

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.2916/Ahd/2017
Assessment Year: 2013-14**

Ikshu Infrastructure Pvt. Ltd.,
A-1, Ram Krishna Apartments,
Hirawadi Road,
Mahavir Nagar,
Bapunagar,
Ahmedabad – 380 026.
[PAN – AADCI 0613 B]
(Appellant)

vs. Income Tax Officer,
Ward-2(1)(3), Ahmedabad.

(Respondent)

Appellant by : Shri K. Vishva Padmanabhan &
Shri T. Banusekar, ARs
Respondent by : Shri James Kurian, CIT DR

Date of hearing : 24.05.2022
Date of pronouncement : 24.06.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order dated 20.11.2017 passed by the CIT(A)-2, Ahmedabad pertaining to A.Y. 2013-14.

2. The grounds of appeal are as under:

- “1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessment was completed without complying with statutory requirements of law.

4. *For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that the order of assessment passed by the Assessing Officer is not valid as the same is barred by limitation.*
5. *For that the Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.107,34,78,610/- being share capital received as unexplained cash credit u/s.68.*
6. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 68 is not inviolable in the facts and circumstances of the case.*
7. *For that the Commissioner of Income Tax (Appeals) failed to appreciate the evidences produced by the appellant and the explanations offered by the appellant in support of the claim of share capital from M/s. ETA Star Infrastructure Limited and M/s. Acara Enterprises FZE.*
8. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that shares in the appellant company were issued to M/s. ETA Star Infrastructure Limited in exchange for purchase of shares of another company for M/s. ETA Star Infrastructure Limited.*
9. *For that the appellant objects to the levy of interest u/s.234B of the Income Tax Act.*

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Hon'ble Tribunal may be pleased to

- a) *Quash the order of assessment and/or*
- b) *Delete the addition of Rs.107,34,78,610/- u/s. 68 and/or*
- c) *Pass such other orders as the Hon'ble Tribunal may deem fit."*

3. The assessee is engaged in the business of investment in infrastructure sectors. The assessee company filed its return of income on 26.09.2013 declaring total income of Rs.Nil. The return of income filed by the assessee was processed under Section 143(1) of the Income Tax Act, 1961. Subsequently the case of the assessee was selected for scrutiny and notice under Section 143(2) of the Act dated 03.09.2014 was issued and served to the assessee. As the jurisdiction of the assessee rests with this office, the case of the assessee was received on transfer on 29.06.2015 from ITO, Ward 1(1)(5), Rajkot. On receipt of the case from Rajkot on transfer, notices under section 142(1) dated 19.10.2015 and 05.11.2015 calling for the preliminary details was issued to the assessee. Further, notices under Section 142(1) of the Act were issued to the assessee calling for various details. After taking into

consideration the submissions of the assessee, the Assessing Officer observed that the assessee's authorised share capital during the year under consideration was Rs.130 Crores out of which the issued paid up and subscribed share capital was Rs.129,45,78,610/-. The details are as under :-

<i>Sr. No.</i>	<i>Name of the Shareholder</i>	<i>No. of shares held</i>	<i>Amount in Rs.</i>
1	<i>Dilipkumar Shah</i>	<i>5,000</i>	<i>50,000</i>
2	<i>Prakash Eswanth</i>	<i>5,000</i>	<i>50,000</i>
3	<i>KMC Infratech Limited</i>	<i>2,21,00,000</i>	<i>22,10,00,000</i>
4	<i>ETA Star Infrastructure Ltd.</i>	<i>5,16,13,951</i>	<i>51,61,39,510</i>
5	<i>Acara Enterprises FZE</i>	<i>5,57,33,910</i>	<i>55,73,39,100</i>
	<i>Total</i>	<i>12,94,57,861</i>	<i>129,45,78,610</i>

4. The Assessing Officer made addition/disallowance as unexplained cash credit under Section 68 of the Income Tax Act, 1961 amounting to Rs.107,34,78,610/- as regards to share capital receipts of ETA Star Infrastructure Limited and Acara Enterprises FZE, as the assessee could not prove the identity, genuineness and credit worthiness of the share capital.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that Section 143(2) notice was issued by ITO, Wad-1(2), Rajkot but the other notices were not issued by the jurisdictional Assessing Officer. The Ld AR further submitted that the notice itself becomes bad as the same was not issued by the proper Assessing Officer. The Ahmedabad office does not have proper jurisdiction and the same cannot be rectified under Section 292BB of the Act. The Ld. AR further submitted that the assessment order is based by limitation. The Ld. AR

further submitted that the addition on account of unexplained share capital under Section 68 is not valid as the assessee has proved the identity, creditworthiness and genuineness of the transaction. Ld. AR submitted that there was no application of mind while making this addition as shares are not money as Section 68 will not be applicable in the case of share capital. In fact, there is no credit to the term shares and thus it cannot be treated as unexplained cash. In alternate, the Ld. AR submitted that the Foreign Company confirmation was before the Assessing Officer and thus all the relevant documents should have been verified by the Assessing Officer and for this Limited purpose the matter may be remanded back.

7. The Ld. DR submitted that the notice issued to the assessee was a proper notice as there was change of address and the assessee himself asked for change in jurisdiction. Ld. DR further submitted that the point of limitation cannot be taken into account as the matter was remanded back by the CIT(A) on earlier occasion. Ld. DR further submitted that the assessee failed to furnish details of the parties along with three parameters which has to be fulfilled by the assessee i.e. genuineness, creditworthiness and identity. Ld. DR further submitted that one of the companies is under winding up and thus creditworthiness of that company is in doubt. The DR relied upon the assessment order and the order of CIT(A)

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the jurisdiction after seeing the reply given by the Information Officer to the right to information application. The same appears to be proper and the jurisdiction was properly availed by the Revenue while passing the Assessment Order. Thus, the submission of the Ld. AR is rejected. As regards limitation points, the same also was not explained by the Ld. A.R. at the time of hearing. As relates to addition under Section 68 of the Act the assessee has given certain documents but nowhere there is mention of confirmation and certain documents which were produced by the assessee in the assessment order. It seems that the Assessing Officer has not taken cognisance of the same. It appears that the Assessing Officer while making the addition/disallowance simplicitor stated that the

assessee did not prove identity, creditworthiness and genuineness but has not verified the documents which were presented before him. Therefore, it will be appropriate to remand back this matter to the file of Assessing Officer for proper adjudication and verification of this issue and conclude according to the due process of law. Needless to say that the assessee be given opportunity of hearing by following the principles of natural justice. Thus, appeal of the assessee is partly allowed for statistical purposes.

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

Order pronounced in the open Court on this 24th day of June, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 24th day of June, 2022

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Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad