

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri B.R. Baskaran (AM)

I.T.A. No. 2061/Mum/2022 (A.Y. 2009-10)

Jupiter Infratrade Pvt. Ltd. 402, CTS No. 307 Sunil Enclave, Pareira Hill Road, Sant Tukaram Road Carnac Bunder, Opp Gurunanak Petrol Pump Mumbai-400 099.  PAN : AABCC7699B (Appellant)	Vs.	ITO, Circle 6(1)(3) Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.  (Respondent)
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Assessee by	Shri Vimal Punmiya
Department by	Ms. Indira Adakil
Date of Hearing	04.10.2022
Date of Pronouncement	07.11.2022

ORDER

The assessee has filed this appeal challenging the order dated 13.07.2022 passed by Ld CIT(A), National faceless appeal centre (NFAC), Delhi and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the validity of reopening of assessment and also in confirming the addition of Rs.45.00 lakhs made by the AO u/s 68 of the Act.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of making investments in shares and securities. It filed its return of income for the year under consideration on 21-09-2009 declaring a total income of Rs.91,463/-. The said return of income was processed u/s 143(1) of the Act. Subsequently, the AO received information from the investigation wing that the assessee has taken bogus accommodation entries to the tune of Rs.45.00 lakhs from various persons. Hence the assessing officer reopened the assessment by issuing notice u/s 148 of the Act on

30.03.2016. The assessee filed various details in order to prove the cash credit of Rs.45.00 lakhs received by it during the year under consideration. The AO, without examining those details and without finding fault with those details, rejected them by observing that these companies belong to Praveen Jain Group. Accordingly, the AO assessed the above said sum of Rs.45.00 lakhs as income of the assessee u/s 68 of the Act.

3. Before Ld CIT(A), the assessee challenged the validity of reopening of assessment and also the addition made by the AO. The Ld CIT(A), however, dismissed the appeal and hence the assessee has filed this appeal before the Tribunal.

4. The Ld A.R submitted that the assessing officer has made the addition u/s 68 of the Act. The assessee has discharged the initial onus to prove the cash credits by furnishing all the information to prove the three main ingredients, viz., the identity of the creditor, the credit worthiness of the creditor and the genuineness of transactions. However, the AO did not examine those evidences and was merely followed the report given by the investigation wing. The assessee also asked for an opportunity to cross examine Shri Praveen Kumar Jain, on whose statement the investigation wing had relied upon to draw adverse inferences. However, no such opportunity was given. The assessee also submitted that Shri Praveen Kumar Jain has retracted his statement, but the same was not taken cognizance by the AO. The Ld A.R submitted that the AO has not rebutted the proofs furnished by the assessee to prove the cash credits and hence the AO was not justified in making addition of Rs.45.00 lakhs.

5. The Ld A.R further submitted that the Ld CIT(A) also did not examine the documents furnished by the assessee to prove the cash credits. He simply relied upon following decisions rendered by Hon'ble Supreme court and confirmed the addition:-

- (a) PCIT vs. NRA Iron & Steel (P) Ltd (103 taxmann 48)(SC)
- (b) R.L Traders vs. ITO (100 taxmann 332)(SC)
- (c) NDR Promoters (P) Ltd vs. PCIT (109 taxmann.com 53)(SC)

The Ld A.R submitted that the cash credits received by an assessee is a factual aspect which has to be examined on the basis of facts prevailing in each case. However, the Ld CIT(A) has not examined the facts prevailing in the present case and further he has not shown the parity of facts between the present case and the cases decided by Hon'ble Supreme Court. He further submitted that the Ld CIT(A) has rejected the claim of non providing of opportunity for cross examination on the basis of a decision rendered on the scope of provisions of sec.254(2) of the Act, which is not applicable to the facts of the present case.

6. The Ld D.R, however, supported the order passed by Ld CIT(A). He further placed his reliance on the decision rendered by the co-ordinate bench in the case of DCIT vs. Leena Power Tech Engineers P Ltd (ITA No.1313/Mum/20 dated 21-09-2021) and submitted that the Tribunal has confirmed the addition of share application money u/s 68 of the Act.

7. In the rejoinder, the Ld A.R submitted that the decision rendered by the co-ordinate bench in the case of Leena Power Tech Engineers P Ltd (supra) will not apply to the facts of the present case. He submitted that, in the above said case, the assessee therein could not prove the genuineness of the transactions. Further the concerned creditors were not engaged in substantive business and were found to be shell companies. On the contrary, the companies which have subscribed to the shares of the company are well established companies having high net worth. One of the companies named Alka Diamonds is listed in the Bombay Stock Exchange also. All the companies were having turnover running into crores. Accordingly, the Ld A.R submitted that the facts prevailing in the instant case stand on sound footing and hence no addition u/s 68 is warranted.

8. I heard rival submissions and perused the record. During the year under consideration the assessee has received share application money from the following companies:-

Alka Diamonds Ind. Ltd	-	12,50,000
Kush Hindustan Ent Ltd	-	10,00,000
Nakshatra Business P Ltd	-	12,50,000
Olive Overseas P Ltd	-	10,00,000
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		45,00,000
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The case of the AO is that the above said companies belong to Pravin Jain group who are involved in giving bogus accommodation entries and hence the AO did not examine the documents furnished by the assessee to prove the cash credits and accordingly assessed the amounts as unexplained cash credit u/s 68 of the Act. The Ld CIT(A) also did not examine the documents furnished by the assessee. He has placed reliance on the propositions laid down by Hon'ble Supreme Court

9. It is settled proposition of law that the initial burden to prove the cash credits is placed upon the shoulders of the assessee u/s 68 of the Act. In order to discharge the said burden, the assessee has to prove three main ingredients, viz., the identity of the creditor, the genuineness of the transactions and the credit worthiness of the creditor. If the assessee discharges the initial burden, then the burden would shift to the shoulders of the assessing officer, i.e., it is the responsibility of the AO to disprove the claim of the assessee by bringing evidences on record.

10. I shall now examine the facts prevailing in the instant case. It is noticed that it is not the case of the AO that the assessee did not discharge the initial burden placed upon it with regard to the share application money received by it. It is the case of the assessee that it has furnished following details relating to the four persons in order to discharge the burden placed upon it u/s 68 of the Act:-

- (a) Copy of Certified Ledger Accounts.
- (b) Copy of investment confirmation by the Investor companies along with the amount of share application money, cheque numbers, bank name and branch etc.
- (c) Copy of share application forms
- (d) Copy of Resolution passed by the Investor companies.
- (e) Copy of Relevant Bank statement of the investor companies.
- (f) Copy of ITR Acknowledgement of the investor companies.
- (g) PAN card copy of investor companies.
- (h) Copy of full set of Balance Sheet and Profit & Loss account of all the said four investor companies for the FY 2008-09 (AY 2009-10).

I notice that all the four companies are assessed to income tax. A perusal of the financial statements of these four companies also show that they had net worth much more than the investments made by them in the assessee company.

11. Thus, I notice that the assessee has furnished necessary documents in order to prove the three main ingredients relating to cash credits. On the contrary, I notice that the AO has not brought any material on record to rebut the documents furnished by the assessee.

12. The Ld D.R relied upon the decision rendered by the co-ordinate bench in the case of Leena Power Tech Engineers P Ltd (supra). The Ld CIT(A) has also relied upon certain decisions rendered by Hon'ble Supreme Court. The settled proposition of law is that the requirement of invoking the provisions of sec.68 of the Act in respect of cash credits has to be decided on the basis of facts prevailing in each of the case and the answer to the question as to whether the assessee has discharged the initial onus placed upon it by proving three main ingredients. I noticed that the assessee, in the instant case, has discharged the initial onus placed upon it. The AO has not rebutted the same. Accordingly, I hold that the addition made u/s 68 of the Act is not justified.

Accordingly, I set aside the order passed by the Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.45.00 lakhs made u/s 68 of the Act.

13. Since the assessee has got relief on merits, the issue relating to reopening of assessment shall become academic and hence not disposed of.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 07.11.2022.

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 07/11/2022

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,

(Assistant Registrar)  
ITAT, Mumbai

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