

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 4/Mum/2023
(Assessment Year: 2012-13)

M/s. Amrita Bhagwati Tradewing Pvt. Ltd. 11, Anand Mangal, Shanti Nagar Chas Ltd., Jain Mandir Road, Sector-3, Mira Road (E), Thane-401 107	BVs.	DCIT, Circle-4(1)(1) Mumbai
PAN/GIR No. AACCA 5856 B		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Neeraj Mangla
Revenue by	:	Shri Manoj Kumar Sinha

Date of Hearing	:	09.03.2023
Date of Pronouncement	:	02.06.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-48, Mumbai ('Id.CIT(A) for short), passed u/s. 143(3) of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

2. The assessee has challenged the ground that the assessment order was passed by the non jurisdictional Assessing Officer (A.O. for short) after initiation of proceeding u/s. 153C of the Act and had challenged the addition of Rs.5,64,00,000/- made u/s. 68 of the Act which was credited in the books of accounts of the assessee during A.Y. 2011-12 and not in the impugned year. The assessee has also challenged the addition of

Rs.3,63,00,000/- u/s. 68 of the Act and have also challenged the disallowance of set off of loss on sale of equity shares amounting to Rs.6,73,69,712/- as speculative loss u/s. 73 of the Act.

3. The brief facts of the case are that the assessee is a Private Limited Company engaged in the business of finance and the assessee company is said to have not carried out any business activity during the impugned year. The assessee filed its return of income dated 15.03.2014, declaring total income at Rs.Nil. The case was selected for scrutiny and the assessment order dated 25.03.2015 was passed by the A.O. u/s. 143(3) of the Act by determining the total income at Rs.14,70,84,430/-, by making various additions/disallowances.

4. The assessee was in appeal before the Id. CIT(A) challenging the impugned order passed by the A.O.

5. The Id. CIT(A) upheld the addition made by the A.O. on the ground that the assessee has failed to prove the genuineness of the transaction for the reason that the assessee itself has admitted that it was a shell company.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. The learned Authorised Representative (Id. AR for short) for the assessee contended that the assessee was only a conduit company for Shri Shirish Chandrakant Shah who was engaged in providing accommodation entries to various parties. The Id. AR for the assessee relied on the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Vijay Conductors India Pvt. Ltd.* [2015] TIOL 2037 HC (Del) IT and the decision

of the Tribunal in the case of *M/s. Sanguine Media Limited vs. ITO* (in ITA No. 882/Chny/2020, vide order dated 31.01.2023), wherein it was held that no addition u/s. 68 of the Act can be made in the case of a conduit/shell company.

8. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the said fact and contended that the assessee company itself has admitted that it is a shell company and, hence, has failed to prove the identity, creditworthiness and genuineness of the impugned transactions. The Id. DR relied on the orders of the lower authorities. He submitted that the provision of section 68 does not exclude a conduit company and the Income Tax Act does not recognize Conduit Company. Further to prove so, the assessee has to name the beneficiary in each of transaction and those beneficiaries should confirm it. Till that time, the assessee cannot escape the rigors of section 68 of the Act. Even otherwise, it is credit in the books of assessee where from money is credited, assessee has failed to prove necessary ingredients.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee company had issued 3,70,800 equity shares of Rs.10/- each and had collected securities premium of Rs.8,89,92,000/- amounting to a premium of Rs.240/- per share. The A.O. had sought for the details of the name, address, PAN of the person to whom the assessee had allotted shares and was also asked to file copy of the return filed with ROC for allotment of shares. The assessee in its reply stated that the share application forms and all other supporting documents was taken over by the Income Tax Department during the search action conducted on Shri Shirish Chandrakant

Shah who is said to be looking after the accounts and other related work of the assessee company. The A.O. observed that from the financials of the assessee company, the assessee was not engaged into any business activity during the current year as well as in previous years and was also not having any regular source of income. The A.O. further observed that the share capital during the earlier years was at Rs.81.50 lacs against which huge share premium of Rs.1,529.50 lacs was allocated. The A.O. also held that the book value of shares claimed by the assessee at Rs.197.65 per share was without any justification. The A.O. added the entire amount of share capital/share premium amounting to Rs.9,27,00,000/- as unexplained cash credit u/s. 68 of the Act for the reason that the assessee has failed to prove the identity, the genuineness and creditworthiness which is mandated as per section 68 of the Act. The Id. CIT(A) in an appeal preferred by the assessee against the impugned addition made by the A.O. had distinguished the case of *M/s. Empower India Limited* (in Appeal No. CIT(A)-48/I.T.-177/DC C-2(1)/2016-17 and CIT(A)-48/I.T.107/SCCC2(2)/2016-17 relied upon by the assessee where on similar facts addition u/s. 68 of the Act was deleted stating that the assessee in that case was only a conduit company which was providing accommodation entry and was not a beneficiary to the impugned transaction. The Id. CIT(A) further stated that the said order has not been challenged by the Revenue before the Tribunal. The Id. CIT(A) further brought our attention to the assessment order dated 02.03.2016, passed u/s. 143(3) r.w.s. 153C of the Act where the A.O. has stated that the assessee company was only a conduit company and which affairs was managed by Shri Shirish Chandrakant Shah in whose hands the real income of the impugned transactions are assessed. The Id. CIT(A) iterated that no addition has been made in the hands of Shri Shirish Chandrakant Shah as alleged in the

assessment order of the assessee upon perusal of the assessment order passed in the case of Shri Shirish Chandrakant Shah dated 29.03.2016, subsequent to the passing of the assessment order in the assessee's case. The Id. CIT(A) relied on the decision of the Tribunal in the case of *M/s. Nishottam Traders Ltd.* (in ITA No. 6874/Mum/2014, vide order dated 10.04.2017) in which the Tribunal has set aside the order of the Id. CIT(A) to assess *de nova* in the case of group concern of the assessee. The Id. CIT(A) has also specified that the assessee has erroneously submitted that the above said decision was in favour of its group concerns which was also related to Shri Shirish Chandrakant Shah. The Id. CIT(A) relied on the decision of the Tribunal in the case of *Dy.CIT, Circle-15(1)(2), Mumbai vs. Leena Power Tech Engineers (P.) Ltd.* which held that the addition on huge share premium was upheld for the reason that the assessee has failed to prove the genuineness of the transaction even before the appellate authority and the financial documents relied upon by the assessee was not accepted for the reason that the assessee itself has accepted that it is a shell company. The Id. CIT(A) further upheld the disallowance of set off of losses amounting to Rs.6,73,69,712/- as being speculative in nature as per *Explanation 2* to section 73 of the Act. The Id. CIT(A) relied on the same observation that since the assessee company is a conduit company, the genuineness of the accounts of the company and other documents cannot be accepted on its face value.

10. On the above mentioned facts, it is evident that the assessee was not carrying out any genuine business and was only into providing accommodation entries to various parties and was aiding Shri Shirish Chandrakant Shah who was habitually engaged in providing accommodation entries in the nature of share capital, share premium, share application money, unsecured loans, LTCGs, STCGs, after receiving cash from various

parties. The assessee has also not denied this fact. The A.O. has made the impugned addition of Rs.9,27,00,000/- as amount received by the assessee company towards share capital and share premium u/s. 68 of the Act as unexplained cash credit. The assessee's contention that it was only a conduit company and not the beneficiary of such transaction is not in accordance with the provisions of section 68 of the Act. The assessee's reliance on the decision of the Hon'ble Delhi High Court in the case of *Vijay Conductors India Pvt. Ltd.* (supra) and the Tribunal's decision in the case of *M/s. Sanguine Media Limited* (supra) is not convincing in our view. The decision of the Hon'ble Delhi High Court in the case of *Vijay Conductors India Pvt. Ltd.* (supra) was distinguishable on facts of the present case, as it relates to the order of the settlement commission where the impugned transactions were to be taxed in the hands of the beneficiaries and in the present case there is no evidence that the amount is taxed in the hands of the beneficiary. Further Shri Shirish Chandrakant Shah is not the beneficiary of the amount involved but beneficiary of merely commission income of accommodation entry. In the present case in hand, the assessee has failed to give the details of the beneficiaries on whose behalf the impugned transactions were made. It is also pertinent to note that the Id. CIT(A) in his order has categorically mentioned that there was no addition made in the hands of Shri Shirish Chandrakant Shah despite the A.O. in assessee's case has stated that the real income from these transactions is assessed in the hands of 'Shri Shirish Chandrakant Shah'. The Id. CIT(A) on perusal of the assessment order of Shri Shirish Chandrakant Shah has convinced that no addition was made as specified by the A.O. It is observed that section 68 of the Act does not mandate that addition cannot be made in the hands of the conduit

company. The relevant extract of the said provision is cited hereunder for ease of ready reference:

Cash credits.

68. *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:*

Provided *that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—*

- (a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

11. On a bare perusal of the above mentioned provision, it is clear that the assessee has to offer explanation about the nature and source of any sum found credited in this book to the satisfaction of the A.O. and the judicial precedence of the Hon'ble Apex Court and other subordinate courts have reiterated that the onus is casted upon the assessee to prove the identity, genuineness and creditworthiness in such transaction, failing which the addition has to be made in the hands of the assessee. In this case, there is no iota of doubt that the assessee has miserably failed to prove the identity, genuineness and creditworthiness of the parties in which case he has failed to discharge the onus casted upon him by the statute. The mere allegation that it was only a conduit/shell company does not entitle the assessee to deprive the Exchequer, the lawful taxes that the authority is bound to levy.

12. From the above observation, we are of the considered view that the order of the Id. CIT(A) finds no infirmity and, hence, the ground nos. 2, 3 & 4 of the appeal raised by the assessee are dismissed. As the Id. AR has not made any arguments on ground no. 1, we

are inclined to dismiss this ground of appeal also. Ground No. 5 being general in nature requires no adjudication.

13. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 02.06.2023.

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 02.06.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai