

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.60/Hyd/2018		
Assessment Year: 2010-11		
Agarwal Industries Pvt.Ltd. 15-9-449, Jagdish Niketan Afzalgunj, Hyderabad	Vs.	DCIT,Circle-1(1) Hyderabad
PAN : AAECA8680P		
(Appellant)		(Respondent)
Assessee by:		Shri Y.Ratnakar, Advocate
Revenue by:		Shri K.P.R.R.Murthy, Sr.AR
Date of hearing:		12.01.2023
Date of pronouncement:		19.01.2023

ORDER

Per Shri Laliet Kumar, J.M.

This appeal is filed by the Assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 02.08.2017 for the AY 2010-11, on the following grounds :

"1. The order of the Ld. Commissioner (Appeals) dt. 02.08.2017 is contrary to law and facts.

Addition of Rs.5,25,00,000 u/s 68

2. The appellant contends that the addition of Rs. 5,25,00,000/- as alleged unexplained cash credit in the name of Smt. Hema Kedia under section 68 of the Income Tax Act, is erroneous and untenable.

3. The Ld. Commissioner (Appeals) erred in not appreciating the evidence filed in support of the appellants plea that the said addition is unwarranted.

4. In any event the Ld. Commissioner (Appeals) erred is not appreciating that the said cash credit did not result in any generation of asset or accretion of funds to the appellant company. The corresponding amount covered by the cash credit has not even been received during the year and hence addition is unwarranted.

5. The Ld.CIT Appeals failed to consider that the appellant has fully explained the nature and source and furnished all relevant details relating to the accounting entry of share application moneys and as such the addition is erroneous. On the facts of the case no addition is warranted.

Addition of Rs.10,00,000 u/s. 68:

6. The Ld. Commissioner (Appeals) erred in upholding the addition of Rs10,00,000 as unexplained cash credit in the name of Ranjan Agarwal u/s 68 of the Income Tax Act.

7. The Ld.CIT Appeals failed to appreciate that the said amount was received in the Asst. Year 2009-2010 as loan and during Asst. Year 2010-2011 (year under appeal) the same loan was transferred as Share Application Money. Therefore. the addition of the said sum of Rs.1 0,00,000 as unexplained cash credit u/s. 68 is erroneous as no funds were received during the year. On the facts of the case no addition is warrant.

Addition of Rs.23,18,295:

8. The appellant contends that the Ld. CIT(A) erred in upholding the addition of Rs.13, 18,195 as income, being the difference in interest receipts between form 26AS and books of accounts

9. The appellant has fully reconciled the difference between the figure of interest in form 26AS and as per books of accounts. Both Assessing Officer and the Ld. Commissioner failed to consider that full reconciliation was made and was filed in the course of assessment proceedings before the Assessing officer and also before the CIT(A) in the course of appellate proceedings. The reconciliation was also explained during the assessment proceedings.

10. The Ld.CIT(A) was in error in upholding the addition on the plea that the reconciliation statement have not been filed before her. The appellant contends they were in fact filed and the deference was explained to the last rupee.

Levy of interest erroneous:

11. It is contended that the levy of interest u/s 234A, 234B and 234C is not correct and the appellant denies its liability for levy of such interest amounts.”

2. The brief facts of the case are that assessee is a company and filed its return of income on 03.02.2011 admitting income of Rs. 43,10,278/- under normal provisions and income of Rs.3,47,58,664/- under the provisions of section 115JB. The return was processed u/s. 143(1) of the I.T Act. Subsequently, the case was converted to scrutiny through CASS. In response to the notices issued u/s. 143(2) and 142(1), the AR's of the assessee appeared from time to time and furnished the information called for. After hearing the AR and after verifying the information filed, the Assessing Officer completed the by making various additions and passed order u/s 143(3) of the Act dt.28.03.2013. The finding recorded by the Assessing Officer reads as under :-

"4. The assessee-company credited an amount of Rs. 6,15,00,000/- in its books of account as 'Share Application Money' purported to have been received from three parties/persons, during the year as under:

- a) Smt Hema Kedia, Prop: M/s. Tanay Agro Food Products, Hyd, Rs.5.25 Crores,*
- b) Smt. Ranjana Agarwal, Basheerbagh, Hyderabad: Rs.1 0,00,000/- and*
- c) Sri. A. Shashi Mohan, Jubilee Hills, Hyderabad: Rs. 80,00,000/-*

Summons u/s. 131 were issued to all the share applicants. In response to summons, Mr. Hema Kedia Proprietrix of M/s. Tanay Agro Food Productis sought an adjournment initially. Meanwhile, on learning that she is assessed with ITO, Ward -7(3), Hyderabad, enquiries were made with ITO, Ward-7(3) and copies of balance sheet, details of investments were obtained from him as filed by Mrs. Hema Kedia. Verification of the information received from the ITQ, Ward-7(3) reveals. that the assessee's name as a debtor or the so called money as an investment of Share Application Money was not appearing in the balance sheet of Mrs. Hema Kedia, Therefore, it is very clear that the so called "hare application money purported to have been received and credited to the account of Mrs. Hema Kedia, Prop: M/ s. Tanay Agro Food Products is nothing but a bogus entry. As can be seen from the bank account statement of M/ s. Tanay Agro Food Products, the date on which the amount realized by the assessee-company pertains to F.Y. 2010-11 relevant to A.Y 2011-12. The AR of the assessee, when confronted, stated that, N.rs. Hema Kedia gave the cheque on the last day of F.Y. 2009-10 and has shown as "cheque on hand" in the Balance Sheet. However, when asked to furnish the details of cheque, no concrete evidence/fool-proof evidence was furnished. They simply stated "cheque on hand" without mentioning the name of the person from whom received, date of cheque and Bank on which it is drawn. To a persistent

question whether he can produce the cheque number, date and counter-foil of cheque-deposit slip, he expressed his inability, stating that as the transaction related to earlier years, the records are not kept. The conduct and evidences produced by the assessee are far from acceptable levels and hence cannot be relied upon. Therefore, the entire share application money stated to be invested by M/s. Tanay Agro Food Products 1S treated as unexplained cash-credit in the hands of the assessee-company and added back to the income returned.

Unexplained cash-credit u/s. 68: Rs.5,25,00,000/-

4.1. Smt. Ranjana Agarwal, Hyderabad, deposed ujs.1310n 04-03-2013, wherein she stated that during the F.Y. 2004-05 she has given unsecured loan of Rs. 10,00,000/- to M/s. Agarwal Agri & Steel Pvt. Ltd. When asked specifically about the investment of share application money during the F.Y. 2009-10 in M/s. Agarwal Industries Pvt Ltd, she stated that she has not invested any amount and categorically denied the claim of assessee company. Therefore, the entire share application money of Rs. 10,00,000/- stated to have been invested by Smt. Ranjana Agarwal is treated as unexplained cash-credit in the hands/books of the assessee-company and added back to the income returned.

Unexplained cash-credit u/s.68: Rs. 10,00,000/.

4.2 Shri A. Shashi Mohan has furnished a letter on 04.03.2013 confirming the investment of share application money and submitted the supporting documents. Hence this is acceptable.

5. It is noticed from Schedule : N of P&L account that the assessee has interest receipts of Rs. 8,19,45,204/- during the year. On reconciliation with Form 26AS it is noticed that interest receipts are Rs. 8,42,63,499/-. Since there is difference of Rs. 23,18,295/- in the interest receipt and the 26AS is showing more interest, the same is added back to the income returned.

6. During the course of assessment proceedings, the assessee furnished the details of Sundry creditors for others/ outstanding liabilities. Verification of the same reveals that an amount of Rs. 11,23,856/- was simply stated as "Outstanding Liabilities 2009-10" without giving any bifurcation regarding nature of such liabilities etc. Therefore in the absence of full details the same amount is added back u/s. 68, as the same can be categorized as unascertained liability.

Addition on this ground u/s 68: Rs. 11,23,856/-."

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A). However, the Ld. CIT(A) had also not granted the relief to the assessee, the reasons and the finding of the Ld. CIT(A) while disposing of the appeal are as under :-

"7.3 The submissions of the appellant have been carefully considered. The submissions were submitted before me are found to be repetition of already submitted before the Assessing Officer. The appellant has not filed any new information before me. The contention of the appellant is not based on any evidence and are rejected by following reasons :

- The appellant has justified the genuineness and creditworthiness of Smt. Herr-a Kedia, as she has given in cheque payment. The contention of the appellant that mere writing of the cheque confirms the genuineness is wrong. The main factor for an investment is the investor should have that kind of money and willingness to invest. In her case, neither she had money nor deposited the cheque. This was purely a bogus entry, for the appellant company to infuse its own funds into the company.*
- It is not known as to whether Smt. Hema Kedia had that kind of money to invest. Despite repetitive request by the Assessing Officer and by me, no bank account was submitted before me. As per the submissions, the cheque was issued from M/s. Tanay Agro food products was asked to be withheld i.e., the balance was not available for encashment. This itself, shows that the appellant did not have the funds to invest and a mere adjustment.*
- The appellant submitted a certificate from SBH, Mahaboobgunj branch .dated 13.03.2013 saying Rs.5,75,00,000/- was drawn in favor of Mis. Agarwal Industries on 29.03.2010 by a cheque. However, the certificate does not confirm whether this cheque was presented to the bank for clearing. Even the counterfoil and the cheque does not bear stamp of the SBH bank. This confirms that this cheque was not presented to the bank.*
- Smt. Hema Kedia was summoned by the Assessing Officer; she did not appear nor confirmed that she had that kind of money in her account to invest. Thereby, casting doubt on her creditworthiness.*
- The appellant has shown Smt. Hema Kedia as one of the subscriber to the share capital as per balance sheet and accounts of the company. However, Smt. Hema Kedia has not shown any investment in her name or in her property! concern M/s. Tanay Agro Food Products Ltd, in the accounts of the relevant Financial Year. This shows the cheque is just a bogus entry in books of the appellant company.*
- Hence, the Appellant failed to substantiate the creditworthiness of the shareholders before me.*

In absence of proof, the share application of Rs.5,25,00,000/- cannot be considered to be genuine. Hence, I uphold the addition made by the Assessing Officer.

-Ground Dismissed

8. Ground No.7 & 8: Addition of Rs.10,00,000/- towards Unexplained cash-credit u/s.68 of Smt. Ranjana Agarwal

8.1 During the assessment proceedings, the Assessing Officer noticed that the assessee-company has received Rs.10,00,000/- as 'Share Application Money' from Smt. Ranjana Agarwal. Accordingly, summons u/s.131 were issued to Smt. Ranjana Agarwal. In response, Smt. Ranjana Agarwal, Hyderabad, on 04.03.2013, stated that during the F.Y.2004-05 she has given unsecured loan of Rs.10,00,000/- to M/s.Agarwal Agri & Steel Pvt Ltd. The Assessing Officer asked specifically about the investment of share application money during the F.Y.2009-10 in M/s.Agarwal Industries Pvt Ltd, Smt. Ranjana Agarwal stated that she has not invested any amount and categorically denied the claim of assessee-company. In view of this, the Assessing Officer treated the entire share application money of Rs.10,00,000/- invested by Smt. Ranjana Agarwal as Unexplained cash credit in the hands/books of the assessee-company.

8.2 Before me, the appellant submitted that the loan was borrowed from Mrs. Ranjana Agarwal in the FY 2004-05 of Rs.30,00,000/-. This amount was lent by her to another company called M/s. Agarwal Agri & Steel Private limited. This has nothing to do with the appellant company. The appellant submitted that they have also received a further sum of Rs.10 Lakhs as unsecured loan from one Mr. Ranjan Agarwal in the FY 2008-09 relevant to AY 2009-10. The same was converted as Share application money in the AY 2010-11. The appellant submitted that the amount was received last year i.e., FY 2008-09 and not in the current year under appeal. The appellant submitted that due to confusion they have furnished particulars of Smt. Ranjana Agarwal. The appellant company submitted that they do not have any access to Mr. Ranjan Agarwal. The appellant has submitted confirmation from Mr. Ranjan Agarwal vide letter dated 21.04.2013, the scanned copy of which is as follows:

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The appellant submitted that even if it is presumed that the share application money received is fictitious yet no part of the above amount is assessable to tax in AY 2009-10. The appellant submitted that in any event share application money received cannot be assessed as the income of the company.

8. The submissions of the appellant have been carefully considered. The contention of the appellant is not accepted for the following reasons:

- No explanation has been adduced before the Assessing Officer, regarding the difference of the name. It is illogical that the name submitted before the Assessing Officer, summoned issued, statements recorded, still the appellant did not bother to bring into light the confusion of the name. The document before the Assessing officer is in relation to Smt. Ranjana Agarwal.
- Before me, the appellant submitted the identity of the share applicator as Mr. Ranjan Agarwal. No evidence has been submitted before me, regarding the existence of this person., As per confirmation given, cheque issue No.708584 dated 24.03.2009 drawn on ICICI Bank to Mis. Agarwal Industries Pvt Ltd for investment could not be traced out in the bank deposit I bank account of Mis. Agarwal Industries Pvt Ltd submitted before me, in ING Vysya Bank. The creditworthiness or genuineness of the transaction was not confirmed by the appellant.
- When further information is called by me, the appellant 'submitted that they are not in touch with the concerned party (Ranjan Agarwal).

In absence of any documentary evidences, I uphold the addition of the Assessing Officer. -Ground Dismissed

9. Ground NO.9: Addition of Rs.23,18,295/ towards difference in interest as per Form 26AS and as per books of accounts.

9.1 During the assessment proceedings, the Assessing Officer noticed that the assessee has interest receipts of Rs.8,29,45,204/_ during the year. On reconciliation with Form 26AS, it was noticed that the interest receipts are Rs.8,42,63,499/-. Hence, there was a difference of Rs.23,18,295/- in the interest receipt and Form 26AS. In view of this, the Assessing Officer has made an addition of Rs.23,18,295/- to the income returned.

9.2 Before me, the appellant submitted as under:

a. The interest in Form 26AS may not tally/reconcile with the actual interest for several factors. The appellant submitted that the Interest on fixed deposits was reduced when it was withdrawn premature. Whereas in the TDS returns filed by the banks, the interest shown without taking into consideration the reversal of interest on pre-closure of term deposits at a later date. The appellant submitted there were many instances of such premature/pre-closure of term deposits.

b. Reconciliation of the entire difference and details of reversal of interest was filed before the Assessing Officer on 28th March, 2013. But the Assessing Officer preferred to remain silent in the assessment order and finds it convenient to add the entire interest difference as income.

c. The appellant submitted Form 16A for the period from 01.04.2008 to 31.03.2009.

9.3 The submissions of the appellant have been carefully considered. The appellant has not submitted Form 26AS or reconciliation as submitted before me. In absence of any documentary evidence, to support the claim, the contention of the appellant is not accepted. Hence, the ground is dismissed."

4. Feeling aggrieved by the order passed by the Ld. CIT(A), the assessee is in appeal before us on the grounds mentioned herein above.

I - Amount Received from Ms. Hema Kedia - Rs. 5,25,00,000/- treated as income (Grounds 2 to 11)

5. In support of the case of the assessee the Ld.AR for the assessee had submitted that the assessee had received the cheque dated 29 March 2010 for an amount of ₹ 5,25,00,000/- drawn on state Bank of Hyderabad from one Ms. Hema Kadia immediately after giving the cheque she had requested to the assessee for not presenting the said cheque, as she is short of funds and was in the process and arranging the required funds for share application. As the cheque was available with the assessee, therefore, the assessee had shown the "cheque in hand" in its books of account.

5.1. Ld.AR had submitted that on the liability side of the assessee company, the assessee shown the amount of Rs.5,25,00,000/- under share application money which was forming part of total share application money of Rs.6,15,00,000/-. The assessee had also submitted before us that the original cheque dated 29th March 2010 was presented for encashment with the bank on 28th August 2010 and the cheque was released on 30th August 2010. The assessee had filed a

certificate from the state Bank of Hyderabad certifying that the cheque was encashed on presentation on 30 August 2010. Beside that a letter was also filed on behalf of the husband of the Mrs. Hema Kedia before Id.CIT(A) mentioning therein that that she had initially thought of investing in the shares of the assessee, as the assessee company agreed to give business, and in continuation of understanding the cheque was given to the assessee by Mrs. Hema Kadia, the cheque amount was credited in the account of the company on 30th August 2010 however later on the proposal of applying for shares was dropped by her and the assessee company had returned back the amount on 28th March 2011 to Mrs. Hema Kedia.

5.2. It was a submission of the Ld.AR that the above explanation was furnished by the assessee before the CIT(A) however he has not accepted it and the additions were made in the hands of assessee. The contention of the Ld.AR before us is that no money has been received by the assessee in the year under consideration, hence, no addition could be made in the hands of the assessee as income of the assessee. Further it was the contention of the assessee that the money was received by the assessee only on 30th August 2010 which is nor relevant to assessment year under consideration and therefore, no addition can be made. It was also contended that once the assessee in the appellate proceedings had produced the deposit slip, the certificate from the bank and the confirmation letter from the husband of Mrs. Hema Kedia, no addition can be made in the hands of the assessee as assessee had proved the identity, the creditworthiness and genuineness of the transactions made by Mrs. Hema Kedia.

5.3. In support of the case of the assessee, the AR of the assessee had filed the following written synopsis to the following effect; –

1. A Cheque was received for Rs. 5,25,00,000/- dt. 29.03.2010 from Smt. Hema Kedia towards Share Application Money. She confirmed the transactions

2. Smt. Hema Kedia requested not to present the cheque without her confirmation as the funds were yet to be arranged.

3. The cheque was presented to State Bank of Hyderabad in the next year on 28.08.2010 and was encased on 30.08.2010.

4. Certificate from SBH was filed before the Assessing Officer that it was encashed on 30.08.2010. In the printed accounts of the appellant for the year ended 31.03.2010 "Cheque on Hand" was shown in the balance sheet on Asset Side along with Cash and Bank Balance.

5. The assessing officer treats the cheque on hand shown in balance sheet as Income

6. Per contra the Ld. DR for the revenue relied upon the order passed by the lower authorities. The Ld. DR had filed the following submissions in support of the case of the Revenue.

CIT Vs. P. Mohanakala	Supreme Court	2007	[2007] 161 Taxman 169 (SC)/[2007] 291 ITR 278 (SC)/[2007] 210 CTR 20 (SC)	A bare reading of section 68 of the Income- tax Act, 1961, suggests that (i) there has to be credit of amounts in the books maintained by the assessee ; (ii) such credit has to be a Sum of money during the previous year ; and (iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books or (b) the explanation offered by the assessee, in the opinion of _the Assessing Officer, is not, satisfactory. It is only then that- the sum so credited may be charged to income tax as the income of the assessee of that previous year. The expression "the assessee offers no explanation" means the assessee
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				offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee
E. Ummer Bava Vs. CIT	Supreme Court	2016	(2017) 77 taxmann.com 1 (SC)/2017 244 Taxman 193 (SC)	SLP dismissed against High Court's ruling that where assessee failed to establish creditworthiness of donor and genuineness of transaction, addition made in terms of section 68 of gift amount was justified
Sudhir Kumar Sharma (HUF) Vs. CIT	Supreme Court	2016	(2016) 69 taxmann.com 219 (SC)/(2016) 239 Taxman 264 (SC)	SLP dismissed against High Court's ruling that where assessee had failed to give list of persons who 'advanced cash to him along with their confirmation in` respect of huge amount cash deposited in its bank account, Assessing Officer was justified in adding said amount to assessee's taxable income under section 68
NDR Promoters Pvt. Ltd. Vs. PCIT	Supreme Court	2016	(2019) 69 taxmann.com 53 (SC)/(2019) 266 Taxman 93 (SC)	SLP dismissed against High Court ruling that where Assessing Officer made additions to assessee's income under section 68 in respect of amount received as share capital from several companies, in view of fact that all of these companies were maintained by one person who was engaged in providing accommodation entries through paper companies and all such companies were located at same address, impugned addition was justified
PCIT Vs NRA Iron & Steel (P.) Ltd.	Supreme Court	2019	(2019) 103 taxmann.com 48 [2019] 262 Taxman 74 (SC)/[2019] 412 ITR 161 (SC)	Where assessee received share capital/premium, however there was failure of assessee to establish creditworthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company
A. Govindrarajulu Mudaliar	(1958) 34 ITR 807 SC		68	Section 68 casts liability on assessee: The assessee has to prove satisfactorily the source and nature of certain amounts of cash received during the accounting year and if not, the ITO is entitled to draw the

				inference that the receipts are of an
Independent Media Pvt Ltd.	(2012) 103 taxmann.com 276 Delhi / (2012) 210 taxman 14 Delhi (MAG)		68	AO is not under, any duty to show the source: For making addition-under section 68, AO would not be under any duty to further show or establish that monies emanated from, coffers of assessee-company
N.R. Portfolio (P) Ltd.	(2014) 42 taxmann.com 339 (Delhi)/ [2014] 222 Taxman 157 (Delhi)(MAG)/ [2014] 264 CTR 258 (Delhi)		68	Evasive and Transient approach before AO & Parameters for - Creditworthiness and genuineness of Share Money: Nature of relationship between parties, object, terms and , - quantum of investment, types of investor, creditworthiness of recipient, etc. Assessee-company adopted non-cooperative attitude before Assessing Officer once, they cannot know about directed enquiry and investigation being made., Evasive and transient approach before Assessing Officer was limpid and perspicuous and, therefore, addition made in respect of impugned amount was to be upheld
Sreelekha Banerjee	(1963) 49 ITR 112 (SC)		68	Mere credit entry would not be Discharge of burden of proof cast on the assessee. Otherwise a clever assessee can always throw the burden of proof on the income tax authorities by making a credit entry in the name of a third party either real or pseudonymous.
Sreelekha Banerjee	(1963) 49 ITR 112 (SC)		68	It is the assessee that has to prove that an entry in the books of accounts does not bear the character of income. At that stage, the department is required to prove nothing: If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it

				does not bear the nature of income. The department is not at this stage required to prove anything.
Devi Prasad Vishwanath	[1969] 72 ITR		68	AO is not under burden to show the source: When there is an unexplained cash credit it is open to ITO to hold that it is income of assessee and no further burden lies on ITO to show that income is from any particular source. It is for the assessee to prove that even if the cash credit represents income it is income from a source which has already been taxed. There is nothing in law which prevents the ITO in an appropriate case in taxing both the cash credit and the business income estimated by him after rejecting unreliable books of account

7. We have heard the rival contentions of the parties and perused the material available on record. It is the admitted case of the assessee before us that the assessee had received a cheque for Rs. 5,25,00,000/- dt. 29.03.2010 from Smt. Hema Kedia towards Share Application Money. It is also the admitted case of the assessee that, subsequently the assessee had received a request from the Smt. Hema Kedia, for not to presenting the cheque as she had to arrange the funds. It is also the admitted case of the assessee, that despite the request of with-holding the cheque, the assessee had mentioned in its balance sheet on the liability side the amount of Rs.5,25,00,000/- towards the share application money. **The question before us is, whether the entries made by the assessee in the books of account on account at the liability side, can form basis of addition of Rs. 5,25,00,000/- in the hands of the assessee or not?**

8. For the purposes of the adjudication of the above said issues, it is essential to understand the rigors of section 68 of the Income Tax Act. The section 68 provides as under :

“Where any sum is found credited in the books⁵⁸of 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 ⁵⁹[Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.”

8.1. A bare reading of section 68 suggests that there has to be credit amounts in the books maintained by the assessee, such credit has to be a sum of money during the previous year and the assessee offers no explanation about the source of such credit in the books or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory.

9. Undoubtedly, there is a credit entry in the books of accounts maintained by the assessee during the previous year. The said entry in the accounts of the assessee, as per the case of the assessee is on account of the share application money received by the assessee. It is the case of the assessee that Smt. Hema Kedia after receiving the cheque on 29.03.2010 had requested the assessee not to present the cheque. Unfortunately, before the Assessing Officer the said Smt. Hema Kedia has not appeared despite the issuance of notice u/s 131 by the Assessing Officer and she has not filed any letter / document confirming the transactions before the Assessing Officer. In the record, the assessee has simply stated cheque on hand without mentioning the name of the person from whom cheque was received, the date of cheque, its number, bank and from which it was drawn. The

Assessing Officer had asked the assessee to produce cheque details, counterfoil of the cheque deposited with it, however, the assessee expressed his difficulty stating that the transactions related to the earlier years and has not kept any record. Further, the Assessing Officer had also mentioned that as Ms. Smt. Hema Kedia did not appear pursuant to the notice u/s 131 of the Act. Hence, the Assessing Officer of the assessee retrieved the information from the Assessing Officer of Smt. Hema Kedia and it was noticed by the Assessing Officer that she had not made any investment of share application money in her balance-sheet. Therefore, the Assessing Officer was not satisfied with the explanation given by the assessee and hence, confirmed the additions.

10. The explanation given by the assessee before the Id.CIT(A) was that the cheque dt.29.03.2010 was given by Ms. Hema Kedia for the share application money and cheque was presented with the State Bank of Hyderabad on 28.08.2010 which was encashed on 30.08.2010. Further, the husband of Ms. Hema Kedia namely, Umesh Kedia had informed vide communication dated 07.03.2013 that a cheque was given in the month of March 2010 and they had asked the company not to present the cheque till the fund is arranged. This explanation was given by the assessee by way of additional evidence before the Id.CIT(A).

11. However, this additional evidence was rejected by the Id.CIT(A) for the reasons mentioned which has been reproduced hereinabove. Now, if we look the letter dt.07.03.2013, it is seen from the letter that the date of cheque has not been mentioned and further, it is categorically mentioned that “and asked the company not to present the cheque till the fund is arranged”.

12. From the letter dt.07.03.2013 of the husband of Ms. Hema Kedia, it is clear that Ms. Hema Kedia was not aware about the date of cheque and further, it is worth noticing that Ms. Hema Kedia had asked the company not to present the cheque till the fund is arranged.

12.1. In our opinion, the explanation of the assessee had been rightly rejected by lower authority as the conduct of the assessee was beyond human probability and incongruous which is clear from the following :

- (1) When Ms. Hema Kedia herself asked the company to withhold the cheque till the funds arranged, then it can be said that the assessee was right in showing the cheque as cheque in hand under the assets side of its account.
- (2) Further, there was no reason to show an amount of Rs.5,25,00,000/- on the liability side when no such corresponding entry was made for the like amount on the credit side.
- (3) We failed to understand how the share application money can be made by a person and accepted by a company without actually making / receiving considerations for share application.
- (4) We have not come across any provision of law under which there is a provision of returning the share application money after it is received by the company, as claimed in the communication dt.07.03.2013 “that the proposed proposal was dropped and they returned back the amount”.

13. Undoubtedly, the assessee had made the entries for the amount of Rs.5,25,00,000/- towards the share application money which clearly falls within the scope of section 68 and the explanation given by the assessee, has rightly been rejected by the lower authorities. We do not find any reasons to interfere in the decisions rendered by the lower authorities in this regard.

14. During the course of argument, the ld.AR had submitted that since no amount has been received by the assessee in the year under consideration, therefore, no addition can be made in the present year. Further, the cheque was received in the assessment year 2011-12, therefore, the addition, if any, was required to be made in that year only. It was also the contention that since no real income arose in A.Y. 2010-11, therefore, no addition can be made under section 68 of the Act.

15. In this regard, it is settled proposition of law that the real income theory is not applicable in the context of section 68 of the I.T Act, 1961 which relates to special provision relating to the credit entries made in the books of accounts of the assessee and failure of the assessee to give a satisfactory explanation thereto. In that scenario, the credit made in the books of accounts may be charged as income of the assessee for that previous year. This is a deeming provision and it does not deal with the real income. This provision is anti abuse / anti evasion provision and therefore, the real income theory has to give way to this specific anti abuse provision deeming provision as by virtue of statutes sought to brought to tax by way of a deeming income. In view of the above, we do not find any merit in the submission of ld.AR and accordingly, we confirm the addition made by the lower authorities to the extent of Rs.5,25,00,000/-. **Thus, the grounds 1 to 11 raised by the assessee are dismissed.**

II - Amount Received from Mr.Ranjan Agarwal - Rs. 10,00,000/- treated as Income.

16. In this regard, the Id.AR for the assessee had submitted as under :

“17. A loan was borrowed from Mrs. Ranjana Agarwal in the financial year 2004-2005 of Rs.30,00,000/-. This amount was lent by her to another company called Agarwal Agri and Steel Private Limited. This loan has nothing to do with the appellant company. The appellant company also received a further sum of Rs.10 lakhs as unsecured loan from one Mr. Ranjan Agarwal in the financial year 2008-2009 relevant to Asst year 2009-2010 which was later transferred to Share application money in the Asst year 2010-2011.In point of fact the amount was received last year itself viz. financial year 2008-2009 and not in the current year under appeal.

18. This money was received through one Mr. Shankarlal Agarwal (brother of Anirudh Pershad Agarwal-Chairman of the Company). Mr. Shankarlal Agarwal died on 11th October, 2011. When Mr. Shankarlal Agarwal office was contacted for particulars they furnished the PAN no. of Smt. Ranjana Agarwal probably due to confusion. Before the CIT(A) confirmation from Ranjan Agarwal was filed and the error made before the assessing officer was corrected. This is the factual background obtaining the above case.

19. For the sake of argument even if it is presumed that the share application money received is fictitious yet no part of the above amount is assessable to tax in Asst. Year 2010-2011. The assessing officer examined the receipt of the above amount as loan amount in asst. year 2009-2010 and all facts were on record in Asst year 2009-2010.

20. The issue is discussed in the Order of the Ld. Commissioner at Para 8.1 to 8.3 of the order. TheLd. CIT (Appeals) confirmed the addition made u/s 68 and the reasons given at Para 8.3 are summarized below.

- a. No evidence is submitted regarding existence of the person.
- b. The Cheque No. 708584 dt. 24.03.2009 drawn on ICICI Bank in favour of the appellant company is not traced in the bank statement of the appellant.
- c. His creditworthiness or genuineness of the transaction was not confirmed by the appellant.

21. *The appellant contends that the Ld. Commissioner was in error. The letter dt. 21.04.2013 produced before Ld. Commissioner (Appeals) proves his existence, address and Income Tax PAN Number. The loan was given in the F.Y2008-2009 vide Cheque No. 708584 dt.24.03.2009 drawn on ICICI Bank. This loan was encashed in the preceding year 2008-2009 itself Therefore this transaction does not appear in the bank statement of the financial year 2009-2010 (Asst. Year 2010-11).*

22. *During the FY 2009-10 this amount which was given as loan is transferred to Share Application Money. The Ld. Commissioner (Appeals) having taken the letter dt. 21.04.2013 of Shri Ranjan Agarwal on record has not called for any further particulars or sought any clarifications. She has straight away dismissed the appeal on this issue on grounds untenable.”*

17. Per contra, the ld. DR relied upon the order passed by the lower authorities. He had also issued that the Assessing Officer had issued notice to Ms. Ranjan Agarwal u/s 131. However, she had refused to have invested any amount and categorically denied the claim of the assessee company. As Smt. Ranjan Agarwal has categorically denied, therefore, the entire amount had been added as unexplained cash credit in the books of accounts of the assessee.

18. We have heard the rival contentions of the parties and perused the material available on record. The assessment order passed by the Assessing Officer clearly shows that Smt. Ranjana Agarwal had clearly denied to have made any investment in the form of share application with the assessee company. In Paragraph 4 of the assessment order, the Assessing Officer had enquired from the assessee about the credit of Rs.6,15,00,000/- in the books of accounts of the assessee as share capital. In response thereto, the assessee had given that Rs.5.25 crores were received by the assessee from Smt. Hema Kedia and Rs.10 lakhs were received from Smt. Ranjan Agarwal.

19. It is the consistent case of the assessee during the assessment proceedings that Rs.10 lakhs was received by the assessee as share application money from Ms. Ranjana Agarwal. On the basis of the submissions made by the assessee, the Assessing Officer had examined the said Ms. Ranjana Agarwal and she had denied to have made any investment in the assessee company. Quite contrary to the case of the assessee before the Assessing Officer, the assessee had submitted before the Id.CIT(A) that the investment was not made by Smt. Ranjan Agarwal but was made by Mr. Ranjan Agarwal. It was also the case of the assessee that the cheque was issued on 24.03.2009 i.e. in the A.Y. 2009-10 and not in A.Y. 2010-11 and therefore, the action on the part of lower authorities is not in accordance with the law. The Id.CIT(A) had dealt with the contention of the assessee at Para 8.3 reproduced hereinabove, we do not find any reasons to interfere in that. In our opinion, the assessee is not permitted take contrary stand before the Id.CIT(A) / Assessing Officer.

20. Initially it was the case of the assessee that the share application money was given by Smt. Ranjana Agarwal and thereafter, the assessee had changed its stand and submitted that the share application money was given by Mr. Ranjan Agarwal. In our opinion, as and when any share application is received by a company then it is required to be in a specific format giving the details of names, parentage, address and pan number along with the consideration for issuing the shares. There cannot be any confusion about the name, address and pan numbers about the share applicant. Once the assessee itself during the assessment proceedings provide the details of share applicant, then that information alone was required to be tested on the anvil of law. In the present case, the lower authorities have verified the

information and thereafter, recorded the finding and that no such investment was made by Smt. Ranjana Agarwal. The case of the assessee before the Id.CIT(A) was contrary to its case before the Assessing Officer, as the assessee had changed its version and submitted that the investment was made not by Smt. Ranjana Agarwal but by Mr. Ranjan Agarwal. In our view, there could be any confusion or doubt in the minds of the assessee, which is a company, as the records of the company are required to be maintained in accordance with the law. Such records include the record of share and share application and the money received for that purposes. In the present case, it is difficult to accept that assessee without knowing the actual share holder / share applicant, had credited the amount in its books of accounts, against the share application.

21. The conduct of the assessee is approbate and reprobate which is impermissible. This proposition is supported by the decision of Hon'ble Bombay High Court reported at 214 ITR 210 (Bom.) in the case of Bombay Cloth Syndicate vs. CIT. Similar view has been taken by Co- ordinate Bench of ITAT, Jodhpur in the case reported at 115 TTJ (Jodh.) 116 in the case of Shri Suresh Chandra Bansali vs. Joint CIT. It has been held by Hon'ble ITAT that doctrine of approbate and reprobate prohibits the parties from blowing hot and cold in the same breath thereby accepting one part of transaction and treating the other part as incorrect. Therefore, in our opinion, the lower authorities were right in making the addition in the hands of the assessee on the basis of credit entries made in the books of accounts as the explanation given by the assessee were found to be devoid of any merit. In view of the above, we do not find any reason to interfere with the finding of the lower authorities and accordingly, the addition made by the lower authorities is sustained. **In the result, the ground nos. 12 to 20 of the assessee are dismissed.**

III - Addition made towards difference in interest as per books of accounts and as per 26AS - Rs. 23,18,295/-

22. In this regard, the Id.AR for the assessee had drawn our attention to the written submissions as well as the order passed by the lower authorities. The Id.AR for the assessee had also drawn our attention to page 63 of the paper book which is to the following effect :

51001AMBER 3AZAR BRANCH 45-3.995 GS Estates Nizamshahi Road SIDDIA MBAR BAZAR HYDERABAD 90012 ANDI IHA Pfti CI Sit Ph: 040.23446662 Email: siddiamberbazarbreringvvyahank.cont				
MS Agarwal Industries Pvt LW	Custom., Numbr, I j, i			
28/01/2008	Openir.g Date			
15-9-449, Atzalgunj	Account Nun.ber			
2-• ;••• ;•• ;I.,i.,	Renewal Date			
	Account Type			
	Aop. • '••• ;••ta..t.,			
	Term in Days 365			
Afzalgunj Hyderabad	Status			
Statement Date 28/04/2009	Ow ,,,			
Interest Rate 9.5	Maturity Date 28/04/2009			
Hyderabad 500C12				
Trans. Date	Transaction Details	Debit	Deposits/ Credit	Balance Rs.
28/04/2008	By Tr Frm-306044000039		9,900,000.00	9,900,000.00
31/03/2009	By Interest		896,437.13 *	10,790,437.13
31/03/2009	To Withhold(Tds)	293,131.00		10,593,306.13
23/04/2009	By Interest			10,655,116.13
23/04/2009	To Interest Reversal	311,131.00	(4657.,21*	10,343,826.13
23/04/2009	To A/C Closure	10,313,826.13		0.00
	Summary	Debits	Credits	Closing B
		10,857,094.68	10,857,094.68	0.00
	Le.lger 1.1.:lo.nt.e 0.00			
	Permanent fold 0.00			
	Available Balance 0.00			

. This is a Computer generated statement and requires no
slonatisco(s).
. Unless the constituent notifies the bank within 15 days of
its re(eint of any cliccreDancy found, it r,ltl be deemed that
the
statement has been found correct.
. The Balance shown in thedikatement of account includes
the unclear,ld effects and funds under hold,. if any, on the
date of
generation of statement. •

NOMINATION : REGISTERED No
of Transactions in this Period are 6

VYSVA BANK LIMITED, Registered & Corporate office :
140 22, MG Road Bangalore - 550 001

AGARWAL INDUSTRIES P.LTD
ACCOUIJTS DIVISION

23. Per contra, the ld.DR relied upon the order passed by the lower authorities.

24. We have heard the rival contentions of the parties and perused the material available on record. Admittedly, the bank had issued Form 26AS showing interest received of Rs.8,42,63,499/- whereas the assessee in the books of accounts, had shown the interest accrued as 8,19,45,204/- on account of difference, the lower authorities have brought to tax the amount of Rs.23,18,295/- as short interest disclosed by the assessee. It is the case of the assessee before us that on account of the mistake of the bank, as it failed to take into account the premature encashment of FDRs, while issuing Form 26AS. On account of the above said error, the bank had wrongly issued 26AS for an amount of Rs.8,42,63,499/- as against Rs.8,19,45,204/-. For the above said purposes, he has drawn our attention to the paper book more particularly page no.63 (supra). In our considered opinion, the core issue is whether the bank had issued the correct form 26AS based on the interest accrued to the assessee or not? For the above said purposes, it is essential that the Assessing Officer should make adequate enquiries from the bank and try to reconcile the actual interest received by the assessee vis-à-vis the interest shown by the bank in Form 26AS. For the above said limited purposes, we remand back this issue of reconciliation of interest of Rs.23,18,295/- to the file of the Assessing Officer with a direction to pass a detailed speaking order after fetching the record from the bank and making all enquiries as possible within the four corners of law after affording due opportunity of hearing to the assessee. Needless to say the assessee may file any documents / evidence in support of its claim. **Thus, this ground of assessee is allowed for statistical purposes.**

25. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 19th January, 2023

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
---	---

Hyderabad, dated 19th January, 2023

TYNM /sps

Copy to:

S.No	Addresses
1	Agarwal Industries Pvt.Ltd. 15-9-449, Jagdish Niketan Afzalgunj, Hyderabad
2	DCIT, Circle-1(1) Hyderabad
3	CIT(A)-1, Hyderabad
4	Pr.CIT-1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order