

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 929/Mum/2022 (A.Y. 2011-12)

Rubberex Industries Pvt. Ltd.

Ground Floor, B-Anjirwadi,
DR Mascarenhas Road,
Mazgaon, Mumbai-400010.

PAN: AABCR8644P

..... Appellant

Vs.

Commissioner of Income Tax-14/NFAC,
ITO Ward 8(1)(2)/AO NFAC,
New Delhi.

..... Respondent

Appellant by	:	Sh. Bhupendra Shah
Respondent by	:	Smt. Mahita Nair, DR
Date of hearing	:	14/11/2022
Date of pronouncement	:	26/12/2022

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short 'NFAC'), Delhi dated 25.04.2022 under section 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2011-12. The assessee has raised the following grounds of appeal:

“1) On the facts and circumstances of the case and in law, the authorities below had erred in confirming/making addition of Rs. 91,54,000/- u/s 68 of the IT Act, without even considering the submissions made, evidences submitted and that too without even affording any opportunity of being heard either physically or virtually in the matter when high stakes are involved, which is against the principles of Natural Justice and against the provisions of Income Tax Act, 1961 and rules made there under.

2) On the facts and circumstances of the case and in law, the authorities below had erred in confirming the levy of interest u/s 234B and 234C of the Act which is against the provisions of Income Tax Act 1961 and rules made there under.

3) On the facts and circumstances of the case and in law, the authorities below had erred in confirming/initiation of penalty proceedings u/s 271(1)(c) of the Act and which is also against the provisions of Income Tax Act 1961 and rules made there under.

4) The appellant craves leave to add, alter, modify and delete all or any of the aforesaid grounds of appeals on or before the date of hearing.”

2. Brief facts of the case are that assessee filed its return of income on 28-09-2011 declaring total income of Rs 29,23,297/-. Thereafter an information was received from the office of registrar of companies (ROC, Mumbai) about this company that it had allotted 9,154 equity shares of Rs 100 each at a premium of Rs 900/- to two entities viz. M/s Niche Infrastructure Pvt Ltd and M/s. Suvi Rubber Pvt Ltd. Assessing officer found that amount received by the assessee not disclosed fully and truly and escaped the assessment for AY. 2011-12 and falls within the provisions of explanation 2(c) (i) of sec 147.

3. Assessee received total Rs. 82, 38,600/- by way of premium and Rs. 9,15,400/- as Share Capital on 9,154 equity shares (face value Rs. 100+ share premium of Rs. 900/-).

4. Various notices were issued to the assessee to seek information about identity, genuineness, creditworthiness and justification for premium charged. We have gone through the paper-book filed by the assessee dated 03-10-2022 about financials of the assessee company, financials of both the subscribers, ITR of assessee-company and both the subscribers and copy of CA certificate for valuation of equity shares of assessee-company as on 31-03-2011.

5. We have gone through the order of the AO, order of the Ld. CIT (A) and submission of the assessee. We have gone through the financials of the assessee vide page no. 12, 14 and 15 (relevant to the issue). In addition to this we have gone through the financials of M/s. Suvi Rubber Pvt Ltd vide Pg no. 31, 34 and 37 and M/s. Niche Infrastructure Pvt Ltd vide Pg no 50, 52. In addition to this we have gone through copy of ledger account of M/s Suvi Rubber Pvt Ltd in the books of assessee vide Pg no. 58 and M/s Niche Infrastructure Pvt Ltd in the books of assessee vides Pg no. 59 of the paper-book.

6. We observed that assessee is maintaining a loan account with M/s. Suvi Rubber Pvt Ltd since FY. 2006-07 and M/s. Niche Infrastructure Pvt Ltd since September 2009.

7. The facts mentioned above are not under challenge from revenue. Now it is pertinent to mention, keeping in view the facts narrated supra that assessee actually received the money in FY. 2009-10 and before. In the relevant AY the only difference is that the same loan amount was allocated as share capital and share premium. Now before going into the merits of the case, we consider it appropriate to confirm the validity of jurisdiction assumed by the AO in the current year for the amount received in the previous years.

8. It's a cardinal principle of law that each year is a separate Asstt. Year and the figures received in one year can't be examined in another year. Since no money was received during AY under consideration, there was no scope for invoking the provisions of sec 68. Only the amount received during the relevant AY can be considered for the purposes of sec 68 or sec 56(2) (viib).

9. Here we need to understand that the amount converted this year into share capital and share premium still represents a liability in the hand of company being an artificial judicial person as in the previous year, on vice versa the same was an asset for the subscribing parties i.e. investment in this year and debtors in the previous years. Ideally, department should have reopened the case in the years in which amounts were actually received, but in the year under consideration no actual money has been received by the assessee. **It is further noted that amount from loan account to share capital and share premium account was transferred through journal entry and no actual money received hence sec 68 can't be applied here.**

10. We further relied on following pronouncement of ITAT and honourable High courts as under:

- i) M/s Syntensia Network Security India Pvt Ltd Vs ITO ITA NO. 2927/Mum/2017 dated 27-07-2018
- ii) DCIT Vs Global Mercantile Pvt. Ltd. 2016 157 ITD 924 (Kol. ITAT)
- iii) CIT Vs Jagat Kumar Satish Bhai Patel 2014 225 taxmann 190 (Guj)
- iv) CIT Vs Usha Stud Agricultural Farms Ltd 2008 301 ITR 384 (Del)
- v) CIT Vs Raqhuraii Agro Industries Pvt Ltd 2012 349 ITR 260(All)
- vi) ITO Vs Shri Nasir Khan J.Mahadik ITA NO. 153/Mum/2010

vii) Suraj Bhan Bajaj Vs ITO 2008 21/SOT/22 (del)

viii) Pramod Kumar Dang Vs JCIT 2006 6 /SOT/301(Del)

11. In view of the above discussion and considering, judicial pronouncement and the totality of facts and circumstances of the case we do not find any merit for the addition so made by the AO u/s 68. In the light of this we direct the AO to delete the addition made u/s 68.

12. In the result appeal of the assessee is **allowed**.

Order pronounced in the open court on 26th day of December, 2022.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 26/12/2022
SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai