

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.114/RPR/2021

निर्धारण वर्ष / Assessment Year : 2015-16

Chhattisgarh Metaliks and Alloys Private Limited
Mohini B-5, Merlin Jayashree Vihar,
Mandi Gate, Pandri Tarai,
Raipur (C.G.)-492 001
PAN : AADCC9242J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-3(3),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA
Revenue by : None

सुनवाई की तारीख / Date of Hearing : 22.02.2023

घोषणा की तारीख / Date of Pronouncement : 13.03.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 25.11.2021, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') dated 08.07.2019 for the assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1.That CIT Appeals-NFAC has erred in both fact and in law in confirming the penalty of Rs.10,95,149/- made by Assessing Officer u/s.271(1)(c) of the Income Tax Act, 1961.

2.That CIT Appeals- NFAC while confirming the penalty has failed to consider the that the appellant is before Hon'ble ITAT on the merits of the case against the CIT(A) order rejecting the Appellant's appeal against assessment order, which is yet to be disposed off.

3. That the assessee craves to add, amend or delete any of the above grounds of appeal during the course of hearing.

4. That the above grounds are without prejudice to each other.”

2. Succinctly stated, the assessee company, which is engaged in the business of trading had e-filed its return of income for A.Y.2015-16 on 20.09.2015, declaring an income of Rs.19,570/-. Subsequently, the case of the assessee was selected for limited scrutiny u/s.143(2) of the Act.

3. Assessment was, thereafter, framed by the A.O vide his order passed u/s.143(3) of the Act dated 26.12.2017, determining the income of the assessee company at Rs.35,44,170/-, after making the following additions:-

Sr. No.	Particulars	Amount
1.	Addition towards unexplained credit u/s.68 of the Act.	Rs.34,46,600/-
2.	Addition u/s.56(2)(viib) of the Act	Rs.75,000/-

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

5. After culmination of the assessment proceedings, the A.O called upon the assessee to show cause as to why penalty u/s.271(1)(c) of the Act qua the additions made in the course of the assessment may not be imposed on it. As the contentions advanced by the assessee did not find favour with the A.O, he vide his impugned order passed u/s.271(1)(c) of the Act, dated 08.07.2019 imposed a penalty of Rs.10,95,149/-.

6. Aggrieved, the assessee assailed the order passed by the A.O u/s.271(1)(c) of the Act dated 08.07.2019 before the CIT(Appeals) but without any success.

7. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

8. Although the department had been put to notice about the hearing of the appeal, we find that neither any representation has been made on its behalf nor any application seeking adjournment has been filed before us. Considering the aforesaid facts, we are constrained to dispose off the appeal after hearing the Ld. Authorized Representative (for short 'AR') for the assessee and perusing the orders of the lower authorities.

9. We have heard the Ld. AR and perused the orders of the lower authorities, as well as the order passed by the Tribunal while disposing off the quantum appeal of the assessee company in ITA No.102/RPR/2019 dated 26.07.2022. As stated by the Ld. AR and, rightly so the very basis for imposition of penalty in the present case, viz. (i) addition towards unexplained credit u/s.68 of the Act : Rs.34,46,600/- ; and (ii) addition u/s.56(2)(viib) of the Act : Rs.75,000/-, had been vacated by the Tribunal vide order passed in ITA No.102/RPR/2019 dated 26.07.2022, observing as under:

“12. We shall first deal with the sustainability of the addition of Rs.34.49 lakhs made by the A.O u/s.68 of the Act, which thereafter had been upheld by the CIT(Appeals). As is discernible from the records, the aforesaid investor company, viz. M/s. Aayush Steelco Pvt. Ltd. had made an investment of Rs.34.49 lac towards share application money with the assessee company. As stated by the Ld. AR, and rightly so, the aforesaid investment was sourced out of the withdrawal made by the investor

company from its capital account as a partner with M/s. Sri Balaji Iron & Steel Traders, Vishakhapatnam. Claim of the assessee as regards the source of its investment towards share application money is established on a conjoint perusal of the capital account of the investor company, viz. M/s. Aayush Steelco Pvt. Ltd. with M/s. Sri Balaji Iron & Steel Traders, Page 31 of APB a/w. its bank account No.911030049109355 with Axis bank, Page 30-36 of APB . Confirmation of the aforesaid investor company as regards the investment made towards share application money with the assessee company a/w. source thereof had been filed by the assessee in the course of the assessment proceedings. Also, a copy of the bank account of the investor company, viz. M/s. Aayush Steelco Pvt. Ltd., Page 45 of APB clearly evidences the investment made by it towards share application money a/w. source thereof, which, for the sake of clarity is culled out as under:

Account Number	Name	Holding status	Customer ID		
200013977831	Aayush Steel Co Private Limited	Primary holder	10208539		
Product Description current account-Indus Blue Branch Address: Vishakhapatnam CDR Hospital, A 3 Raja Complex, Walter Main Road, Vishakhapatnam, Andhra Pradesh-530002 Statement period : 01 June-2014 to 30-June-2014 Statement Frequency : Monthly Average monthly balance required : Rs.5000/- SMS Alert No. Branch MICR Code : 530234001 Branch IFSC Code : INDB0000581 Nomination Registered : No.					
Date	Particulars	Chq. No./Ref. No.	Withdrawal	Deposit	Balance
01-Jun-2014	Brough forward				22,261.98
10-June-2014	Transfer/ECS CREDIT/AAGCA106-1B-AY 2012-13/019407495142823617 CRNACH10061014			2,010.00	24,271.98
10-Jun-2014	Transfer/ Bank Induced RTGS/UTIBH14161077687/ SRI BALAJI IRON & STEEL TRAD 000016043474/UTIB00003 69911030049109355			3,450,000.00	3,474,271.98
10-Jun-2014	Transfer/Customer induced RTGS/INDBH14161917547/CHHATISHGARH METALIKS AND AL 000016047321/STATE BANBK OF IND 33394566277	615286	3,450,000.00		24,271.98
June-2014	Transfer/Bank Induced to RTGS/NEFT Chgs. INDBH14161917547 Value-Date 10-JUN-14		56.18		24,215.80

30-JUN-2014	Carried forward				24,215.80
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On the basis of the aforesaid facts, we are of the considered view that the lower authorities had grossly erred in law and the facts of the case in dubbing the transaction in question, i.e., receipt of duly explained share application money by the assessee company from the aforesaid investor company, viz. M/s. Aayush Steelco Pvt. Ltd. as an unexplained cash credit u/s.68 of the Act. At this stage, we may herein observe, that a perusal of the capital account of the investor company, viz. M/s. Aayush Steelco Pvt. Ltd. reveals beyond doubt that the investment in question was made out of its 'opening balance' of Rs.89.18 lac (supra) on 01.04.2014 as a partner with M/s Sri Balaji Iron & Steel; Traders, Vishakapatnam and not on the basis of any fresh amount which was found parked in the same during the year under consideration. As regards the adverse inferences drawn by the lower authorities, for the reason that M/s. Abharani Vinimay Pvt. Ltd., a share holder of the investor company had allegedly emerged as a shell company, we are of the considered view that the same by no means would have any bearing in so far the issue in hand is concerned. As stated by the Ld. AR, and rightly so, as the investment towards the share application money is sourced from the 'opening balance' of Rs.89.18 lac in the capital account of the investor company with M/s. Sri Balaji Iron & Steel Traders, therefore, there would be no justification in drawing of any adverse inferences qua the said source of investment. At this stage, we may herein observe, that except for raising allegations in the thin air the department had failed to lead any iota of evidence which would persuade us to conclude that it was the unaccounted money of the assessee company which was routed back to its coffers in the garb of share application money through the investor company, viz. M/s. Aayush Steelco Pvt. Ltd. Considering the aforesaid duly substantiated explanation of the assessee as regards the source of investment of share application money made by the investor company, viz. M/s. Aayush Steelco Pvt. Ltd., we are of the considered view that the onus cast upon the assessee company for proving the nature and source of the share application money a/w the additional burden cast upon it as per the "first proviso" to section 68 of the Act, stands duly discharged. Accordingly, not being able to persuade ourselves to subscribe to the view taken by the lower authorities who had dubbed the share application money of Rs.34.49 lac received by the assessee company as an unexplained cash credit u/s.68 of the Act, we herein set- aside the order of the CIT(Appeals) and vacate the said addition. Thus, the **Ground of appeal No.1** raised by the assessee is allowed in terms of our aforesaid observations.

13. We shall now advert to the grievance of the assessee that the lower authorities had erred in law and the facts of the case in making an addition of Rs.75,000/- u/s. 56(2)(viib) of the Act. As observed by us hereinabove,

the assessee company had allotted additional 5000 shares having face value of Rs.10/- each to its existing share holders at a premium of Rs.90/- per share. Accordingly, the assessee company on account of the said allotment had raised an amount of Rs.50,000/- towards share capital a/w. share premium of Rs.4.5 lac. As the FMV of the unquoted equity shares of the assessee company as per sub-rule (2) of Rule 11UA was Rs.85/- per share, therefore, the A.O held the excess amount of Rs.15/- per share so received by the assessee as its income u/s. 56(2)(viib) of the Act.

14. After having given a thoughtful consideration to the contentions of the Ld. AR, we concur with his contention that as the additional shares of the assessee company were issued and allotted on a pro-rata basis to the existing shareholders, i.e., based on their existing shareholding, therefore, the share holding percentage before and after allotment of the aforesaid shareholders remained the same. In sum and substance, as long as there was no disproportionate allotment of shares, i.e., shares were allotted on a pro-rata basis to the shareholders based on their existing holding, then, pursuant to allotment of the additional shares there would only be an apportionment of the value of their existing holding over a larger number of shares. The aforesaid contention of the Ld. AR is fortified by the order of the Co-ordinate Bench of the Tribunal, i.e, ITAT, Bench 'A', Mumbai in the case of Sudhir Menon, HUF Vs. ACIT-21(2), Bendra, Mumbai, (2014) 148 ITD 260 (Mum). Also, a similar view had been taken by the ITAT, Mumbai in its recent order passed in the case of ITO Vs. Rajeev Ratanlal Tulshyan (2021) 136 Taxman.42 (Mum). In fact, we find that the CBDT vide its Circular No.10 of 2018, dated 31.12.2018, had earlier clarified that the provisions of section 56(2)(vii) of the Act shall not be applicable in cases of receipt of shares by the specified company or firm as a result of fresh issuance of shares including those by way of issue of bonus shares, right shares and preference shares. Although the aforesaid circular was, thereafter, withdrawn, but in our considered view, as the provisions of Sec. 56(2)(vii) were introduced as an anti-abuse measure to prevent laundering of unaccounted money in the garb of gifts after abolition of Gift Tax Act, therefore, there is no justifiable reason to depart from the understanding that the said provisions were in the nature of counter evasion mechanism to prevent laundering of unaccounted money. In the case of issuance of bonus shares, allotting of shares to existing shareholders in proportion to their existing shareholding (akin to issue of right shares), there is neither any increase or decrease in the wealth of the shareholder (or of the issuing company) on account of a bonus issue and his percentage holding therein remains the same. What in effect transpires is that a share gets split (in the same proportion for all the shareholders). As observed by the Tribunal in its aforesaid order, such allotment of additional shares would be akin to changing a one thousand rupee note for two five hundreds rupee notes. Accordingly, we are of the considered view, that as stated by the Ld. AR,

and, rightly so, the provisions of section 56(2)(viib) of the Act in the backdrop of the facts of the case before us could not have been triggered.

15. At this stage, we may herein observe that though the aforesaid issue was specifically raised by the assessee before the CIT(Appeals) however, the latter had failed to adjudicate the same. In all fairness, instead of restoring the issue to the file of the CIT(Appeals) for fresh adjudication which would only add to the pending litigation, we have taken a call and adjudicated the aforesaid issue. We, thus, in terms of our aforesaid observations modify the order of the CIT(Appeals) and vacate the disallowance of Rs.75,000/- made by the A.O u/s. 56(2)(viib) of the Act. Thus, the **Ground of appeal No.2** raised in appeal by the assessee is allowed in terms of our aforesaid observation."

As the very basis for imposing penalty in the hands of the assessee company u/s.271(1)(c) of the Act had been vacated by the Tribunal, therefore, the penalty imposed by the A.O u/s.271(1)(c) of the Act cannot be sustained and has to meet the same fate. We, thus, in terms of our aforesaid observations, vacate the penalty of Rs.10,95,149/- imposed by the A.O u/s.271(1)(c) of the Act.

10. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 13th day of March, 2023.

Sd/-
G D PADMAHSHALI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 13th March, 2023
SB

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.