

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANJUNATHA. G, ACCOUNTANT MEMBER**

Sr. No	Appeal Numbers	Assessment Years	Appellant	Respondent
1	ITA No.1126/Chny/2017	2007-08	<b>The Asst. Commissioner of Income Tax,</b> Central Circle-1(1), Chennai.	<b>M/s. Kamachi Industries Ltd.</b> (formerly known as Kamachi Sponge and Power Corporation Ltd.) No.664, T.H. Road, Chennai – 600 081. <b>[PAN: AACCK-6172-C]</b>
2.	ITA No.1127/Chny/2017	2008-09		
3.	ITA No.1128/Chny/2017	2009-10		
4.	ITA No.1129/Chny/2017	2010-11		
5.	ITA No.1130/Chny/2017	2011-12		
6.	ITA No.1131/Chny/2017	2012-13		
7.	ITA No.1132/Chny/2017	2013-14		
8.	ITA No.1133/Chny/2017	2008-09	<b>The Asst. Commissioner of Income Tax,</b> Central Circle-1(1), Chennai.	<b>M/s. Kamachi Steels Ltd.</b> No.664, T.H. Road, Chennai – 600 081. <b>[PAN: AACCK-4450-B]</b>

अपीलार्थी की ओरसे/ <b>Assessee by</b>	:	Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओरसे/ <b>Revenue by</b>	:	Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	22.08.2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	30.08.2023

**आदेश / ORDER**

**Per Bench:**

This set of 08 appeals by the Revenue are arising out of the common order of Commissioner of Income Tax (Appeals)-18, Chennai [hereinafter "CIT(A)"] dated 15.02.2017. The Assessments were framed by Asst. Commissioner of Income Tax, Central Circle-1(1), Chennai for the relevant Assessment Years 2007-08 to 2013-14 vide different orders of even date 31.03.2015 u/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 (hereinafter 'the Act').

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2. First, we will deal with these four appeals of Revenue in ITA Nos.1126, 1127, 1128 & 1129/Chny/2017 relating to A.Ys. 2007-08, 2008-09, 2009-10 & 2010-11 in the case of Kamachi Industries Ltd. At the outset, the Ld. Counsel for the assessee filed a detailed chart relating to these four A.Ys and stated that a search u/s. 132 of the Act was conducted on assessee's premises on 18.12.2012. The assessee (before search) has filed its returns of income for these four A.Ys and assessments either completed u/s. 143(1) or 143(3) of the Act before the date of search and assessments are unabated. The assessee filed the details as under:

ASST YEAR	Date of filing of original ROI	Date of processing U/s. 143(1)	Date of issue of notice u/s. 143(2)	Date of completion of assessment u/s. 143(3)/147	Abated / not Abated
2007-08	26.10.2007	11.02.2009	--	--	--
2008-09	30.09.2008	29.01.2010	13.08.2009	28.12.2010	-
2009-10	30.09.2009	19.11.2010	--	30.12.2011	--
2010-11	14.10.2010	27.04.2011	--	--	--

3. The Ld. counsel for the assessee has stated that there is no incriminating material found and seized even during the course of search in relation to which additions were made by the A.O u/s. 68 of the Act in respect of share application money i.e., share capital/share premium. The Ld. counsel for the assessee drew our attention to the additional ground raised before CIT(A), which reads as under:

*"The learned assessing officer in case of search assessment u/s. 153A of the Act erred in making an addition under section 68 of the*

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*Income Tax Act on account of share capital from corporate without any indiscriminating documents found during the course of search.”*

4. The Ld. counsel for the assessee stated that exactly identical grounds were raised in other three A.Ys i.e., 2008-09, 2009-10 & 2010-11. The Ld. Counsel for the assessee stated that the A.O in these four A.Ys. brought out that no incriminating material was found during the course of search and the documents found are not relating to these A.Ys rather, the assessments were framed u/s 153A r.w.s 143(3) of the Act on the basis of information already filed by the assessee during the course of original assessment proceedings or in the returns of income i.e., from the balance sheets and audited accounts of the assessee. The CIT(A) has recorded this fact in para 4.1 of his order, the assessments which are unabated for all these four A.Ys and the relevant portion reads as under:

*“4.1. I have gone through the assessment order, grounds of appeal, written submissions and case laws relied upon by the appellant. After a careful consideration of the same, the issue is decided as under:*

*As can be seen from the assessment order the AO observed that there is capital infusion through issue of 60,03, 200 shares of face value of Rs. 10/ at a premium of Rs. 15/- per share from various Kamachi group individuals, investment companies which were taken over by the Kamachi group and certain companies registered in ROC, Mumbai and ROC, Kolkatta. In this regard the AO had taken support from the sworn statement of one Mr.Praveen Jain, who is said to be one of the leading entry providers, based on which the former had sent notices u/s. 133(6) to various companies. Most of the companies have replied to the above said notices along with necessary documentary evidences. After going through the same the AO was not convinced that the identity, capacity and genuineness of transactions involving the alleged receipts of share application money has been proved and held that the money had come to the appellant from the aforesaid bogus companies directly*

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*or indirectly in the garb of share application money observing as above the AO added the same under section 68 to the appellant's total income. On going through the materials on record, I am of the view that the various documentary evidences produced by the appellant during assessment proceedings, such as details of registered office address, PAN & assessment particulars, financial statements, copies of annual return filed by the above said companies in the office of the Registrar of Companies, share application forms, copies of minutes of board meeting for allotment of shares in favour of the above said companies, confirmation letters from parties and the copy of bank accounts wherein the said entries are reflected were not taken into account in the proper perspective by the AO. Above all, all the transactions were carried out under normal banking channels.*

*Further the AO himself has concluded that these are bogus companies. Admitting for a while as observed by the AO that these are bogus companies, the right thing AO should have done was to proceed against the said bogus companies, as held in the case of Lovely Exports Pvt. Ltd. (supra) and he should not have considered the said sum under section 68 and added it to the appellant's total income. Hence adding the said amount under section 68 in the hands of the appellant is legally not correct. Accordingly it is held that the action of the AO is in correct as it is against the decision of the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd.*

*As can be seen from the assessment orders, the AO has not discussed about any incriminating materials, the reason being, that no such materials were found during the course of search proceedings and post search proceedings. This means there were no seized materials at all. Hence it is to be concluded that the additions made by the AO are not backed by any incriminating material, except the sworn statement of third party. On the contrary, the appellant had explained cogently with documentary evidences as to the basis on which his claim is to be accepted."*

5. When these facts were confronted to Ld. CIT-DR, he could not answer whether there is any incriminating material available in seized documents or not in relation to these four A.Ys and he also could not controvert the fact that the additions of share capital made by A.O in those four A.Ys u/s. 68 of the Act is on account of share capital / share premium based on documents filed by the assessee in original

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assessments or the transactions recorded in the books of accounts, which are already been declared by the assessee in the returns of income file before search. When it was pointed out that this case is squarely covered in favour of the assessee and against Revenue by the decision of Hon'ble Supreme Court in the case of *PCIT vs. Abishar Buildwell P. Ltd. in Civil Appeal No.6580 of 2021 dated 24.04.2023 (SC)*, he could not controvert the same.

6. After hearing rival contentions and going through the facts of the case and admitted facts are that these are unabated assessment and there is no incriminating material found during the course of search which connects with the introduction share capital / share premium in these four A.Ys by the assessee, which is already been declared in the original return of income, we noted that this issue is covered fully by the decision of Hon'ble Supreme Court in the case of *Abishar Buildwell P. Ltd.*, supra, and the Hon'ble Supreme Court held as under:

*"14. In view of the above and for the reasons stated above, it is concluded as under:*

*i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*

*ii) all pending assessments/reassessments shall stand abated;*

*iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed*

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*during the search and the other material available with the AO including the income declared in the returns;  
and*

*iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

*The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."*

7. In view of the above, we dismiss these four appeals of Revenue.
8. Coming to Revenue's appeal in ITA No.1133/Chny/2017 for A.Y 2008-09 in the case of Kamachi Steels Ltd., the Ld. Counsel for the assessee as well as Ld. CIT-D.R agreed that the facts and circumstances are exactly identical and there is no incriminating material found during the course of search, which can be co-related with share capital / share premium introduction by the assessee during this assessment year and further the assessment is unabated. The finding of CIT(A) is exactly identical, which is reproduced at para 4.1 as under:

*4.1. I have gone through the assessment order, grounds of appeal, written submissions and case laws relied upon by the appellant. After a careful consideration of the same, the issue is decided as under:*

*As can be seen from the assessment order the AO observed*

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that there is capital infusion from various Kamachi group individuals, investment companies which were taken over by the Kamachi group and certain companies registered in ROC, Mumbai and ROC, Kolkatta. In this regard the AO had taken support from the sworn statement of one Mr. Praveen Jain, who is said to be one of the leading entry providers, based on which the former had sent notices u/s. 133(6) to various companies. Most of the companies have replied to the above said notices along with necessary documentary evidences. After going through the same the AO was not convinced that the identity, capacity and genuineness of transactions involving the alleged receipts of share application money has been proved and held that the money had come to the appellant from the aforesaid bogus companies directly or indirectly in the garb of share application money. Observing as above the AO added the same under section 68 to the appellant's total income. On going through the materials on record, I am of the view that the various documentary evidences produced by the appellant during assessment proceedings, such as details of registered office address, PAN & assessment particulars, financial statements, copies of annual return filed by the above said companies in the office of the Registrar of Companies, share application forms, copies of minutes of board meeting for allotment of shares in favour of the above said companies, confirmation letters from parties and the copy of bank accounts wherein the said entries are reflected were not taken into account in the proper perspective by the AO. Above all, all the transactions were carried out under normal banking channels.

Further the AO himself has concluded that these are bogus companies. Admitting for a while as observed by the AO that these are bogus companies, the right thing AO should have done was to proceed against the said bogus companies, as held in the case of *Lovely Exports Pvt. Ltd. (supra)* and he should not have considered the said sum under section 68 and added it to the appellant's total income. Hence adding the said amount under section 68 in the hands of the appellant is legally not correct. Accordingly It is held that the action of the AO is incorrect as it is against the decision of the Hon'ble Supreme Court in the case of *Lovely Exports Pvt. Ltd.*

As can be seen from the assessment orders, the AO has not discussed about any incriminating materials, the reason being, that no such materials were found during the course of search proceedings and post search proceedings. This means there were no seized materials at all. Hence it is to be concluded that the additions made by the AO are not backed by any incriminating material, except the sworn statement of third party. On the contrary, the appellant had explained cogently with documentary evidences as to the basis on which his claim is to be accepted.”

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9. Since, the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of *Abishar Buildwell P. Ltd.*, supra, we dismiss this appeal of Revenue.

10. Coming to ITA Nos.1130, 1131 & 1132/Chny/2017 for A.Ys 2011-12, 2012-13 & 2013-14, these are abated assessments and the Revenue has raised identical grounds and facts. Even circumstances are also identical in all the three A.Ys. The Ld. CIT-DR drew our attention to the grounds raised by Revenue, which are argumentative and decisions cited in these grounds are of various High Courts and decision of ITAT. The precise issue is brought out in ground No.2, which reads as under:

*"2. The learned CIT(A) erred in deleting the addition of Rs.1,00,04,00,000/- made by the Assessing Officer u/s 68 of the Income Tax Act, 1961, in the assessment for A.Y 2011-12 passed u/s 143(3) r.w.s 153A of the IT Act, 1961 in the case of the assessee.*

*2.1 The Id. CIT(A) ought to have appreciated that the documentary evidence brought on record by the Assessing Officer during the assessment proceedings clearly showed that the alleged share holders were only paper companies whose credit worthiness and the genuineness of the transactions were not established.*

*2.2 The Id.CIT(A) ought to have appreciated the decision of Hon'ble Calcutta High Court in the case of Rajmandir Estates Pvt. Ltd. Vs Pr. CIT, Kolkatta III(2016) 70 taxmann.com 124, which, though rendered in the context of application of section 263 with respect to introduction of Share capital/Share Premium, squarely applies to the facts of the case of the assessee."*

11. Since, the facts and circumstances are exactly identical in all the three A.Ys. We will take the facts from A.Y 2011-12 in ITA

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No.1130/Chny/2017, as noted in the above ground, we proceed to adjudicate this issue.

12. The brief facts of the case are that a search and seizure u/s. 132 of the Act was carried out in the case of assessee on 18.12.2012 and in consequent to the same, the assessee was asked to file return in response to notice issued u/s. 153A of the Act dated 06.08.2013. In response to the same, the assessee filed its return of income on 08.04.2014 repeating the same as declared in the original return of income. The A.O noticed that during the year under consideration, the assessee introduced fresh capital through issue of 6003200 shares of face value of Rs.10/- at a premium of Rs.15/- per share from various Kamachi Group individuals, investment companies which were taken over by Kamachi Group. The details of share capital introduced is amounting to Rs. 1,00,04,00,000/-. The details are given in the assessment order are as under:

**KAMACHI SPONGE AND POWER COPORATION LIMITED**

S. No.	Name of the party	FY 2010-11 No. Of shares	FV	Amount Prem	Total
1.	Kamachi Investments Private Limited	4,00,000	40,00,000	60,00,000	1,00,00,000
2.	Solanki Texcomm Pvt Ltd.	4,00,000	40,00,000	60,00,000	1,00,00,000
3.	Devshree saving & Investment Co Pvt. Ltd.	46,42,000	4,64,20,000	6,96,30,000	11,60,50,000
4.	Booh Finance company Private Limited	72,38,000	7,23,80,000	10,85,70,000	18,09,50,000
5.	SBM Investments Private Limited	75,00,000	7,50,00,000	11,25,00,000	18,75,00,000
6.	Uttam Finvest Private Limited	64,36,000	6,43,60,000	9,65,40,000	16,09,00,000
7.	Shivpriya Finvest Limited	80,32,000	8,03,20,000	12,04,80,000	20,08,00,000
8.	Pure Gold Finance Private Limited	53,68,000	5,36,80,000	8,05,20,000	13,42,00,000
	<b>Sub Total</b>	<b>4,00,16,000</b>	<b>40,01,60,000</b>	<b>60,02,40,000</b>	<b>1,00,04,00,000</b>

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13. The A.O after analysing the receipt of share capital i.e. share money and share premium, required the assessee to explain the source of the same, but it seems that none of the companies above as explained the source of the investment made, despite many opportunities given by A.O. The A.O recorded this fact in para 7.7 and 7.8 as under:

*“7.7 Notices u/s 133(6) were issued to 29 such companies which have provided fund to investment companies of Kamachi group in lieu of purchase of investments. Out of these 29 companies, notices have been received back un-served in 21 cases, 5 parties have furnished incomplete reply, and 3 parties have not responded. Received back notices mostly have remarks 'not known'.*

*7.8 Notices u/s 133(6) have been issued to 30 companies whose shares were sold. To ultimately funding M/s Kamachi Sponge & Power Corporation Limited. Out of these, 17 notices have been received un-served, 4 parties have sent replies and 9 cases no reply has been received. Received back notices mostly have remarks 'not known'.”*

14. Even, the replies is not by four parties out of 30 companies has not given complete details and hence, the A.O dismissing all the arguments and held that the assessee is unable to explain the source of the credit, genuineness of transaction and hence, he added the same u/s. 68 of the Act. Aggrieved, the assessee preferred an appeal before CIT(A).

15. The CIT(A) taken the case as these are unabated assessment and decided by a common order for all A.Ys even to abated assessments and to unabated assessments by holding that there is no

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incriminating material. In our view, the findings of CIT(A) recorded in para 4.1 are without any basis, because in case of abated assessment, the requirement of incriminating material is not there. In abated assessments, the assessment is completely open before the A.O and the A.O has to proceed on the basis of documents filed by the assessee and transactions recorded in the books of accounts as a regular assessment or fresh case. We noted that the CIT(A) recorded finding in para 4.1 as under:

*“4.1. I have gone through the assessment order, grounds of appeal, written submissions and case laws relied upon by the appellant. After a careful consideration of the same, the issue is decided as under:*

*As can be seen from the assessment order the AO observed that there is capital infusion through issue of 60,03,200 shares of face value of Rs. 10/- at a premium of Rs.15/- per share from various Kamachi group individuals, investment companies which were taken over by the Kamachi group and certain companies registered in ROC, Mumbai and ROC, Kolkatta. In this regard the AO had taken support from the sworn statement of one Mr.Praveen Jain, who is said to be one of the leading entry providers, based on which the former had sent notices u/s. 133(6) to various companies. Most of the companies have replied to the above said notices along with necessary documentary evidences. After going through the same the AO was not convinced that the identity, capacity and genuineness of transactions involving the alleged receipts of share application money has been proved and held that the money had come to the appellant from the aforesaid bogus companies directly or indirectly in the garb of share application money. Observing as above the AO added the same under section 68 to the appellant's total income. On going through the materials on record, I am of the view that the various documentary evidences produced by the appellant during assessment proceedings, such as details of registered office address, PAN & assessment particulars, financial statements, copies of annual return filed by the above said companies in the office of the Registrar of Companies, share application forms, copies of minutes of board meeting for allotment of shares in favour of the above said companies, confirmation letters from parties and the copy of bank accounts wherein the said entries are reflected were not: taken into account in the proper perspective by the AO. Above all, all the transactions were carried out under normal banking channels.*

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*Further the AO himself has concluded that these are bogus companies. Admitting for a while as observed by the AO that these are bogus companies, the right thing AO should have done was to proceed against the said bogus companies, as held in the case of Lovely Exports Pvt. Ltd. (supra) and he should not have considered the said sum under section 68 and added it to the appellant's total income. Hence adding the said amount under section 68 in the hands of the appellant is legally not correct. Accordingly it is held that the action of the AO is incorrect as it is against the decision of the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd.*

*As can be seen from the assessment orders, the AO has not discussed about any incriminating materials, the reason being, that no such materials were found during the course of search proceedings and post search proceedings. This means there were no seized materials at all. Hence it is to be concluded that the additions made by the AO are not backed by any incriminating material, except the sworn statement of third party. On the contrary, the appellant had explained cogently with documentary evidences as to the basis on which his claim is to be accepted."*

Since, the CIT(A) has deleted the addition, the Revenue came in appeal before the Tribunal.

16. After hearing the rival contentions and going through the facts and circumstances of the case, we hold that the entire order of CIT(A) based on wrong premise that there is no incriminating material and according to his understanding this applies only to unabated and not to abated assessments. We feel that this premise is wrong and not according to the provisions of the Act. We are of the view that for abated assessments, the A.O has all the power to make fresh assessment based on the transactions entered into by the assessee and to examine those transactions as a fresh assessment. There is no requirement for incriminating material in case of abated assessment.

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Hence, we set aside the order of CIT(A) and remand the matter back to his file for fresh adjudication after going through the findings recorded by A.O and submissions to be given by the assessee. In term of above, we remand this matter back to the file of CIT(A) and set aside the order of CIT(A) for the A.Y. 2011-12.

17. As regards to ITA Nos.1131 & 1132/Chny/2017 for A.Ys 2012-13 & 2013-14, since we set aside the appeal for A.Y 2011-12, taking a consistent view, we remand these matters also back to the file of CIT(A) and set aside the orders of CIT(A).

18. In the result, appeals of the Revenue in ITA Nos.1126, 1127, 1128, 1129 & 1133/Chny/2017 are dismissed and the appeals of Revenue in ITA No.1130, 1131 & 1132/Chny/2017 are partly allowed for statistical purposes.

*Order pronounced on 30<sup>th</sup> August, 2023.*

**Sd/-**  
**(मंजुनाथ. जी)**  
**(Manjunatha. G)**

**लेखा सदस्य /Accountant Member**

**Sd/-**  
**(महावीर सिंह)**  
**(Mahavir Singh)**  
**उपाध्यक्ष / Vice President**

चेन्नई/Chennai, दिनांक/Dated: 30<sup>th</sup> August, 2023.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF