

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER

ITA No.225/Ind/2018
Assessment Year: 2010-11

Dhanwan Leasing and Finance Company Ltd.,
107, Sapna Sangeeta Road,
Indore (MP).

Vs. ITO,
Ward 2(2),
Indore.

PAN: AAACD7026L

(Appellant)

(Respondent)

Assessee by	:	Shri Pankaj Shah, CA & Shri Somya Bumb
Revenue by	:	Shri P.K. Mishra, CIT, DR
Date of Hearing	:	16.11.2022
Date of Pronouncement	:	10.02.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 15.01.2018 of the CIT(A)-I, Indore, relating to Assessment Year 2010-11.

2. The grounds raised by the assessee read as under:-

"GROUND 1: AGAINST REOPENING OF ASSESSMENT

1. The learned Commissioner of Income tax (Appeals)-I (CIT(A)) erred in confirming the action of reopening the Assessment for the year u/s 148 of the Act

2. The Appellant prays that the said reopening is bad in law and deserves to be quashed.

GROUND 2: MECHANICALLY CONFIRMING THE ADDITION U/S 68

1. *On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition made by the learned AO without properly appreciating and dealing with the submissions and contentions of the Appellant made during the appellate proceedings and reproduced in his order.*
2. *The Appellant prays that the order passed mechanically without application of mind be quashed/ set aside.*

GROUND 3: AGAINST ADDITION U/S 68

1. *The learned CIT(A) erred in confirming the addition on account of unexplained share application money under Section 68 of the Act amounting to Rs.24,14,75,000.*
2. *He failed to appreciate and ought to have held that the same has already been taxed in the hands of Keti Constructions Limited and also in hands of its SPV companies.*
3. *Accordingly, the Appellant prays that the said addition be deleted.*

GROUND 4: AGAINST ADDITION U/S 69

1. *The learned CIT(A) erred in confirming the addition on account of unexplained investment on account of alleged commission paid amounting to Rs.70,00,000.*
2. *The Appellant prays that the said addition be deleted.*

The Appellant craves leave to add to, alter and / or amend the above grounds of appeal.

3. The Id. Counsel of the assessee submitted that the assessee does not want to press ground No.1, hence the same is dismissed as 'not pressed.'

4. Apropos Grounds No.2 and 3, the Id. Counsel of the assessee submitted that the Id.CIT(A) has erred in confirming the addition made by the AO without properly appreciating and dealing with the submissions and contentions of the assessee made during the appellate proceedings mechanically and without application of mind,

therefore, the same may kindly be quashed/ set aside. The Id. Counsel also submitted that the the learned CIT(A) has erred in confirming the addition on account of unexplained share application money under Section 68 of the Act amounting to Rs.24,14,75,000 as he failed to appreciate that the same has already been taxed in the hands of Keti Constructions Limited and also in the hands of its special purpose vehicle companies (SPVs), therefore, the said addition may kindly be deleted. Further, drawing our attention to page 9 of the assessee's paper book, the Id. Counsel submitted that the assessee received share application money of Rs.24,14,75,000/- and, simultaneously, made investment in share application money with Keti Constructions Ltd. of Rs.24,09,50,000/-, therefore, the money merely came to the assessee in the form of share application money and, further transferred to M/s Keti Construction Ltd. as share application money. Further, drawing our attention to pages 15 and 16 of the assessee's paper book, the Id. Counsel submitted that the assessee received share application money of Rs.24,14,75,000/- from 40 entities and made investments of Rs.24,24,32,085/- including investment as share application money with M/s Keti Construction Ltd. of Rs.24,09,50,000/-, therefore, the source of share application money and its further investment in share application money with M/s Keti Constructions Ltd. is established, therefore, no addition can be made in the hands of the assessee on this account.

5. The Id. Counsel further drawing our attention to page 25 of the assessee's paper book, submitted that M/s Keti Constructions Ltd., in turn, has made further investments, out of amount received from the assessee as share application money, with four entities i.e., Keti Highway Developers Pvt. Ltd., Keti Infrastructure Pvt. Ltd., Keti Toll Infrastructure P. Ltd. and Keti Buildcon Pvt. Ltd. in equity shares. Therefore,

the use of share application money by Keti Constructions Ltd. is also properly explained and discernible from the audited accounts of the said associate company, therefore, no addition is called for in the hands of the assessee u/s 68 of the Act. Further, drawing our attention to pages 26-50 of the assessee's paper book, the Id. Counsel submitted that the AO has not made any addition in the hands of the four companies in which M/s Keti Construction Ltd. made investment in the form of equity shares application money, therefore, no addition can be made in the hands of the assessee as the further use or investment is properly explained by way of documentary evidence from assessee to M/s Keti Construction Ltd. and M/s Keti Constructions Ltd. to the said four companies. The Id. Counsel further explained that the assessee was a special purpose vehicle (SPV) to procure funds in the form of investments as share application money and, after receiving share application money from 40 entities as listed at page 25 of the assessee's paper book, almost the entire amount was re-invested with M/s Keti Construction Ltd. and, furthermore, M/s Keti Construction Ltd. again invested the same to its four associate companies, therefore, the transaction of share application money between group companies cannot be doubted as the assessee was merely a special purpose vehicle for procuring investments for the parent Keti Construction Ltd.

6. Replying to the above, the Id. CIT-DR drew our attention to orders of the authorities below and submitted that the assessee failed to prove the identity of 40 share applicants, genuineness of the transaction and credit worthiness and capacity of the share applicants. Therefore, considering the entire facts and circumstances of the case, the AO was right in making the addition u/s 68 of the Act as the assessee could not discharge the onus lay on its shoulders to escape from the rigors of the

provisions of section 68 of the Act. Further, drawing our attention to first appellate order, the Id.CIT-DR submitted that the Id.CIT(A), after considering the entire facts and circumstances, has rightly upheld the findings arrived at by the Id. AO because further use of the amount received in the form of share application money from 40 entities is of no relevance. The assessee was duty bound to establish the identity of 40 investors listed at page 25 of the assessee's paper book along with their capacity and credit worthiness and also the genuineness of the transaction and, thereafter, the assessee could successfully escape from the rigors of section 68 of the Act. The Id.CIT-DR submitted that the Id.CIT(A) has dealt with the issue elaborately in paras 4.2 to 4.2.5 which are unambiguous and clear, therefore, in view of the judicial pronouncements relied on by the Id.CIT(A), the addition made by the AO may kindly be confirmed.

7. Placing rejoinder to the above, the Id. Counsel placed reliance on the following Judgements:-

- (i) Omni Farms P. Ltd (2017 85 taxmann.com 214) (ITAT Del);
- (ii) Vijay Conductors India P Ltd (ITA 3484/Del/13) (ITAT Del);
- (iii) Vijay Conductors India P Ltd (Delhi HC); &
- (iv) AGM Holdings Limited (ITA No.1667/Del/2014 - ITAT Delhi)

8. The Id. Counsel submitted that in this case, Addl. CIT, u/s 144A of the Act, issued directions for not making any addition in the hands of the conduit entities, i.e., companies which were controlled by Shri S.K. Gupta and were utilized for issuing cheques to the beneficiaries after depositing the cash received from the beneficiaries. Further, placing reliance on the judgement of the *Hon'ble High Court of Delhi in the*

case of PCIT vs. Vijay Conductors India Pvt. Ltd. and other appeals, order dated 29.09.2015, the Id. Counsel submitted that when it is not in dispute that the assessee is the conduit entity and not the beneficiary then the order of ITAT deleting the addition u/s 68 in their hands does not suffer from any legal infirmity. The Id. Counsel has also drawn our attention to the order of ITAT, Delhi in the case of *AGM Holdings Limited vs. DCIT (supra)*.

9. On careful consideration of rival submissions, we note that the sole ground of the assessee, challenging the addition on account of unexplained share application money u/s 68 of the Act amounting to Rs.24,14,75,000/- is that the assessee is a conduit company and it received the said amount as share application money from 40 entities as listed at page 15 of the assessee's paper book and invested the same in the same form of share application money to M/s Keti Construction Ltd. In ground No.3.2, the assessee has also contended that the Id.CIT(A) has failed to appreciate and ought to have held that the impugned amount has already been taxed in the hands of Keti Construction Ltd. and also in the case of SPV companies. It was also contended by the Id. Counsel that when the amount has been taxed in the hands of Keti Construction Ltd., and other SPV companies, then, further addition in the hands of the present assessee which is a conduit company, would not be justified and would certainly amount to double taxation. Therefore, the addition made by the AO and confirmed by the Id.CIT(A) may kindly be deleted.

10. First of all, we may point out, on being asked by the Bench, the Id. Counsel of the assessee, in all fairness accepted that the addition made in the hands of Keti Construction Ltd. by the AO has been challenged before the Id.CIT(A) and the appeal

is pending before the concerned Id. First appellate authority for adjudication. Therefore, we safely presume that M/s Keti Construction Ltd. has not accepted the addition made by the AO in their hands u/s 68 of the Act and litigation is going on.

11. So far as the mention in ground 3.2 of the assessee that the amounts have been taxed in the hands of the respective four SPV companies is concerned, during the arguments, the Id. Counsel of the assessee has drawn our attention to the assessee's paper book pages 26 to 50 and submitted that no addition has been made in the hands of four SPV companies on this account, therefore, the facts mentioned in the grounds of the assessee are contrary to the factual position revealed from the documents submitted by the assessee itself.

12. So far as the contention of the Id. AR that the assessee is a conduit company which is part of group of Keti Construction Ltd. is concerned, admittedly, the assessee company has received the impugned amount in the form of share application money from the 40 entities as listed at page 15 of the assessee's paper book amounting to Rs.24,14,75,000/- and simultaneously made investments as share application money with M/s Keti Construction Ltd. amounting to Rs.24,09,50,000/- and M/s Construction Ltd. further invested the same as share application money with four entities i.e., Keti Highway Developers Pvt. Ltd., Keti Infrastructure Pvt. Ltd., Keti Toll Infrastructure P. Ltd. and Keti Buildcon Pvt. Ltd. in equity shares.

13. The onus lie on the shoulders of the assessee to escape from the rigors of section 68 of the Act to explain the source of share application money received by it from investor companies which are four companies in the present case. But, the assessee neither before the authorities below nor before this Bench has furnished

details and particulars showing the identity of 40 investor companies, their capacity and credit worthiness and genuineness of the transaction as listed at page 15 of the assessee's paper book. From the said list, we note that the assessee has submitted names of four parties, their addresses, PANs and respective amounts, but, has not furnished any documentary evidence in support of their capacity and credit worthiness to make investment and genuineness of the transaction to escape from the rigors of section 68 of the Act. The main contention of the assessee is that the assessee is a conduit company which received amount from 40 share applicants/investors and further invested the same to its associate/main group company M/s Ketu Construction Ltd. and M/s Ketu Construction Ltd. further invested the same in four group companies. Therefore, the addition has been made in the hands of Ketu Construction Ltd., which is the ultimate beneficiary and which is sufficient and no addition is called for in the hands of the present assessee.

14. We may point out that for establishing a factum of conduit company the assessee is duty bound to establish that the source of the impugned amount is a group company and the assessee, after receiving the amount further invested the same by making investments in the group company. But, it is a peculiar situation of present case that the 40 investor companies, who invested the amount in the assessee company as share application money are not part of Ketu Construction group of companies and in this situation, the onus lay upon the shoulders of the assessee cannot be held discharged in absence of substantiating the factum of capacity and credit worthiness of the investor companies and genuineness of the transaction. We may point out that the assessee has shown that the amount was invested in group head company M/s Ketu Construction Ltd. and M/s Ketu Construction Ltd. further

invested the same in four group SPV companies, but, this fact would be relevant if the assessee successfully establishes that the entities or companies who made investments as share application money to the assessee company are also group companies having clear identity and having capacity and credit worthiness to invest the amount establishing genuineness of the transaction. But, in the present case, the assessee cannot be held as conduit company because capacity and credit worthiness of 40 companies who invested share application money in the assessee company and genuineness of transaction has not been established.

15. It may also be pointed out that the assessee cannot be held as intermediary company because the assessee has not successfully established that the source companies are also group companies and it is working merely as middleman entity and a conduit company. Therefore, the benefit of the judgements relied on by the assessee in the case of *Omni Farms Pvt. Ltd. (supra)*, *Vijay Conductors India Pvt. Ltd. (supra)* and *AGM Holdings Ltd. (supra)* is not available for the assessee in the present case having distinct and dissimilar facts as the assessee could not substantiate the fact that it is a conduit company of Keti group of companies. Therefore, we are inclined to hold that since the assessee company has not discharged the onus lay on the shoulders of it that it is a conduit company and also has not successfully proved and established the identity, capacity and credit worthiness of 40 investor companies and genuineness of the transaction, therefore, the AO was right in making addition in the hands of the assessee u/s 68 of the Act and the Id.CIT(A) was also correct in confirming the same.

16. In the result, the appeal filed by the assessee is dismissed.

Order pronounced u/r 34(4) of the Income-tax (Appellate Tribunal) Rules,
1963 on 10.02.2023.

Sd/-
(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 10th February, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft dictated on	24.01.2023
2.	Draft placed before the author	25.01.2023
3.	Draft placed before the other Member	
4.	Approved Draft comes to the Sr.PS/PS	
5.	Order uploaded on	
6.	File sent to the Bench Clerk	
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	