

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.335/SRT/2022

Assessment Year: (2015-16)

(Physical court Hearing)

Khazana Bazar Pvt. Ltd., C-104, Radha Raman Textile Market, Saroli, Surat-395010	Vs.	Income Tax Officer, Ward- 1(1)(3), Surat, Room No.113, Aayakar Bhawan, Majura Gate, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFCK 0726 P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Suresh K. Kabra, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	03/08/2023
घोषणा की तारीख /Date of Pronouncement	27/09/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2015-16, is directed against the order passed by the National Faceless Appeal Centre, Delhi [in short “NFAC/Ld. CIT(A)”] dated 21.09.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 30.11.2017.

2. The grounds of appeal raised by the assessee are as follows:

*“1. The Ld. CIT(A) has erred and was not justified on the facts of the case and in law in confirming the addition of Rs.49,00,015/- u/s 68.”*

3. Succinctly, the factual panorama of the case is that assessee before us is a Private Limited Company and engaged in business of trading of sarees and dress materials. The assessee-company filed its return of income for the assessment year (A.Y.) 2015-16 on

02.10.2015, declaring total income at Rs.4,74,560/-. The assessee's case was selected for scrutiny and notice u/s 143(2) of the Act, was issued on 26.04.2016. Thereafter notice u/s 142(1) of the Act, was issued on 19.06.2017 and 18.10.2017 and served upon the assessee requiring to furnish the details. In response to notice issued, the assessee appeared before Assessing Officer and filed details and documents. On verification of case, it was noticed by the assessing officer that assessee has claimed to have received share capital of Rs.9,42,310/- and share premium of Rs.39,57,705/- totaling to Rs.49,00,015/- ( Rs.9,42,310+ Rs.39,57,705) during the year under consideration. During the course of assessment proceedings, in order to verify the identity and creditworthiness of the investors and genuineness of the transaction, the notice u/s 142(1) of the Act was issued to the assessee wherein the assessee was asked to furnish name, complete address, PAN copy of acknowledgement of the return of income and bank statement of the persons from whom unsecured loans claimed to have been received during the year under reconsideration. In response to the same, the assessee vide letter dated 03.11.2017 furnished the details and documents before the assessing officer.

4. After going through the details and documents, the assessing officer observed that the amount was transferred to the bank accounts of three alleged investors from the bank account of Khazana Gold Energy, which was the bank account of the wife of director of the assessee-company. Further, on perusal of the audit report of the assessee company, it revealed that an amount of Rs.49,81,015/- had been transferred to the bank account of Khazana Gold Energy. From there, the amount was transferred to the bank accounts of three alleged investors, the details of whose bank statement had been examined by the assessing officer. The assessee, (vide order sheet entry dated

06.11.2017 of AO), was also asked to produce the alleged investors for examination. However, the assessee did not produce the above persons for examination. Further, the assessee also failed to explain the nature of the transactions for which the amount was transferred to the Khazana Gold Energy, a company managed by the wife of the director, who in turn transferred the same to Shri Amit Kumar Agarwal, Shri Rajaram Agarwal and Smt. Prabhadevi Agarwal on the same day on which the amount had been transferred from the assessee- company. The assessing officer concluded that all this amount was nothing but share accommodation entries and the undisclosed income of the assessee. Therefore, assessing officer held that the credit amount is nothing but undisclosed income of the assessee company and thus accordingly in the absence of any satisfactory explanation, the provisions of section 68 were invoked and accordingly, the amount of Rs.49,00,015/- was added to the income of the assessee.

5. Aggrieved by the order of Assessing Officer the assessee carried the matter in appeal before Ld. CIT(A) who has confirmed the order of Assessing Officer by observing as follows:

*“.....Moreover, it is also a fact that the assessee could not produce the investors i.e. Sh. Amit Kumar Agarwal, Sh. Rajaram Agarwal and Smt. Prabhadevi Agarwal for verification before the assessing officer. Even, the assessee failed to offer the explanation as regards to the nature of transactions for which the amount had been transferred to the account of Khazana Gold Energy from the assessee company, who in turn transferred the said amount to the bank account of Sh. Amit Kumar Agarwal, Sh. Rajaram Agarwal and Smt. Prabhadevi Agarwal and they consequently, transferred the same amount to the bank account of the assessee company in the garb of share capital and share premium. Thus, in view of the above detailed facts and observation and also drawing strength from the various judicial precedents. I am of the opinion, that the addition made by the assessing officer of amounting to Rs.49,00,015/- is justified. The contention of the assessee that the transactions through banking channels is sufficient to prove the rigors’ as stipulated u/s 68 does not hold any water in view of numerous case laws as cited above and thus negates the contention assessee. The ground is decided negative to the assessee.....”*

6. Aggrieved by the order of Ld. CIT(A) the assessee is in further appeal before us.

7. Shri Suresh K. Kabra, Learned Counsel for the assessee begins by pointing out that all transactions were through banking channels. The assessee submitted PAN number, Name address, Bank statements, and profit and loss account and Balance sheets of Invertors/Share applicants. The justification of premium charged was also furnished before the assessing officer. The amount was debited to the bank account of three investors and on the same date the amount again got transferred to the bank account of the assessee company in the name of share capital and share premium. The amount so debited to the bank account of three investors was genuine and assessing officer has not proved with cogent evidence that the said amount was ingenuine. The assessing officer did not find any fault in the documents and evidences submitted by the assessee, except to say that documents and evidences of the assessee are not acceptable. The Id Counsel further pointed out that no doubt the assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the assessing officer, so as to discharge the primary onus. Such primary onus was discharged by the assessee by submitting PAN number, Name address, Bank statements, and profit and loss account and Balance sheets of Invertors/Share applicants. Therefore, Id Counsel contended that addition made by the assessing officer may be deleted.

8. On the other hand, Learned Senior-DR for the Revenue supported the order of lower authorities and argued that an addition of amounting to Rs.49,00,015/- was made to the income of the assessee

u/s 68 of the Act. A detailed finding of the circle through which this amount has gone through and then finally reached back to the account of the assessee -company in the form of share premium and share capital, have been made by the assessing officer. Before assessing officer all the investors were not produced. The assessee has utterly failed to satisfy three conditions of section 68 namely, identity, creditworthiness and genuineness, therefore Id DR prays the Bench that addition made by the assessing officer may be sustained.

9. We have heard both sides in detail and also perused the records of the case including the paper book filed by the assessee company. Before us Id. Counsel for the assessee submitted following documents and evidence, viz: (i) Chart showing the receipt of share capital and the source of source (vide paper book pages 1-2), (ii) Index of paper book submitted before Assessing Officer date 21.11.2017, (iii) Relevant folio of bank statement of a/c No.0521050035149 (vide paper book page No.4-6), (iv) Relevant folio of bank statement of a/c No.0521050033442 – Khazana Gold Energy (vide paper book page-7) (v) Relevant folio of bank statement of a/c No.0521050026893- Fashion G-Syntex (vide paper book page No.8), (vi) Relevant folio of bank statement of a/c No.0521050026885 – Amit Textiles (vide paper book page No.9), (vii) Relevant folio of bank statement of a/c No.0521050031943 – Khazana Multiplus (vide paper book page No.10), (viii) ITR-V, Computation statement of total income, trading and Profit & Loss account, capital account, and balance sheet for AY 15-16 of Barsha Amit Agarwal (vide paper book pages 11-16), (ix) ITR-V, computation statement of total income, trading and Profit & Loss account, capital account and balance sheet for the AY 15-16 of Prabha Rajaram Agarwal (vide paper book pages 17-23). By submitting these documents and evidences, the Id Counsel for the

assessee claimed that assessee has not only proved 'source' but 'source of the source' also.

10. We note that assessing officer has mainly made the addition based on the reason that assessee could not produce the investors i.e. Sh. Amit Kumar Agarwal, Sh. Rajaram Agarwal and Smt. Prabhadevi Agarwal for verification before the assessing officer. Therefore the main plank on which the assessing officer made the addition was because the directors/investors did not turn up before him. In such a case the Hon'ble Apex Court in the case of Orissa Corpn. (P) Ltd. (supra) 159 ITR 78 and the Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360/[2003] 127 Taxman 523 , has held that onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the Assessing Officer is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from such creditor). In arriving at this conclusion, the Hon'ble Court has further stressed the presence of word "may" in section 68. Relevant observations at pages 369 and 370 of this report are reproduced hereunder:

*"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose*

*statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by' treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69."*

11. Section 68 under which the addition has been made by the Assessing Officer reads as under:

*"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."*

12. The above phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words 'shall' be charged to income-tax as the income of the assessee of that previous year. The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word 'may' and not 'shall'. Thus the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT vs. Smt. P. K. Noorjahan [1999] 237 ITR 570.

13. From the details as aforesaid which emerges from the paper book filed before us as well as before the lower authorities, it is vivid that all the share applicants are (i) income tax assessee's, (ii) they are filing their return of income, (iii) the share application form and allotment letter is available on record, (iv) the share application money was made by account payee cheques, (v) the details of the bank

accounts belonging to the share applicants and their bank statements, (vi) in none of the transactions the AO found deposit in cash before issuing cheques to the assessee company, (vii) the applicants are having substantial creditworthiness which is represented by a capital and reserve as noted above. Therefore, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee, cannot be brushed aside by the AO, to draw adverse view, cannot be countenanced. Thus, based on the facts and circumstances, we delete the addition.

14. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 27/09/2023 in the open court.

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

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

lwjr /Surat

दिनांक/ Date: 27/09/2023

DKP Outsourcing Sr.P.S

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat