

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI**  
श्री वी दुर्गा राव, न्यायिक सदस्य एवं डॉ. मनीष बोराड, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**DR. MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.516/Chny/2020  
निर्धारण वर्ष/Assessment Year: 2013-14

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 1(2),  
Chennai 600 034.

Vs. M/s. Creya Learning and Research  
Pvt. Ltd., No. 9/5, Nandanam Extension  
First Street, Nandanam,  
Chennai 600 035.  
**[PAN:AAECK2657G]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri P. Sajit Kumar, JCIT  
प्रत्यर्थी की ओर से/Respondent by : Shri Muraleedhara Reddy, Advocate  
सुनवाई की तारीख/ Date of hearing : 24.04.2023  
घोषणा की तारीख /Date of Pronouncement : 27.04.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 8, Chennai, dated 13.12.2019 relevant to the assessment year 2013-14. The grounds raised by the Revenue are as under:

- 1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case ?*
- 2. Whether on the facts and circumstances of the case, is it correct on the part of learned CIT(A) to delete the addition u/s 68 by observing that the share application money has been received through banking channel only, without appreciating the fact brought by AO into the assessment order that the investors did not have any sufficient own fund for making the investment and the invested money was sourced into their account (credit in bank account*

*statement) only days before making investment and proper explanation & sufficient documentary evidences has not been provided by the assessee w.r.to the fact- how the investors, having small returned income, are capable of making this huge investment, hence, in absence of genuine source and credit worthiness the addition u/s 68 is justified?*

3. *Whether on the facts and circumstances of the case is it correct on the part of learned CIT(A) to delete the addition u/s 68 by relying on the additional evidences- PANs, addresses of the Lenders to the Investors along with Loan repayment schedule, which were neither submitted during assessment proceedings nor any opportunity under Rule 46A has been provided to the AO during appeal proceeding?*
4. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.*

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2013-14 on 28.09.2013 admitting a loss of ₹.2,98,93,273/-. The case was selected for scrutiny and after following due procedure, the assessment was completed under section 143(3) of the Income Tax Act, 1961[“Act” in short] dated 18.03.2016. During the course of scrutiny proceedings, before the Assessing Officer, the assessee has furnished the details of share capital and premium received during the year, as per which the share premium of ₹.5,21,70,000/- and nominal amount of ₹.44.40,000/- were received from one HUF, two Individuals and a Private Limited Company as detailed below:

#### First & Second Call

Name	No. of shares	Nominal value	Premium	Nominal amount	Premium amount	Call amount
Arvind Karsandas Bhanushali HUF	290000	2.0	23.5	5,80,000	68,15,000	73,95,000
Arvind Karsandas Bhanushali	330000	2.0	23.5	6,60,000	77,55,000	84,15,000
Deepali Arvind Bhanushali	490000	2.0	23.5	9,80,000	1,15,15,000	1,24,95,000
Shree Naman Developers Ltd.	1110000	2.0	23.5	22,20,000	2,60,85,000	2,83,05,000
					Total	5,66,10,000

The assessee was asked to furnish the bank account statements of the shareholders with their ledger accounts. On perusal of the bank account statements of the shareholders, the Assessing Officer noted that none of the share holders have sufficient balances or sources for the share capital introduced by them on the respective dates. All of them, excluding the company M/s. Naman Developers Ltd., have shown lesser/small income in their returns filed, wherein, no schedules were given. Both Mr. Arvind and his wife Mrs. Deepali's Bank accounts show that huge sums were credited into their bank accounts on the same day or a day before, on which date the amounts were transferred to the assessee-company.

5. From the above details, the Assessing Officer observed that these deposits were made to accommodate the said transaction with the assessee company. Further, the ledger balances of these shareholders in the books of the Assessee's company are moulting with the information of 'Amount received' submitted by the AR. Hence the Assessing Officer asked AR of the assessee to substantiate the share premium of ₹.5,21,70,000/- and nominal amount of ₹.44,40,000/- claimed to have been received during the year by producing the shareholders along with their books of accounts, financial statements, proof for the credits in their bank accounts etc.

6. Before the Assessing Officer, the AR of the assessee company has submitted copies of confirmations and total income statements of all the shareholders. There are certain discrepancies in the balance sheets regarding the debit balances compared to the share capital amounts shown in the share capitals & premium received. The AR has furnished reconciliation statements. Further all the shareholders have shown huge unsecured loans as the sources for the share capital introduced in the assessee company. The shareholders were not having much income as per their returns of income to substantiate their credit worthiness either to make huge investments in the assessee company or to repay the sums purportedly received from a number of persons. Some of the loan creditors names were shown in the list of all the shareholders and none of the shareholders have shown any interest payments to their creditors. Moreover, the assessee has failed to produce any of the persons/HUF/ Company for examination. Since, neither the creditworthiness of the so called shareholders or the genuineness of the transaction was proved by the assessee company, the Assessing Officer has treated the entire amount of ₹.5,66,10,000/- claimed to have been received as share capital and share premium as “unexplained income” of the assessee company camouflaged as the share capital/share premium and the same is added to the total income of the assessee.

7. On appeal, after considering the submissions explaining the sources of capital introduced by the shareholders, the Id. CIT(A) has deleted the addition of ₹.5,66,10,000/- by observing as under:

*7. The contents of the assessment order as well as the submission of the assessee are examined. The assessee company had been set up as a start up for developing educational content, The assessee company has developed various educational tools and is marketing the same to various schools across the country. The assessee company has declared losses for this and next few years. The initial share capital of the assessee company had been invested by Aravind Bhanusali, Shri Naman Deepali Bhanushali and M/s. Developers Ltd. The Assessing has not doubted the identity of the shareholders as well as the genuineness of the transactions. All the four shareholders are assessed to tax and have submitted proof of filing regular returns of income. The entire share capital has been received by the assessee company through banking channels only. This should suffice to explain the transaction. With this level of evidence, the onus of any adverse inference shifts to the Assessing Officer.*

*8. The assessee company has gone one step further and has explained the source of source for the share capital introduced. The sources of sources are also verifiable entities. The source of source is also received through banking channels. The assessee company has taken the effort of giving details of the banking transactions as well as names, addresses and PAN numbers of the persons from whom the share holders had received the monies. This level of evidence is more than sufficient to explain away any addition made under section 68 of the IT Act. If required, necessary enquiries could have been conducted in the individual cases of these shareholders. The assessee company has explained the identity of shareholders, genuineness of shares of subscription as well as the creditworthiness of the shareholders. No further proof need be given. The evidence submitted is accepted and the addition made u/s 68 of the IT Act is held as unwarranted and liable to be deleted. The Assessing Officer is directed to delete the addition of Rs.5,66,10,000/-. The grounds of appeal are allowed.*

8. Aggrieved, the Revenue carried the matter in appeal before the Tribunal. The Id. DR has submitted that in the assessment order, the

Assessing Officer has noted that the shareholders, who made huge investment in the company, were not having sufficient fund as per the returns filed by them. The Assessing Officer has doubted the creditworthiness of the shareholders and moreover, the assessee has not produced the shareholders before the Assessing Officer and by considering all the details, the Assessing Officer came to a conclusion that the transactions are not genuine transaction and rightly made the addition. The Id. DR further submitted that the Id. CIT(A) failed to understand that it is the burden on the assessee to prove the entire transactions as genuine. However, the Id. CIT(A) mentioned in his order that it is the onus of the Assessing Officer to prove is not correct.

9. On the other hand, the Id. Counsel for the assessee has submitted that all the details are filed before the Id. CIT(A) and the Id. CIT(A) by considering entire details, deleted the addition made by the Assessing Officer, which is in accordance with law. Therefore, no interference in the decision of the Id. CIT(A) is warranted. The Id. Counsel for the assessee has relied on the following decisions:

1. K.P. Manish Global Ingredients (P.) Ltd. v. ACIT [2021]131 taxmann.com 158 (Chennai – Trib)
2. P. Prabhu v. ACIT [2022] 144 txmann.com 172 (Chennai-Trib)
3. Gujarat Natural Resources Ltd. v. ACIT [2023] 148 taxmann.com 476 (Gujarat)
4. PCIT v. Neotech Education Foundation [2023] 148 taxmann.com 372 (Gujarat)

5. PCIT v. Overtop Marketing (P.) Ltd. [2023] 148 taxmann.com 94 (Calcutta)
6. PCIT v. Enrich Agro Food Products (P.) Ltd. [2023] 148 taxmann.com 26 (Delhi)
7. BST Infratech Ltd. v. DCIT [2023] 146 taxmann.com 406 (Kolkata – Trib)
8. PCIT v. Satkar Infrastructure (P.) Ltd. [2022] 145 taxmann.com 461 (Delhi)
9. Kumar Nirman & Nivesh (P.) Ltd. v. ACIT [2020] 121 taxmann.com 174 (Karnataka)
10. ITO v. Singhal General Traders (P.) Ltd. [2020] 115 taxmann.com 119 (Mumbai-Trib.)

10. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including case law filed by the assessee. In this case, the assessee has received huge capital from various shareholders. The Assessing Officer asked the assessee to file the details of the shareholders. The Assessing Officer came to a conclusion that the shareholders have not much money in their hands and how they paid huge share capital to the assessee. The assessee has not given any explanation before the Assessing Officer. We find that in the assessment order, the Assessing Officer doubted the creditworthiness of the shareholders and the assessee has not explained the source of the creditors and simply filed some details. Some details were filed before the Id. CIT(A). In his order, the Id. CIT(A) has simply stated that all the transactions were through banking channel and therefore, the identity of the parties, creditworthiness and genuineness of the transactions. In this case, the Assessing Officer has doubted the creditworthiness of the shareholders and no satisfactory explanation was

given before the Assessing Officer or before the Id. CIT(A) or even before the Tribunal. The assessee has not filed any paper to prove the transaction as genuine. We find that when the assessee makes a claim that the entire share capital received by the assessee from the share holders, the onus lies on the part of the assessee to prove and not on the part of the Assessing Officer. In this case, the assessee failed to discharge the onus cast upon him that the share holders are having creditworthiness. Without examining true facts of the case, the Id. CIT(A) simply deleted the addition made by the Assessing Officer.

11. So far as case law relied on by the Id. Counsel for the assessee are concerned, in those cases, the assessee has produced complete details of the creditors and also produced source of income of the said creditor. In the present case, the assessee has not at all produced any of the share holders before the Assessing Officer for examination and when the creditworthiness of the shareholders were doubted, no satisfactory explanation was given before the Assessing Officer or before the Id. CIT(A) or even before the Tribunal. Thus, the case law have no relevance to the facts of the present case.

12. In view of the above facts and circumstances, we reverse the order passed by the Id. CIT(A) and confirm the order passed by the Assessing Officer.

13. In the result, the appeal filed by the Revenue is allowed.

Order pronounced on 27<sup>th</sup> April, 2023 at Chennai.

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 27.04.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &  
6. गार्ड फाईल/GF.