

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

BEFORE SHRI AMARJIT SINGH (ACCOUNTANT MEMBER) &  
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA 6125/Mum/2019  
(Assessment year 2008-09)

Deputy Commissioner of Income-tax- CC-7(3), Mumbai, Room No.655 Aayakar Bhavan, M.K. Road, Mumbai-400 020	vs	M/s Nishrin Trading and Investment Pvt Ltd, Ground Floor, Sir Navroji Vakil Street, Grant Road, Mumbai-400 007 <b>PAN : AAACN1760J</b>
<b>CROSS OBJECTOR</b>		<b>RESPONDENT</b>

C.O. 42/Mum/2021  
(Arising out of ITA 6125/Mum/2019)  
(Assessment year 2008-09)

Assessee represented by	Shri Rushabh Mehta, CA
Department represented by	Shri Dharam Vir Yadav, Sr AR

Date of hearing	24/06/2022
Date of pronouncement	21/09/2022

**ORDER**

Per Kavitha Rajagopal (JM):

This appeal has been filed by the Revenue as against the order of the Ld.Commissioner of Income-tax (Appeals)-49, Mumbai, dated 30/07/2019 passed under section 250 of the Income-tax Act, 1961 pertaining to assessment year 2008-09.

2. The solitary issue involved in this present appeal is that the Ld.CIT(A) has erred in deleting the addition of Rs.11 crores made by the Assessing Officer on account of unexplained cash credit under section 68 of the Income-tax Act, 1961 without appreciating the fact that the assessee has received share

application money from those entities who were providing accommodation entries and without appreciating the fact that the Hon'ble Supreme Court in the case of Sumati Dayal vs CIT (1995) 214 ITR 207 (SC) has held that genuineness could validly be decided on the ground or principles of preponderance of human possibilities which form a valid ground or parameter for determining the genuineness.

3. The brief facts are that the assessee company has filed its return of income on 14/09/2008 declaring total income of Rs.17,40,372/-. The case of the assessee was reopened vide notice under section 148 dated 16/03/2015 upon information received from the Investigation Wing during search / survey action conducted in the case of Lotus / Kamadhenu / Green Valley group dated 09/10/2014 that the assessee company is one of the beneficiaries of having received share application money of Rs.2 crores and Rs.4 crores from M/s Bhawna Computers Pvt Ltd and M/s Rowland Trexin Pvt Ltd, respectively alongwith other companies totalling Rs. 12 crores for which the details of the parties with the amount of share application money is as below:-

S.No.	Name of the Party	Amount
1	Rowland Trexim P Ltd	4,00,00,000
2	Bhawna Computers P Ltd	2,00,00,000
3	Blue Jayay Airlines P Ltd	5,00,00,000
4	Mohan Highrise Pvt Ltd	20,00,000
5	Progro Stock P Ltd	20,00,000
6	Ujwal Jute and Fibre P Ltd	20,00,000
7	Vinayak Financial Consultant P Ltd	40,00,000
<b>Total</b>		<b>12,00,00,000</b>

The above companies are alleged to be the concerns of Shri Pradeep Poddar. The assessee submitted that the return of income filed under section 139(1) of

the Act to be treated as return filed in compliance to section 148 notice. The Assessing Officer passed the assessment order under section 143(3) r.w.s. 147 of the I.T. Act, 1961 dated 31/03/2016 assessing total income at Rs.12,17,40,370/-. The Assessing Officer added Rs.12 crores credited in the books under the head 'share application money' by treating the same as unexplained cash credit under section 68 of the I.T. Act. Aggrieved by the said order, the assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) deleted the addition pertaining to M/s Rowland Trexin Pvt Ltd, M/s Bhawna Computers P Ltd and M/s Blue Jay Airlines Pvt Ltd to the tune of Rs.11 crores and had confirmed an addition of Rs.1 crore pertaining to the remaining parties.

4. The Revenue is in appeal before us against the order of the Ld.CIT(A) deleting the addition to the extent of Rs.11 crores made by the Assessing Officer and the assessee has filed a cross objection challenging the assessment order passed under section 143(3) r.w.s. 147 on the ground that the reopening is bad in law and that the assessment order ought to have been passed under section 153C of the Act.

5. The Ld.departmental representative for the Revenue contended that the reopening was upon information received from the Investigation Wing pursuant to the search conducted in the case of Lotus / Kamdhenu / Green Valley group and that the alleged parties were said to be accommodation entry providers, based on which the Assessing Officer made addition of the impugned amounts. The Ld.DR brought to our notice the balance-sheet of the assessee enclosed at page 24 of the paper book wherein the share capital of the current year was Rs.30 crores as against the previous year share capital of

Rs.5 lakhs. The Ld.DR also stated that as per the assessee's P&L Account, placed at pages 25 to 29 of the paper book, the net profit shown was only Rs.11,16,674/- and that the assets and liabilities declared by the assessee are also fictitious since the assets have only furniture and no assets of high value. The Ld.DR contended that the charging of premium by the assessee was itself doubtful. The Ld.DR further stated that the Ld.CIT(A) has failed to call for the remand report and has erred in deleting the addition made by the Assessing Officer. The Ld.DR relied on the decision of Nova Promoters (2012) 18 taxmann.com 217 (Del), NRA Iron & Steel (2019) 103 taxmann.com 48 (SC), Sumati Dayal (supra) and relied on the order of the Ld.Assessing Officer.

6. The Ld.AR for the assessee, on the other hand, alleged that the Assessing Officer in his reasons for reopening has erroneously specified the transaction as Rs.20 lakhs and R.40 lakhs from Bhawna Computers Pvt Ltd and Rowland Trexin Pvt Ltd instead of Rs.2 crores and Rs.4 crores. The Ld.AR relied on the decision of the Hon'ble Gujarat High Court in the case of Manzil Diveshkumar Shah (2018) 95 taxmann.com 46 (Guj HC) and the Hon'ble jurisdictional Bombay High Court in the case of HDFC Bank Ltd vs ACIT (2022) 136 taxmann.com 69 (Bom HC). The Ld.AR further stated that the Revenue has not substantiated its stand that the assessee company is not worth for the premium charged. The Ld.AR relied on the decision of Hon'ble Delhi High Court in the case of BPTP vs PCIT (2020) 113 taxmann.com 587 (Delhi HC). The Ld.AR relying on the said decisions contended that mere low investment does not infer that the company is not capable of attracting huge premium. The Ld.AR has further placed his reliance on the decision in the case of Green Infra (2014) 78 taxmann.240. He relied on the decision of the Ld.CIT(A).

7. As a rejoinder, the Ld.DR stated that the error in the reasons to believe is only a typographical error and that the judgements relied upon by the Ld.AR are not applicable to the facts of assessee's case. The Ld.DR further stated that the ultimate beneficiary in the impugned transaction was the assessee and that tax has to be levied in the hands of the assessee.

8. We have heard the rival submissions and perused the materials on record. It is observed that the Assessing Officer has made addition by treating the share application money received from 7 parties as unexplained cash credit under section 68, viz. Rs.2 crores and Rs.4 crores from Bhawna Computers Pvt Ltd and Rowland Trexin Pvt Ltd and Rs.5 crores from Blue Jay Airlines Pvt Ltd and Rs.1 crore from 4 other Kolkata based companies. The Assessing Officer has alleged that the said investor companies are engaged in providing accommodation entries as per the statement of Shri Pradeep Poddar and Shri Anant Sharma. The lower authorities has considered the transactions with each parties separately and has received evidence pertaining to the said transaction from the assessee company. As per the submission of the assessee, M/s Rowland Trexim Pvt Ltd from whom the assessee company has received Rs.4 crores as share application money is said to be an investor company having own funds to the tune of Rs.27.94 crores and that it does not have any secured or unsecured loans, which, according to the assessee concludes that only own funds of the alleged investment companies was availed to grant loan to the assessee company. The assessee further stated that the books of account of both the assessee and the alleged investment company were duly audited with no adverse remark found in the audit report. The assessee contended that the identity, creditworthiness and genuineness of

the transactions were proved before the lower authorities by documentary evidence which was not considered by the Id. Assessing officer. The Assessing Officer has verified the financials of the alleged companies and has come to the conclusion that these companies did not have funds of their own and that the assessee has failed to prove the creditworthiness of the investments made by the said companies in the assessee company. The Assessing Officer has further stated that the assessee has failed to prove the creditworthiness of the concerns that were advancing the loans or investing share application money and also the genuineness of the said transactions. The Assessing Officer has further stated that the assessee has not proved the nature and source of the amounts credits in its books of account much to the satisfaction of the Assessing Officer. The he Ld.CIT(A), on the other hand, has held that the assessee has proved the identity, genuineness and creditworthiness of the impugned investment company, whose net worth was found to be R.27.94 crores and the gross receipts being Rs.3,58,068/-, the profit for the year was Rs.1,01,819/- and the returned income was Rs.1,01,819/- and tax paid was Rs.31,462/-. Considering the same, the Ld.CIT(A) deleted the addition made with regard to the transaction with M/s Rowland Trexim Pvt Ltd to the tune of Rs.4 crores and have also deleted the addition pertaining to M/s Bhawna Computers Pvt Ltd and M/s Blue Jay Airlines Pvt Ltd.

9. It is pertinent to point out that the statement of Shri Pradeep Poddar, who was acting as dummy director in M/s Divine Tradecom Pvt Ltd, M/s Rowland Trexim Pvt Ltd and M/s Bhawna Computers Pvt Ltd was recorded under section 131 of the Act in which he had accepted that he was providing accommodation entries from these companies to Lotus group of companies. It

is also observed that the alleged companies is said to have received share capital from around 126 Kolkatta based companies out of which, the alleged companies are also found to be part of entry operators. The Assessing Officer has also relied on the statement of Shri Anand Sharma, who has also accepted that around 500 companies was created for the purpose of providing accommodation entries. He has also stated that the alleged companies did not have any business activities and are only into providing accommodation entries by way of share capital, unsecured loans, etc. by cash. The Assessing Officer has stated that the assessee was also beneficiary of these fictitious companies, which are found to be operated by Shri Ankit Bagri, Shri Anand Sharma and other Kolkata based entry operators. The financials of these companies were also examined by the Assessing Officer and has concluded that these companies did not have their own funds, which has made the creditworthiness doubtful. Upon perusal of the financials of the assessee company it is observed that the paid up share capital / capital of partner / proprietor for the impugned year was Rs. 30 crores and the same was only Rs.1 lakh in the previous year. This finds place at page 14 of the paper book submitted by the assessee. The assessee has not substantiated the huge difference in the paid up share capital for the impugned year and the previous year. Further to this, at page 24 of the paper book shows Rs.30 crores of share capital when compared to Rs.5 lakhs for the previous year and reserves and surplus of Rs.10,80,00,000/- and Nil for the previous year thereby estimating the net profit of Rs.11,16,674/-. It is also pertinent to point out the details of fixed assets of the assessee company at page 29 of the paper book wherein the assessee has declared goodwill, plant and machinery, electrical fittings, dies,

office equipments, furniture, computers, fax machine, refrigerators, weighing scale and computer signal as its fixed assets which again corroborates the Assessing Officer's stand that the assessee company lacks worth for such huge share premium and share application from the investor company. Upon consideration of the financials of the investor companies from page 77 onwards of the paper book it is evident that the alleged investment companies, though, has furnished the details such as the copy of returns, balance-sheet, profit and loss account, bank statement, etc. On perusal of the said documents, it is evident that there has been no business transaction carried out in the said companies. The transactions in the bank statements does not inspire confidence in us that these were genuine transactions. From the assessment order of M/s Bhawna Computers P Ltd, it is seen that the said company has received share application of Rs.15,08,50,000/- from various parties which was added to the income of the said company under section 68 of the I.T Act as unexplained cash credits. Similar transactions are also found in case of other alleged investor companies. The assessee has not produced any evidence to show the actual business carried out by the alleged companies either before us or before the lower authorities and also no evidence in support of accumulated income has been filed by the assessee. Resultantly, the investment made by these companies in the assessee company lacks trust as to its genuineness and creditworthiness doubtful. The Assessing Officer has relied on the judgement of Hon'ble Supreme Court in the case of Navodaya Castle (P) Ltd vs CIT (2015) 230 Taxman 268 wherein it was held that mere production of certificate of incorporation, PAN and other details are not suffice to prove the identity of subscriber company, which otherwise was seen to be a

paper company. The Assessing Officer has further cast onus upon the assessee to prove the nature and source of receipt to the satisfaction of the Assessing Officer. The Assessing Officer has also relied upon the decision of Hon'ble Calcutta High Court in the case of Precision Finance Pvt Ltd 208 ITR 465 (Cal) and also in the case of the Hon'ble Apex Court in Sumati Dayal vs CIT 214 ITR 801 (sc).

10. The Ld.CIT(A), on the other hand, has deleted the addition pertaining to M/s Rowland Trexim P Ltd, M/s Bhawna Computers P Ltd and M/s Blue Jay Airlines Pvt Ltd totalling Rs.12 crores and has confirmed the addition pertaining to the remaining 4 parties aggregating to Rs.1 crore. It is evidenced that the Ld.CIT(A) has not substantiated her stand in deleting the addition of the three alleged concerns and has held that the assessee has satisfied the three important conditions, i.e. identity of the creditor, genuineness of the transaction and the creditworthiness of the creditor. In our considered opinion, we do not find any justification in the order of the Ld.CIT(A) in deleting the said addition pertaining to the three concerns as these seem to be mere paper companies. It is also pertinent to point out that the statements of Shri Pradeep Poddar and Shri Anand Sharma are not the only reason for making the addition, but the learned Assessing Officer has further gone into enquiring the nature of the impugned transaction. Upon perusal of the financials of the alleged companies, it is also evident that the said companies' financials did not corroborate with the amount of investment that was made by the said companies with the assessee company. The Ld.CIT(A) has erred in deleting the addition made by the Assessing Officer pertaining to three companies and by only sustaining the addition made with regard to four

parties to the extent of Rs.1 crore on the ground that the financials of the four companies did not inspire confidence as to the genuineness of the transaction. Though the assessee has submitted details of the said transaction such as bank statements, profit and loss account, balance-sheet, copy of PAN, etc. the same did not inspire confidence as to the alleged impugned transaction because the credibility of the said concerns are questionable as per the financials of the same. The bank transactions of the investor companies seem to be fictitious and none of these alleged investor companies has shown the source of investment.

11. From the above observation and by placing reliance on the decision of the Hon'ble Apex Court in the case of Sumati Dayal vs CIT (supra) and Navodaya Castle (P) Ltd vs CIT (supra), NRA Iron & Steel (supra), we hold that the order of Ld.CIT(A) is not sustainable and thereby we set aside the order of the Ld.CIT(A) and uphold the order of the Assessing Officer.

12. In the result, the appeal filed by the Revenue is allowed.

**Cross Objection No.42/Mum/2021**

13. The cross objection filed by the assessee challenges the assessment order passed under section 143(3) r.w.s. 147 of the Act as invalid and bad in law.

14. The assessee has challenged the reopening of the assessment on the ground of verifying the genuineness of a particular transaction is to be held invalid and the assessee has relied on the decision of Hon'ble Apex Court in the case of PCIT vs Manzel Dinesh Kumar Shah (2019) 101 taxmann.com 259 (SC). The assessee further challenges the ground of reopening on the basis of search

carried out under section 132 for which the assessee claims that section 153C ought to have been invoked.

15. Having heard the rival submissions and perused the materials on record, it is evident that on the basis of the information received from the Investigation Wing that the assessee company is alleged beneficiary of having received share application money of Rs.2,00,00,000/- and Rs.4,00,00,000/- from M/s Bhawna Computers P Ltd and M/s Rowland Trexim P Ltd, respectively, and from other alleged companies. It is evident that the Assessing Officer had received credible information from the Investigation Wing and also the statement of Shri Pradeep Poddar, director of the said companies has admitted the fact that the said companies were used for providing accommodation entries to various parties. This information received from the Investigation Wing is reliable source for the Assessing Officer to reopen the assessment and this reason is sufficient for the Assessing Officer to have prima facie belief that income has escaped assessment. Upon this reasonable belief, the assessment order under section 143(3) r.w.s. 147 is valid. We find no absurdity in the reopening of the assessment by the Assessing Officer. In this context, the Cross Objection filed by the assessee is to be dismissed.

16. In the result, appeal filed by the Revenue is allowed and the cross objection filed by the assessee is dismissed.

Order pronounced in the open Court on 21st day September, 2022.

Sd/-

sd/-

<b>(AMARJIT SINGH)</b>	<b>(KAVITHA RAJAGOPAL)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated: 21/09/2022

Pavanan

**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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

**ITAT, Mumbai**