

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**

*(Conducted Through Virtual Court)*

**BEFORE S/SHRI PRAMOD M. JAGTAP, VICE PRESIDENT**  
**AND**  
**T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.2967/Ahd/2014 and 3267/Ahd/2015**  
**Assessment Year :2010-11 and 2011-12**

Kamakahya Metal & Iron P. Ltd. Mehta Lodha & Co. Chartered Accountants 105, Sakar-I, Ashram Road Ahmedabad 380 009. PAN : AADCK 8030 E	Vs	ITO, Ward-4(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Revenue by :	Shri P.D. Shah, CA
Assessee by :	Shri Samir Tekriwal, CIT-DR and Shri R.R. Makwana, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **25/03/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **/05/2022**

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:**

These are the appeals filed by the assessee against the order dated 26.8.2014 relating to the Asst.Year 2010-11 and another order dated 14.09.2015 relating to the Asst.Year 2011-12 by the Commisisoner Income tax (Appeals), Ahmedabad.

2. The solitary ground filed by the assessee before this Tribunal is that the ld.CIT(A) has erred in law by confirming the addition of Rs.21,45,95,000/- as unexplained cash credit under section 68 of the Act relating to the A.Y.2010-11 and a similar addition of Rs.3,40,50,000/- for A.Y.2011-12.

3. The brief facts of the case is this that the appellant company filed its e-return of income for A.Y.2010-11 declaring a loss of Rs.16,180/- on 24.9.2010. For the A.Y.2011-12 the assessee filed its return of income showing a loss of Rs.23,458/- on 24.9.2010. The returns were processed under section 143(1) of the Act and thereafter taken for scrutiny assessment. During the assessment proceedings, the assessee was requested to submit details of security premium of Rs.21,24,49,050/- and share application money of Rs.22,45,950/- along with confirmation, name and address, and details of bank statement etc. in this regard. In response, the assessee submitted the details in respect of new share capital and addition in share premium as follows:

<i>Sr. No.</i>	<i>Name of the applicant</i>	<i>Details submitted</i>	<i>Shares</i>	<i>Date of application</i>
1.	<i>I Idea Distributors Pvt. Ltd.</i>	<i>Share application form</i>	<i>6000 5560 7500</i>	<i>13/03/2010 15/03/2010 15/03/2010</i>
2.	<i>Jeen Mjata Suppliers Pvt. Ltd.</i>	<i>Share application form</i>	<i>5985</i>	<i>17/03/2010</i>
3.	<i>Kushmanda Sales (P) Ltd.</i>	<i>Share application form</i>	<i>5000</i>	<i>17/03/2010</i>
4.	<i>Kushmanda Bargain Pvt. Ltd.</i>	<i>Share application form</i>	<i>5000</i>	<i>17/03/2010</i>
5.	<i>Maheshwari Financial Services Pvt. Ltd.</i>	<i>Share application form</i>	<i>8500 3805 9200 3800 4565</i>	<i>19/03/2010 19/03/2010 22/03/2010 12/03/2010 05/03/2010</i>
			<i>29870</i>	

6.	Naina Devi Commerce Pvt. Ltd.	Share application form	9700	15/03/2010
			9400	15/03/2010
			7900	16/03/2010
			8000	16/03/2010
			8000	16/03/2010
			9100	16/03/2010
			9500	16/03/2010
			2000	16/03/2010
			8000	16/03/2010
			9990	16/03/2010
			9990	17/03/2010
			9910	17/03/2010
			9990	17/03/2010
			7.	Navdurga Distributors Pvt. Ltd.
8.	Surya Financial Advisory Pvt. Ltd.	Share application form	9500 9200 9900 28600	15/03/2010 15/03/2010 15/03/2010

4. When the AO issued notices to the parties concerned, the same were returned as “left/Not known” as postal remarks. So the assessee was offered further opportunity to explain share application money received from various parties. In spite of various opportunities, the assessee has not produced any details, therefore, the AO treated the transaction as not genuine, and not explained properly by the assessee, thereby invoking section 68 and added sum of Rs.21,45,95,000/- as unexplained cash credit in the hands of the assessee. Similarly, for the A.Y.2011-12, a sum of Rs.3,40,50,000/- was being added as unexplained cash credit in the hands of the assessee. Aggrieved against the same, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The assessee claimed that the share application money are genuine transaction, wherein proper details of the investors were reflected in the share application itself. So, the addition made by the AO as unexplained investment is not correct in law. The Id.CIT(A) after considering the submissions made by the assessee held that evidence given by the appellant does not serve purpose, as factual inquiry report clearly showed that the parties were not existing at

the given address. It appears that no actual business is being conducted by the companies and these companies existing only on paper in order to facilitate retention of money in the form of accommodation entries from entry to another. The fact that nobody knew the companies at their address or the companies were not found at that address clearly showed that the companies were existing merely on paper, and they were not doing any business at the given address. Their records showed that the appellant company has not done any business; there are transactions except the loan transaction. The observation of the AO regarding *de jure* existence of the company was therefore correct. The assessee relied on the judgment of Hon'ble Apex Court in the case of Lovely Exports P.Ltd. and Stellar Investments Ltd. and the same are not applicable as inquiry made by the department clearly showed that the share applicants were not existing at the given address. In view of the above discussion, the Id.CIT(A) dismissed the appeals filed by the assessee.

5. Aggrieved against the same, the assessee is in appeals before the Tribunal on the solitary ground that the addition made on account of unexplained cash credits under section 68 of the Act is not correct in law. During the course of hearing on 2.2.2022, the Id.counsl for the assessee has advanced his arguments, stating that the issue relating to the addition under section 68 on account of share capital, share premium may be restored to the file of the AO. Since the matter is very old relating to A.Y.2010-11, the assessee is ready to file confirmation from the share-holders and also gave undertaking by way of affidavit that the shareholders are ready to appear before the AO along with documentary evidence to explain that the share capital, share premium amount in terms of section 68. Considering the above submissions, the assessee was given time

of three weeks to file such affidavit-cum undertaking before the Tribunal. During the hearing on 25.3.2022, the ld.counsel for the assessee filed affidavits-cum-undertaking deposed by Somnath Chakraborty, director of Jeen Mata Suppliers P.Ltd., Sanjib Paul, Director of Suryamukhi Financial advisory Pvt. Ltd., Asha Agrawal, Navdurga Distributors P.Ltd., Abhishek Agarwal, Director of Kushmanda Sales P.Ltd., Narottam Sharma, Director of Kushmanda Bargain P.Ltd., Purushotam Agarwal, Director of Maheshwari Financial Services P.Ltd., Annu Sharma, Director of Naina Devi Commerce P.Ltd., Ila Agarwal, Director of Idea Distributors P.Ltd., Santhosh Daima, Director or Harshnath Power Tools & Machine P.Ltd., and Meera Chokhani, Director of Inland Vanijya P.Ltd. wherein concerned parties have explained subscription of shares in assessee's companies, and also confirmed that the so-called directors undertook to submit that whatever further information, details, documentary evidences required by the ld.AO. Further, the parties are ready to explain the subscription of the share-capital, share premium and also ready to prove the identity, genuineness and credit-worthiness for subscription of the above shares. While going through the above affidavit-cum-undertaking, the ld.DR appearing for the Revenue has no objection in setting aside the matter back to the file of the AO by giving one more opportunity to the assessee to explain its case.

6. We have given our thoughtful consideration on the material available on the record, more particularly, affidavit-cum-undertaking given by various investors, whose share application money is being doubted by the AO as not genuine, and added as unexplained income under section 68 of the Act. As investors have come up with this type of affidavit-cum-undertaking, and also ready to produce further information details, documentary evidence before the AO on

the investment made by them and also undertaken by the directors of the investor companies, we deem it fit that the matter be remanded back to the AO for a final opportunity to the assessee to prove genuineness of the transaction of investments made in the assessee-company. Thus, we set aside the order passed by the lower authorities and remand the matter back to the file of AO, to re-consider the affidavit-cum-undertaking and also any relevant documents produced by the assessee or its investors before the ld.AO, within a period of three months from the receipt of this order. Needless to state, as undertaking given by the assessee and investors in the affidavit-cum-undertaking, they should cooperative with the AO by producing all the details, as required by the AO, and help the AO in passing assessment order in accordance with law. With this direction, the appeals filed by the assessee are treated as allowed for statistical purpose.

7. In the result, appeals of the assessee are allowed for statistical purpose.

**Order pronounced in the Court on 11<sup>th</sup> May, 2022 at Ahmedabad.**

**Sd/-  
(PRAMOD M. JAGTAP)  
VICE-PRESIDENT**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 11/05/2022

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad