

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.123/Asr/2020: A.Y. 2012-13**

**I.T.A. No.124/Asr/2020:A.Y. 2015-16**

Asstt. Commissioner of Income Tax, Circle-3, Srinagar.  <b>(Appellant)</b>	<b>Vs.</b>	M/s Trumboo Cement Industries Pvt. Ltd. 156-C, Javidan Building Rajbagh, Srinagar. [PAN: AABCT3414F] <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Ravinder Mittal, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. P.K. Misra, CA</b>

<b>Date of Hearing</b>	<b>26.04.2023</b>
<b>Date of Pronouncement</b>	<b>12.05.2023</b>

**ORDER**

**Per:Anikesh Banerjee, J.M.:**

Both the appeals of the revenue were filed against the order of the Id. Commissioner of Income Tax (Appeals), Jammu,[in brevity the ‘CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2012-13& 2015-16.The ACIT, Circle-3, Srinagar had framed the assessment u/s 143(3) of the Act.

2. At the outset, both the appeals are under the same factual backdrop. All the grounds are similar, only the ground no. 1 of ITA No. 124/Asr/2020 is different. With the consent of both the parties ITA No. 123/Asr/2020 is taken as lead case.

3. The Id. DR has filed an application for condonation of delay for 53 days. Wherein, Id. DR has stated that the Hon'ble Supreme Court in **SUO MOTU WRIT PETITION (C) NO. 3 OF 2020** vide order dated 10<sup>th</sup> January 2022 extended the period of limitation. For the purpose of limitation, by excluding the period from 15.03.2020 till 28.02.2022, therefore, the delay of 53 days is condoned.

### **I.T.A. No.123/Asr/2020**

The revenue has taken the following grounds:

- “1. The Ld. CIT (A) Jammu has erred in deleting the addition of Rs. 11,59,123/- made by the A.O on a/c of payments for provident fund dues^ beyond due date as provided u/s 36(l)(va). As the payments related to employees contribution towards EPF were deposited beyond due dates, the finding of the Ld. CIT(A) are not \J acceptable.*
- 2. The Ld. CIT(A) has erred in restricting the addition of Rs. 6,62,048/- to 5,29,638/- @8% made on a/c of disallowance of expenses amount of Rs. 66,20,474/- @ 10% . The assessee could not substantiate these expenses during assessment proceedings. The relief is allowed entirely on estimation basis without appreciating the*

*fact that disallowance was made owing to non production of relevant voucher/bills of expenses. As the quantum of relief has no rational basis, the findings of the Ld. CIT(A) are not acceptable.*

3. *The Ld. CIT(A) has erred in deleting the addition of Rs. 60,38,701/- made by the AO on account of disallowance of disallowance u/s 14A. As the A.O has observed that the assessee has utilized business funds for share application money and there was no close proximity to the business of the assessee company and investment in Tramboo Industries Pvt. Ltd. and the assessee has utilized business funds for earning dividend which is an exempt income and only proportionate disallowance of expenses was made, the findings of the Ld. CIT(A) are not acceptable.*

4. *The Ld. CIT(A), has erred in deleting the addition of Rs. 2,10,00,000/- made by the AO on account share application money received during the concerned assessment year from its Directors. The Ld. CIT(A) contended relying on the fact that the assessee has very well come out of the Act in view of the clutches of section 68 of the Act in view of the fact that the identity of the persons is not in doubt as they are all directors of the appellant company. As the credentials of the directors has already been verified during assessment proceedings, the findings of the Ld. CIT(A) are not acceptable.”*

**I.T.A. No.124/Asr/2020**

The revenue has taken the following grounds:

*“1. The ld. CIT(A) Jammu has erred in deleting the addition of Rs.1,44,02,930/- made by the AO on account of disallowance of interest u/s 36(i)(iii).”*

*2. The ld. CIT(A) has erred in deleting the addition of Rs.21,83,395/- made by the AO u/s 23(1)(va) read with section 43B on account of late deposit of employee contribution to provident fund.*

*3. The ld. CIT(A) has erred in restricting the addition of Rs.24,11,992/- to 9,64,797/- @ 8% made on account of disallowance of expenses amount of Rs.1,20,59,960/- @ 20%.”*

4. Brief fact of the case is that the assessment was completed with addition related to delay payment of PF and ESI, the addition for disallowance of u/s 14A, enhancement of G.P. rate, disallowance of share capital amount of Rs.2.10 crore and disallowance u/s 36(i)(iii). Aggrieved assessee filed an appeal before the ld. CIT(A). After considering the submission of the assessee the ld. CIT(A) rejected the addition of the ld. AO and allowed the appeal of the assessee. Being aggrieved revenue filed an appeal before us.

**ITA No. 123/Asr/2020**

5. **Ground No. 1.** This issue is related to delay payment of EPF of employees contribution. The amount was paid beyond due date of respective act. The issue was already determined by the same bench of the ITAT, Amritsar Bench. The Id. DR also referred the order of the **Hon'ble Apex Court in Chekmate Services P. Ltd. vs. CIT, Civil Appeal No. 2833/2016 dated 12.10.2022 (2022) 143 Taxmann.com 178 (SC).**

6. The Id. AR for the assessee accepted the addition related to this ground. Accordingly, the addition of delayed payment of employees contribution towards EPF amount of Rs.11,59,123/- is upheld.

Considering the facts, the **ground no. 1 of the revenue is allowed.**

### **Ground No. 2**

7. During the assessment the Id. AO disallowed 10% of unverifiable expenses amount of Rs.66,20,474/- which is worked out to Rs.6,62,048/-. In argument the Id. DR placed that the Id. CIT(A) has reduced the disallowance from 10% to 8% related to unverifiable expenses. So, the addition should be restricted @ 10%.

7.1 The Id. AR placed that the issue was already dealt by the Coordinate Bench of ITAT, Amritsar and the rate of disallowance was determined @ 5%. But the assessee had not made any contradiction related to @ 8% which is determined by the Id. CIT(A). So, the 8% rate should be accepted. The Id. AR invited our

attention in **ITA No. 489/Asr/2013 of assessee's own case date of order 30.12.2014**. The relevant paragraph no. 13 is extracted as below:

*“13. We have heard the rival contentions and have perused the facts of the case. It was argued by the learned counsel for the assessee that having regard to the nature of expenses, no external vouchers or evidence can be produced. In such circumstances and facts of the case, there is every possibility of leakage of revenue. The learned CIT(A) has rightly restricted the ad hoc additions @ 5% in place of 10% made by the AO. Accordingly, we find no infirmity in the order of the learned CIT(A). Thus, Ground No.6 of the assessee is dismissed.”*

8. We heard the rival submission and relied on the documents available in the record. The issue is already determined by the ITAT, Amritsar Bench. But the assessee has not made any further argument and not filed any objection against the order of the Id. CIT(A). Accordingly, the rate @ 8% is restricted for ad hoc disallowance of expenses.

Accordingly, **the ground no. 2 of the revenue is dismissed.**

### **Ground No. 3**

9. The Id. DR argued that the Id. CIT(A) has rejected the addition amount of Rs.60,38,701/- in relation to disallowance u/s 14A for utilisation of business fund

for share application money. The assessee company is utilising the tax-free fund and the share application money cannot be considered as investment which is likely to earn tax free dividend. So, the order of the CIT(A) for rejection of disallowance amount to Rs.60,38,701/- u/s 14A is bad.

10. The Id. AR relied on the order of the Id. CIT(A) page no. 18 the relevant para is extracted as below:

*“It is further submitted that share application money is not capable of earning any exempt income therefore the share application money cannot be considered as investment which is likely to earn tax free dividend. Share application money is only in the nature of an offer to buy shares made by the assessee. It is only after the offer is accepted by the company resulting in a concluded contract, the assessee becomes the shareholder in a company. Till such time the assessee becomes a shareholder, the assessee cannot have any rights to claim any dividend that may be declared by the company. In such circumstances while working out the average value of the investments u/r 8D(2)(iii) of the Income Tax Rules the share application money should not be included. For this proposition reliance is placed on the following decisions:*

*Decision of Hon'ble ITAT Kolkata Bench in the case of ITA ITO v. LGW Limited in ITA No. No.267/Kol/2013 dated 07.10.2015.*

*Decision of Hon'ble IT AT Mumbai Bench in the case of Rainy Investments P. Ltd v/s. ACIT in ITA No.5491/Mum/2011 dated 16.01.2013.*

*Decision of Hon'ble IT AT Chennai Bench in the case of MSA Securities Services Pvt. Ltd. vs ACIT in ITA Nos.1523-1524/Mds/2012 dated 17.10.2012.*

*From the above judicial pronouncements it is ample clear that share application money cannot be considered for calculation of average investments capable of yielding exempt income.*

*In view of the above it is prayed that the addition of Rs. 60,38,701/- u/s 14A is ii and deserves to be deleted on the merits of the case.”*

(Emphasis supplied)

11. We heard the rival submission and consider the relevant documents in the record. The ld. AR placed the order of ITAT Mumbai Bench in the case of **Rainy Investments P. Ltd. vs. ACIT, 9 (3) Mumbai (2013) 30 taxmann.com 169 (Mumbai-Trib.)**. As per the ld. AR there is no such exempted income of assessee during impugned assessment year. The section 14A will not be levied. We fully relied on the order of ITAT Mumbai Bench which is squarely similar in factual matrix with this case. There is no such any exempted income related to assessee-

company for this assessment year. So, the addition u/s 14A is uncalled for. We are not intervening in the order of the ld. Appellate Authority for this ground.

In the result, **the ground no. 3 of the revenue is dismissed.**

**Ground No. 4**

12. The ld. DR agitated the issue related to deleting the addition amount of Rs.2.10 crore on account of share application money received from its director.

The ld. DR invited our attention in the appeal order page no. 39, the relevant para is extracted as below:

*“The provision of section 68 of the Income-tax Act, 1961, deals with cases, where any sum found credited in the books of account of an assessee, in any previous year, for which the assessee offered no explanation about the nature and source, thereof or the explanations offered by the assessee, in the opinion of the AO is not satisfactory, then sum so found credited maybe charged to income tax, as income of the assessee of that previous year. In order to fix any credit within the ambit of section 68 of the I.T Act, 1961, the AO has to examine three ingredients i.e., identity, genuineness of transactions and creditworthiness of the parties. In this factual and legal background, if we examine, the present case in the light of various evidences filed by the assessee, in order to prove credit found in the form of share capital money, one has to see, whether the assessee has discharged its initial onus cast upon u/s 68 of the I.T. Act, 1961, or not. In this case,*

*the assessee has filed various details, including bank statements of the concerned persons, bank statement reflecting, the amount received through banking channels, confirmations of the parties who purchased lands from the Directors and Sale Deed of the land. Once, the assessee has discharged its initial onus by filing various details, then the onus shift to the AO to carry out further verification, in the light of evidences filed by the assessee to ascertain true nature of transactions between the parties before, he come to the conclusion that the transactions between the parties are genuine or not. In this case, the AO has not issued 133(6) notices to the parties, no further enquiry has been conducted, including issue of summons u/s 131. The fact of the matter is when, assessee has filed complete set of documents, including name and address of the parties, it is for the AO to carry out further investigation by exercising all possible options available to him. In this case, the assessee done what best it could do and filed, whatever information available with it, in order to satisfy the AO. In case, the AO is not satisfied with documents furnished by the assessee, then he is free to carry out his own investigations by exercising powers conferred u/s 131 or u/s 133(6) of the I.T. Act, 1961.*

*In this case, the Assessing Officer has not made any such efforts and failed to take any remedial action in the hands of the Directors, if he was of the opinion that they should have shown iand transactions and Capita! Gain from that, in their returns of income. The issue whether there was Capital Gain or Loss from the sale transaction of the land*

*by the Directors, had to be examined by the A.O, in their returns or by reopening of the assessments under section 148 which had not been done within the prescribed time and now the Assessing Officer cannot add that notional income in the hands of the appellant assessee legally. Nothing has been done by him to controvert the documents filed by the appellant showing true nature of transactions between the parties. Therefore, I am of the considered view that when, assessee has filed complete details to prove identity, genuineness of transactions and creditworthiness of the parties, then there is no reason for the AO to come to the conclusion that share capital is unexplained only for the reason that the Directors have not shown the sale of land in their returns. Therefore, on this count, the additions made by the AO cannot be sustained.*

*3.9. Considering the remand report and the additional evidences furnished by the appellant company i.e. sale deed, declaration, confirmation from the buyer and the bank statement of the appellant company and I tend to agree with the contention of the AR of the appellant that it has very well come out of the clutches of section 68 of the Act in view of the fact that the identity of the persons is not in doubt as they are all directors of the appellant company, the creditworthiness is established from additional evidences produced during the appellate proceedings and the genuineness of the transaction is evident from the bank statement. I, therefore, direct the*

*AO to delete the addition of Rs. 2,10,00,000/- and accordingly, the ground no. 7 is allowed.”*

12.1 The ld. DR further placed that the remand report of the ld. AO is not in favour of assessee and the ld. CIT(A) disallowed the addition without considering the creditworthiness of the investor.

13. The ld. AR argued that the directors are staying in Kashmir. Due to the insurgency the documents are not easily available. This is the primary reason for non-submission of evidence before the revenue during assessment proceeding. So, the issue was not properly verified by the ld. AO.

14. We heard the rival submission and relied on the documents available in the record. The remand report was drawn by the ld. AO. But only point of grievance for ld. AO was non-acceptable of creditworthiness. The ld. AO was dissatisfied related to the creditworthiness of the investor, director of the assessee-company. We find that there is a genuine cause for the director to establish the creditworthiness before the ld. AO. We remand back the matter to ld. AO for further verification of the creditworthiness of the director related to the investment of share application money paid amount to Rs.2.10 crore to the assessee company. Accordingly, **the ground no. 4 of the revenue is allowed for statistical purposes.**

**ITA No.124/Asr/2020 A.Y. 2015-16.**

**Ground-1**

15. The Id. DR vehemently argued and placed that the assessee invested the amount of his loan fund.

15.1 On the other hand, the interest was paid related to the loan which was debited in the Profit & Loss A/c. Accordingly, the AO disallowed the amount to Rs.1,44,02,930/- and added back u/s 36(i)(iii). The Id. DR invited our attention in the assessment order paragraph 4 which is extracted as below:

*“04. During the assessment proceedings, it was observed that the assessee company has incurred finance cost to the amount of Rs.1,44,02,930/- and had advanced interest free advances to M/s.Trumboo Industries Pvt. Ltd a related concern to the amount of 19,52,6,952/-. The counsel of the assessee was asked to show cause, as to why proportionate interest for interest free advances made to the Trumboo Industries Pvt. Ltd, may not be disallowed and added to the returned income of the company. In response to the query raised, the counsel of the assessee i.e. Shri Naveen Gupta, C.A., has stated that advance was made as share application in previous years, which has been transferred to amount recoverable and interest bearing funds have been raised for specific purpose of working capital requirements and term loans of purchase of assets. Further the A.R submitted that*

*the advances have been made for business exigencies and loans have been allowed for business purposes only.*

*The contention of the assessee company was duly considered vis-a-vis provision of Income tax Act, 1961 and juridical pronouncements on this issue. The provision of section 36(l)(iii) of the IT Act,1961 provides for deductions of interest on loans raised only for business purpose. The onus is on the assessee to prove that the loan in respect of which interest is claimed as deductible expenses, were wholly and exclusively used for the business purpose. In the present case the assessee has failed to discharge his duty and the contention of the assessee that the loans were advanced for commercial expediency and for business purposes aren't borne out by the facts. No proof of the same has been submitted that the loans were advanced for business purposes.”*

15.2 The Id. AR vehemently argued and fully relied on the order of the Id. CIT(A). The appeal order page no. 25, the relevant para is extracted as below:

*“Considering numerous judicial orders relied upon by the appellant and from the above submissions of the appellant, the undersigned is of the opinion that there existed a nexus between the utilization of borrowed funds invested in M/s TIPL as Share Application Money for business purposes as the same was done to sustain its own business in the Kashmir Valley as both companies were in the same line of business using same brand/commercial name and dealer/distributor*

*network. The opinion of the undersigned is reinforced by the fact that the profitability of the appellant company, which uses VSK Technology, improved since inception of M/s TIPL, which is using Rotary Technology, unlike its peers using VSK Technology in the same business. Therefore, I hold that the amount invested in M/s TIPL by the appellant company as Share Application Money was commercial expediency for which the disallowance made by the AO u/s 36(1)(iii) of the Act cannot sustain, in view of the above discussion, the ground no. 2 is accordingly allowed.”*

16. During hearing the Id. AR also submitted a cash flow statement related to available of fund from which the investment was made. The copy of this relevant paragraph is extracted as below:

TRUMBOO CEMENT INDUSTRIES PRIVATE LIMITED  
SRINAGAR  
Cash flow Statement for the year ended 31/03/2015

CASH INFLOW FROM OPERATIONS	31/03/2015
Net Profit Before Tax	62,99,157
Depreciation	96,01,687
Receipt from Sundry Debtors	55,28,253
Receipt from Trumboo Industries Pvt Ltd	4,00,80,000
Short-Term Borrowings	18,77,917
<b>Total Inflows (A)</b>	<b>6,33,87,014</b>
<b>OUTFLOWS</b>	
Increase in Inventories	75,32,690
Balance with Revenue Authorities	17,60,251
Loans and Advances Given	1,97,23,691
Payment to Sundry Creditors	62,45,050
Income Tax Paid	23,50,000
Payment of Other Current Liabilities	1,01,86,036
Purchase of Tangible Fixed Assets	1,40,98,066
Repayment of Long-Term Borrowings	17,37,774
<b>Total Outflows (B)</b>	<b>6,36,33,559</b>
<b>Net Outflows (A-B)</b>	<b>(2,46,545)</b>
Cash and Cash equivalents as at 01.04.2014	8,43,075
Cash and Cash equivalents as at 31.03.2015	5,96,530

The Id AR was categorically explained the source of fund for investment which is the own fund of assessee. The submission of the assessee is placed first time before the bench which is not part of evidence before the lower authority. The order of the Id. CIT(A) is setting aside as the source of invested fund is not explained which is the grievance of the revenue. We remit back the issue before the Id. AO for further adjudication. Also, the assessee should get the reasonable opportunity of hearing for substantiate it's claim.

16.1. In the result, the **Ground no-1 of the Revenue for ITA No.124/Asr/2020 A.Y. 2015-16 is allowed for statistical purpose.**

16.2. Hence, the bench feels that the decision taken by us in ITA No. **123/Asr/2020** for the Assessment Year 2012-13 shall apply *mutatis mutandis* in the ITA No **124/Asr/2020** and follows accordingly.

17. In the result, the appeal bearing **ITA No.123/Asr/2020** is partly allowed & **ITA No. 124/Asr/2020** is allowed for statistical purpose.

**Order pronounced in the open court on 12.05.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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