

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.122/RPR/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Income Tax Officer-1(1),  
Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Godriwala Plastics Pvt. Ltd.  
Msana Road, Deopuri,  
Raipur (C.G.)

PAN : AABCG1400C

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nilesh Jain, CA  
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.07.2022

घोषणा की तारीख / Date of Pronouncement : 29.07.2022

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the department is directed against the order passed by the CIT(Appeals)-1, Raipur, dated 01.02.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 30.03.2015 for assessment year 2012-13. Before us the department has assailed the impugned order on the following grounds of appeal:

- “1. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.2,95,00,000/- made by the A.O on account that the credits of share premium and share capital in the name of M/s. Reward Tie-up are not genuine and are unexplained.
2. Whether on facts & circumstances of the case, the CIT(A) is correct in holding that the assessee had discharged onus lies u/s.68 of the Income Tax Act, 1961 in respect of share premium and share capital credited in books of account of the assessee.
3. The order of the Ld. CIT(A) is erroneous both in law and on facts.
4. Any other ground that may be adduced at the time of hearing.”

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing of molded plastic furniture and household plastic goods had e-filed its return of income for the assessment year 2012-13 on 20.08.2012, declaring an income of Rs.2,27,346/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed to have received an amount of Rs.2.95 crore towards share capital and share premium from M/s. Reward Tie-up, a Kolkata based company. On a perusal of the records, it was observed by the A.O that the shareholding of M/s. Reward Tie-up Pvt. Ltd. was with two companies, viz. (i) M/s. Godriwala Real Estate P. Ltd. and (ii) M/s. Godriwala International P. Ltd., sister concerns of the assessee company that had purchased the shares of the aforementioned company from the original subscribers in the year 2010. Statement of Shri Satish Thorani, director of the assessee company was recorded by the AO u/s. 131(1) of the Act. Observing, that Shri Satish Thorani (supra) was also one of the director of the share subscriber company, viz. M/s Reward Tie-up Pvt. Ltd, the AO called upon him to provide details of the credits appearing in the bank account of the aforementioned company from where the subscription of the shares of the assessee company was sourced. However, as Shri. Satish Thorani (supra) failed to come forth with the necessary details, therefore, the A.O holding a conviction that the nature and source of the share capital of the assessee company was not proved, thus, held the aforesaid amount of Rs.2.95 crore as an unexplained cash credit u/s.68 of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). Observing, that Shri Satish Thorani (supra) had furnished the requisite details as were called for by the A.O in the course of the assessment proceedings, the CIT(Appeals) was not persuaded to accept the claim of the A.O that he had failed to furnish the requisite details before him. It was observed by the CIT (Appeals) that not only the share holding pattern of the assessee company was filed in the course of the assessment proceedings, but also the details of the shareholders of the subscriber company i.e. M/s. Reward Tie-up Pvt. Ltd. was furnished by the assessee with the A.O. Apart from that, it was noticed by the CIT(Appeals) that the names of the companies with which M/s. Reward Tie-up had entered into transactions, viz. (i) M/s. Frontier Tradecom Pvt. Ltd.; and (ii) M/s. M.M Real Pvt. Ltd was also provided to the A.O. Also, it was observed by the CIT(Appeals) that the assessee company had during the course of the assessment proceedings furnished with the A.O certain documentary evidences to substantiate the authenticity of its claim of having received share capital from the aforementioned subscriber company, viz. confirmation of account, PAN No., full postal addresses, copies of return of income, bank statement and balance sheet of the aforesaid share subscriber company, viz. Reward Tie-up Pvt. Ltd. It was observed by the CIT(Appeals) that though the “1<sup>st</sup> proviso” to Section 68 of the Act which obligates an assessee company to explain the “nature” and “source” of the

share capital or share premium or share application in the hands of a resident person against whose name it is found credited in its books of account was made available on the statute vide the Finance (Act), 2012 w.e.f. 01.04.2013 and was not applicable to the year under consideration i.e A.Y.2012-13, but despite that the assessee company had duly explained the source out of which the aforesaid share subscriber company, viz. M/s. Reward Tie-up Pvt. Ltd. had made the investment towards share capital/premium. It was, thus, observed by the CIT(Appeals) that the assessee company had not only discharged the primary onus that was cast upon it but had also gone a step further and despite there being no legal obligation cast upon it had also explained the source of source of the subscriber company. On the basis of his aforesaid observations and drawing support from certain judicial pronouncements the CIT(appeals) was of the view that now when the assessee company had duly discharged the onus that was cast upon it as regards proving the identity and creditworthiness of the share subscriber and also the genuineness of the transaction of receipt of share application money, therefore, the amount received by it towards share capital/premium of Rs.2.95 crore could not have been assessed by the AO as an unexplained cash credit u/s.68 of the Act. For the sake of clarity the relevant observations of the CIT(Appeals) are culled out as under:

“2.3 From the above facts it is seen the appellant company has received capital of Rs. 2.95 crores from M/s Reward Tie-up Pvt Ltd. The AO has alleged that in the statement of director Mr. Satish Thourani the financial affairs of M/s Reward Tie-up Pvt Ltd were not properly explained and in view of un-verifiability of sources, the genuineness of share capital is not proven. AO has not elaborated what explanation/information was sought from the director of the company which he failed to furnish/explain and in view of the which the inference was drawn that sources of capital of M/s Reward Tie-up Pvt Ltd was not properly explained. On going through the statement to the director recorded on 26/06/2015 it is found that complete list of share allotments in the appellant company was provided. Going back one step, the details of shareholders of M/s Reward Tie-up Pvt Ltd was also provided in reply to question no. 9. At question no. 25 names of companies with which M/s Reward Tie-up Pvt Ltd had transactions was confirmed. There is no question which was not replied, and all details/information were provided which were asked in the course of the statement. Further the AO has also provided point-wise reply and details to the AO vide letter dated 21/10/2014. This reply runs from page 1 to 26. At point No.7 of this letter the appellant has furnished confirmation accounts in respect of share application, name, PAN, full postal address, ward number, ITR, bank account and balance sheet of share holders. Going one step back the appellant has also explained source of money that M/s Reward Tie-up Pvt Ltd out of which the payment was made to the appellant. As per bank account of M/s Reward Tie-up Pvt Ltd Rs. 25 lakhs was paid to appellant on 09/07/2011. This was out of RTGS received on the same date from M/s Frontier Tradecom Pvt Ltd.. Next a total of Rs. 180 lakhs was received by M/s Reward Tie-up Pvt Ltd from another company M/s M.M. Real Pvt Ltd on 12/07/2001 which was paid to appellant company. The appellant has discharged not only its onus by furnishing the documents mentioned above but also explain source of money received by M/s Reward Tie-up Pvt Ltd from other companies. As per the proviso to Sec. 68 inserted w.e.f. 01/04/2013 the appellant has to satisfy the AO about the source of money in the hands of subscribers of the company. Although this amendment is not applicable for the AY under consideration, still at the instance of the AO these were explained. There is nothing on record to show that after the discharge of onus of the assessee any enquiry has been made by the AO to establish that some or all of the money in the hands of M/s Reward Tie-up Pvt Ltd is not explained. As per Hon'ble Supreme Court in the case of M/s Lovely Export Pvt. Ltd., 216 CTR 195 if the share application money in the hands of appellant is found to be bogus, the department is free to re-open the individual assessment of shareholders. Hon'ble Bilaspur High Court has held in the case of Jagdamba Sponge Pvt Ltd 130 TTJ 494 held that appellant company having produced Income tax assessment particulars of its share applicants before the A.O, the burden cast upon it to prove the identity and genuineness is discharged and no addition u/s 68 can be made. As per a recent judgment of Hon'ble Delhi High Court in the case of CIT Vs Vriandvan Farms Pvt , Ltd ITA No. 71/20015 , ITA No. 72/2015 dated 12/08/2015 it has been held that where revenue has not doubted the identity of share applicants, entire details of the share applicants were made available to the AO including their PAN Nos, confirmations, bank statements, balance sheets and Profit & loss account and the certificate of incorporation etc. and the AO has not undertaken any investigation of the

veracity of the above documents submitted to him, the assessee by producing sufficient documentation discharged its initial onus of showing the genuineness and creditworthiness of the share applicants.”

5. We have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. After giving a thoughtful consideration to the issue in hand, we find that as observed by the CIT(Appeals), and rightly so, now when the assessee company had duly discharged the primary onus that was cast upon it as regards proving the identity and creditworthiness of the share subscriber a/w. genuineness of the transaction, therefore, there was no justification on the part of the A.O to have dubbed the aforesaid amount of Rs.2.95 crore that was received by the assessee company as share capital and share premium as an unexplained cash credit u/s.68 of the Act. At this stage, we may herein observe that though the “first proviso” to section 68 of the Act had been made available on the statute vide the Finance (Act), 2012 w.e.f. 01.04.2013 and is applicable prospectively from 01.04.2014 and thus, was not applicable to the case of the assessee before us, however, the latter in order to dispel all doubts as regards the genuineness of its claim of having received the share capital and share premium from the aforementioned subscriber company viz. M/s.Reward Tie-up Pvt. Ltd. (supra) had even explained the source of source, i.e., the

source out of which the share subscriber company had made the investment in question. On a perusal of the bank accounts of the aforesaid share subscriber company, viz. M/s. Reward Tie-up Pvt. Ltd. (supra) to which our attention was drawn by the Ld. Authorized Representative (for short 'AR') for the assessee, we find that it had made the investment in the assessee company out of the amounts which were received by it from two companies, viz. (i) M/s. Frontier Tradecom Pvt. Ltd.; and (ii) M/s. M.M Real Pvt. Ltd. and not out of any cash deposits in its bank accounts. In absence of any such material having been placed on record which would evidence that the amount received by the aforesaid share subscriber company, viz. M/s. Reward Tie-up Pvt. Ltd was in turn sourced out of amount that was received by it from companies which were involved in facilitating providing of accommodation entries, we are unable to persuade ourselves to subscribe to the unsubstantiated view of the A.O that the amount in question was an unexplained cash credit u/s.68 of the Act. Apart from that, we find that the assessee in order to discharge the primary onus that was cast upon it as regards proving the authenticity of the aforesaid transaction in question had placed on record substantial documentary evidences, viz. copies of the return of income, copy of tax audit report, confirmations, copies of bank statement, copy of return of allotment of shares, copy of share certificates and copy of certificate of incorporation of the share subscriber company viz. M/s. Reward Tie-up

Pvt. Ltd. On the basis of the aforesaid facts we are of a strong conviction that now when the assessee had duly substantiated the identity and creditworthiness of the share subscriber and also the genuineness of the transaction in question, therefore, there was no reason for the AO to hold the amount of Rs.2.95 crore received by the assessee company towards share capital and share premium as an unexplained cash credit u/s.68 of the Act. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) who had rightly vacated the dubbing of the share capital and share premium received by the assessee company as an unexplained cash credit u/s.68 of the Act, uphold his order.

6. In the result, the appeal filed by the revenue being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in the open court on 29<sup>th</sup> day of July, 2022.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 29<sup>th</sup> July, 2022  
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	25.07.2022	Sr.PS/PS
2	Draft placed before author	26.07.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		