

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3694/Del/2018
Asstt. Year: 2013-14

| | | |
|--|-----|--------------------------------|
| Apple Industries Ltd. B-16, Sector-2, Noida, Uttar Pradesh PAN AAJCA9960N | Vs. | DCIT, Central Circle, Noida |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|-------------------------|
| Assessee by: | None |
| Department by : | Shri R.K. Gupta, CIT DR |
| Date of Hearing | 23.08.2022 |
| Date of pronouncement | 23.08.2022 |

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 19.03.2018 of the Ld. Commissioner of Income Tax (Appeals) - IV, Kanpur (**"CIT(A)"**) pertaining to assessment year (**"AY"**) 2013-14.

2. The assessee has taken the following grounds of appeal:-

"1 a. *On the facts and circumstances of the case and in law, the initiation of assessment proceedings and issue/services of notices are not in accordance with the provisions of law and accordingly the assessment order passed on the foundation of such notice(s) is liable to be quashed and CIT(A) erred in not holding so.*

b. *On the facts and circumstances of the case and in law no notice u/s 143(2) was issued within the stipulated statutory time and*

accordingly the assessment order passed by the assessing officer is liable to be quashed and CIT(A) erred in not holding so.

c. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is without jurisdiction and CIT(A) erred in not holding so.

- 2. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition of Share Capital /Share Premium of Rs. 54,58,00,000/- made by the assessing officer as alleged unexplained cash credits u/s 68 of Income Tax Act, 1961.*
- 3. On the facts and circumstances of the case and in law, the addition of Rs.54,58 00,0010/- made by the assessing officer u/s 68 of the Act is beyond the scope of provisions of section 153A of the Act and CIT (A) erred in not holding so.*
- 4. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition of unsecured loans of Rs.56,12,89,096/- made by the assessing officer as alleged unexplained cash credits u/s 68 of Income Tax Act, 1961.*
- 5. On the facts and circumstances of the case and in law the addition of Rs. 56,12,89,096/- made by the assessing officer u/s 68 of the Act is beyond the scope of provisions of section 153 A of the Act and CIT(A) erred in not holding so.*
- 6. On the facts and circumstances of the case and in law, the various alleged adverse inferences drawn / reasons given by the assessing officer / CIT(A) for making / confirming additions are erroneous and not sustainable in law.*
- 7. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is contrary to the provisions of section 153D of the Income Tax AC, 1961 and CIT(A) erred in not holding so.”*

3. It is a search case. The assessee belongs to Apple Group of Companies. Search under section 132 of the Income Tax Act, 1961 (**the “Act”**) was conducted on the group on 11.11.2014. The assessee is engaged in the business of manufacturing of steel/cast pig iron, ferro silica manganese/ billets plate/sheet/S&S / TMT, sponge iron, trading of steam

coal, coal located at Anantpur (A.P.). Notice under section 153A was issued on 15.07.2016 and served upon the assessee. In response thereto the assessee e-filed its return on 05.02.2014 declaring income at Nil. During assessment proceedings, the assessee produced books of account, vouchers and bills which the Ld. Assessing Officer (“AO”) examined by test check.

4. The Ld. AO found credits in the name of nine parties aggregating to Rs. 56,12,89,096/-. He required the assessee to provide (a) confirmation from the lenders (b) audited financial results of the lenders (c) bank statement of the lenders explaining the source of funds (d) IT return filed by the lenders (e) agreement of loan and details of interest paid, if any. The assessee filed its own bank statement highlighting the receipt of unsecured loans, instead of providing bank statement of lenders and submitted that the transactions have been routed through bank and from group companies.

5. The explanation was not acceptable to the Ld. AO who held that the assessee failed to prove the capacity of the creditors, their creditworthiness and therefore added Rs. 56,12,89,096/- to the income of the assessee under section 68 of the Act.

6. The Ld. AO further found that the assessee has issued share capital to the 5 private limited companies aggregating to Rs. 2,72,90,000/- at premium which amounted in all to Rs. 51,85,10,000/-. He required the assessee to provide details of share applicants, namely confirmation from them, share application form duly filled and signed, Form-2 in respect of allotment of share capital along with FIRC and FC-GPR, in case funds are received from foreign entity, IT return filed by share applicant, share subscription and allotment agreement executed between the parties. The assessee submitted details of share capital along with PAN and addresses of the share holder but the Ld. AO was not convinced of the existence of the share holders nor their creditworthiness. According to him, it was not believable that the investors would invest their crores of rupees in a non-listed company without any return and the recipient company even does not have any agreement with the investors. The only plea of the assessee was

that the transactions had been routed through bank. The Ld. AO was not satisfied with the explanation of the assessee. Holding that the assessee failed to discharge the onus of proving the creditworthiness of the investors, genuineness of the transactions and existence of the investors, he added the amount of Rs. 54,58,00,000/- to the income of the assessee under section 68 of the Act.

7. Accordingly, the Ld. AO completed the assessment on total income of Rs. 110,70,89,090/- on 31.12.2016 under section 153A r.w.s. 143(3) of the Act.

8. The assessee appealed before the Ld. CIT(A) challenging the aforesaid additions. During appellate proceedings the assessee raised legal plea that the impugned assessment framed under section 153A is bad in law as the assessment for this year is unabated. For the reasons recorded by the Ld. CIT(A), he rejected this plea. In para 7.2 of the appellate order, the Ld. CIT(A) reproduced the contentions of the assessee which he sent for remand report from the Ld. AO who submitted the report incorporated by the Ld. CIT(A) in para 7.3 of his order. The Ld. CIT(A) sent the said remand report to the assessee who submitted rejoinder which is reproduced by the Ld. CIT(A) in para 7.4 of his order. The Ld. CIT(A) recorded his findings on the impugned addition on account of share capital of Rs. 54,58,00,000/- and unsecured loans of Rs. 56,12,89,096/- in para 7.5 to para 7.9 of his order and for the details and elaborate discussion and case laws cited by him arrived at the conclusion that the assessee failed to prove the credit capacity of the creditor and genuineness of the transaction. He, therefore, confirmed the impugned additions made by the Ld. AO. The assessee took another plea that the Ld. AO did not obtain approval of Joint Commissioner in terms of section 153D of the Act. This was also rejected by the Ld. CIT(A) as according to him the statutory approval under section 153D of the Act was given by the JCIT which fact was found recorded in para 8 of the assessment order. We reproduce the observations and findings of the Ld. CIT(A) hereunder:-

“7.5 Undersigned has carefully gone through the assessment order, written submission, remand report of the Ld. AO, rejoinder of the appellant and the verbal argument of the Ld. AR. It is seen that the share capital of Rs. 54,58,00,000/- and unsecured loan of Rs. 56,12,89,096/- has been received by the appellant company during this relevant assessment year.

During the course of assessment proceedings appellant has produced certain documents like confirmation letter, copies of ITR and the bank statement of the appellant company, wherein the share premium / unsecured loan were received. However, AO has observed from the facts and the circumstances of the case that creditworthiness of the creditors and genuineness of transaction were not established. It was also noticed by the AO that the return income of the lenders/creditors were very meager to prove the credit capacity of the lender. Therefore, AO made the addition of Rs. 54,58,00,000/- as unexplained share premium and Rs. 56,12,89,096/- as unexplained unsecured loans u/s. 68 of the Act.

7.6 It is a settled preposition of law u/s. 68 of the IT Act that the initial burden of proof rest upon the appellant to establish the identity, credit capacity of the creditor and to establish the genuineness of transaction/ Further, the law has undergone the change for corporates w.e.f. 01,04,2013 i.e. assessment year 2013-14 wherein in a case of share premium or share application money or other credits, the source of credit of the creditor is also to be established by the corporate. FOP- the sake of clarity provision of section 68 of the Act as amended read as under:

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax, as the income of the assessee of that previous year :

[Provided] that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited

consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless

- {a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]”

The instant case is squarely covered by the amended law, wherein it was imperative for the appellant to prove the source of credits in the books of creditors. Appellant has miserably failed to prove the source of credit in the books of creditors.

7.7 It is also an established law that mere filing of confirmation letter and the ITR copies are not enough to prove the credit capacity of the creditor, Hon'ble Calcutta High Court in the case of CIT Vs Korlav Trading Company Ltd. (Cal) 232 ITR 280 and CIT Vs Precision Finance P. Ltd. (Cal) 208 ITR 465 have observed and held that mere filing of confirmation of transaction through the banking channel is not enough to prove the genuineness of cash credit and it can be assessed. Further, Hon'ble Apex Court in the case of 5hri Roshan D. Hatti Vs CIT (SC) 107 ITR 938 held that in the case of credits in the name of third party, it is the duty of the appellant to prove the identity or credit capacity of the creditors to advance money and genuineness of transaction. In the Instant case, the undersigned is of the view that the credit capacity-of the creditor is not proved by the appellant company. Following chart shows the name of the creditor, credit received and the return income of the creditor;

| S.No. | Name of the Lender | Amount(Rs.) | Returned income of lender |
|-------|-----------------------|----------------|---------------------------|
| 1 | Apple Commodities Ltd | 1,75,00,000/- | 15736232 |
| 2 | Apple Iron | 15,25,00,000/- | 237249 |

| | | | |
|---|---|-----------------|---------------|
| | <i>Enterprises P. Ltd (Merged With M.G. Metalloy Pvt Ltd)</i> | | |
| 3 | <i>Apple Natural Resources Pvt. Ltd</i> | 3,00,000/- | Not submitted |
| 4 | <i>Ashish Garg</i> | 16,57,00,000/- | 12070012 |
| 5 | <i>Doan Alloys & Castings Pvt. Lid</i> | 3,50 00,000/- | 533739 |
| 6 | <i>Hardwari Lal Manoharlal (Prop.) Ankit Garg)</i> | 12,66,852/- | |
| 7 | <i>Manan Power Pvt. Ltd (Merged with M.G. Metalloy Pvt. Ltd</i> | 2,40.00.000/- . | 472871 |
| 8 | <i>Nirman Stelco Pvt. Ltd.</i> | 13,65,22,244/- | Not submitted |
| 9 | <i>Sanidhya Steels Pvt. Ltd (Merged with M.G Metalloy Pvt. Ltd)</i> | 2,85,00,000/- | 277816 |
| | <i>Total</i> | 56,12,89,,095 | |

Positions of returned income regarding share, applicants are as follows:

| <i>S.N</i> | <i>Name of the share applicant</i> | <i>Share capital money</i> | <i>Returned income</i> |
|------------|--|--------------------------------|------------------------|
| 1. | <i>Shubh Sponge Iron Pvt Ltd (Now Merged with M,G Metalloy Pvt Ltd)</i> | 360000000 | 403850 |
| 2. | <i>Doon Alloys & Castings Pvt Ltd</i> | 40000000 | 533739 |
| 3. | <i>Ankush Alloys Pvt Ltd</i> | 30750000 | 00 |
| 4. | <i>M.G Metalloy Pvt Ltd</i> | 87690000 | 123653 |
| 5. | <i>Neekunj Power Pvt Ltd</i> | 27360000 | Not submitted |
| 6. | <i>Total</i> | 545800000 | |

From the scanning and examination of the above table, it is seen that the most of creditors advancing huge share capital/unsecured loan to the appellant company either disclosed Nil or very meager income to substantiate the credit

capacity of the creditors. Hence, AO has rightly added the unexplained share capital/unexplained unsecured loans u/s. 68 of the Act.

7.8 Another contention of the appellant is that the some of the credits does not relate to this assessment year. The contention of the appellant cannot be accepted because no such plea was advocated by the Ld AR of the appellant in the assessment proceedings before the AO. Further, the perusal of the balance sheet and its annexure reveals that there is matching addition on account of the share capital and unsecured loan during this relevant assessment year vis-a-vis earlier assessment year. During the course of this proceeding, Ld, AR of the appellant was specifically asked to give the details of assessment year wise share capital/unsecured loans. However, no such details were filed. It is observed that the lender company or creditor company/entities/persons have shown either nil or very meager income in their returns to inspire confidence regarding the capacity of the creditor. Further, it is observed by the AO that the appellant company was involved in raising the share capital/unsecured loans from the non-descript and Calcutta based paper company. It was also noticed by the AO that the lenders have also raised huge share capital and unsecured loans and have shown nil/meager income in the PAL accounts. Infact, in the case of many creditors no P&L a/c of the lender companies or bank statement showing the transaction were produced by the appellant. Therefore, in absence of such information, source of funds could not be substantiated. Thus, it is concluded that the appellant company has failed to discharge its initial onus of establishing the credit worthiness of the creditor and the genuineness of transaction.

7.9 In the case of **Suman Gupta Vs ITO ITA no. 680/12/07.08.2012 jurisdictional High Court of Allahabad has held** that wherein identical amounts were found to have been deposited in the account of the lender prior to the lending and appellant cannot produce the single lender for examination, the addition is to be made as appellant failed to prove the genuineness of loans. This decision of jurisdictional Hon'ble Allahabad High Court has been

affirmed by the Hon'ble Supreme Court by dismissing the 5LP of the appellant. Instant facts of the case are exactly identical with the case of Suman Gupta, wherein identical amount were credited in the bank account of the creditor before advancing the same to the appellant company. Further, **Delhi High Court in the case of PCIT Vs Vikram Singh (2017)85 taxmann.com 104** has observed, and held that even if transaction of loan is made through cheque, it cannot be presumed to be genuine in absence of any agreement, security and interest payment. Mere submission of the PAN of the creditor does not establish the authenticity of huge loan transaction particularly when the ITR of the lender does not inspire such confidence. Mere submission of ID proof and the fact that the loan/transaction were through banking channel does not establish the authenticity of transaction. The loan entries are generally masked to pump the black money into the banking channel and such practices continued to plague Indian Economy. Further, in the case of **CIT Vs N.R. Portfolio Pvt. Ltd (ITA No. 1018, 1019/2100 dated 22.11.2013) Hon'ble Delhi High Court** has observed and held that

“mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive companies no doubt are artificial or juristic person but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the person behind the company who take the decisions, controls and manage them. ”

The cases relied upon by the Ld. AR are on their own footings and distinguishable facts and are not applicable to the present case. Further, **Hon'ble Calcutta High Court has observed and held in the case of Pragati Financial Management Pvt. Ltd Vs CIT in C.A, 887 & 998 of 2016 and others dated 07.03.2017**, that, AO is entitled to make enquiry u/s, 68 of the Act regarding genuineness of the share capital. Also-, **Hon'ble Supreme Court in the case of Rick Lunsford Trade & Investment Ltd Vs CIT [2017] 2016TTOL-207-SC-IT**, has dismissed the SLR upholding

that it is open to the Revenue Department to make addition on account of alleged share capital u/s. 68, where the assessee company has failed to show genuineness of its shareholders.”

9. Being aggrieved the assessee came up in appeal before the Tribunal challenging the order of the Ld. CIT(A).

10. The appeal of the assessee came up for hearing on 02.09.2021, 02.11.2021, 14.03.2022, 23.05.2022 and finally on 23.08.2022. None of the hearing was attended by the assessee or any authorised representative, though the Department was represented in each and every hearing. It is therefore obvious that despite sufficient opportunities having been given to the assessee, the assessee chose not to avail them. We, therefore, proceeded to decide the appeal ex parte on merits after hearing the Ld. DR who wholeheartedly supported the order of the Ld. AO / CIT(A).

11. We have thoroughly gone through the assessment order, the contentions raised by the assessee before the Ld. CIT(A) and the observations and findings recorded by the Ld. CIT(A). We find that the Ld. CIT(A) has dealt with all the contentions raised by the assessee before him in detail with reasons with which we concur. In this view of the matter, we decline to interfere with the order of the Ld. CIT(A) and consequently reject all the grounds of appeal taken by the assessee before us.

12. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open court at the time of hearing itself
i.e. on 23rd August, 2022.**

sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Dated: 30/11/2022

sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

Veena

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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