

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 1303/DEL/2021 [A.Y 2012-13)

The Dy. C.I.T
Central Circle
Meerut

Vs.

RPG Industrial Products Pvt Ltd
First Floor, Shankar Vihar
Vikas Marg, New Delhi

PAN: AABCR6248 K

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain Adv
Shri Lalit Mohan, CA

Department By : Shri Rajesh Kumar, CIT-DR

Date of Hearing : 29.08.2022

Date of Pronouncement : 31.08.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A), Kanpur dated 25.06.2021 pertaining to Assessment Year
2012-13.

2. The grievances of the Revenue read as under:

"1. On the facts and circumstances of the case and the order suffers from perversity as it failed to adjudicate the case on merit.

2. On the facts and circumstances of the case the Ld. CIT (A) is erred in deleting the quantum addition of Rs.3.42,00,000/- and Rs. 30,00,000/- on the ground that every cash creditor the A.R. has given detailed submission in which apart from source, sources of the source has also been furnished. The A.O. has not pointed out any specific discrepancies in these cash credits and has given only general remark that Sri Ashok Kumar Shah and Sri Sudhir Kumar Garg have given statements with regard to cash credits. However, from the facts of the case it was found that they have not given statements with regard to cash credits of creditors of this year.

3. The Ld. CIT (A) is erred in concluding that the quantum without appreciating the fact that during investigation it was found that the amount was credited in the account of share holder before transfer of the amount and during the course of assessment proceedings the assessee could not produce the evidences of the sources of investment in share despite that ample opportunity was given to the assessee. The assessee did not produce the copy of bank statement of all the share applicant and hence, the creditworthiness of the share applicant could not be verified.

4. On facts and circumstances of the case the Ld. CIT(A) is failed to appreciate the fact that after search action the investigation wing in search proceedings and post search investigation it was found that the assessee company has been provided the bogus unsecured loan through accommodation entries and the company is engaged in the receiving the bogus unsecured loan and bogus share capital through the accommodation entries.

5. On facts and circumstances of the case the Ld. CIT(A) is failed to appreciate the fact that the assessee did not produce all the required papers such as confirmation of share holders and bank account statement at the time of assessment proceedings despite providing ample opportunity to the assessee to produce the same in support of its claim

6. On facts and circumstances of the case the Ld. CIT(A) is failed to appreciate the fact that the assessee did not discharge its onus at the time of the assessment proceedings casted upon it to prove the genuineness of the share capital in allr respect in terms of section 68 of the Act.

7. On the facts and circumstances of the case the Ld. CIT(A) erred in disallowance of agricultural income. The assessee during the course of assessment proceedings did not furnish the evidence of the carrying out any agricultural activities on the land.

8. The order of the Ld. CIT(A) is erroneous in facts of the case and hence it is liable to be set aside"

3. At the very outset, the ld. DR sought time to revise the grounds of appeal.

4. It is the say of the ld. DR that the grievance raised by the Revenue vide Ground No. 2 is not clear. The ld. DR further stated that if the facts mentioned in Ground No. 2 are correct, then he would like to see the statements of Shri Ashok Kumar Shah and Shri Sudhir Kumar Garg so that he can ask the PCIT why the Revenue has filed this appeal.

5. We have given thoughtful consideration to the contentions raised by the ld. DR. We fail to understand how the ld. DR can question the appeal filed by the Revenue on the ground that the appeal was not necessary on the facts of the case.

6. We are of the considered opinion that this ld. DR wants to adjourn for one reason or the other without even understanding the merits of the case. Once an appeal has been filed, even it if is by the Revenue, the same has to be decided on merits of the case and not at the whims and surmises of the departmental representative. We, therefore, decided to proceed. The request of the ld. DR is denied.

7. The orders of the authorities below have been carefully considered. The facts of the case are that original assessment was completed u/s 143(3) of the Act vide order dated 29.01.2015 on total income of Rs. 11,56,118/-. Search and seizure operation was conducted in Dev Priya Group on 01.03.2016. Since the assessee being a part of the group searched by the department, notice u/s 153A of the Act was issued and served upon the assessee, pursuant to which the assessee filed return of income electronically on 27.01.2017 declaring total income of Rs. 11,38,668/- as shown in the original return of income.

8. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee did not carry on any business of trading of waste paper. The Assessing Officer found that there are three directors of the company, namely Shri Rajeev Gupta, Shri Sanjeev Gupta and Ms. Parul Gupta having share holdings of 4.45%, 4.45% and 7.94% respectively.

9. The Assessing Officer found that during the year under consideration, the assessee has received a sum of Rs. 3.42 crores on account of share capital and Rs. 5.37 crores towards share premium.

The company has allotted equity shares worth 5.97 crores, which included opening balance of Rs. 2.55 crores.

10. As a result of search operation, the Investigation team gathered documents and found that Dev Priya Group had been providing bogus unsecured loans, bogus share capital and bogus shares through accommodation entries after accepting cash.

11. The Investigation team had recorded statements of Shri Ashok Kumar Shah and Shri Sudhir Kumar Garg, who admitted in their statements that they had provided accommodation entries in the shape of unsecured loans and bogus share capital to Dev Priya Group after receiving cash from the director of this group and they received commission in lieu of this.

12. The Assessing Officer found that during the year under consideration, the assessee has accepted share capital and share premium of Rs. 6,08,83,241/- from A.S. Papers Pvt, RPG Nirman Pvt Ltd, Wartika Nirman Pvt Ltd, Bhavya RPG Trust, Holly Commercial Pvt Ltd, Krish RPG Trust, Manish Dhruv Trust, Rajendra Prasad and Sons, RPG Varun Trust, Varnika RPG Trust and V.R. Portfolio Pvt Ltd.

13. Copies of confirmations were filed alongwith Income tax returns and copies of their respective bank accounts. The Assessing Officer doubted the credibility of these companies and concluded that the share capital and share premium is unexplained u/s 68 of the Act and made addition of Rs. 6,08,83,324/-.

14. Proceeding further, the Assessing Officer noticed that the assessee has also received share application money of Rs. 7.50 lakhs, Rs. 10 lakhs and Rs. 7.50 lakhs and Rs. 5. Lakhs from Shri Ashok Sachdeva, Shri Paras Sachdeva, Shri Sanjay Kumar and Vijay Lakshmi Enterprises Pvt Ltd respectively and on receiving no plausible explanation, the Assessing Officer made addition of Rs. 30 lakhs

15. The assessee carried the matter before the Id. CIT(A) and strongly contended that in respect of alleged addition of Rs. 6.08 crores, the Assessing Officer has grossly erred in not understanding the facts in their true perspective. It was brought to the notice of the Id. CIT(A) that the assessee has successfully discharged the onus cast upon it by provisions of section 68 of the Act.

16. It was further explained that any adverse inference drawn from the Statement of Shri Ashok Kumar Shah and Shri Sudhir Kumar Garg has been taken care of by the group by taking benefit of Vivad se Vishwas Scheme, 2020 and the impugned transactions are within the group itself and have nothing to do with the statements of Shri Ashok Kumar Shah and Shri Sudhir Kumar Garg.

17. The Id. CIT(A) called for remand report from the Assessing Officer.

18. In his remand report, the Assessing Officer fairly admitted that share capital and share premium do not relate to the concerns about which statements on oath have been given by Shri Ashok Kumar Shah and Shri Sudhir Kumar Garg. The factual categorical findings of the Id. CIT(A) on this aspect read as under:

"From the remand report it is clear that the addition of Rs 6,08,83,324/- which has been made on account of share capital and share premium u/s 68 of IT Act does not relate to the concerns about which statements on oath have been given by Shri Ashok Kumar Shah and Shri Sudhir Garg. Further the submission of the assessee has been examined and it has been found that the amount of Rs. 6,08,83,324/- is not correct amount of face value and premium of

5,97,000 shares issued by assessee, the face value of the same is Rs. 59,70,000/- and premium is Rs. 5,37,30,000/- which sums up Rs. 5,97,00,000/-. Further from the bifurcation of this amount, it has been found that ; 32,00,000/- has been received in A.Y. 2008-09, Rs. 40,00,000/- in A.Y. 2010-11, ; 1,83,00,000/- in A.Y. 2011-12 which sums up to Rs. 2,55,00,000/-. Thus in this year i.e. in A.Y. 2012-13 the total amount received on account of face value of shares and premium on the same adds upto Rs. 3,42,00,000/-. The submission of the AR has been found correct in this regard that without prejudice to the merit of the case, the addition over and above this amount of Rs. 3,42,00,000/- cannot be made u/s 68 of IT Act."

19. In so far as the deletion of addition of Rs. 30 lakhs is concerned, the relevant findings of the Id. CIT(A), based upon the remand report, read as under:

"7.3 In the assessment order the AO has observed that the assessee did not submit copies of confirmations, It has further been observed that the copy of bank account in the case of Shri Ashok Sachdeva has not been filed and on perusal of bank accounts of other persons, it is seen that there are credits in their bank accounts prior to deposits with the assessee. However the AR has filed all the confirmations in the appellate proceedings which were also remanded to the AO and in the remand report no factual finding could be given by successor AO, who only reiterated the

legal observations. In this regard it is note-worthy that the assessee group has availed the Vivad Se Vishwas Scheme 2020 in the year in which cash credits were received from the persons, which'; were related to the statements given by Shri Ashok Kumar Shah and Shri Sudhir Garg.j From the entire episode, it appears that AO's opinion was influenced about all cash creditors, though the statements of Shri Ashok Kumar Shah and Shri Sudhir Garg were not related to all the cash creditors.

7.4 I have carefully perused the assessment order and the details furnished by the AR. in the matter of every cash creditor the AR has given detailed submission. The AO has not pointed out any specific discrepancy in these cash credits and has given only general remark that Shri Ashok Kumar Shah and Shri Sudhir Garg have given statements with regard to cash credits. However from the facts of the case it was found that they have not given statements with regard to cash credits of the creditors of this year. Therefore no adverse inference can be drawn for the cash credits of this year, therefore the assessee succeeds in this ground of appeal and the relief is allowed on merit.

20. From the above findings, it is crystal clear that the cash credits which were received through the alleged accommodation entries from Shri Ashok Kumar Shah and Shri Sudhir Kumar Garg are different from the transactions considered by the Assessing Officer and it is also

factually clear that the quarrel relating to the alleged cash credits through accommodation entries have been settled by the Vivad se Vishwas Scheme, 2020 and the impugned credits in the name of Shri Ashok Sachdeva, Shri Paras Sachdeva, Shri Sanjay Kumar and Vijay Lakshmi Enterprises Pvt Ltd have been successfully explained by the assessee.

21. Considering the facts of the case in totality, in light of the irrelevant averments made by the ld. DR, we do not find any error or infirmity in the findings of the ld. CIT(A) and, therefore decline to interfere with the same.

22. In the result, the appeal of the Revenue in ITA No. 1303/DEL/2021 is dismissed.

The order is pronounced in the open court on 31.08.2022.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 31st August, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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