

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.8698 & 8690/Del/2019

(निर्धारण वर्ष / Assessment Year : 2013-14)

ITO Ward- 14 (1) New Delhi	बनाम/ Vs.	Kalyani Finvest Pvt. Ltd. 1101-1103, Pearl Business Park, Netaji Subhash Place, Pitampura, New Delhi-110034
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACK2732J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Sh. Anuj Garg, Sr. DR
प्रत्यर्थी की ओर से / Respondent by :	Sh. S. B. Nagar, CA Ms. Aabgina Chishti, Advocate

सुनवाई की तारीख / Date of Hearing	12.09.2022
घोषणा की तारीख /Date of Pronouncement	12.09.2022

आदेश/ORDER

PER PRADIP KUMAR KEDIA, AM:

Both the captioned appeals have been filed at the instance of the assessee against the order of the Commissioner of Income Tax-5, New Delhi dated 29.08.2019 concerning AY 2013-14.

2. Both the appeals have arisen from the same cause of action i.e. addition under section 68 of the Act in quantum proceedings in ITA No.8690/Del/2019 and imposition of penalty under section 271 (1) (c) of the Act thereon in ITA No.8698/Del/2019 concerning A.Y.2013-14.

3. We shall first take up appeal in ITA No.8690/Del/2019 concerning quantum additions under section 68 of the Act.

4. The revenue has challenged the relief granted by the CIT(A) on an addition of Rs.9,40,10,000/- made by the AO on account of receipt of share application money by invoking 68 of the Act.

5. The CIT(A) in the first appeal took note of the factual position and returned the finding in favour of the assessee as reproduced here under :-

9. **Ground nos. 2 to 4** relates to the addition u/s 68 of the Act and looking to the nature of addition and grounds of appeal, the same are taken together for adjudication as interlinked.

9.1 It is observed from the assessment order that an addition has been made u/s 68 of the Act amounting to Rs. 9,40,10,000/- towards the share application money received by the appellant from the 16 different parties/persons (their name and amount is already mentioned in the submission above) and identity, creditworthiness and genuineness of transaction was not duly discharged by the appellant and notice u/s 133(6) of the Act, issued to them has been received back un-served.

9.2 It is contended by the appellant, as reproduced earlier that the total amount shown as share application money for Rs. 9,40,10,000/- has been a carried forward balance since last 3-4 years and no fresh amount has either been received or repaid during the year under consideration. It is also stated that there is no business activity during the year under consideration and no significant movement of funds. Therefore, it is requested to delete the addition as no amount received during the year and provisions of section 68 of the Act is not applicable. The appellant substantiated this fact from its

balance sheet and copy of ledger accounts of those share applicants as well as bank account.

9.3 I have gone through the details provided and submissions by appellant. It is observed from the balance sheet of appellant that as far as share application money is concerned, this total amount is shown as outstanding on 31.03.2012 which is same as on 31.03.2013. It is also seen that there is no business activity during the year under consideration. A perusal of bank account and the ledger account of such parties establishes that these funds were received during FY 2008-09 and 2009-10. Since then no further movements in the funds so received and subsequently these share application money stated to have been converted as share capital.

9.4 As per the provisions of section 68 of the Act, it is primary condition that the funds should be found credited in the books of the assessee for the relevant previous year. Further, if no explanation is offered with respect to the source of such funds, then only the addition u/s 68 can be made. In the case of appellant, the share application money has been received by the appellant during FY 2008-09 and 2009-10, which is duly proved from the bank account and the ledger account of the company. Further, it is also reflected in the balance sheet of the appellant that this amount is shown as outstanding for the last day of earlier financial year.

9.5 Therefore in such circumstances where appellant has duly demonstrated that no amount has been received for the year under consideration by the appellant and this amount was shown as outstanding since last 3-4 years, the addition is not tenable as primary condition of section 68 of the Act has not been fulfilled.

9.6 Reliance is also placed to the judgment of Hon'ble Delhi High Court, in the case of CIT vs. Usha Stud Agriculture Farms Ltd. 301 ITR 384 (Del) where it has been held by the Hon'ble Jurisdictional High Court that addition cannot be made u/s 68 of the Act because there was no fresh credit entry

for the previous year under consideration. The facts of the case relied above and the ratio laid down by the Hon'ble High Court is squarely applicable to the case of appellant and hence the addition is not called for.

9.7 Therefore, looking to the facts and circumstances of this case and in law, where it is observed that no fresh credit has been received by the appellant during the year under consideration and respectfully following the above mentioned judgment and other judgments relied upon by appellant as well as considering the discussions in the foregoing paragraphs, it is held that this addition u/s 68 of the Act is not called for and hence, directed to be deleted. These grounds of appeal are allowed.

6. We have heard the rival submissions and perused the orders passed by the AO and the CIT(A). We straightaway notice the factual position that the share application money in question were not received or credited in the financial year 2012-13 relevant to A.Y. 2013-14 in question but such money were admittedly carried forward balance since last 3-4 years. This being so the primary condition for invoking the section 68 is not satisfied at the first instance Section 68 is applicable only qua the credit entries pertaining to the subject Assessment Year. The remedy, if any, lies with the revenue in the year in which the credit were actually received and not in the subsequent year as is the case in the present appeal. The issue is no longer *res-integra* including CIT Vs. Usha Stud Agriculture Farms Ltd. 301 ITR 384 (Del) (2009) and settled in favour of the assessee by plethora of decisions. We thus see no infirmity in the action of the CIT(A) in deleting the additions made by the AO towards entries not found credited in the previous year relevant to A.Y.2013-14 in question. We thus see no warrant to interfere with the first appellate order.

7. In the result, the appeal of the revenue in ITA No.8690/Del/2019 is dismissed.

ITA No.8698/Del/2019 (A.Y.2013-14)

8. The revenue has challenged the deletion of penalty of Rs.3,05,01,668/- under Section 271 (1) (c) of the Act corresponding to the addition of Rs.9,40,10,000/- on account of share application money under Section 68 of the Act challenged in ITA No.8690/Del/2019 (supra).

9. In the light of the discussion in quantum proceedings where the action of the AO was not found tenable on the touchstone of section 68 of the Act, the foundation for imposition of penalty corresponding to such untenable addition could naturally not survive. The CIT(A) thus has rightly reversed and cancelled the penalty in question. We thus, see no reason to interfere with the order of the CIT(A) in the absence of any infirmity therein. We thus, see no merit in the appeal of the revenue.

10. In the result, the appeal of the revenue in ITA No.8698/Del/2019 is also dismissed.

11. In the combined result, both captioned appeals of revenue are dismissed.

This Order was pronounced in the open court on 12/09/2022

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: /09/2022

Neha, Sr. Private Secretary

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR ITAT
NEW DELHI

Date of dictation	13.09.2022
Date on which the typed draft is placed before the dictating Member	14.09.2022
Date on which the typed draft is placed before the Other Member	14.09.2022
Date on which the approved draft comes to the Sr. PS/PS	19.09.2022
Date on which the fair order is placed before the Dictating Member for pronouncement	19.09.2022
Date on which the fair order comes back to the Sr. PS/PS	19.09.2022
Date on which the final order is uploaded on the website of ITAT	19.09.2022
Date on which the file goes to the Bench Clerk	19.09.2022
Date on which the file goes to the Head Clerk	