

**IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

**ITA No. 749/PUN/2015 : A.Y. 2010-11**

Khandesh Builders Ltd.,  
1<sup>st</sup> floor, Old Bhikamchand Jain Market  
Jalgaon – 425 001  
PAN: AAACK 8222 H : Appellant

Vs.

The Dy. C.I.T. , Circle 1, Jalgaon :Respondent

Appellant by : Shri Sunil Ganoo  
Respondent by : Shri Ramnath P. Murkunde  
Date of Hearing : 22-09-2022  
Date of Pronouncement : 28-09-2022

**ORDER**

**PER SHRI PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from order of the Id. CIT(A)-2 Nashik, dated 12-03-2015 for A.Y. 2010-11 as per the following grounds of appeal.

1. *In facts, circumstances and position of law, Id. CIT-Appeals II, Nashi erred in treating entire off-market share transactions as not genuine transactions and are bogus.*
  - i. *Erred in confirming disallowance of loss of Rs. 2,11,00,000/- in respect of off-market trading in shares;*
  - ii. *Erred in treating profit of Rs. 43,47,956/- on account of off-market trading in shares as bogus and*
  - iii. *Not allowing speculation losses to be carried forward and no set off of speculation loss.*
2. *In facts, circumstances and position of law Id. CIT-Appeals II, Nashik erred in confirming addition of Rs. 2,55,00,000/- on account of shares subscription money received.*
3. *Appellant craves leave to add, alter, amend or substitute to the above grounds of appeal at the time of hearing.*

2. That, with regard to the facts pertaining to Ground No. 1, the Assessing Officer has discussed this issue in his order at para 9 onwards. During the year

under consideration the assessee has shown to have carried out off-market transaction of the shares of EMCO Ltd., with Mr. Suwalal C. Bafna and shown to have incurred losses of Rs. 2,11,00,000/-. The said transaction of purchase and sale were shown to be carried out with certain party i.e., Suwalal C. Bafna. The extract of account of the assessee in the books of account of Mr. Suwalal C. Bafna clearly reveals that the assessee had shown to have purchased shares and sold the same on the same day itself and incurred losses of Rs. 2,11,00,000/- which was ultimately shown to have settled by payment of cheque. Meaning thereby, it was noticed by the Id. A.O first of all, the purchase and sale of the share transaction was carried out only with Mr. Suwalal C. Bafna and that also the shares were purchased and sold on the same day and the assessee thereby incurred loss of Rs. 2,11,00,000/-. The Id. A.O on verification of computation of income of Mr. Suwalal C. Bafna observed that the said party has claimed set off of the speculation gain out of off-market transactions shown to be carried out with the assessee. The assessee and Mr. Suwalal C. Bafna have managed the transaction with a view to siphon the funds of the assessee by showing speculation loss and claim the said income in the hands of Mr. Suwalal C. Bafna as set off against loss incurred by Mr. Suwalal C. Bafna in future and option transactions, without paying taxes. The said transactions shown to be carried out by the assessee and Mr. Suwalal C. Bafna, were therefore, held to be bogus transactions and the speculation loss of Rs. 2,11,00,000/- was added to the income of the assessee as bogus claim. The Id. A.O in his assessment order has also taken cognizance of the ledger account of M/s. Khandesh Builders Ltd., Jalgaon, regarding Mr. Suwalal C. Bafna which is annexed along with the assessment order as Exhibit 1 and also a copy of computation of total income of Mr. Suwalal C. Bafna for A.Y. 2010-11 was also annexed with the assessment

order as Exhibit 2 and were duly confirmed as true copies by one Shri K.R. Bhawsar, Director of assessee-company.

3. The Id. CIT(A) has dealt with this issue from para 10 onwards. The assessee had filed detailed written submissions which were considered by the Id. CIT(A). Thereafter, it is observed vide para 10.2 onwards by the Id. CIT(A) that on perusal of the assessment order, remand report and written submissions of the assessee, it was apparent that off-market share transactions were not only done with Mr. Suwalal C. Bafna but also with other persons i.e., Shri Rajendra Anil Mayur, Shri Sureshkumar Bhikamchand Jain (individual) and Sushil Financial Services Pvt. Ltd. The assessee-company has earned profit of Rs. 43,47,956/- with respect to the transactions with other parties and has incurred loss only in the case of Shri Suwalal C. Bafna. The assessee had submitted before the Id. CIT(A) that the transactions were settled by making payment by account-payee cheque with all the parties and thus loss incurred is actual and not bogus as claimed by the Id. A.O., especially when the Id. A.O has accepted the profit earned in the similar transactions with other parties but disallowed the loss incurred in case of Shri Suwalal C. Bafna. According to the assessee, the transactions of off-market with Mr. Suwalal C. Bafna and others are at par with those in which the profits have been allowed and accepted and hence loss in the case of Mr. Suwalal C. Bafna cannot be said to be bogus loss. That during the course of assessment proceedings, the assessee had furnished the details of off-market trading in shares which were on record of the Department and also appearing as a part of the Id. CIT(A)'s order. Thereafter, the Id. CIT(A) held as follows:

*“10.4 From the perusal of the above discussions and details, the appellant had entered into off market transactions with Shri Rajendra Anil Mayur, Shri Suresh Kumar Chakacha Jain (Individual), M/s Sushil Financial Services Pvt. Ltd. and Shri Suwalal C. Bafna. It is a fact that the AO had considered the appellant's off market transactions with Shri Suwalal C. Bafna only and the other*

*similar transactions were not examined. As submitted by the appellant, the off-market transactions are settled on the same day. From the details furnished and shown above, the purchases and sales took place on the same day. It is also seen that the shares traded are of M/s Reliance Industries Ltd., M/s Alok Industries Ltd. and M/s EMCO Ltd., M/s EMCO Ltd. can be said to be belonging to the appellant's family. Maximum off market trading had taken place in respect of shares of M/s EMCO Ltd. The above three companies are traded in stock exchanges. For instances, M/s Reliance Industries Ltd. is a well-known company in India and its shares are traded in all stock exchanges of India. Therefore, the question to be raised is that why the appellant has to resort to off market trading when the transactions in the said shares can be routed through the recognized stock exchanges of India. There is no difficulty in buying and selling the said shares through the broker. In off market transactions, the purchase and sale prices of the said shares are arbitrarily fixed by the parties involved depending on their requirements. In other words, the purchase and sale prices of the said shares. are so arranged that they have no connection with the prices quoted in the recognized stock exchanges. Off market share transactions are not genuine transactions, but bogus. Such off-market transactions are resorted to in order to take tax benefits by the parties involved which are not acceptable. In my considered view, all the transactions mentioned above are not genuine. Therefore, there will be no gains or loss on this account. Therefore, the AO is directed to remove both the profit of Rs. 43,47,956/- and the loss of Rs. 2,11,00,000/- from the appellant's total income. As such, there will be no speculative gain or loss in respect of the above mentioned off market share transactions. The entire off market share transactions are held to be fictitious and therefore, there will be no speculative loss to be carried forward. If the appellant has any other speculative income other than the above-mentioned speculation income of Rs. 43,47,956/- such income will not be disturbed. In other words, there will be no set off of speculative loss amounting to Rs. 2,11,00,000/- against such income."*

3. In the aforesaid observations of the Id. CIT(A), he has taken cognizance of the transactions entered by the assessee vis-à-vis Mr. Suwalal C. Bafna as well as in respect of transactions with other parties. It was duly observed that the assessee had earned profit of Rs. 43,47,956/- vis-à-vis transactions entered with other parties and loss of Rs. 2,11,00,000/- with regard to the transaction with Shri Suwalal C. Bafna. The other important observation by the Id. CIT(A) which is also in accordance with the observation made by the Id. A.O is that on examination of the copies of ledger account of M/s. Khandesh Builders Ltd., it is clear that the purchase and sale took place on the same day. Maximum of market trading had taken place in respect of shares of M/s. EMCO Ltd., and that the said company, as remarked by the Id. CIT(A) upon due verification that all belonged to the assessee's family. The Id. CIT(A) also observed that the modus operandi of the assessee for going in off-market transactions, the purchase and

sale transactions, prices of the shares can be arbitrary fixed by the parties involved depending upon their requirement. The purchase and sale prices of the transactions of the said shares so arranged that they have no connection with the prices quoted in recognized stock exchange. Therefore, such off-market share transactions are not genuine transactions but bogus as such off-market transactions are resorting to in order to take illegal tax benefit by the parties involved which are not acceptable. Therefore, the Id. CIT(A) confirmed the loss of Rs. 2,11,00,000/- in respect of off-market trading in case of Shri Suwalal C. Bafna and further disallowed the profit of Rs. 43,47,956/- on account of off-market trading of shares with other parties and held to be bogus in the hands of the assessee.

4. At the time of hearing before us, the Id. A.R of the assessee could not explain the mechanism of purchase and sale of shares as demonstrated in Exhibit 1 in the account extract of M/s. Khandesh Builders Ltd. for A.Y. 2010-11 wherein the purchases and sales were made on the same day. We observe from the Exhibit 1 that the shares were purchased on a particular date and were also sold on that very day itself and this peculiarity of transactions continued throughout ultimately giving rise to the loss of Rs. 2,11,00,000/-. The Id. A.R failed to answer the question that when the shares are purchased and again sold on the same day, how come there arises loss as claimed by the assessee of Rs. 2,11,00,000/- with respect to transactions with Mr. Suwalal C. Bafna. It can only be left to the best imagination of the arrangers of such transactions what could be the accounting relevance in respect of such transactions. The Id. A.R only submitted that such addition of loss of Rs. 2,11,00,000/- in the hands of the assessee is not correct since at the time of assessment of Mr. Suwalal C. Bafna the Department has accepted his return of income and that he had paid the taxes

as well. The Id. A.R contended that the additions were made by the Department on mere suspicion without any evidences.

5. Per contra, the Id. D.R vehemently contended that when the Id. A.O confronted the assessee regarding the modus operandi of the purchase and sale of share transactions, the assessee could not provide any answer. From Exhibits 1 and 2, it is clearly evident that the purchase and sale of shares were done on the same day i.e. it was purchased from same party and again sold to the same party on the same day and it continued ultimately claiming loss of Rs. 2,11,00,000/- which is absolutely fabricated, false and untrue. The Id. D.R further high-lighted the background of the assessee as brought out on record by the Id. A.O vide paras 3.1 and 3.2 of the assessment order. The relevant paras are extracted as follows:

*“3.1 The assessee is a limited company incorporated with main object of carrying on the business real estate development as appeared from the record. The certified copy of Memorandum & Articles of Association of the Company is not provided by the assessee. The Company is appeared to have promoted by different persons and during the year under consideration, following persons are shown to be beneficial shareholders of the Company*

1. Jagannath Nathu Wani (46.02%)
2. Mr. Atul S. Jain (48.392%)

*3.2 Surprisingly the ordinary employees of the assessee company i.e., Mr. Gokulchand Birla, Mr. Gopal R. Nagla & Mr. Kishor R. Bhavsar are shown to be directors Company.’ Whereas Mr. @okulchand Birla is shown to be manager of the company, Mr. Gopal Nagla is shown to be clerk of the company and Mr. Kishor Bhavsar is shown to be Jr. accountant of the company drawing yearly salary of Rs. 2,00,000/and 80,823/- respectively. The assessee company is charged with the criminal cases by Municipal Corporation of Jalgaon for its alleged involvement in some illegal contract work. In the Balance sheet the opening work in progress as well as closing work in progress is same at Rs. 33,08,00,508/- at the same time the balances of other accounts i.e. security deposits, construction advance from Jalgaon Municipal Corporation, Mobilization advance from Jalgaon Municipal Corporation, etc, are also same as last year. On careful analysis of the entire affairs of the Company, it clearly appears that due to involvement of the company in the criminal scam that happened in Jalgaon Municipal Corporation, the funds as well as other assets of the Company are systematically siphoned off on account of one and other reasons. It is also a matter of fact that out of the main shareholders Mr. Jagannath Nathu Wani is at present in Police/Judicial custody along with Mr. Suresh Jain i.e. father of Mr. Atul S. Jain. Earlier the address of the company was shown to be at Jalgaon but all of a sudden the company has shifted its office at Mumbai even when there is no any activity or staff, etc. at Mumbai. The assessee vide its letter dated 25/03/2013 has accepted that there is no activity of the Company at Mumbai.”*

6. From the aforesaid paras, it is evident that the assessee-company had involvement in criminal scam that happened in Jalgaon Municipal Corporation and funds as well as other assets of the company are systematically siphoned off on account of one and other reason. These facts were not refuted by the Id. A.R of the assessee.

7. We have perused the case records, analyzed the facts and circumstances and considered the rival contentions. We have also perused the relevant documents placed on record. We find from Exhibit 1 and Exhibit 2 that it is very apparent particularly from Exhibit 1 that the purchase and sale of shares were done on the same day in respect of Mr. Suwalal C. Bafna, which culminated to the huge loss as claimed by the assessee. We therefore, agree with the observations of the revenue authorities that these are fabricated transactions to derive illegal tax benefits. We also observe that there were two-fold transactions on account of off-market trading – one was with respect to Mr. Suwalal C. Bafna where the assessee claimed loss of Rs. 2,11,00,000/- and the other transaction was with respect to other parties from where the assessee earned profit of Rs. 43,47,956/-. Before us, the Id. A.R also could not explain genuinity of these transactions of off-market trading and how the constant purchase and sale of shares on the same day gives rise to such huge loss as claimed by the assessee with respect to Mr. Suwalal C. Bafna. The Id. A.R also could not establish the genuineness of the transactions with respect to the other parties which is also off-market trading in which the assessee earned profit of Rs. 43,47,956/-. The Id. A.R did not have any justification regarding modus of operations entered into by the assessee both in respect of Mr. Suwalal c. Bafna and with respect to the other parties. The common factor was that both were off-market transactions and the possible need for such usage and the genuinity for resorting to such methods could not be explained by the Id. A.R. We are in conformity with the observations

of the revenue authorities that such off-market transactions are resorted to in order to take illegal tax benefit through these bogus and sham dealings. We also do not agree with the submissions of the Id. A.R that the revenue has made the additions without any evidences. This is because the entire case-records were confronted by the revenue authorities to the assessee and the modus of operation regarding these purchases and sales of shares through off-market trading but the assessee could not provide any answer. The Id. A.R before us also admitted that the share transactions entered into by the assessee were off-market transactions and not done through any recognized stock-exchange. The Id. A.R could not submit any reason why such off-market trading was resorted to when the share transactions could genuinely be done through recognized stock-exchange. Therefore, upon examination of the facts and circumstances of this case, we are in conformity with the submissions of the Id. D.R that the modus of operations of the share transactions adopted by the assessee through off-market trading and the corresponding claim of loss of Rs. 2,11,00,000/- and also the profit of Rs. 43,47,956/- are fictitious, fabricated, false and bogus. We do not find any reasons to interfere with the findings of the Id. CIT(A) and the same is upheld. **Ground No. 1 of the appeal of the assessee is dismissed.**

8. In ground No. 2, the assessee is aggrieved by sustaining of addition by the Id. CIT(A) of Rs. 2,55,00,000/ on account of share subscription money received. The Id. A.O has discussed this issue from para 4 onwards of his order as follows:

“4. Issue of Shares of Rs. 15,00,000/- at a premium of Rs. 2,40,00,000/- during the **Year under consideration**

On perusal of the financial statements of the assessee, it was revealed that during the year under consideration, the assessee has shown to have received total amount of Rs. 2.55 crores towards share capital, out of which Rs. 15 lacs was towards equity capital and Rs. 2.40 crores was towards

share premium. The said amount is shown to be received from the following persons :

Sr.No.	Name	Address	Total amount shown to be received	Source of income
1.	Ravindra Kedarsingh Patil	A/P Mehunbara, Tal. Chalisgaon, Dist. Jalgaon	Rs. 25,50,000/-	Agricultural income out of 9 acres of land.
2.	Ramchandra Sadashiv Patil	A/P Godadha, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	No details furnished
3.	Murlidhar Mohan Patil	A/P Kathora, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	No details furnished
4.	Yogesh Subhash Lathi	A/P Bhokar, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	No details furnished
5.	Ramesh Chintaman Dhake	A/P Maimurabad, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	Agricultural income out of 2.25 acres of land.
6.	Ravindra Prahlad Chavan	A/P Kanalda, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	No details furnished.
7.	Ramkrishna Shivram Sapkale	A/P Fakani, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	No details furnished.
8.	Bharat Himmat Borse	A/P Bhadali, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	No details furnished.
9.	Pradip Ankush Patil	A/P Pathari, Tal. Jalgaon, Dist. Jalgaon	Rs. 25,50,000/-	No details furnished.
10.	Shamkant Bhaulal Jadhav	A/P Fupanagari, Tal. Jalgaon, Dist. Jalgaon.	Rs. 25,50,000/-	No details furnished.

- 4.1 I have carefully gone through the documents submitted by the assessee in support of the above credits. The assessee has filed share application forms in respect of in above cases except in the case of Mr. Ramchandra Patil, Mr. Murlidhar Patil & Mr. Yogesh Lathi. Further all the share application forms are filled up by one person. Mr. Ravindra Patil is shown to be resident of Mehunbara, but the documents filed by the assessee shows his residence at Umberkhed. The above persons are not assessed to income tax.' Further the background of the above person is absolutely did not support the above investment shown to have been made by them in the assessee company. All the transactions are shown to be carried out in cash: How the cash of Rs. 25,50,000/- is paid 'by the respective persons on 04/04/2009 along with exact source is not furnished by the assessee. Except Mr Ravindra Patil and Mr. Ramesh Dhake, nobody has even confirmed the transaction. The assessee has asked to issue Summons to said parties. As regards Mr. Ravindra Dhake, his agricultural lands are mortgaged to IDBI Bank in respect of loans taken by him from the said bank and the agricultural lands of Mr. Ramesh Dhake are mortgaged to Mamurabad Primary Co-Op Credit Society as well as Syndicate Bank in respect of loans taken by him from the said bank/society. The most important aspect is that no prudent person would buy the shares of any company at such high premium of Rs. 160/- per share where the "net worth of the company is negative by more than Rs. 20.20 crores. The book value

of share of the company's negative i.e. Rs. (-) 50/- per share. The main activity of the company i.e., construction has come to standstill. The company is blacklisted by almost all authorities. The criminal cases are going on against the company as well as its main shareholders. The A.R. of the assessee vide order sheet entry dated 25/03/2013 was again requested to substantiate the claim of the company of having received Rs. 2.55 crores towards share capital/share premium, but the A.R. of the assessee instead of furnishing the requisite details has reiterated his earlier submission. Therefore, considering the totality of the case and facts on record, it is absolutely clear that the amount of Rs. 2.55 crores shown to be credited under the guise of equity capital as well as premium thereon is unexplained. Hence the same are added to the Total income of the assessee."

9. From the above observations of the Id. A.O., it is evident that the assessee has received from 10 persons towards share capital and it is the same amount of Rs. 25,50,000/- received from each person. There is not even a difference of a single paisa in the money received by the assessee from these persons even though each person is different and are not related to each other. Further it is noted by the A.O that all these transactions were carried out in cash on 04-04-2009 and how this cash of Rs. 25,50,000/- per person was paid, their exact source of income has not been furnished by the assessee. Before the Id. A.O in spite of being given sufficient opportunity, the assessee was unable to substantiate the identity, credit worthiness and the genuineness of the transactions in respect of the amount of Rs. 25,50,000/- received towards share capital money from each of the ten people. The Id. A.O further observed that main activity of the assessee-company was construction which has come to a stand-still. The company is blacklisted by almost all authorities. There are criminal cases going on against the company and also its main shareholders. The assessee could not answer how a prudent shareholder could buy shares of such dying company at a share premium which has no further chance of revival. Since the amount of Rs. 2.55 crores remained unexplained it was added to the total income of the assessee.

10. The Id. CIT(A) has dealt with this issue at paras 15.2 onwards of his order as follows:

*15.2 I have gone through the assessment order, written submissions filed by the appellant and also the remand report. During the year under appeal, the appellant company has increased its share capital by issuing 1,50,000 equity shares having face value of Rs. 10/- and share premium of Rs. 160/- per share and thus there is increase in share capital of Rs. 2,55,00,000/-. During the course of appellate proceedings, the Assessing Officer asked the appellant company to substantiate the same, however, the appellant company could not substantiate the claim in respect of shareholders.*

*In respect of following three shareholders mentioned below, some information were submitted during the course of assessment proceedings.*

- a) Shri Ravindra Kedarsing Patil
- b) Shri Ramesh Chintaman Dhake
- c) Shri Bharat Himmat Borse

*During the course of remand proceedings, the A.O had issued summons to all shareholders, out of which summons issued to 8 share holders were served and two were returned as one of the share holder had died and another's name was not found on the given address. In the remand proceedings, the A.O has confirmed the addition made by him in the assessment proceedings by stating that even in respect of above three shareholders creditworthiness is not established.*

*In respect of shareholder viz. Ravindra Kedarsingh Patil of Umberkhed, the appellant has furnished his confirmation along with 7/12 extracts of agricultural lands and PAN number and further confirmation is confirmed by filing the Affidavit. After filing the affidavit separate application for admission of additional evidence was filed by the appellant company and the copy of the remand report was also submitted with the Dy. Commissioner of Income Tax, Circle- I, Jalgaon. It is stated in the affidavit by this shareholder that his annual income from agricultural activities ranges in between 3,00,000/- to 4,00,0007-. However, no books of accounts are maintained for the agricultural activity and all agricultural produce are stated to be sold locally to the petty merchants. It is further clarified in the affidavit by the affiant that the summons issued by the Assessing Officer in the month December, 2013 was received by him. However, due to his personal work, he was out of station and hence could not attend the Office the Assessing Officer.*

*While making addition in respect of this creditor, the Assessing Officer has stated that this shareholder has mortgaged his property to IDBI Bank for raising the loan and hence his creditworthiness is not proved. It has been clarified by the A.R. in his submission that share application money of Rs. 25,50,000/- was paid on 04-04-2009*

*15.3 I have examined the details filed by the appellant in respect of Shri Rammdra confirming the share subscription, copies of PAN, election~7/12 extracts. Therefore, the appellant had claimed that the identification of this creditor is established. However, the appellant has failed to establish the creditworthiness of the creditor and the genuineness of the transaction. The reasons are as under: -*

*(1) the appellant company is incurring heavy losses and there is no business during the year under consideration. There is no scope for revival of this company in near future due to various factors. No businessman or agriculturist in his right mind will subscribe to the shares of the appellant With Such huge premium of Rs.160/- when the appellant company is dying without any hope of revival. This fact will apply to all the share subscribers/creditors.*

*(2) The said share-holder/creditor is not assessed to tax. In his affidavit, he has claimed owning some 9 acres of agricultural land earning an income of 3,00,000/-*

to @ 4,00,000/- per annum. He does not say whether the said amount is gross or net income. He also claims to be engaged in dairy farming Without any prove. His agricultural and farming income is hardly sufficient to meet the requirements of his family. He is not a person of means to subscribe to shares of a dying company. It does not make any sense **whatsoever**.

(3) The share-holder has paid cash of Rs. 25,00,000/- for the subscription of the shares. He does not have the capacity to have so much cash in hand on 04-404-2009. It appears that he does not have bank account. If he has, he has not disclosed it in the affidavit to prove his creditworthiness. He does not maintain any accounts to show that he has some actual income. All his claims are not backed by any concrete evidence.

(4) Any person can have election card and PAN card without any difficulty. They may prove identity of the holder, but they do not establish his creditworthiness.

(5) When he was summoned by the A.O u/s 131 of the Act, he did not attend. He accepted the fact that summons had been issued to him, but he made excuses of not being available on the particular date given by the A.O. He could have attended when he was available if he was not running away from the law. Therefore, his real identity itself has become doubtful.

In view of the above discussions, I am of the considered view that the appellant has not established the creditworthiness of the creditor and the genuineness of transaction. Therefore, the addition of Rs. 25,00,000/- made by the AO in the **case of Shri Ravindra K. Patil is confirmed.**

15.4 Shri. Ramesh Chintaman Dhake :-During the course of remand proceedings, the Assessing Officer has issued summons to all share holders, out of which summons issued to 8 shareholders were served and two were returned as one of the shareholders had died and another's name was not found on the given address. In the remand proceedings, the Assessing Officer has confirmed the addition made by him in the assessment proceedings by stating even in respect of above three shareholders creditworthiness is not established.

In respect of shareholder viz. Ramesh Chintaman Dhake, the appellant has furnished confirmation along with 7/12 extracts of agricultural lands and PAN number and further confirmation is confirmed by filing the Affidavit. After filing the affidavit separate application for admission of additional evidence was filed by the appellant company and the copy of the remand report was also submitted with the Dy. Commissioner of Income-tax, Cir. 1, Jalgaon. It is stated in the affidavit by this share holder that his annual income from agricultural activities ranges in between Rs. 5,00,000/- to Rs. 6,00,000/-, however, no books of accounts are maintained for the agricultural activities and all agricultural produce are stated to be sold locally to the petty merchants. It is further clarified in the affidavit by the affiant that the summons issued by the A.O in the month of December 2013 was received by him, however, due to his personal work he was out of station and hence could not attend the office of the A.O.

While making addition in respect of this creditor, the .A.O has stated that this shareholder has mortgaged his property to syndicate bank and Mamurdabad Primary Co-op. Credit Society for raising the loan and hence his creditworthiness is not proved.

15.5 In the case of Shri Ramesh Chintamani Dhake, the appellant has filed a copy of the affidavit of the shareholde3r claiming to be an agriculturist having 22 acres of land. As in the case of Shri Ravindra K. Patil, Shri Ramesh C. Dhake has also subscribed to the share of the appellant company at a premium of Rs. 160/- per share of the face value of Rs. 10/-. Shri Ramesh C. Dhake is also not assessed to tax. He is 62 years old having family. He claims to be having agricultural income of Rs. 5,00,000/- to Rs. 6,00,000/- without any evidence. He also claims to have obtained PAN for general purposes, and not for income-tax purposes. He is not maintaining any accounts and records of the agricultural activities. He also does not show that he is maintaining bank account. If he is having any bank account, he is

*not disclosing to the Department. He also claims to have invested in the appellant company from past savings. But he has not provided any prove of his agricultural income and savings. If we consider the expenditure incurred for cultivating the land and family expenses, there is hardly any savings possible in his case. As discussed above, the appellant company is dying without any hope.*

*It appears from the appellant's submission that this shareholder/creditor is aware of this fact. As in the case of Shri Ravindra K. Patil, Shri Ramesh C. Dhake does not comply with the summons issued by the A.O. He makes the same excuse as Shri Ravindra K. Patil that he was not available and could not attend the office of the A.O. This type of explanation for non-compliance is not acceptable. Further, he paid the share application money in cash. The source of this cash of Rs. 2,5,00,000/- is not explained at all. Therefore, I hold that the appellant has failed to establish the creditworthiness of the creditor/shareholder and the transaction is not genuine. The identity itself is a suspect in this case. Thus, the addition of Rs. 25,00,000/- made by the AO is confirmed.*

*15.6 In the case of Shri Bharat Himmat Borse, the summons was issued to him and served on him, but he did not comply with the requirement of law. The appellant has also failed to file confirmation of this creditor/shareholder except 7/12 extract. This proves nothing. The identity of creditor, creditworthiness and genuineness of transaction has not been established in respect of this creditor. No PAN Bank statement, copies of the return of income filed, balance sheet, etc. have been furnished. It is apparent that this creditor had paid the share application money in cash. There is no evidence of having explained sources. In the absence of any supporting evidences to establish the creditor's identity, creditworthiness and genuineness of transaction, the claim of the appellant cannot be supported. Therefore, the addition of Rs. 25,00,000/- is confirmed.*

*15.7 In the case of the remaining seven creditors/shareholders, the appellant has not furnished anything. The said seven creditors have not responded to the summons issued by the A.O. The appellant claims that they are not co-operating and therefore, the appellant is not able to furnish the necessary evidences. This explanation of the appellant is unacceptable. These seven parties have paid cash of Rs. 25,00,000/- each as share application money to the appellant company. Now, they are not co-operating. This is too simple an explanation. They have not filed confirmations, PAN, copies of acknowledgement of returns of income filed, balance sheet, bank statements, evidences of explained sources of the share application money. In other words, the appellant has failed to prove the identity of these seven creditors/shareholders, creditworthiness and the genuineness of the transactions. In the absence of documentary evidences, the appellant's contentions are not accepted. Therefore, the addition made by the AO in respect of the above said seven creditors are confirmed.*

*15.8 In all the ten shareholders/creditors discussed above, I find that they do not have the capacities to pay for the share application money. They do not have explained sources for the cash of Rs. 25,00,000/- each on a particular date i.e. 04-04-2009. The only conclusion that can be drawn is that the sources of the said cash originate from the appellant itself and find its way back by way of share application money received from said ten poor farmers. After considering the facts and circumstances in totality, I find that the contentions of the appellant are not substantiated. The total addition confirmed come to Rs. 2,55,50,000/-."*

11. We have perused the case records, analyzed the facts and circumstances in this case and we observe that the Id. CIT(A) on the aforestated issue has given detailed findings on thorough examination of facts. The Id. CIT(A) has analyzed the requirements of section 68 and has correlated with the facts of the assessee's case. The facts admittedly are

that the assessee-company has increased its share capital by issuing 1,50,000 equity shares having face value of Rs. 10/- and share premium of Rs. 160/- per share and thus there was an increase in the share capital of Rs. 2,55,00,000/-. During the assessment proceedings, the Id. A.O had asked the assessee-company to substantiate the same. However, the assessee could not substantiate the claim in respect of shareholders. However, some informations were provided during the assessment proceedings in respect of following three persons:

- i) Shri Ravindra Kedarsing Patil;
- ii) Shri Ramesh Chintaman Dhake; and
- iii) Shri Bharat Himmat Borse

12. During the course of remand proceedings, the Id. A.O had issued summons to all shareholders, out of which summons issued to eight shareholders were served and two were returned as one of the shareholders had died and another's name was not found on the given address. In the remand proceedings, the Id. A.O has confirmed the addition made by him in the assessment proceedings by stating that even in respect of the above mentioned three shareholders, credit worthiness is not established. With regard to Mr. Ravindra Kedarsing Patil, it is observed by the Department that though in his affidavit it is stated that his annual income from agricultural activities ranges between Rs. 3,00,000/- to Rs. 4,00,000/-, however, no books of accounts are maintained for such agricultural activities and all the agricultural produces are stated to be sold locally to the petty merchants. That, even when the summons were issued by the Id. A.O., it was received by him, however, he had not attended before the A.O., for some reason or the other. The Id. CIT(A) observed that the creditworthiness of the creditor and genuineness of the transactions is not established for the following reasons:

(i) The assessee-company incurred heavy losses and there was no business during the year under consideration and also there was no scope for revival of this company in the near future due to various factors. Therefore, any businessman or agriculturist in his right mind will definitely not subscribe to the shares of the assessee with such huge premium of Rs. 160/- when the assessee-company is dying without any hope of revival;

(ii) The said creditor/shareholder is not assessed to tax. In his affidavit he has claimed owning some nine acres of agricultural land and earning an estimated income of Rs. 3,00,000/- to Rs. 4,00,000/- per annum. However, he was unable to even explain before the Id. CIT(A) whether these amounts were gross or net income. No documentary evidences were filed in this regard.

(iii) He also claims to be engaged in dairy farming for which no evidences have been furnished. His agriculture and farming income is hardly sufficient to meet the requirement of his family and he is not a person of means to subscribe to shares of a dying company. That before the Id. CIT(A), the shareholder has also not given any copy of bank account. He does not maintain any bank accounts to show that he has some actual income. Even if he has but has not disclosed it to the Department. Therefore, creditworthiness is not at all proved. This shareholder has not submitted any evidences before the Id. CIT(A) or before the A.O. to prove genuineness of the transactions and also to prove whether he is a person of sufficient means to invest such a huge amount of cash in the assessee-company which is a

dying company and also the reason for subscribing to the shares of such a dying company. Furnishing of Election Card and PAN card proves the identity only. However, the assessee has failed to establish the creditworthiness of the shareholder and genuineness of the transactions. Accordingly, the addition made by the Id. A.O in case of Shri Ravindra Kedarsing Patil was confirmed by the Id. CIT(A).

13. In the case of Shri Ramesh Chintaman Dhake, the assessee has filed a copy of the affidavit claiming that the shareholder is an agriculturist having 22 acres of land. As like the earlier case of Shri Ravindra Kedarsing Patil, this shareholder also has subscribed to the shares of the assessee-company at a premium of Rs. 160/- per share of the face value of Rs. 10/-. This shareholder is also not assessed to tax. He claims to be having agricultural income of about Rs. 5,00,000/- to Rs. 6,00,000/- per annum without any evidences. He is not maintaining any accounts and records of his agricultural activities. He has also not produced any copy of the bank account before the Id. CIT(A). He claims that he has invested in assessee-company from his past savings but has not given any evidences regarding proof of his agricultural income and savings. Summons were also issued to him but again like the other shareholder, he did not appear before the Id. A.O for some reason or the other. The source of money that he has paid and invested in assessee-company, is not established. He has failed to establish creditworthiness and genuineness of the transactions. The Id. CIT(A) therefore, confirmed the addition as made by the Id. A.O in this case also.

14. In the case of Shri Bharat Himmat Borse, the assessee had only submitted a copy of 7/12 extracts and nothing else. The identity of this creditor, creditworthiness and genuineness of the transactions have not been established. It is also apparent that this creditor has paid share application money in cash. There is also no evidence of having any explained source of income. In absence of any supporting evidences to establish the identity, creditworthiness and genuineness of the transactions, the assessee-company's claim was not accepted by the Id. CIT(A) and the addition was also confirmed as regards this shareholder also.

15. In the case of the remaining seven creditors/shareholders, the assessee has not furnished any evidences/documents. These seven creditors have also not responded to the summons issued by the Id. A.O. It is the claim of the assessee that these seven creditors/shareholders were not co-operating with the assessee and this explanation is absolutely false, untrue and fabricated since these persons have invested huge money in assessee-company and it is beyond human probabilities that the shareholders would not respond to the legal process of the company in which they are themselves financially interested being the investors. The assessee-company has not filed confirmations, PAN cards, copies of acknowledgement of returns of income filed, balance-sheet, bank statement, evidences of explained source of share application money. The assessee has therefore, failed to prove identity, creditworthiness and genuineness of the transactions.

16. At the time of hearing, the Id. D.R vehemently contended that all the transactions are nothing but mere name-lending. The assessee company

has a negative net worth and no prudent person would invest such huge amount in a dying company. This prima facie reason has not at all been explained by the assessee. The Id. A.R also could not come out with plausible explanation in respect to these transactions of shareholders vis-à-vis assessee-company. He has relied on some case-laws such as (i) CIT Vs. Lovely Exports (Pvt) Ltd. (2009) 319 ITR 56 (SC) and (ii) Gaurav Triyugi Singh Vs. ITO (2020) 423 ITR 531 (Bom) which are substantially different on facts from the present case of the assessee. The Id. A.R has also filed in the form of additional evidences before the Tribunal the affidavits of all the shareholders. Simply filing affidavits, does not prove the creditworthiness and genuineness of the transactions. The Id. A.R had no answer that when the main activity of the company which is construction which has come to a stand-still, when most of the authorities have blacklisted the company, when criminal cases are going on against the company and its main shareholders then how a prudent shareholder would invest in shares of such collapsed company. More so, the Id. A.R could not establish genuineness of transactions as to the source of funds paid for share premium by these shareholders on 04-04-2009 in cash of Rs. 25,50,000/- each totaling to Rs. 2,55,00,000/- on account of share subscription money received by the assessee company.

17. We further find that Hon'ble Supreme Court in the case of Pr. CIT Vs. NRA Iron and Steel Pvt. Ltd. (2019) 412 ITR 161 (SC), in the context of section 68 of the Act, held that use of the words "any sum found credited in the books" in section 68 of the Act indicates that the section is widely worded, and includes investments made by the introduction of share capital or share premium. According to settled law, the initial onus is on the

assessee to establish by cogent evidence the genuineness of the transaction, and creditworthiness of the investors u/s 68 of the Act. The principles which emerge where sums of money are credited as share capital or premium are:

1. *The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the Assessing Officer, so as to discharge the primary onus;*

2. *The Assessing Officer is duty bound to investigate the creditworthiness of the creditor or subscriber, verify the identity of the subscriber, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders;*

3. *If the inquiries and investigations reveal the identity of the creditors to be dubious or doubtful, or lack creditworthiness then the genuineness of the transaction would not be established. In such a case the assessee would not have discharged the primary onus contemplated by section 68 of the Act.*

18. Reverting to the facts of the present case, the assessee-company was under legal obligation to prove the genuineness of the transactions, identity and creditworthiness of the creditors and the investors and whether they have financial capacity to make the investments in question. This primary onus of the assessee has not been discharged as contemplated u/s 68 of the Act. The Id. A.O has done his duty by issuing summons and has done detailed examination of the facts and circumstances of the case. However, the assessee-company has not submitted any documentary evidences for ascertaining whether the transactions were genuine or not and neither have established through any materials/documents that the share subscription money received were not bogus or that they were not name-lending entries. In fact, the summons remained unanswered by these shareholders which were issued and served by the Id. A.O. We are therefore, of the considered view that the creditworthiness of the shareholders are not established, the genuineness of the transactions are

also not established and in majority cases the identity of the creditors also not established by the assessee. Thus, there is no reason to interfere with the findings of the Id. CIT(A) in this issue and the additions made by the Id. A.O of Rs. 2,55,00,000/- and as confirmed by the Id. CIT(A) is hereby upheld. **Ground No. 2 of assessee's appeal is dismissed.**

19. Ground No. 3 is general in nature.

20. **In the combined result, appeal of the assessee is dismissed'**

Order pronounced in the open court on 28<sup>TH</sup> this day of September 2022.

SD/-  
**(R.S. SYAL)**  
**VICE PRESIDENT**

SD/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Pune; Dated, this 28<sup>TH</sup> day of September 2022  
Ankam

1. The Appellant.
2. The Respondent.
3. The Pr. CIT- 2, Nashik
4. The CIT(A)-2, Nashik
5. The D.R. ITAT 'A' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary  
ITAT, Pune

**/// TRUE COPY ///**

		Date	
1	Draft dictated on	26-09-2022	Sr.PS
2	Draft placed before author	27-09-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	28-09-2022	Sr.PS/PS
7	Date of uploading of order	28-09-2022	Sr.PS/PS
8	File sent to Bench Clerk	28-09-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		