

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 75/SRT/2018 (AY 2014-15)

(Hearing in Virtual Court)

M/s Kanamia Aqua Frozen Pvt. Ltd. H No. 1015, Bamanvel, Pahar Falia-Chikhli, District- Navsari. PAN : AAECK 2014 R	Vs	I.T.O., Ward-3, Navsari.
Appellant / assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri Vinod Kumar, Sr-DR
Date of hearing	27.06.2022
Date of pronouncement	27.06.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. Commissioner of Income tax (Appeals)-Valsad, dated 23/11/2017 for assessment year (AY) 2014-15, wherein the assessee has raised following grounds of appeal:-

“1. On facts and circumstances of the case and in law, Id. Assessing Officer has erred in considering share application money received from Resident director as unexplained under Section 68 as a cash credit, Id. CIT(Appeals) has also erred in confirming the same.

2. The appellant craved leave to add, alter, delete, amend or rescind any of the above grounds of appeal.”

2. Brief facts of the case are that assessee is a Private limited company, filed its return of income for the assessment year

(A.Y.) 2014-15 on 29/11/2014 declaring NIL income. The case of the assessee was selected for scrutiny through CASS to examine the issue of large share application money received against un-allotted shares. During the assessment, the Assessing Officer on verification of audited report found that the assessee has shown Rs. 1.10 crores received on account of share application money, pending allotment. The Assessing Officer asked the assessee to furnish complete details of share applicant including to furnish share application money, ledger account, copy of application of the share applicant, ITR acknowledgement, balance sheet and banking details of share applicant to prove the genuineness of transactions. The Assessing Officer recorded that on repeated notices, the assessee furnished printed application form which does not contain date of receipt of application, application number and signature of applicant. The assessee was again asked to furnish complete details and issued show cause notice as to why such receipt should not be treated as unexplained cash credit under Section 68 of the Income Tax Act, 1961 (in short, the Act). The Assessing Officer recorded that neither any representative of

assessee attended the hearing nor furnished any required details. The Assessing Officer in para 6 of assessment order recorded that the assessee received share application money of Rs. 1.04 crore from Shri Ibrahim Kanamia who is Citizen of United Kingdom and Rs. 6.00 lacs from Shri Mahefuzali Hasanali Kanamia. No details or supporting document to prove the identity and creditworthiness of share application and genuineness of transactions were furnished. Further the Assessing Officer held that Shri Ibrahim Kanamia is a resident of United Kingdom. The Assessing Officer treated the said share application money as unexplained cash credit and brought to tax under Section 115BBE of the Act.

3. On appeal before the Id. CIT(A), the assessee submitted that during the assessment, the assessee was asked to produce the evidence in support of share application money. To support the share application money, the assessee furnished copy of passport alongwith bank statement of ICICI bank and NRE Account of its NRI Director Shri Ibrahim Kanamia. Out of total share application money, Rs. 1.04 crore is received from NRI Director. The Assessing Officer made addition of share

application money and added to the income of the assessee by invoking first proviso of Section 68 of the Act. The share application money was received through NRE account with ICICI bank. The Assessing Officer wrongly treated the first proviso of Section 68. During the course of assessment proceedings, the assessee as well as NRI director has offered explained and furnished all material documents. The Assessee further stated that they have furnished identity, creditworthiness and the burden of prove was discharged. The assessee also relied upon on certain case laws.

4. The Id. CIT(A) after considering the submission of assessee, recorded that first proviso is not applicable to Non-resident, is found to be correct. The assessee has submitted copy of bank statement of NRE account of NRI director Shri Ibrahim Kanamia. Thus the source of fund of NRI director cannot be treated as unexplained. The fund received cannot be negated as unexplained, thus deleted the addition to the extent of 1.04 crore.
5. So far as the share application money of Rs. 6.00 lacs is concerned, which was received from Shri Mahefuzali Hasanali

Kanamia, the ld. CIT(A) held that explanation as required by first proviso to Section 68 was not filed before the Assessing Officer which lead to him to make the addition by applying deeming provision. The ld. CIT(A) further held that in case of Resident share applicant, the nature and source of fund is to be furnished to the satisfaction of Assessing Officer. The Assessing Officer has not filed any such explanation or evidence to controvert such findings, therefore, the addition of Rs. 6.00 lacs was affirmed by the ld. CIT(A). Further aggrieved, the assessee has filed the present appeal before the Tribunal.

6. None appeared on behalf of the assessee despite service of notice on the assessee. Perusal of record reveals that a number of adjournments was sought by Shri Sujesh C. Suratwala, CA, on various occasion. We find that an application for withdrawal of authority letter is filed on record on the ground that the assessee is not giving any information to represent the assessee before the Tribunal. We find that this appeal was filed in February, 2018 and more than six adjournments were sought by Shri Sujesh C. Suratwala, CA and now filed application before the Tribunal that the assessee is not giving appropriate

information. We does not appreciate such type of modus operandi adopted by the assessee or his representative. Having left no option we decide to hear the submission of ld. Sr.DR of the revenue and to decide to the appeal on the basis of material available on record.

7. The ld. Sr.DR for the revenue supported the order of the lower authorities and submitted that the assessee is not discharged its onus to prove the identity and creditworthiness of investors and genuineness of transactions. Not a single piece of evidence to substantiate the grounds of appeal has been placed before the Tribunal. The ld. Sr. DR prayed for dismissal of appeal of assessee.
8. We have considered the submission of ld. Sr. DR for the Revenue and have gone through the orders of the lower authorities. We find that the Assessing Officer made addition of unexplained cash credit against the share application money received by the assessee company from Shri Mahefuzali Hasanali Kanamia in absence of documentary evidence to prove the identity and creditworthiness of investor. No such document was filed before assessing officer, the ld. CIT(A), accordingly, in absence of any

evidence, the addition made by assessing officer was confirmed by Id CIT(A). Before us, neither any written submission nor any document is filed to prove the identity and creditworthiness of investor and genuineness of transaction, therefore, we do not find any reason to deviate from the order of Id. CIT(A) which we affirm. In the result, the grounds raised by the assessee is dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 27/06/2022 at the time of hearing of appeal.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 27/06/2022

**Ranjan*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

Sr.P.S/Assistant Registrar, ITAT, Surat