

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6885/Mum./2018
(Assessment Year : 2007-08)

Marine Cables & Wire Pvt. Ltd.
(Now merged with Apar Industries Ltd.)
Apar House, 5, Corporate Park
Sion-Trombay Marg, Chambur (East)
Mumbai 400 071 PAN – AAACM0713H

..... Appellant

v/s

Income Tax Officer
Ward-4(2)(4), Mumbai

.....Respondent

Assessee by : Shri Malav Sheth
Revenue by : Smt. Smita Nair

Date of Hearing – 23/06/2022

Date of Order – 16/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 31/07/2018, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals)-2, Mumbai, [*"learned CIT(A)"*], for the assessment year 2007-08.

2. In its appeal, the assessee has raised following grounds:

"Being aggrieved by the order of the Hon'ble Commissioner of Income Tax (Appeals) - 2, Mumbai, this appeal petition is submitted on the following

grounds which it is prayed may be considered independently without prejudice to one another;

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs. 5,00,000/- made by the learned AO u/s 68 of the Act, received as Share application money from M/s. Talent Infoways Ltd. The learned CIT(A) erred in not appreciating the submissions made by Appellant to the effect that it has discharged its onus with regards to identity of the party, creditworthiness of the party and genuineness of the transaction. Thus entire additions of Rs 5 lakhs u/s 68 confirmed by the learned CIT(A) is bad-in-law and must be deleted.

2. On the facts and circumstances of the case and in law, the learned CIT(A) NO erred in confirming the addition of Rs.1,46,379/- towards Interest on Term loan with Shamrao Bank which is pertaining to F.Y 2003-04 under the head prior period adjustments. The Learned CIT(A) erred in not appreciating that the Appellant has not claimed the said expenses while calculating the Taxable Income since the appellant has started the computation of business income/ (loss) by considering profit / (loss) before tax and before the said prior period adjustment. Thus, the addition made on account of the same is bad-in-law and must be deleted."

3. The issue arising in ground No. 1, raised in assessee's appeal, is pertaining to addition of Rs. 5,00,000, made by the Assessing Officer ('AO') under section 68 of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of manufacturing and job work of electrical and JFTC cables. For the year under consideration, the assessee e-filed its return of income on 24/09/2007 declaring total loss of Rs. 4,79,624. Information was received from Addl. DIT (Investigation), Mumbai, that during the search action conducted in the case of M/s Mahasagar Securities Private Ltd, it was found that M/s Mahasagar Securities Private Ltd., and its related group of around 36 companies run by Shri Mukesh Choksi, were engaged in business of providing bogus speculation profit/loss, short/long term capital gain/loss, share application

money, commodities profit/loss on commodity trading. It was further found that M/s Talent Infoway Ltd, which was part of the group run by Shri Mukesh Choksi, had provided such accommodation entries to the assessee. Accordingly, notice under section 148 of the Act was issued in the case of the assessee and reassessment proceedings were initiated. During the course of reassessment proceedings, assessee was asked to provide the details of shareholding pattern, justification and calculation of share premium, copy of share application form and board resolution and documentary evidence regarding how the shareholder approached the assessee. In reply, assessee filed name, address, PAN, number of shares allotted, copy of board resolution regarding new share allotment, copy of share application form and return of allotment in Form No.2. But, working of share premium and documentary evidence of approach by the shareholder was not produced. The assessee submitted that it has issued 1000 no. of shares for total consideration of Rs. 5,00,000 (including premium) to M/s Talent Infoways Ltd and the consideration was received by the assessee by account pay cheque. Accordingly, assessee submitted that transaction of issue of share is genuine transaction and provision of section 68 cannot be invoked in the case of the assessee. The AO vide order dated 26/03/2013, passed under section 143(3) r/w 147 of the Act did not agree with the submission of the assessee and treated the share application money of Rs. 5,00,000 as unexplained cash credit under section 68 of the Act, by observing as under:

"6.

The assessee's submission is carefully considered. The same is not accepted. The address given on the share application of M/s. Talent Infoway Ltd. is Santacruz (East), Mumbai-400055. The assessee has not produced the Director of M/s. Talent Infoway Ltd., for supporting its claim. Assessee has also failed to produce copy of Balance sheet of M/s. Talent Infoway Ltd. Assessee has claimed in reply that bank statement of subscriber is filed but it is not correct. As per the reply of assessee dated 28/01/2011 (same is on record) the said shares were sold by M/s. Talent Infoway Ltd. to M/s. Aditya Share Dealing & Trading Pvt. Ltd. on 19/04/2008 for a consideration of Rs.50,000/- Except the share application form and copy of the cheque, nothing is filed by the assessee to establish the share allotted of Rs.5,00,000/- to M/s. Talent Infoway Ltd., is the genuine transaction. The department has evidence by way of statement of Shri Mukesh Choksey that it is a mere accommodation entry. The modus operandi is already described in para no.03 above. The assessee failed to establish credit worthiness of M/s. Talent Infoway Ltd. and genuineness of transaction.

7.

8. In view of the above, the explanation of the assessee claiming genuineness of the receipt of Share Application Money as well as the Securities Premium from M's Talent Infoway Ltd. is not accepted. These transactions and the ensuing utilization of resources of M/s Talent Infoway Ltd. run by Shri. Mukesh Choksi whose admission on Oath proved that these entities were utilized by him only in the business of providing bogus Share Application Money leave no doubt that the assessee had utilized their own resources and of Shri. Mukesh Choksi operated M/s Talent Infoway Ltd. for routing back its undisclosed and unaccounted income of Rs.5,00,000/- (in the form of Share Application Money and Securities Premium) and accordingly, I have no constraint in treating the same as unexplained cash credit u/s 68 of the previous year as per the terms of the said section as the explanations furnished by the AR in connection with the said credit is not satisfactory."

5. In appeal, learned CIT(A) vide impugned order dated 31/07/2018, after taking note of various decisions passed by coordinate benches of Tribunal in the case of Shri Mukesh Choksi and the companies run by him, wherein it was held that such companies and Shri Mukesh Choksi were engaged in the business of providing accommodation entries, dismissed the appeal filed by the assessee on this issue, by observing as under:

"4.2.2.15 From the above facts, it is clear that the appellant has taken an accommodation entry of Rs.5,00,000/- which is in form of share application money credit entry in its books of account and credit worthiness of the creditor is not proved, therefore, respectfully following various judgments of Hon'ble ITAT in case of Mr. Choksi and various business concerns run by him where the Hon'ble Tribunal has held that the only business of Mr. Mukesh Choksi was providing accommodation entries. In instant case since the appellant had obtained accommodation entries to the tune of Rs.5,00,000/- and the addition was also made by the AO to that extent and the various judicial pronouncements strongly authenticates that Shri Mukesh Choksi and a group concerns have provided accommodation entries and the profit element has already been finalized by the highest facts finding authority, the accommodation entry taken by the appellant from the aforesaid parties comes into the sphere of unaccounted income. Therefore, I do not find any reason to interfere with the action of the A.O. and the addition made by the A.O. is sustained. Accordingly, the ground of appeal is treated as disposed off and dismissed."

Being aggrieved, the assessee is in appeal before us.

6. During the course of, learned Authorised Representative ('learned AR') submitted that by furnishing the name, address, PAN number of the share Applicant, the assessee proved the identity of the share Applicant. It was further submitted that the assessee also furnished the board resolution resolving for making investment in the shares of the assessee and also share application form and details of allotment made. The details regarding the cheque payment and credit of the same in the bank accounts of the assessee was also furnished before the lower authorities in order to justify the genuineness of the transaction. The learned AR submitted that the copy of financials of 11 entities were furnished, who had also contributed in share capital of the assessee with premium, however, audited financials of M/s Talent Infoways Ltd could not submitted by the assessee during the reassessment proceedings and therefore, the AO made the addition in respect of share application money received from M/s Talent Infoways Ltd

alleging it to be an unexplained cash credit under section 68 of the Act. It was further submitted that assessee vide various letters asked for copy of the recorded statement of Shri Mukesh Choksi, however, the same was not provided to the assessee and accordingly, Shri. Mukesh Choksi, could not be cross-examined. Learned AR further submitted that the assessee is not a group entity of Shri Mukesh Choksi, and share Applicant is part of Mukesh Choksi group.

7. On the other hand, learned Departmental Representative submitted that Shri Mukesh Choksi and the company is run by him have been held to be an accommodation entry provider. Since, M/s Talent Infoways Ltd., is a part of Shri Mukesh Choksi group, therefore, the transaction of the assessee with the said entity is not genuine.

8. We have considered the rival submissions and perused the material available on record. In the present case, reassessment proceedings were initiated under section 147 of the Act on the basis of information received from investigation wing regarding companies run by Shri Mukesh Choksi, who were found to be engaged in providing accommodation entries. As per the information, M/s Talent Infoways Ltd. is one of the companies of Shri Mukesh Choksi, who had invested in shares of the assessee and paid share application money of Rs. 5,00,000. In order to verify the transaction, the AO sought various details. In reply, assessee furnished the name, address, PAN number, number of shares allotted, board resolution regarding new share allotment. The assessee also submitted that the payment was received by

cheque and credited in the bank accounts of the assessee, which proves the genuineness of the transaction. However, the AO vide assessment order did not accept the submission of the assessee. Further, in absence of director of M/s Talent Infoways Ltd. and also financials of M/s Talent Infoways Ltd, the AO treated the amount of Rs. 5,00,000 as unexplained cash credit under section 68 of the Act. In the present appeal, assessee has filed copy of annual report of M/s Talent Infoways Ltd., for the relevant financial year by way of application seeking admission of additional evidence under Rule 29 of ITAT rules, 1963. In this regard, assessee has submitted that during the course of reassessment proceedings, copy of audited financials of 11 entities, who had also contributed in share capital of the assessee, were submitted. However, since the copy of audited financial of M/s Talent Infoways Ltd. could not be submitted, in absence of same, the AO made the addition of Rs. 5,00,000 received from M/s Talent Infoways Ltd., under section 68 alleging it to be unexplained cash credit by assuming the same as accommodation entry. The assessee, accordingly, prayed for admission of the additional evidence. In view of submission made during the hearing, we admit the aforesaid additional evidence filed by the assessee. We further find that the assessee vide various letters, forming part of the paper book from page No. 57 – 60, has requested the AO to provide the statement recorded of Shri Mukesh Choksi. However, the said statement was not provided to the assessee. Though, in the case of Shir Mukesh Choksi, and the companies run by him it has been established that they were engaged in providing accommodation entries to its beneficiaries, however, the

statement recorded of Shri Mukesh Choksi, was not provided to the assessee despite various requests. Further, it is the plea of the assessee that in absence of the aforesaid statement no cross examination could be done of Shri Mukesh Choksi. Since the additional evidence now filed before us was not examined by the AO and statement on the basis of which the reassessment proceedings were initiated was also not furnished to the assessee despite its requests, we deem it appropriate to remand this issue to the file of the AO for *de novo* adjudication. We direct the AO to provide the copy of statement of Shri Mukesh Choksi or any other person, which has been relied upon by the AO and also to examine the audited financials of M/s Talent Infoways Ltd. to determine the creditworthiness of the said entity. Since this issue is remanded for adjudication afresh, the assessee shall be at liberty to adduce any other evidence to support its case. Further, the AO shall also have the liberty to call for or examine any other documents/detail as may be necessary for complete adjudication of this issue. We order accordingly. As a result, ground No. 1 raised in assessee's appeal is allowed for statistical purpose

9. The issue arising in ground No. 2, raised in assessee's appeal, is pertaining to addition of Rs. 1,46,379, towards interest on long-term loan with Shamrao Bank.

10. The AO vide order passed under section 143 (3) r/w section 147 of the Act disallowed the interest of term loan with Shamrao Bank pertaining to the year 2003-04 debited during the current financial year. In appeal, the

learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue. As per the assessee, the amount of Rs. 1,46,379 towards interest on term loan with Shamrao Bank, which is pertaining to financial year 2003-04, was debited to its profit and loss account under the head prior period adjustments. Since, it forms of adjustments below the line of profit/loss before tax, therefore, the assessee has not claimed the said expenses while calculating the taxable income as the assessee has started the computation of business income/loss by considering profit/loss before tax and before the said prior period adjustment. In this regard, reference was made to the income tax return, computation of total income and profit and loss account of the assessee by the learned AR. After perusal of the aforesaid details, we agree with the submissions of the assessee and accordingly, direct the AO to delete the disallowance of Rs. 1,46,379, towards interest on long-term loan with Shamrao Bank. As a result, ground No. 2, raised in assessee's appeal is allowed.

11. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 16/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 16/09/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai