

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 102/Ind/2021
Assessment Year : 2003-04

M/s. Amaltas Hotels Private Limited, 2, R.K. Puram Colony, A.B.Road, Indore.	<u>बनाम/</u> Vs.	DCIT, Circle 3(1), Indore.
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AABCA4859K		
Assessee by	Shri Manjeet Sachdeva, and Shri Avinash Gaur, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.08.2023	
Date of Pronouncement	25.08.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 08.03.2021 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 31.03.2014 passed by learned DCIT, Circle 3(1), Indore u/s 143(3) read with section 254, for assessment year 2003-04, the assessee has filed this appeal on following grounds:

- "1. The Ld. CIT(A) erred in confirming the addition made by the AO amounting to Rs. 13,30,000/- without appreciating the documents submitted.*
- 2. That the Ld. CIT(A) erred in not appreciating that the Hon'ble ITAT had accepted that the amount received was in the nature of share application money.*

3. *That the Ld. CIT(A) erred in treating the lender companies as paper companies ignoring the fact that the amounts were received as share application money.*

4. *That the order ignoring the direction of the Hon'ble ITAT is illegal and wrong."*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee is a company. For the relevant AY 2003-04, the return filed by the assessee was selected for scrutiny and the original assessment-order was passed u/s 144 on 30.03.2006 after making certain additions against which the assessee filed first appeal to CIT(A). After decision of CIT(A), the assessee and Revenue both sides carried matters to ITAT, Indore Bench in I.T.A. No. 306/Ind/2011, I.T.A. No. 307/Ind/2011 and Cross Objection No. 3/Ind/2012 and those matters were decided by ITAT, Indore, through a consolidated order dated 23.03.2012. While deciding, the ITAT remanded a particular addition of Rs. 13,30,000/- u/s 68 to AO with a direction for fresh examination and re-adjudication after opportunity to assessee. Thereafter, in pursuance of such direction of ITAT, the AO passed a fresh assessment-order dated 31.03.2014 u/s 143(3) read with section 254 wherein the impugned addition of Rs. 13,30,000/- was repeated. The assessee again contested in first-appeal whereupon the CIT(A), vide order dated 08.03.2021, decided against assessee. Now, the assessee has again come before us in this appeal assailing the orders of lower-authorities. This way, it is the 2nd round of litigation *qua* the addition of Rs. 13,30,000/-.

4. At the out-set, we would like to narrate the nature and character of the impugned addition of Rs. 13,30,000/- i.e. whether it is in respect of unexplained share application money or unsecured loan. In the original order of assessment, the AO, based on reporting made in Balance-Sheet of assessee, treated the same as unsecured loan but at appellate stage before CIT(A) as well as ITAT, it was explained by assessee that the said amount

was wrongly shown as “unsecured loan” in Balance-Sheet, in fact it was share application money received by assessee. The assessee’s submission was accepted by CIT(A) and ITAT (Para No. 3 and 3.3 of order of ITAT in 1st round). Therefore, there is no controversy at present about the nature and character of the impugned addition of Rs. 13,30,000/-. Both of the learned Representatives were *ad idem* on this aspect. In fact, Ld. DR went on submitting that the AO has also, in last line of Para No. 3 of assessment-order, clearly mentioned “I have considered the submissions of AR and found that the share application money does not appears to be genuine” and thereafter proceeded to adjudicate the same. Hence, according to Ld. DR, there is no controversy as to the nature and character; the controversy is qua the identity and creditworthiness of the shareholder and genuineness of transaction, which this Bench is required to adjudicate.

5. The assessee-company is claiming to have received the impugned share application money of Rs. 13,30,000/- from undermentioned 5 shareholders:

S.No.	Shareholder	Amount
1.	M. B. Deshmukh	Rs. 5,00,000/-
2.	Vijay Singh Rajput	Rs. 1,00,000/-
3.	Mayank Welfare Society	Rs. 3,00,000/-
4.	Mayank Club	Rs. 3,00,000/-
5.	Sanjay Gupta	Rs. 1,30,000/-
	Total	Rs. 13,30,000/-

6. Before us, Learned AR for assessee and Ld. DR for revenue made vehement submissions. We have heard them and also considered the documents placed before us including the orders passed by lower-authorities. The submissions of parties and our findings/conclusions are discussed below:

(i) Shri M.B. Deshmukh:

(a) Referring to assessment-order, Ld. AR submitted that assessee submitted to AO that the shareholder was an advocate in high court and also having agricultural income from land over 60 bighas. The copy of khasra report of land was submitted to AO. Further, an affidavit of Shri Bhupendra Deshmukh, son of shareholder, was also submitted confirming that his father, Shri M.B. Deshmukh/ shareholder, had expired on 07.03.2002. However, the AO observed that if the shareholder expired on 07.03.2002, how could he deposit amount during the financial year 2002-03, AY 2003-04 under consideration? On this reasoning, the AO made addition. Ld. AR submitted that there occurred a typo mistake in mentioning the date of death in the affidavit submitted to AO, hence the assessee filed a revised-affidavit dated 26.02.2021 to CIT(A) during first-appeal mentioning correct date, copy of revised affidavit is filed at Page No. 7 of Paper-Book-I. The revised-affidavit contains a testimony of mistake having occurred in original affidavit as well as correct date of death.

(b) Per contra, Ld. DR submitted that the assessee has shown a hefty receipt of Rs. 5 lakh in cash from shareholder but that person was not available for verification. He submitted that the assessee has not filed any death certificate uptill now, even before ITAT. Then, the Ld. DR also carried us to the submission made by assessee before CIT(A) with regard to the identity, genuineness and creditworthiness of the impugned receipt:

Identity:

He was an advocate & agriculturist.
Resident of M.G. Road, Shajapur

Genuineness:

His legal heirs confirmed the transaction on affidavit.
Closely connected with the assessee.

Creditworthiness:

He was an advocate for past many years doing his practice.
Apart from that he was also having about 60 Hectares of land in Shajapur (Nearly 40 Acres of land where he carried agricultural operations)

Ld. DR submitted that from a bare reading of assessee's submission, one can easily find that the submission is extremely weak, general and vague. The complete address of shareholder is not mentioned. No ITR of shareholder is on record to justify creditworthiness and still a big investment of Rs. 5,00,000/- is claimed to be genuine. Ld. DR submitted that it is totally unbelievable.

- (c) In rejoinder, Ld. AR submitted that in the year 2003, the system of death-certificate was not popular at smaller places. He submitted that although the assessee has made all efforts to collect death certificate from legal heirs of shareholder but the legal heirs have expressed inability. That is why, an affidavit of son of shareholder, in fact revised affidavit, has been arranged and filed.
- (d) We have considered submissions of both sides. Firstly, we find that the assessee has shown a receipt of Rs. 5,00,000/- in cash from shareholder which is a hefty sum. We also find that there is no identity proof of shareholder submitted by assessee. On perusal of documents filed, we find that the assessee has filed a copy of "SHARE-APPLICATION FORM" in Paper-Book-II, Page No. 49. The same is scanned and re-produced below:

SHARE APPLICATION FORM

75 49

To,
The Directors

Amaltas Hotels Pvt. Ltd.

Dear Sirs:

I/ We hereby apply and request you to allot me ⁵⁰⁰⁰
(..... ~~FIVE THOUSAND~~) equity shares of Rs. 100/-each subject to the
Memorandum and Articles of Association of the Company and authorize you to place
My/ Our name's on the register of the member of the Company as the holders of such
shares allotted.

DETAILS IN BLOCK LETTERS

1. Usual Signature :
2. Surname /First Name : M. B. DESHMUKH
(in block letters)
3. Father's/Husband's name : SH. P. B. Deshmukh
4. Occupation : Advocate
5. Full Postal Address : M. G. Raad
Shujalpur
6. Resident or Non Resident : Resident

Thanking you,
Yours faithfully,

(M. B. DESHMUKH

Encl:- Cheque/ Cash... Cash...

Date:- 05.03.2003

Amount:- 500,000/-

For Office Use :

1. No. of Allotment :
2. No. of Shares applied:
6. Membership Register Folio.....
7. Nos. of share certificate issued

This application form is signed and submitted by shareholder (Shri M.B. Deshmukh) on 05.03.2003. Now, we re-produce below the aforesaid revised-affidavit filed in Paper-Book-I, Page No. 7:

INDIA NON JUDICIAL

FIFTY RUPEES
Rs.50

रु.50

INDIA

सत्यमेव जयते

प्रदेश MADHYA PRADESH

AW 930656

NOTED AND REGISTERED
on Dt. 26 FEB 2021
At.Sr.No. 5888/21

शपथपत्र

मैं शपथग्रहिता शपथ पर सत्य कथन करता/करती हूँ कि :-

मेरा नाम	:-	श्री भूपेन्द्र देशमुख
पिता का नाम	:-	श्री स्व.श्री मधुकर देशमुख
आयु	:-	45 वर्ष
पता	:-	शुजालपुर मंडी, शुजालपुर (म.प्र.)

यह कि, मुझ शपथग्रहिता के द्वारा अमलतास होटल इन्दौर के लिए एक शपथ पत्र निष्पादित किया गया था, जो श्रीमान नोटरी महोदय के.एम. जायसवाल के समक्ष नोटरी क्रमांक 2329 दिनांक 19/03/2007 को निष्पादित किया गया था।

2) यह कि, उक्त निष्पादित शपथ पत्र मे टाईपिस्ट ने त्रुटिवश मेरे पिताजी की मृत्यु दिनांक 07/02/2002 अंकित कर दी थी, जब कि मेरे पिताजी की मृत्यु दिनांक 07/02/2003 है।

यह कि, यह शपथपत्र मैं अपने पिताजी की मृत्यु दिनांक 07/02/2003 होने के समर्थन मे प्रस्तुत कर रहा हूँ।

इन्दौर
दिनांक 26 FEB 2021

शपथग्रहिता

सत्यापन लेख

उपरोक्त शपथपत्र के पेरा चरण 1 से लगायत अंत तक कुल कथन सत्य होकर इसमे कोई भी असत्य कथन नहीं किया होकर किसी तथ्यगत बात को छिपाया नहीं है।

ATTESTED

इन्दौर
दिनांक 26 FEB 2021

शपथग्रहिता

SANJAY GAYKWAD
NOTARY
GOVERNMENT OF INDIA
INDORE (M.P.)

This affidavit testifies, in Para No. 2 and 3, correct date of death as 07.02.2003. Now, even if the revised date of death i.e. 07/02/2003 is taken as correct, then also this date precedes 05.03.2003 i.e. the date on which the shareholder has signed the share application form. Therefore, the basic point still remains same i.e. how can the shareholder make sign on application-form and make investment on 05.03.2003 when he had already died on 07.02.2003. Furthermore, it is also noteworthy that the revised-affidavit, though notarized, is not signed by any deponent. The signature part is left blank. The signature at the right side of seal of notary, appearing in the scanned copy of revised-affidavit re-produced above, is a signature of assessee's counsel for certification of documents filed in Paper-Book and not of deponent of affidavit. Thus, without making any more comment from our side, we only suffice to conclude that the assessee has miserably failed to prove the identity of the shareholder much less the elements of creditworthiness and genuineness. In these circumstances, we are not inclined to accept the impugned receipt of Rs. 5,00,000/- as satisfying the requirements of section 68. Consequently, we uphold the addition of Rs. 5,00,000/-.

(ii) Shri Vijay Singh Rajput:

(a) Referring to assessment-order, Ld. AR submitted that assessee submitted to AO that the shareholder expired on 21.05.2012 (after 1st round of assessment but before 2nd round), copy of death-certificate is also filed at Page No. 17 of Paper-Book-I. The assessee also submitted PAN card of shareholder, copy placed in Paper-Book-II, Page No. 24. But the AO has made addition on the footing that no evidence was given which proves that the application money had been received from shareholder. Ld. AR submitted that an affidavit dated 3003.2006 given by the shareholder himself, prior to his death, is filed at Page

No. 6 of Paper-Book-I in which he has himself confirmed having made investment of Rs. 1,00,000/- in shares of assessee.

- (b) Per contra, Ld. DR carried us to the submission made by assessee before CIT(A) wherein the assessee has given following explanation *qua* the identity, genuineness and creditworthiness of the impugned receipt:

Identity:

Resident of 16 Bakhtawar Marg, Freeganj, Ujjain.
His PAN was filed. PAN is ABLPROO97G

Genuineness:

Confirmed the transaction on affidavit.
Closely connected with the assessee.

Creditworthiness:

Jamindar having huge agricultural land

Ld. DR submitted that from a bare reading of submission made by assessee, one can easily find that the explanation is extremely weak, general and vague. There is no document of shareholder except PAN. He submitted that mere holding of jamindari does not prove creditworthiness.

- (c) We have considered submissions of both sides. We find that the assessee has given a complete address of shareholder. Then, the assessee has filed an affidavit of shareholder himself before his death which contains full address of shareholder and clear confirmation that he invested in shares of assessee. The assessee has also given PAN of shareholder. Lastly, the amount of investment is Rs. 1,00,000/- only. Therefore, there are sufficient evidences to support the requirement of section 68. Hence, the authorities are not justified to disbelieve submissions of assessee without bringing anything adverse on record. Consequently, the addition of Rs. 1,00,000/- is deleted.

- (iii) Mayank Welfare Society:

- (a) Referring to assessment-order, Ld. AR submitted that the shareholder is a registered society. The assessee submitted Receipt & Payment A/c of shareholder to AO to show the deposit of share application money. However, the AO has observed that shareholder-society was having total receipt of Rs. 14,850/- only, therefore it cannot deposit Rs. 3,00,000/- with assessee. Further, the AO also noted that the shareholder-society cannot make investment in assessee's shares since it would violate the provisions of section 10(23C) read with section 11(5). Ld. AR submitted that the AO has wrongly linked the investment of Rs. 3,00,000/- with gross-receipts of current year alone, the investment could very well be made out of accumulated funds. Ld. AR also contended that the observation by AO that the shareholder-society cannot make investment in shares of assessee as it would be a violation of section 10(23C) or 11(5), is something which is totally irrelevant to assessee. Ld. AR submitted that if it is a violation in the hands of shareholder-society, the department may very well proceed against the shareholder-society but how can the department draw any adverse inference against assessee? Therefore, the AO's order is very much wrong.
- (b) Ld. DR relied upon AO's order.
- (c) On a careful consideration, we find that the assessee has made following explanation before lower-authorities *qua* the identity, genuineness and creditworthiness of the impugned receipt:

Identity:

Society incorporated on 12.04.1996
Having Registered Office at Bicholi Mardana, Indore.
Its PAN is AANFM0784C

Genuineness:

Confirmed the transaction on affidavit.
Closely connected with the assessee.
Running a medical college.

Creditworthiness:

Running a medical college

- (d) We find that the shareholder is a registered society from 12.04.1996, copy of registration-certificate issued by Registrar of Societies is placed in Paper-Book-II, Page No. 25. The ITR of shareholder is filed in Paper-Book-II, Page No. 26. In fact, the lower-authorities do not have any question-mark on the identity of shareholder. Then, we find merit in the submission of Ld. AR that the AO is not justified to link the investment made by shareholder with gross-receipts of shareholder in current year alone; the investment could have been well-made out of accumulated funds. We also find a strong merit in the submission of Ld. AR that even if the investment in shares of assessee by the shareholder-society is a violation of section 10(23C) or 11(5), such violation can permit the department to take any action against the shareholder-society but cannot be a basis for addition u/s 68 in the hands of assessee. We, therefore, do not find any justification in the basis adopted by lower-authorities for making addition in the hands of assessee. Consequently, we delete the addition of Rs. 3,00,000/- is deleted.
- (iv) Mayank Club:
- (a) Referring to assessment-order, Ld. AR submitted that the AO has simply noted that the shareholder-club was having only receipt of Rs. 2,25,000/- during the year and such a low-profile club cannot make investment of Rs. 3,00,000/- in assessee's share capital. Ld. AR submitted that the assessee has given sufficient evidences to lower-authorities for proving the elements of section 68, still the AO has made addition on conjecture and surmise only.
- (b) Per contra, Ld. DR relied upon assessment-order.

- (c) On a careful consideration, we find that the assessee has made following explanation before lower-authorities *qua* the identity, genuineness and creditworthiness of the impugned receipt:

Identity:

Copy of Society registration certificate of Mayank Club is enclosed. That the society was registered by Joint Registrar on 12.05.1997
Its PAN is AANFM0552G

Genuineness:

Confirmed the transaction on affidavit
Closely connected with the assessee.

Creditworthiness:

Copy of Audited Receipt & Payment account of Mayank Club for the year ended on 31.03.2003 reflecting share application money of Rs. 3,00,000/- is enclosed.

We find that the shareholder is a registered society from 18.05.1997, copy of registration-certificate issued by Registrar of Societies is placed in Paper-Book-II, Page No. 27. PAN card of shareholder is in Paper-Book-II, Page No. 28. Constitution-Deed is filed in Paper-Book-II, Page No. 29 to 40. It appears from order of CIT(A) that the assessee has also filed a copy of audited Receipt & Payment A/c reflecting the share-application money payment of Rs. 3,00,000/- to assessee, which is not controverted by Ld. DR. The observation made by Ld. AO that the shareholder is a low-profile club which cannot make investment of Rs. 3,00,000/- in assessee's share, is only a conjecture not based on any fact. Therefore, we do not find any justification in the basis adopted by lower-authorities for making addition in the hands of assessee. Consequently, we delete the addition of Rs. 3,00,000/-.

- (v) Shri Sanjay Gupta:

- (a) Referring to assessment-order, Ld. AR submitted that the assessee submitted copy of ITR of shareholder from which the AO observed that the shareholder was having just salary income of Rs. 47,967/- and such a low paid employee cannot make investment in assessee's

shares. Ld. AR submitted that salary of Rs. 47,967/- was not a small amount in that year, the AO should not have made any adverse inference.

- (b) Per contra, Ld. DR carried us to the submission made by assessee before CIT(A) *qua* the identity, genuineness and creditworthiness of the impugned receipt:

Identity:

He was doing service.
Resident of Indore

Genuineness:

He confirmed transaction on affidavit
Closely connected with the assessee.
His PAN Card was filed.

Creditworthiness:

His return of income was filed

Ld. DR submitted that the identity of shareholder is not even proved. He submitted that the annual salary income of shareholder was just Rs. 47,967/-, out of which he must be incurring household expenses. Then, if we consider the left-over saving, how can it be believed that he could invest Rs. 1,30,000/- in shares of assessee which generate no income.

- (c) We find that the shareholder's ITR is filed in Paper-Book-II, Page No. 43-45 which proves the identity element. But there is a strong merit in the submission of Ld. DR that the shareholder is having a meagre annual income of Rs. 47,967/- and after his household expenses would be left with a very small saving. Therefore, the shareholder cannot make investment as high as Rs. 1,30,000/- which is manyfold of his saving. No other source available with the shareholder for making investment in assessee is submitted before lower-authorities or even before us. Therefore, we are not in position to find

creditworthiness of the shareholder and genuineness of transaction.

Consequently, we uphold addition of Rs. 1,30,000/-.

7. Resultantly, this appeal of assessee is partly allowed as mentioned above.

Order pronounced in the open court on 25.08.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
-(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 25.08.2023.

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*