

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गारत्न, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखासदस्य के समक्ष
**Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member**

आयकर अपील सं./I.T.A. No.758/Chny/2020
निर्धारण वर्ष/Assessment Year: 2012 - 13

The Assistant Commissioner of
Income Tax,
Corporate Circle – 4(2),
Chennai – 600 034.

Vs. M/s. KAG India Private Limited,
No.264/15-1, Sathyanathan Complex,
1st Floor, Velachery Road,
Tambaram East, Chennai – 600 059.
[PAN: AADCK5381Q]

(अपीलकर्ता/Appellant)

(प्रत्यर्थी/Respondent)

अपीलकर्ता की ओर से / Appellant by : Mr. P. Sajit Kumar, JCIT
प्रत्यर्थी की ओर से/Respondent by : Mr. Y. Sridhar, C.A.
सुनवाई की तारीख/ Date of hearing : 22.03.2022
घोषणा की तारीख /Date of Pronouncement : 18.05.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-8, Chennai, dated 21.02.2020 for the assessment year 2012 - 13.

2. The appeal filed by the Revenue is delayed by 116 days in filing the appeal due to outbreak of pandemic COVID-19 and hence, the delay in filing the appeal is condoned and admitted the appeal for adjudication.

3. Facts are, in brief that the assessee is in the business of trading and manufacturing of tiles and filed its return of income for the assessment year 2012-13 on 02.01.2013 declaring an income of ₹.45,34,830/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short] on 25.03.2014. Subsequently, the case was selected for scrutiny under CASS and against statutory notices, the assessee has furnished details. The Assessing Officer has completed the assessment under section 143(3) of the Act on 19.03.2015. In the assessment order, the Assessing Officer has noted that the assessee company has received investments from various companies. When the Assessing Officer has called for confirmation, the AR of the assessee could not furnish the confirmation in respect two companies (1) Sanguine Media Ltd. and (2) IRIS Media Works Ltd. to the tune of ₹.1,00,00,000/- & ₹. 2,80,00,000/- respectively. Hence, the investments from these two companies were treated as unexplained cash credit under section 68 of the Act and accordingly, the Assessing Officer disallowed and brought to tax.

4. On appeal before the Id. CIT(A), the assessee has filed confirmation from the above two companies namely (1) Sanguine

Media Ltd. and (2) IRIS Media Works Ltd. and the Id. CIT(A) forwarded the same to the Assessing Officer calling for remand report vide letter dated 07.10.2016. The Assessing Officer did not reply despite reminders send by the Id. CIT(A) vide his letter dated 07.01.2020. Accordingly, the Id. CIT(A) by his order dated 21.02.2020 decided the appeal on merits. The relevant portion of the Id. CIT(A)'s order is reproduced as under:

5. Decision

5.1 Background facts, assessing officer order and submissions are duly considered.

The appellant clarified that it had accepted the fact that confirmation could not be furnished when called for at the time of assessment but did not agree to the addition per se.

5.2 The appellant filed copy of the confirmation letter from two companies namely - IRIS Networks Limited and Sanguine Media Limited and the same was forwarded to AO calling for the remand report vide this office letter dated 07.10.2016. The AO did not reply the same even despite reminders including my letter dated 07.01.2020. Hence the case is being decided on merits as per the submission made and after considering all material evidences.

*I would also place on record that recently in **ACIT vs Modi Revlon Pvt Ltd.**, the Delhi ITAT held that the Commissioner of Income Tax (Appeals) can admit additional evidences produced by the assessee but if the Assessing Officer does not file remand report even after several reminders, the bench clarified that, in such cases, Rule 46A of the Income Rules would not be treated as violated.*

5.3 It is no less important to note that Rule 46A cannot over ride Principles of Natural Justice. In case evidences surfaced after the assessment orders and the appellant moved with such evidences and produces the same before the CIT (A) which are the vital evidences and touch the roots of the case, the admissibility of such evidences cannot be denied overriding the principles of natural justice.

In the case of Jute Corporation of India Ltd. v. CIT 1991 AIR 241, 1990 SCR Supl. (1) 340 the Hon'ble Supreme Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter, There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer. The Hon'ble Apex Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

In view of the above there is no violation under Rule 46A in this case, in my considered view.

5.4 Unexplained Cash Credit u/s 68

5.4.1 I have carefully considered AO's order and AR submissions. Let me first summarize AO's case. According to AO the fact that the appellant had received Share Capital amounting to Rs. 3,80,00,000/- from the two companies namely, IRIS Networks Limited and Sanguine Media Limited for which no confirmation was received, itself would be a sufficient reason to charge the above Share Capital to tax u/s 68 of the IT Act. On the other hand AR sought to demonstrate that he had more than adequately discharged the onus of proving the identity and credit worthiness of the share of the applicant and also the genuineness of the transaction. Further, the AR argued that there was no provision in the Act under which the said Share Capital could be charged to tax. There was hence no scope for making any addition u/s 68 of the IT Act, as made by AO, as per AR.

5.4.2 In this case the appellant filed the complete details of the name and address of the applicant, its PAN, its bank statement before the AO. These documents have been re-filed before me as part of the compilation. Further, in this case I find that the identity and credit worthiness of the share of the applicant and also the genuineness of the transaction has been established more than adequately. To conclude, having established the identity and credit worthiness of the investor as also the genuineness of the



transaction, I find that there was no scope for invoking the provisions of Section 68 of the IT Act.

5.4.3 At this juncture it would also be important to briefly discuss the recent amendments in Section 68 of the Act. A proviso to section 68 state 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 person, 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: "

In the appellant's case, the assessment year concerned is 2012-13, whereas the first proviso to section 68 was introduced by the Finance Act 2012 w.e.f 01.04.2013. Prior to amendment the only onus contained in section 68 was proving the identity, genuineness and creditworthiness of the entities from whom share application money was received. The present case of the assessee Company falls in the pre-amendment period and, therefore, placing on record name, address, PAN, confirmations and providing that the money was received through banking channel will lead to sufficient compliance with regard to section 68. Thus, addition made and confirmed is bad in law. Reliance is placed on the decision of Hon'ble High Court of Bombay in the case of CIT-1 v.M/s Gagandeep Infrastructure Pvt. Ltd. wherein it was held that the amendment in section 68 is prospective and not retrospective.

*5.4.4 In the case of **Lovely Exports Ltd. (2008) 216 CTR 195 (SC)** it was held that if share application money is received by an assessee from subscribers, whose name are given to Assessing Officer and the same turn out to be bogus, then the revenue is free to reopen their individual assessment in accordance with law. Thus, unlike other credits wherein one has to explain three ingredients viz;- identity, credit-worthiness and genuineness or transactions, the onus on the assessee company is limited while explaining credit in the nature of share capital etc,*

5.4.5 Therefore, considering the totality of the facts and circumstances of the case, I find substance in the argument of Authorised Representative. In view of the same I have no hesitation in holding that the impugned addition

made by invoking the provision of Section 68 of IT Act, 1961 by the AO is not justified in the circumstances. Accordingly, I direct the AO to delete the addition of Rs. 3,80,00,000/- made u/s 68 of Income Tax Act,1961.

*6. In the result the appeal is **allowed**; This Order is passed under Section 250 read with Section 251 of the Act.”*

5. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR strongly supported the order passed by the Assessing Officer and submitted that the assessee was not able to produce confirmation letter before the Assessing Officer and only produced before the Id. CIT(A) and the Id. CIT(A) has simply accepted is contrary to the law. It was further submission that the Id. CIT(A) failed to consider the judgement of the Hon'ble Supreme Court in the case of PCIT v. NRA Iron & Steel (P) Ltd. [2019] 412 ITR 161.

6. On the other hand, the Id. Counsel for the assessee has pointed out that the addition made by the Assessing Officer was only on the ground that the assessee has failed to produce confirmation letter from the creditors and he has not discussed anything else in the assessment order. Therefore, once the assessee has produced the confirmation letter before the Id. CIT(A), the Id. CIT(A) has called for remand report, the Assessing Officer failed to submit the remand report. By considering the confirmation letter as well as explanations submitted by the assessee and considering the facts of the case, the

Id. CIT(A) allowed the appeal of the assessee. He strongly supported the order passed by the Id. CIT(A). The Id. Counsel has also pointed out from the paper book in respect of the confirmation letter issued by IRIS Media Works Ltd., wherein, it was submitted that all the amounts were received from banking channel. It was the submission that the first payment was received on 17.03.2012 for ₹.80,00,000/-, the second payment was received on 21.03.2012 for ₹. 1,00,00,000/- and the third payment was received on 22.03.2012 for ₹.1,00,00,000/-. It was further submission that in so far as amounts received from Sanguine Media Ltd. is concerned, the assessee filed confirmation letter and also amounts received through RTGS on 16.03.2012. It was further submission that the assessee has proved the identity, creditworthiness and source and therefore, it was prayed for confirmation of the order passed by the Id. CIT(A).

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. The case of the assessee is that the assessee has borrowed money from various creditors and in respect of two creditors namely (1) Sanguine Media Ltd. and (2) IRIS Media

Works Ltd., the assessee could not file confirmation and therefore, the Assessing Officer has made addition under section 68 of the Act. Before the Id. CIT(A), the assessee has filed confirmation letters from both the parties and submitted that all the amounts were received through RTGS and addition may be deleted. The Ld. CIT(A) after considering the confirmation letters filed by the assessee and also bank statements filed in the form of paper book, he called the remand report the A.O. The A.O has not responded in respect of remand report called by the Ld. CIT(A). Thereafter, the Ld. CIT(A) after examining the facts, bank statements and also confirmation letters filed by both the creditors, he came to the conclusion that the assessee has proved the identity, creditworthiness, source therefore, addition cannot survive. Accordingly, Ld. CIT(A) deleted the addition. He also relied on the decision of the Hon'ble Supreme Court in the case Lovely Exports Ltd. (2008) 216 CTR 195 (SC).

8. We find that the case of the A.O is that the assessee has not filed information letters therefore, the A.O was made addition u/s. 68 of the Act. The assessee filed confirmation letters from two creditors namely (1) Sanguine Media Ltd. and (2) IRIS Media Works Ltd., in the form of paper book and also bank statements in respect of share application

money received i.e., Rs. 80 Lacs on 17.03.2012, Rs. 1 Crore on 21.03.2012 and Rs. 1 Crore on 22.03.2012. So far as Sanguine Media Ltd., the assessee has received share application money of Rs. 1 Crore on 16.03.2012. The assessee by filing all the details, in our opinion he has discharged burden cost upon him and therefore, the Ld. CIT(A) by calling the remand report from the A.O and the A.O was not responded. We are of the considered opinion that by considering all the facts and circumstances of the case and also by following the judgment of the Hon'ble Supreme Court in the case of Lovely Exports Ltd. (supra), the Id. CIT(A) has rightly deleted the addition made by the A.O.

9. So far as case law relied on by the Revenue in the case of PCIT v. NRA Iron & Steel (P) Ltd. (supra), the Hon'ble Supreme Court has considered the facts of the case that the A.O has made an independent and a detailed enquiry and the field report revealed that the shareholders were either non-existent or lacked creditworthiness. In this case, under those circumstances, the Hon'ble Supreme Court held that the onus to establish the identity of the investor companies was not discharged by the assessee and confirmed the order of the A.O by Hon'ble Supreme Court. In the present case, the assessee has

discharged a burden by proving identity of the creditors, genuineness of the transactions and creditworthiness of the creditors. Therefore, the Ld. CIT(A) by considering all the facts and circumstances of the case, the addition is deleted. Recently, the Hon'ble Bombay High Court in Income Tax Appeal No.1231 of 2017 in the case of PCIT vs. Ami Industries (India) P. Ltd. vide order dated 29.01.2020 has considered the decision of the Hon'ble Supreme Court in the case of PCIT v. NRA Iron & Steel (P) Ltd. (supra), and observed that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and credit worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower authorities, we confirmed the order of the Tribunal. Whereas, in present case, the relevant assessment year is 2012-13, which is pre-amendment period to the first proviso to section 68 of the Act introduced by Finance Act, 2012 w.e.f. 01.04.2013 as well as the assessee has placed on record the name, address, PAN, confirmations and genuineness of the transaction through banking channel, thereby, the Id. CIT(A) has deleted the addition made under section 68 of the Act. Under the above facts and

circumstances, we find no infirmity in the order passed by the Id. CIT(A) and thus, the ground raised by the Revenue is dismissed.

10. In the result, the appeal filed by the Revenue is dismissed

Order pronounced on 18th May, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 18.05.2022

Vm/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy to: 1. ँ पीलर्षी/Appellant, 2. प्रत्यर्षी/ Respondent, 3. आयकर आयुक्त (ं पील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभर्षीय प्रतिनिधि/DR & 6. गर्ष फर्षल/GF.