

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 384/Srt/2023 (Assessment Year 2009-10)

(Physical hearing)

Anjani Logistics Private Limited, 301,302 Shree Jalaram Complex, Nr. Development Credit Bank, Vapi- 396191, Gujarat. <b>PAN No. AAHCA 8368 H</b>	Vs.	I.T.O., Ward-1, Vapi.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Chaitali Shah, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	30/05/2023
Date of hearing	05/07/2023
Date of pronouncement	05/07/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 25/04/2023 for the Assessment Year (AY) 2009-10 wherein the assessee has raised following grounds of appeal.

*"1. On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in re-opening the assessment u/s 147 by issuing notice u/s 148 of the Income Tax Act, 1961.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making an addition of Rs. 5,00,000/- on account of alleged bogus share application money.*

*3. It is, therefore, prayed that above addition made by the assessing officer and confirmed by CIT(A) may please be deleted.*

*5. The appellant craves leave to add or alter or delete any of the ground or grounds of appeal at the time of the hearing before your honour."*

2. Brief facts of the case are that the case of assessee for A.Y. 2009-10 was reopened on the basis of information that the assessee has received share application/share premium money from Shri Anand Kumar Sharma and Shri Janardhan Chokhani of Rs. 5.00 lacs on payment of commission. On the basis of such information, the Assessing Officer was of the view that the income of assessee has escaped assessment to the extent of Rs. 5.00 lacs and that the assessee has failed to disclose fully and truly all material facts necessary for assessment within the meaning of Section 147. Notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) was issued on 31/03/2016 after recording reasons. The Assessing Officer recorded that no return of income was filed by assessee in response to notice under Section 148 of the Act. The Assessing Officer issued notice under Section 142(1) of the Act for seeking certain details which was taken on record. The Assessing Officer further noted that the assessee has not shown such share application/premium money received from Shri Anand Kumar Sharma and Shri Janardhan Chokhani in its books of account. The Assessing Officer further recorded that final show cause notice was issued to assessee on 13/10/2016 as to why the transaction of share application / premium of Rs. 5.00 lacs should not be added to the income of assessee as undisclosed income. The Assessing Officer

recorded that no response was made by assessee, accordingly, assessment was completed under Section 144 r.w.s 147 of the Act on 28/11/2016 by making addition of Rs. 5.00 lacs.

3. Aggrieved by the additions and reopening, the assessee filed appeal before the Id. CIT(A). The assessee in its statement of fact submitted that the assessee is a private limited company incorporated with intention to start logistic business from Vapi. However, the business was not commenced in Financial Year (FY) 2008-09. The assessee filed its return of income for A.Y. 2009-10 declaring NIL income. The return was processed under Section 143(1) of the Act. The case of assessee was reopened under Section 147 and completed assessment under Section 144 r.w.s. 147 of the Act by making addition of Rs. 5.00 lacs on account of bogus share capital. The Assessing Officer reopened the case on the basis of information received from DIT, Kolkata that assessee received accommodation entry of share premium. During the assessment, it was informed to the Assessing Officer that the assessee has not started it business and not opened bank account during the year and bank account is in the name of one of the Director Mrs Bhanuja Anil Agarwal. It was stated on behalf of assessee that they have not received any share application money and further there is no entry in the bank account of Director during the F.Y. 2008-09. No material was provided by the Assessing officer for making impugned

addition. There is no evidence on record to support the finding of assessing officer. The report of investigation was of not correct and there was no corroborative evidence for making addition. The Assessing Officer made addition by disregarding the submission made by assessee. To support their submission, the assessee relied on certain case laws.

4. The Id. CIT(A) after considering the submissions of assessee, noted that on perusal of record of assessment, he found that the assessee has not furnished any detail of accommodation entry of share premium. The assessee has not share application/premium of Rs. 5.00 lacs in its books, received from Shri Anand Kumar Sharma and Shri Janardhan Chokhani. The assessee has not furnished details regarding amount received and could not prove its claim. No response was made by assessee in response to show cause notice. The decision of Assessing Officer is right and legal and need no interference. Further aggrieved, the assessee has filed present appeal before the Tribunal.
5. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that the Assessing Officer provided the reasons recorded to the assessee on 18/07/2016. The reasons recorded are invalid reasons. At one place, the Assessing Officer recorded that the assessee has received

accommodation entry in the form of share application/share premium of Rs. 5.00 lacs from Shri Anand Kumar Sharma and Shri Janardhan Chokhani. In subsequent paragraph, the Assessing Officer recorded that *"as per details available on record, it is seen that the assessee Anjani Logistics Pvt. Ltd. has filed return of income on 12/03/2010 and has shown Rs. NIL shareholders fund and also shown at Rs. NIL. The above mentioned transaction is not reflected in the return of income."* The Id. AR of the assessee submits that the reasons recorded in fact is invalid and in the reason once the Assessing Officer himself accepted that no share application is shown in the return of income, how the addition can be made. Further the assessee has filed its objection before the Assessing Officer vide objection dated 08/08/2016, stating therein that the assessee has not allotted the equity share and only initial expenses for registration of company was reflected in the balance sheet. The assessee specifically stated that they are not aware of any party which is mentioned in the notice and operation has not started, there is no question of share application, share premium or loans. The assessee was asked for certain information by DCIT, Central-4, Kolkata which was furnished to them copy of which was enclosed. The Id. AR of the assessee submits that such objection of assessee was not disposed off by the Assessing Officer. The Assessing officer has not considered such submission while passing the assessment order. The assessee has filed

bank account of Director of assessee and there is no such credit entry of any share premium or share application. In fact, no such share application money as alleged by Assessing Officer was received. The Id. AR of the assessee submits that the reasons recorded are invalid. The assessee raised specific grounds of appeal before the Id. CIT(A), however, the Id. CIT(A) has not given any finding on such specific ground of appeal challenging the validity of reopening.

6. On merit, the Id. AR of the assessee submits that when the assessee has not received any share application or share premium money, there was no occasion for assessee to prove such fact in negative and the assessee vide their objection/letter dated 08/08/2016 specifically informed the Assessing Officer about their stand that no such share application money was received. The Id. AR of the assessee submits that she has filed various case laws including the decision of Hon'ble Supreme Court in Kishanchand Chellaram Vs CIT 125 ITR 713 (SC) wherein it was specifically held that burden of proof lie on the department to show that remitted amount belonged to the assessee by bringing proper evidence on record. The assessee right from the beginning asserting that no such amount was received, it was incumbent upon the Assessing officer to prove such details to substantiate the allegation that the assessee has received such share premium/application money.

7. On the other hand, the Id. Sr. DR for the revenue supported the order of Assessing officer and Id. CIT(A).
8. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I have also deliberated on various case laws relied by the Id. AR of the assessee. I find that in the reasons recorded, the Assessing Officer noted that the assessee has shown NIL shareholders fund. In response to reasons recorded, the assessee filed objection dated 08/08/2016, which was duly acknowledged by the Assessing officer wherein the assessee specifically stated that they are not aware of the party which was mentioned in the notice by Assessing Officer and that they have not received any share application/share premium. The Assessing Officer without bringing any material on record have made addition of Rs. 5.00 lacs. In my view, neither the reasons recorded were correct nor the Assessing Officer was justified in making addition of share application/share premium in absence of evidence of such credit in the books of bank account of assessee. The assessee has also filed copy of bank statement in the name of Director of the assessee wherein there is no such credit entry of Rs. 5.00 lacs from alleged entry provider. The assessee claimed that they are not started business nor received any such premium, the Assessing Officer instead of considering the reply, made addition without bringing any adverse material on record,

therefore, I do not find any justification for making such addition. Thus, the assessee succeeded on the issue of reopening as well as on merit. In the result, the grounds of appeal raised by the assessee are allowed.

9. In the result, this appeal of assessee is allowed.

Order announced in open court on 05<sup>th</sup> July, 2023 at the time of hearing.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 05/07/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat