

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH, HYDERABAD.**

**BEFORE SHRI LILET KUMAR, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**ITA No.1305/Hyd/2019
(Assessment Year : 2013-14)**

M/s. Gowri Gopal Hospitals Pvt. Ltd.,
Hyderabad.
PAN AACCS 9035Q

.....Appellant.

Vs.

Asst. Commissioner of Income Tax,
Circle 2(2), Hyderabad.

.....Respondent.

Appellant By : Shri K.K. Gupta, C.A.
Respondent By : Shri T. Sunil Goutam. (D.R.)

Date of Hearing : 25.04.2022.
Date of Pronouncement : 27.04.2022.

O R D E R

Per Shri Laliet Kumar, J.M. :

This assessee's appeal for Asst. Year 2013-14 arises from the order of Commissioner of Income Tax (Appeals)-9, Hyderabad dt.29.07.2019.

2. The grounds raised by the learned A.R. in the present appeal is as under :

“1. The appellant company has complied with the requirements u/s.68 of providing the identity / genuineness and creditworthiness of the applicants in respect of share application money. The onus cast on the appellant u/s.68 was discharged by the appellant.

2. On the above and other grounds that may arise during the appeal, the appellant requests for an order deleting the addition made in the assessment order.”

3. The learned AR for the assessee has submitted that the assessee company during the Asst. Year 2013-14 has received share application money for Rs.70 lakhs from various persons. The details of applicants are as under :

S.No.	Name of the party	Amount Rs.
1.	K Praveen Kumar	500000
2.	K Lakshmi	500000
3.	M Sasikala	1000000
4.	K Srinivasulu	500000
5.	K Surendra Kumar	500000
6.	G Siva Nagamani	500000
7.	Praneeth Gopal	500000
8.	Srikanth	1500000
9.	Anitha Srikanth	1500000
	Total :	70,00,000

4. It was the case of the assessee that during the assessment proceedings the assessee had provided the information as called for by the Assessing Officer namely applicant's PAN Number, confirmation letter, share application form, copies of the cheques, etc. The assessee had received share application money through banking channel and therefore the assessee was able to show the identity, genuineness and credit worthiness of the share application money. It was also submitted that the assessee had established all necessary requirements u/s.68 of the Income Tax Act, 1961 (in short "the Act") and the A.O. was not justified in making the addition u/s.68 of the Act. In fact the assessee had also submitted that all the shares were not allotted to the applicants and there were refunds also and the same was confirmed by the share applicants. The details of such refunds were provided at pages 11 to 21 of the paper book.

4.1 Aggrieved by the order of A.O., the assessee had filed an appeal before the learned CIT(Appeals). The

CIT(Appeals) confirmed the order of the Assessing Officer and vide para 5.2 he dismissed the appeal of the assessee as under :

“5.2 On 10.04.2019, Sri K.K. Gupta, admitted that subsequently, share application money has been returned to the share applicants, however, no evidence was filed. The A.O. has observed that share capital has been increased, then how this money has been returned back without buy back of the shares. The initial stand taken before the A.O. is totally incorrect, that paid up capital is increased to Rs.3,381,60,000, even in the ground of appeal same plea has been taken, this is the basic reason why alleged share holders did not turned up even during the remand proceedings, and even in rejoinder no reply has been given on merit. This is an admittance that share capital was not genuine. On facts it has been established that credits were not genuine, merely entry by cheque is not conclusive even the explanation given has been established as incorrect. Therefore, this ground of appeal is dismissed.”

4.2 Feeling aggrieved by the order of CIT(A), the assessee is in appeal before us for the grounds stated herein above.

5. The learned AR had filed the written submission as under :

“ The position in law after the dismissal of series of SLPs by the Supreme Court on 11th January 2008 is that the onus cast upon the assessee company is discharged upon disclosure of the names and particulars of the shareholders. It is for the Dept. to conduct its own enquiry thereafter and additions if any may be made in the hands of the shareholders.

The honourable Delhi High Court in the case of 'CIT vs. Value Capital Services Ltd. ' in its judgment dated 25.04.2008 whilst rejecting the appeal of the CII~ held that, even if the applicant does not have the means to make the investment, the investment made by the applicant actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee, if it has to be treated as its undisclosed income.

The honourable Supreme Court of India in the case of CIT- Vs-Lovely Exports Pvt Ltd., it was held that the source of the sources need not be explained by the assessee company, as below:

" Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961 ?

We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AD, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment. Subject to the above, Special Leave Petition is dismissed "

The honourable Madras High Court, in the case of M/s Lalitha Jewellery Mart Pvt. Ltd. Vs. Deputy Commissioner of Income tax and Another, U20171399 ITR 425 (Mad)-(Madras High Court), held that:

" 42. On the other hand, the legal principle enunciated by the Supreme Court, as noticed supra by us, is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee company would still be the money available and belonging to the investors. The consistent principle followed is that the investors sources and credit worthiness cannot be explained by the assessee. If the department has a doubt about the genuineness of the investors capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures that the assessee has, in fact, ploughed back the money. The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject.... "

The honourable ITAT, Hyderabad, A-Bench, in the case of KLR Industries Ltd., Hyderabad Vs. DCIT, CC2(l), has held that the Assessee has to establish identity and genuineness of the depositor.

The honourable Co-ordinate bench, in the case of Brilliant Biopharma Ltd. Vs. DCIT, Circle-1(3), Hyd, (ITA No. 1791/Hyd/2017 & SA No.168/Hyd/2019, Asst Year: 2011-12) accepted the position that no 'addition' is called for when confirmations of the depositors/ applicants (showing the identity and genuineness) were filed.

The honourable Co-ordinate bench, in the case of Brilliant Industries Pvt Ltd-Vs-DCIT; Circle-1(2),Hyd, (ITA No. 912/Hyd/2017, Asst Year: 2012-13) accepted the position that no 'addition' is called for when confirmations of the depositors / applicants (showing the identity and genuineness) were filed.

Copies of order are filed herewith for ready reference.

Now it is a settled law, relating to the Deposits/Share Application Money, that the assessee (who has accepted the share application money/deposits) if furnishes Name, PAN and address of the Depositors/Share Applicants, it is to be considered as genuine. Since, the share application money has been accepted through banking channel and the assessee has furnished the Name, PAN and Address of the share applicants/depositors the transactions are to be considered as genuine. The source of the source need not be explained by the assessee. The assessing officer may refer to the jurisdictional assessing officer of the Depositor/Share Applicant.

In view of the above facts and information and as per above rulings and legal position, the addition of 'Share Application Money' under section 68 is not correct and justified, the assessee request you to pass order to delete the additions made to the total income in the assessment order."

6. Per contra, the learned Departmental Representative had drawn our attention to the Hon'ble Apex Court decision in the case of NRA Iron and Steel (P) Ltd. Vs. Pr. CIT (Central) (2020) 117 taxmann.com 752 (SC).

7. We have heard the rival contentions and perused the material available on record. The A.O. in paragraphs 4.2 to 4.4 has recorded the findings as under :

“ 4.2 However the assessee did not furnish any evidence in support of source of the above share capital. Hence the assessee was given another opportunity vide order sheet entry dtd.14.01.2016 to furnish confirmation letter, bank account statements and Return of Income of share capital investors on or before 22.01.2016. However the assessee failed to furnish the same within the prescribed date. Subsequently on 4.2.2016 the assessee's AR Sri K. Surya Bhagavan appeared and furnished confirmation of balance and share application forms. However the assessee did not furnish any evidence to prove the genuineness of the transactions and identity and creditworthiness of the above mentioned persons. Hence the AR was asked vide order sheet entry dtd.4.2.2016 to show cause as to why Rs.70,00,000/- being the increase in paid up share capital should not be treated as income of the assessee u/s.68 of the I.T. Act. In response to the same the assessee's AR vide letter dtd.5.2.2016 submitted as follows :

“ In respect of Share Application Money all the receipts are through cheques / banking channel and the applicants are identifiable and their PANs are furnished.

Your kind attention is drawn to the decision of honourable ITAT (Hyderabad-A Bench) in the case of KLR Industries Ltd., Hyderabad Vs. DCIT, Central Circle 2(1), Hyderabad.”

4.3 The submission of the assessee was considered and found to be not acceptable for the following facts and reasons :

i. In spite of the repeated opportunities given as explained above, the assessee has failed to produce any material evidence to prove the identity and creditworthiness of the above persons and genuineness of the share capital transactions. The assessee failed to furnish even the PAN No.s (only few furnished), income tax details, Return of Income and bank account statement of the above mentioned persons. Thus the assessee has failed to discharge the onus cast on it u/s.68 of the Act to prove the nature and source of Rs.70,00,000/-. The mere fact that the as. Received the money through Banking Channel, does not make the transaction genuine. The genuineness should be supported by material evidence.

ii. The case law relied upon by the assessee was perused and the facts involved in the said case were found to be different from that of the instant case. For instance, in the case of KLR Industries Ltd. Vs. DCIT, the assessee furnished all details viz. name, address, PAN and Income Tax particulars of the share applicants. Further, in that case share applicants filed affidavits mentioning their source to invest in M/s. KLR Industries Ltd. Whereas in the instant case, the assessee did not even furnish confirmation from the share capital investors about the source of investment. Further, Asst. Year involved in the decision of ITAT relied upon by the assessee is prior to insertion of proviso 1 to section 68 of the Act. Hence, the decision of ITAT in the case of M/s. KLR Industries Vs. DCIT is not applicable to the facts of the assessee's case.

iii. Identity of the share applicants.

The assessee merely produced copy of Balance confirmation letter which is sent to the alleged share capital investors by the assessee and inturn signed by investor. Scanned copy of one of the Balance confirmation letters furnished by the assessee is reproduced below for ready reference.



CIN No. U85110TG1986PTC008030

Phone : 255499, 255663, 289807, 289608,
 Cell : 9948391459, 9490050358
 Emergency Number : 255668

GOWRI GOPAL HOSPITALS PVT. LTD.,

46-87, Budhawarapeta, KURNOOL - 518 002. FAX : 08518-255256

REF: GGH/ACCTS/2012-13

To

Mrs.M. Sasikala,

Dear Sir,

Sub: Confirmation of balance as on 31.03.2013.

Our books of accounts showing credit balance of Rs.10,00,000/- (Ten Lacs only) as share application amount on your name as on 31.03.2013. In this regard, We request you to confirm the balance.

Thanking you,

Yours faithfully,
 For M/s.Gowri Gopal Hospitals Pvt.Ltd.,

X M. Sasikala

Authorised Signatory

From the above, it is evident that the confirmation does not contain even basic details viz date of letter, address and PAN of Share applicant etc. Further, the alleged share applicant has merely signed the letter given by the assessee but did not confirm/state anything. Similarly, the share applications also does not contain basic information viz date, PAN and address of share applicant. Scanned copy of one of such share application is reproduced for ready reference.

SHARE APPLICATION FORM

(for Private Circulation only)

To
 The Board of Directors,
 M/s.Gowri Gopal Hospitals Pvt., Ltd.,
 Regd.off: C-4, Industrial Estate,
 Sanath Nagar, Hyderabad-500029.

Dear Sir,

Sub: Equity share application

I /We here by apply to you for allotment to me/us of 100000 Equity shares of Rs.10/- at par/with a premium of _____. I/We are enclosing the remittance of Rs. 10,00,000/- (Rupees Ten Lakhs only) by cheque bearing No. 456542, dated 28-12-2012 in favour of M/s.Gowri Gopal Hospitals Pvt., Ltd., Kurnool. I/We hereby agree to accept the equity shares which may be allotted to me/us.

I/We undertake that I/We will sign all such other documents and do all such other acts, if any, necessary on my/our part to enable me/us to be registered as the holder(s) of the equity shares which may be allotted to me /us. I/We authorize you to place my/our name on the Register of Members of the company as holder(s) of the Equity Shares that may be so allotted and to register my/our address(es) as given below.

I/We confirm that I am/We are Indian Nationals resident in India and am/We are not applying for the equity shares as nominees of any persons resident abroad or any foreign nationals.

Name in full & Address	Surname	Age/Years
M. SASIKALA		
Occupation	Status	Sign
-	Individual	
Father's/ Husband's Name		
Pan/Gir No.(Income Tax)	District	Circle/Ward :
		: KURNOOL

Date. 29-12-2012

X M. Sasikala
 Signature



From the above, it is evident that the assessee failed to prove the identity and creditworthiness of the share applicants.

iv. Creditworthiness:

The assessee failed to furnish income tax assessment particulars and Income Tax Return copies of the share applicants. As mentioned above, the source of share applicants to invest in assessee company is not given. Even details of sources of income and Bank account statements of share applicants were not produced by the assessee. In the absence any confirmation and material evidence, the creditworthiness of the share applicants have not been proved.

v. Genuineness of the transaction:

The assessee did not furnish even Form-2 Return of Allotment, which it has to file before RoC to prove that the shares have been allotted to the persons mentioned in Table-1. The Bank account of alleged share applicants was not produced. In the absence form-2 and Bank account statement of share applicants, genuineness of transaction has not been proved.

In view of the facts and discussion, it is evident beyond doubt that the assessee has failed to discharge its onus of proving the identity & creditworthiness of the share applicant and genuineness of the transactions.

vi. Further Provisio 1 to S.68 of the Act mandates as follows:

"provided that where the assessee is a company(not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) The persons, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory."

From the above it is clear that w.r.t. Share application money/Share capital the explanation offered by the assessee shall be deemed to be not satisfactory unless the Share applicants(as per Table-1) also offers an explanation about the nature and source of Rs.70,00,000/-.

In the assessee's case not only the alleged share applicants failed to offer satisfactory explanation but their identity and creditworthiness are also not proved. Further the genuineness of the transaction is also not proved with material evidences..

4.4. In view of the above facts and discussions, the explanation offered by the assessee about the nature and source thereof of Rs.70,00,000/- are not satisfactory in the opinion of the undersigned. Hence Rs.70,00,000/- is charged to tax as the income of the assessee for A.Y.2013-14

However, before the learned CIT(A) it was submitted by the assessee that the assessee had returned the money received from the share applicants.

7.1 However the Ld. CIT(A) has not accepted this contention of the assessee, as mentioned by the Ld. CIT(A) in paragraph 5.2 of his order. It is also the case of the assessee that at that time, the necessary evidences / documents were not produced before the Ld. CIT(A) and therefore there was no factual determination by the concerned authorities.

7.2 Now our attention was drawn to page 11 of the paper book where the details of return of application money was mentioned. The details furnished by the assessee are as under :

S.No	Name of the party	Address	PAN	Amount Paid	Cheque No.	Cheque Date	Bank Details
1	K.Praveen Kumar S/o K.Mallikarjun Rao	H.No. 63-48, Chidambar Rao Street, Kurnool - 1	AICPK6851H	5,00,000	234655	10-06-2014	SBH,Kurnool A/C No. 52081846383
2	K.Lakshmi W/o K.Praveen Kumar	H.No. 63-48, Chidambar Rao Street, Kurnool - 1	BIYPK2673L	5,00,000	234657	10-06-2014	SBH,Kurnool A/C No. 52081846383
3	M.Sasikala W/o M.V.Kumar Swamy	Plot No. 401, Royal Towers, Prakash Nagar , Kurnool-1	AJTPM5661K	10,00,000	234656	10-06-2014	SBH,Kurnool A/C No. 52081846383
4	K.Srinivasulu S/O K. China Venkata Swamy	Plot No. 203B, Royal Towers, Prakash Nagar , Kurnool-1	AAYPK9069A	5,00,000	234653	10-06-2014	SBH,Kurnool A/C No. 52081846383
5	K.Surendra Kumar S/o K. Mallikarjun Rao	H.No. 63-48, Chidambar Rao Street, Kurnool - 1	ASOPK3725G	5,00,000	234654	10-06-2014	SBH,Kurnool A/C No. 52081846383
6	G.Siva Nagamani W/o Subba Rao	H.No. 22-6-30, Maruti Residency, Balaji Nagar, Kurnool-6.	BDEPG7629F	5,00,000	234652	10-06-2014	SBH,Kurnool A/C No. 52081846383
7	Praneeth Gopal S/o Kalyan Gopal	SBI Colony, Near St.Joseph Degree College, Sunkesula Road, Kurnool-1.	AGMPM3897R (PAN of Kalyan Gopal)	5,00,000	94801	17-04-2013	SBH,Kurnool A/C No. 52081846383
8	PR Srinath	230/235, Srinath Building, Sultanpet Circle, Bangalore-53	ALSPS9002K	15,00,062	266912	31-08-2014	SBH,Kurnool A/C No. 52081846383
9	Vani Srinath	230/235, Srinath Building, Sultanpet Circle, Bangalore-53	ALSPS9001L	15,00,062	266913	31-08-2014	SBH,Kurnool A/C No. 52081846383
TOTAL				70,00,124			

7.3 Admittedly, the above said documents shows refund of entire share application money which was neither examined by the A.O. nor by the learned CIT(A), as the fresh document was filed before us along with appeal. In our considered opinion these fresh document/evidence showing the return of the shared application money to the respective applicants are essential to be examined by the lower authorities and factual finding is required to be given. In view of the above we admit document now filed before us and remand back the matter to the file of the lower authority.

7.4 This is a new fact to be verified by the lower authorities and based on the outcome of the examination, a view has to be taken as per the provisions of section 68 of the Act. As the assessee had allegedly returned back the share application money in subsequent year which, as per the case of the assessee was accepted by the revenue in the subsequent assessment years and no additions were made thereof.

7.5 In the light of the above discussion, we deem it appropriate to remit the matter back to the file of learned CIT(A) with a direction to verify the details from assessment record for the A.Ys 2013-14, 2014-15 & 2015-16 to find whether Rs.70,00,124 was returned back by the assessee and what was the treatment given by the share applicants in their respective return of income at the time of filing the share application, allotment of shares if any and at the time of receipt of alleged refund amount from the assessee. The same exercises is also required to be carried out in the in the hands of assessee also. Needless to say that if the learned CIT(A) comes to the conclusion that the assessee before us has returned the application money then an appropriate order shall be passed in accordance with law. While doing so, if the learned CIT(A) decided to examine the transaction, then the assessee shall co-operate and file the necessary documents including income tax returns filed, balance sheet, bank account etc. of these persons for a year prior to the receipt of the share application.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27th April, 2022.

Sd/-

(L.P. SAHU)
Accountant Member

Sd/-

(LALIET KUMAR)
Judicial Member

Hyderabad, Dt.27.04.2022.

* Reddy gp

Copy to :

1.	M/s. Gowri Gopal Hospitals Pvt. Ltd., B Block, 8 th Floor, IT Towers, AC Guards, Masab Tank, Hyderabad-500 004
2.	ACIT, Circle 2(2), Hyderabad.
3.	Addl. C I T, Range-2, Hyderabad.
4.	CIT(Appeals)-9 / CIT(A)-2 Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.