company by way of share of company.

e)Out of 675 subscribers the notices having been send only to 200, the

DCIT ought not to have generalized his opinion and drawn a straight conclusion that the entire share application money is unexplained money of the appellant company itself.

f) It is admitted fact and also clearly mentioned in the order by ACIT that the company has not done any activity during the year under appeal as such it cannot have income in such huge quantum as is being alleged.

Without prejudice to the above the appellant company submits that the additions are restricted to the extent of shares subscribers who have not confirmed the amount subscribed.

4. The appellant has raised the above various grounds contesting the additions of Rs. 60,55,000/- . The appellant is a Pvt. Ltd. Company incorporated on 03.04.1996 with the object of developing of various type of seeds plantation. The company did not commence its business till the date of order. There is no change in the situation as of today. The authorized share capital of the company is Rs.5 lacs. It has raised share application money from the period Nov. 1997 to Mar 2000. The company has given loan to one of its directors Mr. Ashok C. Bhasame and claimed the loan to him to be out of share application money received by it. During the course of assessment proceedings in the case of Shri Bhasame, Assessing Officer gathered certain information on the basis of which he formed an opinion that certain income has escaped from tax within the meaning of section 147. Therefore, notice u/s 148 r.w.s. 147 was issued to the company and assessment u/s 143(3) r.w.s. 147 was completed in the case of appellant on 22.03.2005 determining the total income at Rs. 60,55,000/- (Rs. 50,50,414/- on protective basis and Rs. 10,04,586/- on substantive basis). The appellant carried the matter before the erstwhile Commissioner of Income Tax, (Appeals) Kolhapur who sustained additions made by A.O. to the extent of 80% of the share application money. Both the department and the appellant preferred an appeal before ITAT Pune. The Honorable ITAT Pune restored the case back to A.O. for assessment a fresh. The assessing officer passed an order u/s 143(3) r.w.s 254 on 29.12-2011 and maintained the status co of original assessment.

5. Aggrieved by the order of A.O. appellant has preferred an appeal before me contesting A.O.'s order of making additions Rs.60,55,000/-.

6. As per the appellant it has furnished all the detailed list of share applicants along with their names, addresses, amount received as share application money, number of shares applied for, receipt number vide which the amount received, confirmation for share application money invested with the company and ID proof (ration card). According to appellant out of 671 share applicants, confirmation in respect of 473 applicants were produced and expressed its preparedness to furnish the balance confirmations and thereby discharge of owners to explain the source of share application money. According to the appellant Assessing Officer erred in not considering the request of appellant to

produce the confirmations of balance applicants and also erred in not considering the fact that the share applicants are relatives and friends of the directors. Further according to appellant, Assessing Officer erred in calling information u/s 133(6) in respect of only 200 applicants and drawing conclusion on the basis of replies of the persons who responded to Assessing Officer and thereby treating the share application money as unexplained money. As per the appellant the Assessing Officer also erred in not considering fact that the company had no business at the relevant time and hence it could not be alleged to have such huge income under the shelter of share application money. Appellant has vehemently argued for deletion of the addition in view of the aforesaid argument.

7. Assessing Officer was not convinced by the explanation and details furnished by appellant. The reasons for Assessing Officer not getting convinced can be summarized on the basis of his observations while passing the order as under:

a) The appellant company has authorized share capital of Rs. 5 lacs and subscribed and paid up capital during the year is Rs. 2,000/- and share application money pending for allotment is Rs. 69,99,500/-. Assessing Officer was not convinced of this huge share application money pending for allotment particularly in view of authorized share capital of Rs. 5 lacs. According to him this situation is improbable and illegal under the company law. The share capital of the company had not been increased till passing of this order.

b) During the course of statement recorded in respect of director Mr. Bhasame, Assessing Officer found that the company never filed its statement of financial affairs to the registrar of companies. He also found that the company was defunct till the date of this order.

c) Under these circumstances how assessee could receive cash under the garb of share application money.

d) Assessing Officer called for information from 200 share applicants by issuing notice u/s 133(6) of the I.T. Act. The recipients of the notices attended the office and filed written submission stating that they were unaware of the company under the name Satyaraj Oil Company Pvt. Ltd., and some of them stated that they have given money but they were in the low income of Rs. 2000/- per month. Further, Assessing Officer observed that after long persuasion the appellant filed the addresses of the share applicants.

e) Assessing Officer on verification of 443 confirmations categorized the applicants with respect to their annual income. The classification prompted him not to believe the possibility of share application money of such huge amount from 671 shareholders.

8. On going through the appellant's submission and Assessing Officer's observations my findings are as under:

a) The possibility of receiving share application money was totally missing in the present case because the authorized share capital of the Assessee was only of Rs. 5,00,000/-. The directors had no intention to

increase the authorized share capital. The appellant stated to have received share application money Rs. 60,55,000/- during the year. If appellant was to receive share capital then it ought to have applied for increase in the authorized share capital. How long the appellant could receive the alleged share application money without there being authorized share capital and therefore, without any possibility of allotment of shares. As of today the share application money remains waiting for allotment.

b) The appellant had no respect for Company Law and other matters and has unscrupulously collected share application money.

c) The appellant has submitted during the course, of proceedings that it intended to raise capital from general public. The appellant, being a private-limited company, supposed to know at the time of its formation itself that unlike a proprietary or partnership firm, it has to comply with the various stringent procedures and file various documents and seek permissions from the registrar of companies at the time of changing its objects, accepting the share application money etc.

d) The entire share application money is received only by cash and none by through banking mode. It not only accepted share application money in cash initially but continued to accept the same in cash day over day, month over month and year over year.

e) The appellant company neither produced share applications at the time of assessment nor at the time of hearing before me. Therefore, the identity of share applicants remained to be corroborated with the ration cards shown in the list of share applicants submitted.

f) A private limited company as per the then prevailing company law could have share holders up to maximum 50 numbers. It is amazing to note how it has proceeded to reach as many as 671 share applicants for making them its shareholders.

g) On test of human probability, one would agree that no one would invest Rs. 10,000/- to Rs. 20,000/- in the shares of a company which has not at all started its functions. Further, major applicants have income in the range of Rs. 10,000/- to 20,000/- per annum.

h) There was no business exigency to receive share application money in cash right from 1997 to 2000.

i) The directors of the company and the company were one and the same.

j) The appellant's own version is that the income criteria of share applicant could not be concluded merely on the basis of ration card given as proof of source. When the credit worthiness could not be arrived at on the basis documents filed by himself, why the ration cards should be believed in the absence of corroboration of the same with the share applications made by the share applicants. It is difficult to accept the ration card for the purpose of identity only and ignore it for the purpose of credit worthiness of the card holder.

k) The assessing officer's findings to the effect that the share applicants

are bogus for which he relied upon the written statements of share applicants filed u/s 133(6) of the I.T. Act.

i) The appellant has submitted that it has discharged its onus casted by section 68 in the form of ration cards produced. The ration cards submitted reveal that the income of the card holders is in the range of Rs. 10,000/- to 20,000/-. Therefore, the evidence does not withstand the test of credit worthiness as contemplated by section 68 of the IT Act.

m) It is pertinent to note that the entire amount lying with the company has been diverted to the director for his benefit and for the reasons best known to the appellant. It is also to be noted that the said amount remains unpaid till the date of order.

9. After perusing the Assessing Officer's observations, appellants submission and my findings, the question that arises before me for adjudication is whether the appellant company has discharged its onus of proving the source, credit worthiness and genuineness of the share applicants who are 671 in numbers. Given the facts, list of shareholders, absence of compliance of Company Law information received u/s 133(6), whether it could be accepted that the details furnished explain the source of share application money.

10. On the basis of my findings I can safely reach to the conclusion that the appellant has shown in its books of accounts the receipt of share application money from various share holders according to its requirement to divert the same to the Director Mr. Bhasame. It has simply branded the money of Mr. Bhasame as share application money and rerouted the same to him as loan through banking mode. I do not see any merit in the contention of the appellant as to have discharged the onus casted by section 68. The appellant contended that it has disclosed source of money and all other details then this section will not be applicable. It could be seen from the facts that there was no urgent need for the business of the appellant to collect the share application money and meet its capital needs. It is difficult to believe that it collected share application money year over year without any business in hand. AO when confronted the appellant to furnish, the list of share applicants after a long persuasion the same was furnished. This again is reason best known to the appellant. In view of the above, it is difficult to accept the appellant's version that it has discharged its onus of explaining the share application money. The facts of the case and Assessing Officer's observations force me to conclude that appellant has received money in cash belonging to the director under the garb of share application money. Ignoring the same one cannot declare that any cash received from shareholders as share application money. Therefore, I uphold the additions made by the Assessing Officer

4. Learned counsel vehemently contended during the course of hearing that the assessee had indeed discharged its onus of proving identity, genuineness and creditworthiness of all the share applicants involving 671

parties. He made a very strong endeavour to highlight the fact that this assessee intended to commence edible oil manufacture/production activity wherein the farmers/growers had sought to invest their money in smaller sums in its stake. And also that most of them had filed confirmations alongwith all the corresponding details before the learned lower authorities and therefore, the impugned addition of unexplained cash credit under Section 68 is liable to be deleted.

5. Mr. Walimbe placed strong reliance on CIT(A)'s order affirming the impugned addition.

6. We have given our thoughtful consideration to the foregoing rival contentions and find no merit in assessee's stand. We make it clear that there is no dispute regarding the clinching fact that the assessee having claimed to have received share application money from 671 parties having meagre source of income. Hon'ble apex court's various landmark decisions Sumati Dayal vs. CIT (1995) 214 ITR 801, CIT vs. Durga Prasad More (1972) 82 ITR 540 and PCIT vs. M/s. NARA Iron and Steel Pvt. Ltd. (2019) 412 ITR 161 hold that any evidence filed in income tax proceedings has to be appreciated in light of human probabilities after removing all blinkers. And also that an assessee could not be held to have proved genuineness of cash credits merely by filing documents or confirmations only. We proceed on the same line of reasoning and hold that the assessee has not been able to prove genuineness of its alleged investor parties wherein most of them are having very meagre incomes. We thus find force in the Revenue's argument strongly supporting the impugned addition. The CIT(A)'s above extracted findings upholding the Assessing Officer's action to this effect are affirmed.

7. This assessee's appeal is dismissed.

Order pronounced in the open court on 6th May, 2022.

Sd/-
(Dipak P. Ripote)
Accountant Member

Sd/-
(S.S. Godara)
Judicial Member

Pune, Dated: 6th May, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -2, Kolhapur*
4. *The CIT - II, Kolhapur*
5. *The DR, "A" Bench, ITAT, Pune*

By Order

//True Copy//

*Assistant Registrar
ITAT, Pune Benches, Pune*

n.p.