

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1238/M/2021
Assessment Year: 2014-15**

M/s. Stillwater Defence Textile Tech P. Ltd., Block No.C-96, TTC Industrial Estate, Turbhe, Navi Mumbai, Maharashtra- 400 705 PAN: AADCC6835B	Vs.	ITO-3(3)(2), Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bharat Gandhi, A.R. &
Ms. Poonam Kotkar, A.R.

Revenue by : Ms. Richa Gulati, Sr. A.R.

Date of Hearing : 13 . 12 . 2022

Date of Pronouncement : 23 . 12 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Stillwater Defence Textile Tech P. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 08.12.2017 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2014-15 on the grounds inter-alia that :-

"1. The Ld. Commissioner of Income Tax Appeal has erred in law and in facts that the share Applicant was an NRI payments was

received through banking channels Name and address was given to the revenue the burden of proof under section 68 was on the revenue to make further enquires which they are not discharged.

2. *The Ld. Commissioner of Income has erred in law and in facts that the mere failure on the part of the revenue to investigate the identity of the Shareholders and genuineness of the transaction addition is held to be not justified.*

3. *The Ld. Commissioner of Income Tax has erred has the Share capital to foreign national infuse the share capital once their identity and genuine of the transaction is a stab list medicine is not justify.*

4. *The Ld. Commissioner of Income Tax has erred that the Appellant has discharged their burden of proof and they have explained the source of fund deletion of addition is justified.*

5. *The Ld. Commissioner of Income Tax has erred that the share premium and it is the Pre-rogatory of the board of directors to decide the premium and it is the wisdom of the Shareholder whether they want to subscribe to share at such premium or not and addition cannot be made on presumption.*

6. *The Ld. Commissioner of Income Tax has erred that the Shares at premium source, was explained addition cannot be made as cash credit addition is not justified.*

7. *The Ld. Commissioner of Income Tax has erred that when the Appellant explains the mode of Investment addition is not to be justified.*

8. *The Ld. Commissioner of Income Tax has erred that cash credit share premium collected over and above premium worked out in valuation report in view of the facts that as per the notification of FEMA there is no bar on collection of higher amount of Share premium addition cannot be made.*

9. *The Ld. Commissioner of Income tax has erred that nature and sources of share premium received is explained addition cannot be made as cash credit.*

10. *The Ld. Commissioner of Income Tax has erred that Share premium even if it is higher transaction cannot be doubted addition is held to be not justified.*

11. *The Ld. Commissioner of Income Tax has erred that share applicant money received through banking channels and identity of applicant shareholder addition was held to be not valid.*
12. *The Ld. Commissioner of Income Tax has erred that subscription of share premium done through banking channels is genuine, identity of subscribers established addition is not justified.*
13. *The Ld. Commissioner of Income tax has erred that the Assessing officer has failed to demonstrate with specific evidence that the assessee has obtain accommodation entry by showing cash deposited linked to the investors.*
14. *The Ld. Commissioner of Income tax has erred that Share capital even if the non-existent shareholders who is entitle to make enquiries light of the decision of the Delhi High Court Full bench judgment.*
15. *The Ld. Commissioner of Income Tax has erred that Share Application addition can be made in the hands of the share Applicant shareholder and not in the recipient company as held by Bombay Tribunal.*
16. *The Ld. Commissioner of Income Tax has erred that the said Application Primary burden is on the Assessing officer, cannot sit back with folded hands and simply reject the Appellant Evidence.*
17. *The Ld. Commissioner of Income Tax has erred that Share Application money no independent Enquiry was made by the Assessing officer addition was deleted.*
18. *The Ld. Commissioner of Income Tax has erred that Cash credit income from other sources which share premium is a capital receipt neither it can be treated as a cash credit or as income from other sources.*
19. *The Ld. Commissioner of Income Tax has erred that Share Applicant money was Non- resident amount transferred from foreign account addition cannot be made.*
20. *The Ld. Commissioner of Income Tax has erred that If the Identity and other details of the shares applications money is established it cannot be treated as undisclosed income in the hands of the company the addition and if at all should be made in the hands of the Share Applicants Delhi High Court.*

21. *The Ld. Commissioner of Income Tax has erred that Share Application money when is adequately disclosed transaction in the books of account, file statutory forms regarding allotment of shares provided name address no additions can be made under section 68 of the Income Tax Act, 1961.*

22. *Relief Claimed:*

Reliefs:

a. Impugned order dated 14.03.2018 Passed by the Commissioner of Income Tax Appeals may please be set-aside.

b. To any relief to the facts circumstances of the case is concerned and circumstances of the case is concerned.

c. Pending the final hearing and disposal of this Appeal the operation of the impugned order dated 14.03.2018 passed by the Commissioner of Income Tax Appeals may please be state cost of this Appeal may please be provided.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: the assessee is into the business of research and development for acquiring new technologies for processing and manufacturing textiles, paints and 14 dyestuff to provide technological solutions and consultancy to the textile etc. Assessee's return of income declaring total loss of Rs.38,16,088/- was subjected to scrutiny. During the year under consideration the assessee company has allotted 1,26,441 equity shares at the premium of Rs.140 per share receiving total premium of Rs.1,77,01,740/- entirely subscribed by an overseas entity M/s. Abrey Holding Ltd. On failure of the assessee to prove the genuineness and creditworthiness of the amount invested as share premium by M/s. Abrey Holding Ltd. the Assessing Officer (AO) made addition of Rs.1,77,01,740/- to the total income of the assessee under section 68 of the Act and thereby framed the assessment under section 143(3) of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly there is no dispute as to the share application money involved in this case and the only dispute is qua share premium. The Ld. CIT(A) has decided the issue against the assessee by returning following findings:

4.1 In this ground of appeal, the appellant has contended that the AO erred in adding Rs.1,77,01,740/- on account of share premium received by the appellant during the year as it has failed to satisfactorily explain the genuineness and credit worthiness of the investor Abrey Holdings Limited.

4.2 Facts relating to ground No.

4.2.1 During the PY 2013-14, the appellant allotted 126441 equity shares to an overseas entity, viz., M/s. Abrey Holding Ltd. at a premium of Rs.140 per share resulting in receipt of total premium of Rs.1,77,01,740/-. By a letter dated 7.11.2016 the appellant was asked to furnish details in respect of receipt of share premium. The appellant was also called upon to show cause why the receipt of premium of Rs.1,77,01.740/- during the year be not taxed as unexplained cash credit u/s. 68. After considering the appellant's submissions in this regard, the AO held that M/s. Abrey Holding Ltd. failed to offer an explanation regarding the nature of the sum so credited. The AO added Rs.1,77,01,740/- to the total income of the appellant

4.3 Submissions of the appellant on ground No. 1:

4.3.1 In the course of the assessment proceedings the AR of the appellant claimed that it is covered by the exceptions provided in

clause (a) and clause (b) to the first proviso to section 68 and therefore, the said proviso is not attracted in its case. The appellant further claimed that the transaction was genuine and the identity of M/s Abrey Holding Ltd. was established in the course of the assessment proceedings.

4.3.2 Sec. 68 as applicable to the AY 2014-15 reads 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 on the opinion of the Assessing Officer aforesaid has been found to be satisfactory.

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

4.3.3 In this case the money was credited in the books of the appellant name of My Abrey Holding Ltd., an overseas entity. It is not a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10. Therefore, the first proviso is applicable in this case.

4.3.4 As per the first proviso, the explanation offered by the appellant 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:

4.3.5 The appellant claims that it satisfies both the conditions in clause (a) and clause (b) of the aforementioned in para 4.3.4 above. This claim of the appellant is not correct because M/s. Abrey Holding Ltd., in whose name the sum was credited is not a resident in the first place. Therefore clause (a) mentioned in paragraph 4.3.4 is not satisfied. It follows that the explanation offered by the appellant's deemed to be unsatisfactory by virtue of the first proviso to section 68.

4.3.6 In view of the above whether or not the identity of M/s. Abrey Holding Ltd. is established is of no consequence. Similarly, whether or not the transaction is genuine is also of no consequence. Therefore, I confirm the addition made by the AO u/s 68 of the Act. Accordingly I dismiss ground of appeal No. 1 of the Act."

6. The Ld. A.R. for the assessee challenging the impugned order contended inter-alia that sufficient documents were provided to the AO to prove the genuineness of the transactions and charging of premium based on valuation certificate but the same was not considered by the AO. It is also case of the assessee that tax practitioner has also provided all the necessary documents to the Ld. CIT(A) but has failed to obtain any acknowledgment and as such the assessee has not been provided with an opportunity of being heard and relied upon the decision rendered by Hon'ble Supreme Court in case of Tek Ram vs. CIT (2013) 357 ITR 133/ (2014) 44 taxmann.com 367 (SC). The Ld. A.R. for the assessee also moved an application for leading additional evidence viz. valuation of equity shares, remittance of share application money etc. running into 20 pages.

7. Bare perusal of the assessment order and impugned order passed by the Ld. CIT(A) goes to prove that the documents relied upon by the assessee have not been discussed to decide the issue in

controversy, although the assessee has contended that he has furnished all the documents, but acknowledgment for furnishing requisite document as called for by the AO detailed in para 5 of the assessment order has not been brought on record. However, to decide the issue once for all and to impart justice all these documents now sought be approved by way of additional evidence are required to be examined by the AO to reach at the logical conclusion. Both the Ld. A.R.s for the parties to the appeal have also agreed that the issue is required to be set aside for complete enquiry on the basis of additional evidence sought to be lead by the assessee. So the application filed by the assessee for leading additional evidence is allowed being necessary to decide the issues at hand.

8. In view of what has been discussed above the impugned order passed by the Ld. CIT(A) and AO are set aside and file is remitted back to the AO to decide afresh after entertaining additional evidence sought to be lead by the assessee by way of application moved before this Bench by providing opportunity of being heard to the assessee.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.12.2022.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 23.12.2022.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.