

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI SHAMIM, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No:- 31/Del/2020
(Assessment Year: 2016-17)**

Assistant Commissioner of Income Tax, Circle 51(1), New Delhi.	Vs.	M/s Enterprises, \38/2093, Naiwala, Karol Bagh, New Delhi-110005.
APPELLANT		RESPONDENT
PAN No: ABEFA0870D		

Revenue By : Shri Kanv Bali, Sr. DR
Assessee By : Shri kapil Goel, Adv.

Date of Hearing : 13.07.2023
Date of Pronouncement : 21 .07.2023

ORDER

PER SHAMIM YAHYA, A.M.

This appeal by the Revenue is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-17, New Delhi, dated 22.10.2019 and pertains to Assessment Year 2016-17. The Grounds of appeal are as under:-

- "1. The Ld. CIT(A) has erred in deleting the addition amounting to Rs. 2,68,50,000/- on account of bogus share capital u/s 68 of the Act.

2. *The assessee firm failed to prove the genuineness of the funds utilized to introduce capital in to the firm during the year under consideration as the funds introduced as capital have been routed through various persons whose creditworthiness was not established when their ITR and bank statements were taken into account. Further, the loans received by partner's from various persons are on account of money received by these purported lenders either in cash or through banking channels just before granting loan to the partners. It is again emphasized that the firm is the ultimate beneficiary in this regard and hence the bogus share capital is taxable in its hands.*
3. *The appellant craves to leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal."*

2. Brief facts of the case are that during the year under consideration, there is capital introduced by the partners in their capital account. The AO has obtained the copy of capital account of the partners and it is observed that capital of Rs. 1,70,00,000/- was introduced by Sh. Jitender Kharbanda and Rs. 98,50,000/- by Sh. Mohan Lal Kharbanda. Income declared in the ITR of the partners is Rs. 8,92,700/- by Sh. Jitender Kharbanda and Rs. 3,84,600/- by Sh. Mohan Lal Kharbanda, whereas capital was introduced by them at Rs. 2,68,50,000/-. The AO has examined the bank accounts of the partners and it is observed that funds are received from M/s Seven Heaven Landcon Pvt. Ltd. and M/s Ambika Buildmart Pvt. Ltd. in the account of partner Sh. Jitender Kharbanda. On the same day of receipt, transfers are made to the account of M/s Ambika Enterprises as capital in the name of Sh. Jitender Kharbanda. On receipt from either M/s Seven Heaven Landcon Pvt. Ltd. or M/s Ambika Buildmart Pvt. Ltd. he either has transferred the amount to M/s Ambika Enterprises bank account or to the account of his father Sh. Mohanlal Kharbanda, who has then transferred it to M/s Ambika Enterprises as capital introduced in his account. The AO observed that amount received from M/s Seven Heaven Landcon Pvt. Ltd. and M/s

Ambika Buildmart Pvt. Ltd. has been routed through partners through partners to create share capital of assessee firm. Thereafter, under the veil of purchase of weigh bridge (dharma kanta) the same amount of share capital created in the assessee firm is transferred back to M/S SHL Pvt. Ltd. The AO has asked the appellant to explain the nature of payment and transactions with M/s Seven Heaven Landcon Pvt. Ltd. The AO has recorded the statement of Sh. Jitender Kharbanda u/s 131 and it is explained by him on oath all amount given to M/s Ambika Enterprises by him reflected loan repayment from M/s Seven Heaven Landcon Pvt. Ltd. The AO has issued the summon to Sh. Sabharwal Director of M/s Seven Heaven Landcon Pvt. Ltd. to corroborate the claim of the partner but he has not made the compliance as he was out of India. It is also observed by the AO that both M/s Seven Heaven Landcon Pvt. Ltd. and M/s Ambika Buildmart Pvt. Ltd. shown negligible income in their ITRS. The AO has prepared the gist of the submissions made by the appellant in respect of amount received by the partners from different persons on page 9 of the order and hold that appellant firm has been unable to discharge its statutory onus of proving genuineness and creditworthiness of the source of share capital as per provisions of section 68 and added Rs. 2,68,50,000/- in the taxable income of the appellant on account of capital introduced by the partners in the appellant firm.

3. Against the above order, the assessee is against the order of Ld. CIT(A). Ld. CIT(A) noted the submissions of the Ld. Counsel for the assessee and held as under:

"5.4 As per the provisions of section 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 AO satisfactory, the sum so credited may be charged to the income tax as the income of the assessee that previous year. Appellant has discharged the initial onus laid down upon the firm and had furnished an explanation that amount was brought in by respective partners. The appellant has received the whole of the payments towards capital contribution through banking channel from the partners Sh. Jitender Kharbanda and Mohanlal Kharbanda. The identity of the partners and regarding sources of income has been placed on record. Both the partners assessed to tax on their independent income and have admitted that account of money brought in by them. In the case of the non-corporate assessee, AO could not examine the source of source of funds. In the case of the appellant source of introduction of funds are by partners only. There is nothing to suggest the aforesaid amount brought in by the partners were actually income of the firm. In case the AD doubted the genuineness of the sources he should have considered the in the hands of the partners not in the hands of the firm. It is held by Hon'ble ITAT Delhi in the case of Shri Gems VS ITO that "the present cone amount in question was deposited by the partner as he capital therefore even of the Assessing Officer was not satisfied with explanation, it cannot be added in the assessee firm. At the most it can be considered in the hand of the individual partner of the assessee firm."

5.5 It is held by Hon'ble ITAT Cuttack in the case of Panda Fuels Vs ITO(ITA 07/CTK/2018) that a firm cannot be assessed for the unexplained cash credit w/s 68 of LT. Act, 1961 in respect of capital introduced by the partner"

5.6 In the case of CIT vs Metachem Industries Ltd. (2000) 245 ITR 160 (MP) Hon'ble MP High Court held that "so far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of the income tax. In this case capital was introduced by the partner in the firm. Hon'ble Tribunal as well as CIT(A) held that once it is established that a amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee firm is over."

5.7 In the case of CIT Vs M/s Radiant Embroidries (ITA No. 3428/AND/2008) Hon'ble Ahmedabad TTAT hold that when the west has explained the amounts as capital

contributions by the partners, the AO is not justified in holding that the assessee has not explained the source. In case the Assessing Officer doubted the genuineness of the source, he should have considered the same in the hands of the partners only and not in the case of the firm.”

5.8 In the case of the appellant, the AO admitted that the flow of the funds in the hands of the partners but he hold that firm was not able to discharge its statutory onus of proving genuineness and creditworthiness of the share capital. As per the provisions of section 68 source of source has to be proved in the corporate assessee and not in the case of non-corporate assessee. The appellant has established that funds have been received from the partners, the onus of the appellant stands discharged. Moreover, appellant has filed the confirmation of all the persons who advanced money to the partners alongwith copy of bank statement, ITR, PAN card to explain the source of loan given to the partners of the firm. If AO is not satisfied with the evidences furnished by the appellant necessary action could be taken in the hands of the partners of the firm not in the case of the firm. Considering the above facts and decisions of the judicial authorities AO is not justified in making addition of Rs. 2,68,50,000/- in the hands of the appellant firm on account of capital introduced by the partners and addition made by the AO is hereby deleted.”

3.1 Against the above order, Revenue is in appeal before us.

4. We have heard both sides and perused the materials available on record. The Ld. Departmental Representative relied upon the order of the Assessing Officer.

5. Per contra, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A). He submitted that the capital has been introduced by partner of the firm. In this regard, Ld. Counsel for the assessee relied upon the various case laws reads as under:

- i) **Allahabad High Court** in case of *Kesharwani Sheetalya Sahson vs. DCIT in ITA No. 17 of 2007 order dated 24.04.2020.*
- ii) **Gujarat High Court**
 - a) *Commissioner of Income-tax v. Pankaj Dyestuff Industries, rendered on 6.7.2005 in Income Tax Reference No. 241 of 1993.*

- b) *PCIT-4 vs. VAISHNODEVI REFOILS AND SOLVEX in Tax Appeal No. 846 of 2017 order dated 28.11.2017*
- iii) **Madras High Court** :- *in the case of CIT vs. Taj Borewell [2007] 291 ITR 232 (Mad)*
- iv) **Telangana & Andhra Pradesh High Court:-** *in the case of CIT vs. M. Venkateswara Rao and others [2015]370 ITR 212 (T& AP)*
- v) **Punjab & Haryana High Court:-** *in CIT vs. Metal and Metals of India (2007) 208 CTR 457 (P&H)*
- vi) **Rajasthan High Court:** *the Rajasthan High Court in CIT v. Kewal Krishna and Partners [2009] 18 DTR 121 (Raj) has also taken similar view.*
- vii) **Madhya Pradesh High court:- Commissioner of Income Tax v. Metachem Industries [200] 245 ITR 160 (MP)** *and it was held that according to Section 68 the burden was on the assessee to satisfactorily explain the credit entry in the books of account o the previous year and in a case where satisfactory explanation had been given by establishing that the amount had been invested by a particular person, be he a partner or any individual then the burden of the assessee firm is discharged and the credit entry could not be treated to be income of the firm for the purposes of income tax.*
- viii) **HONOURABLE TRIBUNAL VIEW ON THE SAME ISSUE:-**
- 1) *ITAT Delhi in case of Alliance Engineers & construction ITA 6180/Del/2015 order dated 15.02.2019*
 - 2) *ITAT Chennai in case of Nityashuda combines vs ITO order dated 6 May 2022 in ITA 576, 577/Chn/2020*
 - 3) *ITAT Ahmedabad in case of ITO vs. Uma Cotton Industries in ITA No. 446/Ahd/2011 order dated 25-09-2014*
 - 4) *ITAT Kolkata in ITO ward 40(3) vs. Bajaj Roadways in ITA 2023/Kol/2016 order dated 04.07.2018"*

6. We have carefully considered on both sides and perused the materials available on record. We find that in this case there is no ambiguity about the identity of the partner

and capital introduced from him. In such circumstances if he AO was of the opinion that the amount is not proved in the hands of the partner, he should have considered it in his individual hands and not in the hands of the firm. This view is duly supported by Hon'ble Madhya Pradesh High court in the case of CIT vs. Metachem Industries 245 ITR 160. Hence, following the aforesaid precedents, we do not see any infirmity in the well reasoned order of the Ld. CIT(A), same is thereby upheld.

7. In the result, appeal by Revenue stand, dismissed.

Order pronounced in the open court on 21/7/2023

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 21/07/2023
(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	