

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Shri Yogesh Kumar US, Judicial Member

ITA No. 1362/Del/2019 : Asstt. Year : 2012-13

Eduwizrd Infosolutions P. Ltd, (formerly known as Kalyanpur Cements Ltd), 4, Schindia House, Connaught Place, New Delhi	Vs	ACIT, Circle-8(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCE7367C		

**Assessee by : Sh. R. M. Mehta, CA
Revenue by : Sh. Lalit Kishore, Sr. DR**

Date of Hearing: 23.05.2022	Date of Pronouncement: 27.06.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Assessee against the order of the Id. CIT(A)-34, New Delhi dated 27.12.2018.

2. The revenue has raised the following grounds of appeal:-

"1.0 That on the facts and in the circumstances of the case, Ld. CIT (Appeals) was not justified and erred in law in upholding the disallowance of Rs. 7,44,469/- u/s 40(a)(ia) of the Act.

2.0 That on the facts and in the circumstances of the case, Ld. CIT (Appeals) was not justified and erred in law in upholding the addition of Rs. 2,17,00,000/- u/s 68 of the Act by relying on allegations made by the Assessing Officer during the course of assessment proceedings for AY 2014-15, which were not accepted by the CIT(A), who treated the investment as genuine.

3.0 That on the facts and in the circumstances of the case, Ld. CIT (Appeals) was not justified and erred in law in upholding the addition of Rs. 2,17,00,000/- u/s 68 of the Act by disregarding voluminous evidence filed by the assessee to prove identity, creditworthiness and genuineness of the investor and not following the order of the CIT(A) for AY 2014-15."

3. The brief facts of the case are that the assessee company is engaged in the business of providing online tutoring and assignment to help through white board, a text chart and voice communication which creates a real time one to one environment. The assessee filed return of income on 27.11.2012 declaring loss of Rs.1,10,83,236/-. The AO has completed assessment u/s 143(3) vide order dated 10.03.2015 by making disallowance of expenses u/s 40(a)(ia) of the Income Tax Act, 1961 at Rs.7,44,469/- and addition u/s 68 at Rs.2,17,00,000/-. Total assessed loss computed at Rs.1,13,61,233/-.

4. Ground No. 1 pertaining to disallowance u/s 40(a)(ia) has not been pressed before the Id. CIT(A) vide the written submissions dated 05.08.2016 filed by the assessee. Owing to the submissions of the assessee and as per the order sheet entry dated 14.12.2018, the grounds have been dismissed by the Id. CIT(A). Hence, we decline to interfere with the order of the Id. CIT(A).

5. Ground No. 2 pertains to addition on account of share capital u/s 68.

6. During the course of assessment, the AO observed from the audited balance sheet that the assessee company has received

share application money of Rs.2,17,00,000/- from ms/ Shree Ratnakar Invesca Pvt. Ltd., which has shown its address at 26,Chittaranjan Avenue, Kolkata. The entity M/s Shree Ratnakar Invesca Pvt. Ltd. has paid this share application money to the assessee company through Bank of Maharashtra, Kolkata (A/c No 60047644728).On perusal of bank statement of M/s Shree Ratnakar Invesca Pvt. Ltd., the AO observed that as a matter of practice for every debit and almost equal amount of funds are gathered, credited and money deposited in the account was transferred the these amount to M/s Eduwizard Info Solutions Pvt. Ltd. on the same day or within two days.

7. Since, the debit and credit was happening simultaneously in the account, the AO opined that the working of the account showed it to be an account of an entry operator. The AO held that if such corresponding debits and credits are removed, the entity is not left with any financial credit worthiness to make such investment. The AO alleged that all transactions are in round figures which is not possible in any form of business. It was held that the account is extensively used for providing dubious transactions.

8. Further, the AO held that the assessee did not furnish the details of M/s Shree Ratnakar Invesca Pvt. Ltd., copy of ITR of M/s Shree Ratnakar Invesca Pvt. Ltd. and there was no business activity during the year as sales was nil. The AO held that the income from revenue operations of M/s Ratnakar Invesca Pvt. Ltd. was NIL and there was no other business activity during the A.Y 2012-13 and interest was the only scour. On the basis of these sightings, the AO held that the creditworthiness of M/s Shree

Ratnakar Invesca Pvt. Ltd. was not satisfactory and hence made an addition of Rs.2,17,00,000/- to the income of the assessee u/s 68 as unexplained receipt.

9. Aggrieved the assessee filed appeal before the Id. CIT(A).

10. Before the Id. CIT(A), the assessee has contended that they have received share application money of Rs. 2,17,00,000/- from M/s Shree Ratnakar Invesca Pvt. Ltd. To prove the identity, creditworthiness and genuineness of the transactions as per the provisions of section 68, the assessee has filed the confirmation from M/s Shree Ratnakar Invesca Pvt. Ltd., copy of ITR, copy of bank statement, copy of return of allotment of shares filed with ROC in respect of shares issued by the assessee and copy of balance sheet of the assessee for the FY 2011-12 and 2012-13. The assessee has also filed the copy of the assessment order 2014-15 and CIT appeal order for the AY 2014-15, in which CIT appeal has allowed the appeal of the assessee on the similar issue. The party whom the share application money was received also the same.

11. The relevant part of the order of the Id. CIT(A) for the A.Y. 2014-15 on the issue of share application money received from M/s Shree Ratnakar Inveska Pvt. Ltd. is reproduced as under:

"2.11I have gone through the case law relied upon by the Ld. AR. It is held by Rajasthan High Court that addition of Rs. 65,06,815/- on account of share application money u/s 68 cannot be sustained in the absence of anything to establish that sources of the creditors' deposits flew from the assessee

itself. Further, appellant has proved the sources of its investor.

2.12 In the case of Kamdhenu Steels SLP filed by the department has been dismissed. Therefore, the contention of the AO that identity, genuineness and creditworthiness of the investor is not proved by the assessee is not correct."

12. The Id. CIT(A) categorically held that during the year under consideration, when the AO has raised doubt about the genuineness and creditworthiness of transaction, the assessee has not put any effort to prove the identity, creditworthiness and genuineness of transaction by way of producing the share applicant. The Id. CIT(A) held that filing of the copy of the return, PAN of the Directors, copy of income tax return, certificate of allotment of shares and copy of the bank account of the applicant is not acceptable.

13. The Id. CIT(A) has taken the details from the investigation conducted pertaining to A.Y. 2014-15 and held that especially when the AO asked the assessee to produce the Director of M/s Shree Ratnakar Invesca Pvt. Ltd. for identification, creditworthiness and genuineness of the transaction and the assessee failed to produce the Principal Officer of the shareholder company, the addition could be sustainable. It was held that the assessee shown its inability to produce the Director of applicant company because the distance is more than 1500 KM. The AO has issued commission to DDIT (Investigation), Unit-4, Kolkata, to verify the credentials of the applicant. DDIT has issued summons u/s 131 for the personal appearance to the Principal Officer/Director of the share creditor of the assessee company but

neither any person appeared nor any details submitted. The DDIT reported that credentials of the shareholder is doubtful and lack of identity, creditworthiness and genuineness of the transaction. The AO confronted the report of the DDIT to the appellant, but appellant submitted that M/s Shree Ratnakar Invesca Pvt. Ltd. has nowhere denied having invested in the appellant company. The appellant has also raised the doubt on the investigation made by the DDIT (Investigation), Unit- 4, Kolkata. Thereafter, the AO himself made enquiry in the case of share applicant by holding camp office on 19.12.2016 at DDIT (Investigation), Unit-4, 4th Floor, Aayakar Bhawan, Kolkata. The AO has also deputed his Inspector to visit the premises of the applicant, conducted the necessary enquiry and serve the notice on the premises but no such company / Principal Officer/ Director were found at the given address. It was reported by the Inspector that there was no such company at the building, the address given by the assessee. The fate of the enquiry was confronted to the assessee but appellant failed to prove the identity, creditworthiness and genuineness of transaction of so called shareholder. The Id. CIT(A) held that after making so many efforts in subsequent year to prove the identity of the share applicant it remained unverifiable and unexplained. The Id. CIT(A) held that the assessee has not discharged their primary onus and to offer a lucid, reasonable and acceptable explanation before the Assessing Officer and hence the addition is sustainable.

14. Before us during the argument, the Id. AR primarily submitted that the addition has been confirmed based on the enquiries conducted for the A.Y. 2014-15.

15. We have gone through the order of the Id. CIT(A) for the A.Y. 2014-15 wherein the sources to the lender M/s Shree Ratnakar Invesca Pvt. Ltd. have been examined. The same are as under:

"2.8 The Ld. AO added Rs. 65,06,815/- on account, of share application money received from M/s Shree Ratnakar Invesca Pvt. Ltd. on the ground that it is nothing but the appellant's own income from undisclosed sources. In response to the above, the Ld. AR submitted the following documents to prove the identity, genuineness and creditworthiness of the investors:

- (i) Confirmed statement of account of The Phosphate Co. Ltd. in the books of Shree Ratnakar Invesca Pvt. Ltd.;*
- (ii) Relevant bank statement of The Phosphate Co. Ltd. from where above said funds were received by Shree Ratnakar Invesca Pvt. Ltd.;*
- (iii) Balance Sheet of The Phosphate Co. Ltd. to establish its genuineness and creditworthiness;*
- (iv) Confirmed statement of account of Devendra Finvest & Holding Pvt. Ltd. in the books of Shree Ratnakar Invesca Pvt. Ltd.;*
- (v) Relevant bank statement of Devendra Finvest & Holding Pvt. Ltd. from where above said funds were received by Shree Ratnakar Invesca Pvt. Ltd.;*

Balance Sheet of Devendra Finvest & Holding Pvt. Ltd. to establish its genuineness and creditworthiness;

Relying on all the above stated documents, it was reiterated that:

- (i) *Source of Investment by Ratnakar is refund of loans from two other entities namely - The Phosphate Co. Ltd. and Devendra Finvest & Holding Pvt. Ltd.;*
- (ii) *Bank statement of The Phosphate Co. Ltd. and Devendra Finvest & Holding Pvt. Ltd. would reveal that loan refunded by them to Shree Ratnakar Invcsca Pvt. Ltd. is through bank transfer and the source of such funds are from their normal business activities;*
- (iii) *Balance sheet of The Phosphate Co. Ltd. would reveal that its revenue from operation i.e. its business is Rs. 70.15 crores. This again substantiates the claim regarding its Credit worthiness and genuineness;"*

16. Thus, we find that the Id. CIT(A) has deleted the addition after enquiring into the sources of source. Owing to low tax effect, the issue was not adjudicated by the Tribunal. Hence, the question of genuineness and creditworthiness of the lender has not attained any finality on merits. We have also considered the fact that the assessee has been continuously receiving funds from the same assessee from Shree Ratnakar Invcsca Pvt. Ltd. for the A.Y. 2008-09, A.Y. 2009-10, A.Y. 2010-11, A.Y. 2011-12, A.Y. 2012-13, A.Y. 2013-14 and A.Y. 2014-15. The proceedings of the A.Y. 2014-15 are not concluded on merits. The enquiries conducted by the DDIT(Inv.), Kolkata did not yield any result. The Principal Officers of the lender companies have neither appeared nor submitted any details during the enquiries conducted for A.Y. 2014-15 or any other earlier period. The periods of receipts before 2012-13 were also not examined any time by the revenue. Thus, there is absence of finding of fact to the extent of genuineness and creditworthiness of the lender

company. The AO has completed the Assessment Order based on his experience and perception of the bank account (page 5 of AO) without bringing tangible evidence on record. The Id. CIT(A) has relied upon the investigation conducted in the subsequent years but at the same time did not examine the fact in relation with the relevant years. Thus, the relevant facts pertaining to the correctness and the addition made u/s 68 have not been brought. Reliance is being placed on the judgment of Hon'ble Jurisdictional High Court in the case of Commissioner Of Income Tax Vs. M/S Jansampark Advertising and Marketing (P) Ltd. dated 11 March, 2015 in ITA No. 525/2014. The applicable part of the order to the instant case is as under:

"42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld."

17. Hence, keeping in view, the entirety of the facts of the instant case, we deem it proper to remand the matter to the file of the AO to examine the lender and take a decision in accordance with the provisions of the Act. Needless to say the assessee be given adequate opportunity to furnish all the details as sought by the revenue.

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

Order Pronounced in the Open Court on 27/06/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 27/06/2022

Subodh Kumar, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR