

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**Before Sh. C. M. Garg, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 4161/Del/2016 : Asstt. Year : 2008-09

DCIT, Circle-5(1), New Delhi	Vs	BTM Exports Pvt. Ltd., G-11, 17/41, West Punjabi Bagh, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCB5093M		

**Assessee by : Sh. Ajay Wadhwa, Adv. &
Ms. Bharti Sharma, Adv.
Revenue by : Sh. Kanav Bali, Sr. DR**

Date of Hearing: 15.02.2023

Date of Pronouncement: 27.04.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-2, New Delhi dated 29.03.2016.

2. Following grounds have been raised by the Revenue:

"1. Whether the Id. CIT(A) has erred on facts and in law in deleting the addition counting to Rs.5,20,00,000/- as unexplained cash credit u/s 68 of the Income Tax Act, 1961 without appreciating the facts that the Id. CIT(A) vide appeal No. 254/2011-12 dated 31.01.2013 has upheld the addition on the same ground in the assessee's own case in the A.Y. 2009-10."

3. Heard the arguments of both the parties and perused the material available on record.

4. The assessee filed return of income on 26.08.2008 declaring income of Rs.95,23,700/-. The original assessment under section 143(3) of the Act was completed on 08.12.2010 wherein returned income was accepted. Owing to the order of the Id. CIT passed u/s 263, assessment proceedings have been reinitiated by the AO.

5. The Assessee received the share capital amounting to Rs. 5,60,00,000/- from 29 shareholders. The AO issued notices under section 133(6) of the Act on 14.02.2014 to all the shareholders seeking information to verify identity, creditworthiness & genuineness of the transactions.

6. All the subscribers confirm that the subscription made by them including the copy of their ITRs, PAN, bank statements. Out of the 29 shareholders 7 were close relatives of the Director of the assessee company Shri Sanieev Tekriwal which the AO has found to be genuine

7. With regard to set of 15 subscribers, it was submitted to the AO that the investment was made on behalf of and out of the funds received from two parties i.e. Shri Govind Tripathi (Proprietor of M/s Shubhlaxmi Tax Co.) and Shri Ram Kirpal Parikh (Proprietor of M/s Shree Ram Enterprises). The particulars of 15 shareholders are as under:

S. No.	Name of shareholder	Amount of share capital invested (in Rs.)	Name of party from funds received by shareholder to invest in the Assessee Company
1.	Ashok Gupta HUF	25,00,000	Shree Ram Enterprises
2.	Babloo Lal HUF	25,00,000	Shree Ram Enterprises
3.	Bindeshwar Shah HUF	25,00,000	Shree Ram Enterprises
4.	Govind HUF	25,00,000	Shree Ram Enterprises

5.	Kamta Shah	25,00,000	Shree Ram Enterprises
6.	Lal Chand Bhagat HUF	25,00,000	Shree Ram Enterprises
7.	Manoj Shah HUF	25,00,000	Shree Ram Enterprises
8.	Nageshwar Mishra HUF	25,00,000	Shree Ram Enterprises
9.	Rameshwar Shah HUF	25,00,000	Shree Ram Enterprises
10.	Ravindra Singh HUF	25,00,000	Shree Ram Enterprises
11.	Shadeo Mishra	25,00,000	Shree Ram Enterprises
12.	Shyam Mishra	25,00,000	Shree Ram Enterprises
13.	Arbind Kumar Singh HUF	40,00,000	Shree Ram Enterprises
Total of funds received from Shree Ram Enterprises (A)		3,40,00,000	
14.	Kiran Devi	20,00,000	Shubh Laxmi Tex
15.	Lalita Devi	20,00,000	Lalita Devi received funds from Kiran Devi who in turn had received funds from Shubh Laxmi Tex
Total of funds received from Shubh Laxmi Tex (B)		40,00,000	
Total funds received from Shree Ram Enterprises and Shubh Laxmi Tex (A+B)		3,80,00,000	

8. The AO through order sheet entry dated 11.03.2014 asked the Assessee to furnish the information about Shree Ram Enterprises and Shubh Laxmi Tex which was provided by the Assessee vide letter dated 12.03.2014.

9. The AO issued the notices u/s 133(6) of the Act to the above two parties seeking the required information. The parties replied to the notice of the AO acknowledging that they are the regular suppliers of fabrics having business relation with the Assessee. They also accepted that they provided the funds from their own sources to the parties known to them to invest in the shares of the Assessee Company as they didn't want to invest directly in the Assessee Company due to trading links.

10. With regard to set of 7 subscribers, it was submitted to the AO that the investment by these shareholders were made on behalf of and out of the funds received from M/s Shree

Amarnath Synthetics. The Ld. CIT(A) called the information relating to M/s Shree Amarnath Synthetics u/s 250(4) of the Act and the Assessee filed the confirmation and the bank statement of Shree Amarnath Synthetics vide letter dated 25.03.2016. The particulars of shareholder who received the funds from Shree Amarnath Synthetics are as under:

S. No.	Name of shareholders who received funds from Shree Amarnath Synthetics	Amount (in Rs.)
1.	Gangaram Aggarwal	20,00,000
2.	Godavari Devi	20,00,000
3.	Kamini Devi	20,00,000
4.	Panna Devi	20,00,000
5.	Pashupati Nath Aggarwal	20,00,000
6.	Radhe Shyam Aggarwal	20,00,000
7.	Sarbati Devi	20,00,000
Total funds received from M/s Amarnath Synthetics		1,40,00,000

11. The AO passed order u/s 143(3) r.w.s. 263 on 28.03.2014 and made addition of Rs. 5,20,00,000/- on account of unexplained share capital received from 22 shareholders u/s 68 of the Act on account of the following reasons:

- i) Financial statements of Shree Ram Enterprises and Subh Laxmi Tex reflected huge turnover but negligible profits;
- ii) The income declared by both the parties in their respective return of income established that both the parties didn't have the creditworthiness of their own;
- iii) Both the parties were merely used as one of the channel to rotate funds by the Assessee;

iv) Both the firms declared more or less similar income for both the assessment years i.e. A.Y. 2007-08 & A.Y. 2008-09.

12. Being aggrieved with the order of the AO dated 28.03.2014, the Assessee had filed an appeal before Id. CIT (A).

13. The Id. CIT(A) vide her order dated 29.03.2016 deleted the entire addition of Rs. 5.20 crore made u/s 68 of the Act after examining the documents furnished by the Assessee and the 22 shareholders and their source firms in response to the notices issued to them u/s 133(6) in order to verify the identity, genuineness and creditworthiness of the transactions. The Id. CIT(A) also called the information u/s 250(4) from Shree Amarnath Synthetics.

14. The Id. CIT(A) verified the movement of funds by cross checking the bank statements of 22 shareholders and their source firms and the Assessee's bank statement and also examined the detailed confirmations filed by the 22 shareholders and their source firms explaining the nature and source of the investment as well as the reason of making investment in the Assessee Company. She also verified the Audited Financial Statements of the source firms in order to examine the creditworthiness of the parties.

15. The Assessee Company has furnished detailed confirmations explaining nature, source and the reason of making investment in the form of share capital in the Assessee Company, ITRs (AY 2007-08 & 2008-09), relevant bank statements and PAN No. and addresses of all the 22 Share

Applicants. The Assessee also furnished the confirmations, ITRs (A.Y 2007-08, 2008-09), relevant bank statements, Tax Audit Report and Audited financial statements for A.Y 2008-09 and the ledger Account of Shree Ram Enterprises and Shubh Laxmi Tex Co. who provided the funds from their own sources to 15 shareholders who in turn subscribed the share capital of the Assessee Company.

16. The proprietors Sh. Ram Kripal Parikh of Shree Ram Enterprises and Sh. Govind Tripathi of Shubh Laxmi Tex Co. stated in their respective confirmations that they are in the business of trading of fabrics for a long time and had long term relationship with BTM Exports and had done trading of fabrics with the Assessee Company in the past. They further stated that share applicants belonged to their city and were personally known to them. They said they knew the director of the Assessee Company, Sh. Sanjeev Tekriwal very well and wanted to invest in the Company but due to direct trading links with the Assessee Company, they provided funds to the share applicants who in turn invested in the share capital of the Assessee Company on their behalf.

17. The confirmation of Sh. Ram Kripal Parikh, proprietor of Shree Ram Enterprises and Sh. Govind Tripathi, proprietor of Shubh laxmi Tex Co. are on record. The ledger of the Assessee Company in the books of Shree Ram Enterprises and M/s Shubh laxmi Textile showing business transactions Company showing purchase transactions is on record. The Audited financial statements of Shree Ram Enterprises as on 31.03.2008 shows turnover of Rs. 2.55 crore and investment of Rs. 4.36 crore and

advances (liability) of Rs. 2 crore. The Audited financial statements of Shubh Laxmi Textile Co. as on 31.03.2008 shows turnover of Rs. 33.5 crores and investment of Rs. 40 lakhs and Loans and advances(Assets) of Rs. 2 crore. The bank statement of Shree Amarnath Synthetics is also on record.

18. All the 22 share applicants also confirmed in their respective confirmations that they received funds from Shree Ram Enterprises, Shubh Laxmi Textile Co. and from Shree Amarnath Synthetics to invest in the share capital of the company and in fact on cross verification of the bank statements of the Assessee Company, 22 share applicants and the source firms, each entry of movement of funds from the proprietorship firms to the share applicants and from the share applicants to the Assessee Company can be tallied. Besides, all the 22 share applicants and their source firms independently responded to the notices u/s 133(6) issued to them and provided the desired information to the AO. The AO brought no evidence on record to support his baseless allegations which are mere conjectural and hypothetical that share capital introduced in the Assessee Company is unaccounted income/money of the Assessee Company. There was no allegation of share capital issued at unreasonable share price or excessive share premium and there was also no allegation of any cash deposit prior to payment of share capital in the bank statements of the share applicants or the source firms. If the AO had any doubt then he could have made further inquiries and issued summons u/s 131 to the share applicants and their source firms but he did not do.

On going through the entire facts on record, we hold that the Assessee Company has discharged its onus in establishing identity, genuineness and creditworthiness of the share applicants and all the amounts have been emanated from three entities namely, M/s Shree Ram Enterprises, M/s Shubh Laxmi Tex and M/s Shree Amarnath Synthetics. The same has been confirmed by the shareholders as well as the Directors of all the three entities. Hence, we hold that the addition made by the AO has rightly been deleted by the Id. CIT(A). The order of the Id. CIT(A) is affirmed.

19. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 27/04/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 27/04/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR