

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 5719/Mum/2016**

(Assessment Year 2011-12)

Rikosh Fashions P. Ltd.  
605, Business Classic,  
Chincholi Bunder Road,  
Malad (W)  
Mumbai-400 064

Vs.

DCIT  
Circle 9(3),  
Mumbai-400 007

**(Appellant)**

**(Respondent)**

**PAN No.AACCR3941G**

**Assessee by** : None

**Revenue by** : Shri Rakesh Ranjan, CIT DR

**Date of hearing:** 17.08.2022

**Date of pronouncement :** 26.08.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA no. 5719/M/2015 is filed by Rikosh fashions private limited (the appellant /assessee) for A.Y. 2011-12 against the order of the Commissioner of income tax (appeals) – 21, Mumbai [the learned CIT(A)] dated 14<sup>th</sup> March, 2016 raising the following grounds of appeal:-

*"1. on the facts and circumstances of the case as well as in Law, the learned CIT (A) has erred in confirming the action of learned assessing officer in adding a sum of ₹ 450 lakhs u/s 68 of the income tax act 1961 without considering the facts and circumstances of the case*

*2. on the facts and circumstances of the case as well as in Law, the learned CIT (A) has erred in confirming the action of the learned assessing officer in disallowing a sum of ₹ 451,927/- u/s 14 A of the income tax act 1961 by invoking rule 8D of the income tax rules, 1962 without considering the facts and circumstances of the case.”*

02. Briefly stated the facts of the case shows that that assessee is a company who filed its return of income declaring loss of ₹ 1,30,16,763 on 27<sup>th</sup> September, 2021. During the year under consideration the assessee was engaged in the doing job work for others at the factory located at Tarapur Boisar. The assessee receives yarn from several persons for job work to produce grey fabrics for them. Assessee is also a whole sale trader in grey fabrics. During the year the assessee has received sale application money from nine different parties amounting to ₹ 495 lakhs out of which ₹ 450 lakhs was received during the year at the rate of ₹ 200 per share. The assessee before the assessing officer furnished the return of income, the audited accounts as well as the bank statement of investors of only 25 lakhs. The AO found that the share value of the assessee is not in accordance with the value of the shares that is only ₹ 82 per share, the gross profit ratio of the assessee is meager and assessee has not provided any basis for figure on the basis of which valuation of shares was arrived at. AO was also concerned that for the year under consideration assessee has made a loss of ₹ 13,016,760. Accordingly the learned assessing

officer made an addition to the total income of the assessee being amount received in excess of intrinsic value of shares determined at ₹ 118/- per share and also the remaining amount totaling to ₹ 450 lakhs as unexplained cash credit within the meaning of Section 68 of the Act.

03. During the year assessee has received dividend income of ₹ 303,250/- assessee was asked to explain about the disallowance under Section 14A of the Act. The assessee did not file any response. Therefore the learned assessing officer invoke the provisions of Rule 80 and made a disallowance of ₹ 451,927/-. Accordingly the assessment order was passed on 31/3/2014 under Section 143 (3) of the Act, determining total income of the assessee at ₹ 32,435,164/- against the loss of third in the return of income of ₹ 13,016,763.
04. The assessee aggrieved with that preferred an appeal before the learned CIT(A), who confirmed the addition with respect to the share capital for following reasons:-
- i. During the current year assessee company had issued 3,72,500 shares for a premium of ₹ 190 per share and accordingly receive ₹ 3,725,000 on account of share capital and ₹ 70,775,000 on account of share premium.
  - ii. Assessee is merely doing job work activities
  - iii. The assessee is incurring continuous losses in subsequent two years.



- iv. The investments were disproportionate to their earnings on verification of the financial statement of the investors.
  - v. Meager profits, meager resources in the form of share capital et cetera shows of creditworthiness of the investors.
  - vi. The investment is made by investor company is in same set of common private limited companies run by common persons.
  - vii. Only identity of the investors is established, creditworthiness is questionable and genuineness of the transaction is not established.
05. With respect to the disallowance under Section 14 A of the Act, he directed the learned Assessing Officer to restrict the disallowance as per Rule 8D only with respect to 0.5% of the investments. The reason being that that the funds for investment are out of non-interest-bearing funds and therefore no disallowance with respect to interest could have been made.
06. Assessee aggrieved with that order preferred an appeal before us. The appeal is pending since 2018 there is no appearance from the side of the assessee on many occasions. The notices also been issued to the registered post. Still there is no compliance. On last 9 occasions the notices were issued but assessee did not put any presence. Therefore, we do not have any other option but



to decide the issue on the merits of the case as per information available on record.

07. The learned departmental representative vehemently supported the order of the lower authorities.
08. We have carefully considered the contentions of the learned departmental representative as well as the written submission made by the assessee on 8<sup>th</sup> July, 2019 which is available on record. In its return submission assessee has merely relied upon several judicial precedents however did not produce any evidence with respect to the creditworthiness and genuineness of the depositors. According to the provisions of Section 68 of the Act, it is the duty of the assessee to show if any sum is credited in the books of accounts, the nature and source of such credit is by producing relevant details such as identity of the depositors, creditworthiness of the depositors and genuineness of the transaction of depositing such sum. The assessee has failed to demonstrate the same before the lower authorities. In view of this we do not find any infirmity in the order of the learned that lower authorities in confirming the addition of ₹ 450 lakhs under Section 68 of the Act. Accordingly ground no. 1 of the appeal of the assessee is dismissed.
09. The ground no. 2 is with respect to the disallowance under Section 14 A of the income tax Act. During the year the assessee has received exempt income of ₹ 303,250/-. The learned CIT(A) restricted the addition/disallowance only with respect to the administrative expenditure at the rate



of 0.5% of the average value of investment whereas the AO made the disallowance of ₹ 45,1927 the disallowance confirmed by the learned CIT(A) is ₹ 55,511/-. We do not find any infirmity in the order of the learned CIT(A). Accordingly, his order is confirmed. Ground number 2 is dismissed.

010. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 26.08.2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.08.2022

*Sudip Sarkar, Sr.PS/dragon*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai