

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.2655/Kol/2019
Assessment year: 2012-13

M/s BST Infratech Ltd.

(Formerly known as Baba Strips and Tubes Ltd.).....Appellant

R. No.231&232, 2nd Floor,

Martin Burn House,

1, R.N. Mukherjee Lane, Kolkata-1.

[PAN:AADCB0844M]

vs.

DCIT, Circle-3(1), Kolkata.....Respondent

Appearances by:

Shri A. K. Tulsyan, FCA, appeared on behalf of the appellant.

Shri Amal Sudhir Kamat, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing :September 29, 2022

Date of pronouncing the order : November 30, 2022

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 28.11.2019 of the Commissioner of Income Tax (Appeals)-11, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. That the Ld. CIT(A) was wrong in confirming the addition of a sum of Rs.14,63,00,000/- u/s 68 of the Act being the share capital & share premium money received during the year from the share applicants without appreciating the fact that the details and documents provided to him were fully examined. Further, all the share applicants are assessed to income tax and the entire share application money was received though

proper banking channels. Thus, addition made by Ld. A.O and confirmed by Ld. CIT(A) is unjustified and needs to be deleted.

2. That the assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing.”

2. The brief facts of the case are that that Assessing Officer(in short AO) during the assessment proceedings noted from the accounts of the assessee that the assessee during the year had shown receipt of share capital including share premium of Rs.14,63,00,000/- from different private limited companies. On being asked to explain in this respect, the assessee furnished the required documents to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. However, the Assessing Officer treated the said share capital and share premium as unexplained income of the assessee and made the impugned addition of u/s 68 of the Income Tax Act.

In first appeal, the Ld.CIT(A) confirmed the additions so made by the AO.

3. We have heard the rival contentions and gone through the record.

At the outset, the Ld. AR of the assessee has brought our attention to the impugned assessment order dated 12.03.2015 to submit that the same is a small cryptic order. We note that there is absolute no discussion made by the AO in respect of the details and evidences furnished by the assessee to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. The AO without pointing out any defect, discrepancy in the evidences furnished by the assessee, straightway added the entire share application money into the income of the assessee u/s 68 of the Income Tax Act holding the same as unexplained cash credit.

The ld. AR has also brought our attention to the relevant paras of the impugned order of the CIT(A) to demonstrate that even the ld. CIT(A) in para 6.1 of the impugned order has categorically mentioned, “in a cryptic and unclear statement, the ld. AO has stated that the appellant had furnished ‘some details’ without mentioning which detail was furnished and which were not.” The ld. CIT(A) has also pointed out that though the AO has mentioned that the assessee did not produce any of the director of the shareholder companies for examination, however, the said fact has been refuted by the ld. AR stating that all the details as required by the AO were submitted before him and that even the directors were also produced before him but the ld. AO refused to record their statement, and, with a biased mind, passed the impugned assessment order.

Further, the ld. CIT(A) in para no. 8 of the impugned order has observed that since the ld. AO had not brought any relevant fact on record, therefore, he himself proceeded to undertake the fact-finding exercise. He, accordingly, asked the assessee to furnish the details of the directors of the assessee company, the names of companies in which they are substantially interested, the details of companies/entities who have invested in the assessee company, their returns of income, financial statement along with copies of memorandum of association, bank account statements of the accounts from which the cheques were issued for investment in the assessee company and the basis, formula or method which was followed in ascertaining the value of the shares and deciding the rate at which premium was to be issued. The ld. CIT(A) examined the details furnished by the assessee, however, concluded as under:

“(a) They have no or nominal assets in real terms. Assets in the form of investments have been created through a circular rotation of money as is evidenced by the bank accounts of the investors. This has already been discussed above.

(b) The assets consist of cash and cash equivalents,

(c) There actually is no or insignificant business being conducted by its investors. They do not have income (or have negligible income from business operations),

(d) The returns filed by them are mostly of loss or of insignificant proportions being below the taxable limits.

(e) The bank accounts are used only for rotating money and for issuing account payee cheques to impart an appearance of genuineness to the transactions.”

4. The ld. counsel for the assessee explained before us that the assessee company has issued 29,26,000 no. of shares of Rs.10/- each at a share premium of Rs.40/- per share amounting to Rs.14,63,00,000/-. The ld. Counsel, further submitted that all the shareholders companies were group companies of the assessee. That in every group, there was one or two flagship companies and so was the case of the assessee. Further, that the relatives of Mr. Gopal Kumar Agarwala, the director of Assessee company, were also directors in the share applicant companies. The nature of relationship has been explained in the table below:

SI No.	Name of the company	Name of Directors	Relation with Mr. Gopal Kumar Agarwala
1.	M/s. GainwellTextrade Pvt. Ltd.	a. Ramesh Prasad Agarwal	Brother In Law of Gopal Kr. Agarwala
		b. Rohit Saraf	Relative of Gopal Kr. Agarwala
2.	M/s. Lucky Tradelink Pvt.	a. Sangita	Wife of Brother in Law of Gopal Kr.

	Ltd.	Agarwal	Agarwala
		b. Bijay Poddar	Maternal Uncle of Gopal Kr. Agarwala
3.	M/s. Pawapuri Mercantile Pvt. Ltd.	a. Gopal Kumar Agarwala	Director of M/s. BST Infratech Ltd (Formerly, M/s. Baba Strip & Tubes Ltd)
		b. Krishna Dalmia	Sister of Gopal Kumar Agarwala
4.	M/s. HIL Engineering Pvt. Ltd.	a. Gopal Krishna Lodha	Relative of Gopal Kumar Agarwala
		b. Manoj Kumar Agarwal	Brother In Law of Gopal Kumar Agarwala
5.	M/s. Mubarak Cosmetics Pvt. Ltd.	a. Rajiv Dalmia	Nephew of Gopal Kumar Agarwala
		b. Urmila Devi Agarwal	Wife of Gopal Kumar Agarwala

4.1. The Ld. Counsel, further, took us through the written submissions filed before the ld. CIT(A), details of the appellant company which included its audited financial statement, income tax return, bank statement and the documents of investor companies placed in the paper-book. He submitted that the share applicants were having sufficient net owned funds for making investments in the assessee company. The details of the net owned funds of the applicants and the investments made by them were explained as under:

Sl. No.	Name of the company	Net Worth of Applicant	Investment made by them in assessee
1.	M/s. GainwellTextrade Pvt. Ltd.	18.87 Crores	8.10 Crores
2.	M/s. Lucky Tradelink Pvt. Ltd.	5.53 Crores	50 lakhs

3.	M/s. Pawapuri Mercantile Pvt. Ltd.	18.24 Crores	60 lakhs
4.	M/s. HIL Engineering Pvt. Ltd.	20.65Crores	4.00 Crores
5.	M/s. Mubarak Cosmetics Pvt. Ltd.	17.51 Crores	1.43 Crores

4.2 The Ld. Counsel, therefore, submitted that the share applicants were having sufficient owned funds and substantial net worth with them and small portion out of that was invested in the assessee company and hence their creditworthiness cannot be doubted at all. Further, the details of the group companies who have invested in the assessee company has been furnished as under:

a) Gainwell Textrade Pvt. Ltd.- This company was incorporated on 08.03.2007 and was having company identification number U51109WB2007PTC114011. This company duly filed its return of income before ITO Ward 1(1), Kolkata and was having PAN AACCG7981P. This company was having a paid up capital with free reserves and surplus of Rs.18,87,05,097/- as on 31/03/2012. The copy of the bank statement of the Company is duly available in the paper book. The company is an Active Compliant and has made a regular compliances as evident from the master details available at the Ministry of Corporate Affairs website. Companies Balance Sheet along with the return filing Acknowledgment as on the current date is also enclosed for the kind perusal of your honours.

b) Lucky Tradelink Pvt.Ltd. - This company was incorporated on 30.09.2008 and was having company identification number U51909WB2008PTC129811. This company duly filed its return of income before ITO Ward 11(2), Kolkata and was having PAN AABCL5331R. This company was having a paid up capital with free reserves and surplus of Rs.5,52,71,797/- as on 31/03/2012. The copy of the bank statement of the Company is duly available in the paper book. The company is an Active Compliant and has made a regular compliance as evident from the master details available at the Ministry of Corporate Affairs website. Companies Balance Sheet along with the return filing Acknowledgment as on the current date is also enclosed for the kind perusal of your honours.

c) Pawapuri Mercantile Pvt. Ltd.-This company was incorporated on 21.01.1994 and was having company identification number U51909WB1994PTC061532. This company duly filed its return of

income before ITO Ward 1(2), Kolkata and was having PAN AABCP5142N. This company was having a paid up capital with free reserves and surplus of Rs.18,24,24,141/- as on 31/03/2012. The copy of the bank statement of the Company is duly available in the paper book. The company is a Active Compliant and has made a regular compliances as evident from the master details available at the Ministry of Corporate Affairs website. Companies Balance Sheet along with the return filing Acknowledgment as on the current date is also enclosed for the kind perusal of your honours.

d) HIL Engineering Pvt. Ltd.-*This company was incorporated on 21.08.1991 and was having company identification number U65921WB1991PTC052785. This company duly filed its return of income before ITO Ward 5(4), Kolkata and was having PAN AAACH6729E. This company was having a paid up capital with free reserves and surplus of Rs.20,65,33,137/- as on 31/03/2012. The copy of the bank statement of the Company is duly available in the paper book. The company is an Active Compliant and has made a regular compliances as evident from the master details available at the Ministry of Corporate Affairs website. Companies Balance Sheet along with the return filing Acknowledgment as on the current date is also enclosed for the kind perusal of your honours.*

e) Mubarak Cosmetics Pvt. Ltd.-*This company was incorporated on 19.01.1995 and was having company identification number U51909WB1995PTC067638. This company duly filed its return of income before ITO Ward 4(2), Kolkata and was having PAN AACCM2670F. This company was having a paid up capital with free reserves and surplus of Rs.17,51,35,634/- as on 31/03/2012. The copy of the bank statement of the Company is duly available in the paper book. The company is a Active Compliant and has made a regular compliances as evident from the master details available at the Ministry of Corporate Affairs website. Companies Balance Sheet along with the return filing Acknowledgment as on the current date is also enclosed for the kind perusal of your honours.”*

4.3 The Ld. Counsel, therefore, submitted that from above details it was clearly evident that the companies were active companies making full compliances of both ROC and Income Tax. The Ld. Counsel further submitted that to prove the identity and creditworthiness of the transactions, the following details were furnished before the lower authorities: “

Sl.	Particulars
A.	Copy of letter dated 26.02.2015 intimating Income Tax Department of issuance of shares during AY 2012-13
B.	Documents in support of change in name of assessee
1	Copy of Certificate of Incorporation pursuant to change of name from M/s. Baba Strip & Tubes Ltd to M/s. BST Infratech Ltd.
2	Copy of ITR Acknowledgement for A.Y. 2012-13.
3	Copy of Audited Accounts for the F.Y. 2011-12
5	Copy of relevant page of Bank Statement
6	Copy of Assessment proceedings for the A. Y. 2012-13 filed before the Ld. DCIT Circle -3(1), Kolkata along with requisite documents.
C.	Documents of the share applicants to show their identity, credit worthiness & also the genuineness of the transactions
7	M/S. GAINWELL TEXTRADE PVT. LTD. (Share Applicant)
7.1	Copy of Company Master data
7.2	Copy of PAN CARD
7.3	Copy of Ledger Account of <i>M/s. Baba Strip & Tubes Ltd.</i> in the books of M/s. GainwellTextrade Pvt. Ltd evidencing share application money paid to M/s. Baba Strip & Tubes Ltd. on different dates during the F.Y. 2011-12.
7.4	Copy of relevant page of Bank Statement
7.5	Copy of Affidavit before the Notary Public Kolkata relating to share application money
7.6	Copy of Source of Fund towards payment made to M/s. Baba Strips & Tubes Pvt. Ltd. (Name changed to M/s. BST Infratech Ltd.)
7.7	Copy of ITR Acknowledgement for A.Y. 2011-12
7.8	Copy of Audited Accounts for the F.Y. 2010-11
7.9	Copy of ITR Acknowledgement for A.Y. 2012-13
7.10	Copy of Audited Accounts for the F.Y. 2011-12
7.11	Copy of ITR Acknowledgement for A.Y. 2013-14
7.12	Copy of Audited Accounts for the F.Y. 2012-13
7.13	Copy of Memorandum of Association & Article of Association

Sl.	Particulars
8	M/S. LUCKY TRADELINK PVT. LTD. (Share Applicant)
8.1	Copy of Company Master data
8.2	Copy of PAN CARD
8.3	Copy of Ledger Account of <i>M/s. Baba Strip & TubesLtd.</i> in the books of M/s. Lucky Tradelink Pvt. Ltd. evidencing share application money paid to M/s. Baba Strip & Tubes Ltd. on different dates during the F.Y. 2011-12.
8.4	Copy of relevant page of Bank Statement
8.5	Copy of Affidavit before the Notary Public Kolkata relating to share application money
8.6	Copy of Source of Fund towards payment made to M/s. BST Infratech Ltd
8.7	Copy of ITR Acknowledgement and Computation for A.Y. 2011-12
8.8	Copy of Audited Accounts for the F.Y. 2010-11
8.9	Copy of ITR Acknowledgement for A.Y. 2012-13
8.10	Copy of Audited Accounts for the F.Y. 2011-12
8.11	Copy of ITR Acknowledgement for A.Y. 2013-14
8.12	Copy of Audited Accounts for the F.Y. 2012-13
8.13	Copy of Memorandum and Articles of Association
9	M/S. PAWAPURI MERCANTILES PVT. LTD. (Share Applicant)
9.1	Copy of Company Master data
9.2	Copy of PAN CARD
9.3	Copy of Ledger Account of <i>M/s. Baba Strip & TubesLtd.</i> in the books of M/s. Pawapuri Mercantiles Pvt. Ltd. evidencing share application money paid to M/s. Baba Strip & Tubes Ltd. on different dates during the F.Y. 2011-12.
9.4	Copy of relevant page of Bank Statement
9.5	Copy of Affidavit before the Notary Public Kolkata relating to share application money
9.6	Copy of Source of Fund towards payment made to M/s. BST Infratech Ltd

Sl.	Particulars
9.7	Copy of ITR Acknowledgement for A.Y. 2011-12
9.8	Copy of Audited Accounts for the F.Y. 2010-11
9.9	Copy of ITR Acknowledgement for A.Y. 2012-13
9.10	Copy of Audited Accounts for the F.Y. 2011-12
9.11	Copy of ITR Acknowledgement and Computation for A.Y. 2013-14
9.12	Copy of Audited Accounts for the F.Y. 2012-13
9.13	Copy of Memorandum and Articles of Association
10	M/S. HIL ENGINEERING PVT. LTD. (Share Applicant)
10.1	Copy of Company Master data
10.2	Copy of PAN CARD
10.3	Copy of Ledger Account of <i>M/s. Baba Strip & Tubes Ltd.</i> in the books of M/s. HIL Engineering Pvt. Ltd. evidencing share application money paid to M/s. Baba Strip & Tubes Ltd. on different dates during the F.Y. 2011-12.
10.4	Copy of relevant page of Bank Statement
10.5	Copy of Affidavit before the Notary Public Kolkata relating to share application money
10.6	Copy of Source of Fund towards payment made to M/s. BST Infratech Ltd
10.7	Copy of ITR Acknowledgement for A.Y. 2011-12
10.8	Copy of Audited Accounts for the F.Y. 2010-11
10.9	Copy of ITR Acknowledgement for A.Y. 2012-13
10.10	Copy of Audited Accounts for the F.Y. 2011-12
10.11	Copy of ITR Acknowledgement for A.Y. 2013-14
10.12	Copy of Audited Accounts for the F.Y. 2012-13
10.13	Copy of Memorandum and Articles of Association
11	M/S. MUBARAK COSMETIC PVT. LTD. (Share Applicant)
11.1	Copy of Company Master data
11.2	Copy of PAN CARD

Sl.	Particulars
11.3	Copy of Ledger Account of <i>M/s. Baba Strip & TubesLtd.</i> in the books of M/s. Mubarak Cosmetic Pvt. Ltd. evidencing share application money paid to M/s. Baba Strip & Tubes Ltd. on different dates during the F.Y. 2011-12.
11.4	Copy of relevant page of Bank Statement
11.5	Copy of Affidavit before the Notary Public Kolkata relating to share application money
11.6	Copy of Source of Fund towards payment made to M/s. BST Infratech Ltd
11.7	Copy of ITR Acknowledgement for A.Y. 2011-12
11.8	Copy of Audited Accounts for the F.Y. 2010-11
11.9	Copy of ITR Acknowledgement for A.Y. 2012-13
11.10	Copy of Audited Accounts for the F.Y. 2011-12
11.11	Copy of ITR Acknowledgement for A.Y. 2013-14
11.12	Copy of Audited Accounts for the F.Y. 2012-13
11.13	Copy of Memorandum and Articles of Association
11.14	Copy of ITR Acknowledgement for A.Y. 2012-13
11.15	Copy of Audited Accounts for the F.Y. 2011-12
11.16	Copy of relevant page of Bank Statement

4.4 The Ld. Counsel has further submitted that the justification for raising the share capital and share premium from group companies was also furnished before the lower authorities, which is given as under:

*“1.4 Before entering into the merits of the case and travelling through the discussion to prove the identity and creditworthiness of the investors as well as genuineness of the transactions, **it is pertinent to understand that why at all such huge capital was required by the assessee at the impugned point of time and also how such huge capital was used by the assessee company for its business?**”*

1.4.1 The answer to above questions was itself available in the financial statement of the assessee which the AO did not take pain to see. At the

relevant point of time the assessee was expanding its business. There were **huge additions to plant & machinery, buildings, etc. In the impugned year the increase in fixed assets was Rs.14,37,89,571/-**. Also, the business of the assessee has increased remarkably in the year concerned. **The revenue from operations (Net) has increased by Rs. 102,00,99,789(i.e 73%) in comparison to the previous year.** Therefore, the business activities have also increased considerably. For the purpose of expansion, funds are required to carry on the business activities. Therefore, the assessee raised funds from various means, increment in share capital from associates being one of them. Consequent to sales there has also been huge increase in the expenses incurred by the assessee in achieving such huge turnover. **The increase in expenses was Rs. 102,17,48,258/- as compared to last year.** If we travel through the other side of balance sheet, then your honors will address that the stock and debtors have increased by Rs. 11,01,72,814/- and Rs 29,44,11,286/-. From the above it apparent that a considerable part of funds was blocked in stock and debtors. Therefore, the assessee was in need of funds that could be channelized into its operation activities as well as in assets expansion. **The assessee utilised the funds so raised (including the impugned amount of share application money of Rs. 14,63,00,000/-) for the production purpose, for acquisition of fixed assets, for repayment of loans and other activities concerned with day to day operation of the business.**

1.4.2 Therefore, the facts emerging from the above analysis are that the assessee is a manufacturing company having a genuine and renowned client base. In order to have a strong capital base and for business expansion, the capital of the company needs to be increased so that it can create a sound impression among the investors, who are well known & close associates of the assessee, about the soundness of its creditworthiness and bright future prospect. The assessee raised its capital by allotting the shares to its group companies. On careful examination of balance sheet of the assessee your honors will address the fact that the assessee is using mixed pool funding system i.e, both owned capital and borrowed capital are used by the assessee. In the instant case, the assessee has also borrowed short term loans for utilization in its business in addition to the issue of shares for raising capital. Therefore, issue of shares and raising capital from body corporate is just a way of funding its business activities and it should not be seen in isolation.”

5. After considering the above details, which have also been reproduced in the impugned order of the CIT(A), we note that the Assessee has proved the identity of the share subscribers. The share

applicants are the Group companies of the assessee company and they are body corporate, registered with the ROC and they were available at the given address. The share applicants have furnished copy of PAN and are registered with ROC having CIN. All the data's of such companies are available with Income Tax Department & ROC. They are also assessed to Income Tax regularly. In respect of genuineness of the transaction the Id. Counsel has established that the share application money was received through proper banking channels; the share holders had sufficient fund for the purpose of investment & the investments are reflected in their books of account and Bank accounts of the shareholders confirmed the transactions. All are share holders are regularly assessed to Income Tax.

So far as the need for share subscription money and the reason for the group companies to invest in the assessee company is concerned, in this regard it has been explained by the assessee that the assessee is a manufacturing company having turnover of more than Rs. 241 Crores and huge net worth. The assessee is mainly engaged in steel industry so the future prospect is great. Also the business of the assessee is heavily expanding in terms of both turnover and asset. That the assessee was in need of funds as the assessee was expanding its operations. The facts of the case itself suggest that during the impugned point of time there was heavy increase in fixed assets also the turnover increased by 73%. To expand the business assessee needed the funds, which were generated through issue of fresh shares. Further, that the reason to invest also included strategic relation and are made by the associate / group companies, having directors directly related to the assessee company's directors.

We further find force in the contention of the Ld. AR that even the Assessing Officer or the CIT(A) has not brought on record any evidence to show that it was the assessee's own fund that was brought back in the form of share application money. The Ld. CIT(A), himself, has pointed out that the assessment order of the AO was cryptic and that no exercise was done by the AO to examine the records of the case.

Even the Ld. CIT(A), who has, himself, done the exercise of examining the documents has not pointed any doubt or discrepancy with regard to the identity of the investors. The only contention that has been raised by the CIT(A) in the impugned order is that the investor companies have low income. Assets in the form of investments have been created through rotation of money in between the group companies and that the assets mainly consist of cash and cash equivalents. The above contentions raised by the CIT(A), in our view, are not enough to prove that any unaccounted money of the assessee has been introduced in the assessee company, warranting addition under section 68 of the Income Tax Act. Even after making elaborate exercise of examining the documents, the Ld. CIT(A) could not point out any rebuttal to the above evidences furnished by the assessee to prove the identity, creditworthiness of the share subscribers and genuineness of the transaction. The hon'ble Jurisdictional Calcutta High Court, in the case of PCIT vs. Anmol Stainless (P.) Ltd. (2022) 138 taxmann.com 535 (Calcutta HC) has held that that where it has been sufficiently established that share applicants had substantial creditworthiness and investments had been made by assessee's own sister concern/group companies having mostly common directors and thus, establishing creditworthiness and genuinity

of investments, additions under section 68 had been rightly been deleted.

In view of the discussions made above, we do not find justification on the part of lower authorities in making/confirming the impugned additions, the same are accordingly ordered to be deleted.

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

Kolkata, the 30th November, 2022.

Sd/-

[डॉक्टर मनीष बोराड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग/Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 30.11.2022.

RS

Copy of the order forwarded to:

1. M/s BST Infratech Ltd. (Formerly known as Baba Strips and Tubes Ltd.)
2. DCIT, Circle-3(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches