

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

आयकर अपील सं./ITA No.140/SRT/2020

Assessment Year: (2011-12)

(Physical Hearing)

|   |     |  |
|---|-----|--|
| The DCIT,<br>Circle – 1(1)(2),<br>Surat         | Vs. | J. B. Syntex Pvt. Ltd.,<br>B-25, Guj. Eco. Textile Park,<br>N. H. No.8, Palsana, Surat – 394315. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCJ9389D |     |  |
| (Appellant)                                     |     | (Respondent)   |

|                       |                          |
|-----------------------|--------------------------|
| Appellant by          | Shri Vinod Kumar, Sr. DR |
| Respondent by         | Shri Rasesh Shah, CA     |
| Date of Hearing       | 17/08/2023               |
| Date of Pronouncement | 18/10/2023               |

**आदेश / O R D E R**

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

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-1, Surat [in short “the ld. CIT(A)”], in Appeal No. Surat-1/10264/2014-15, dated 19.02.2020, 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 31.03.2014.

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

*“1. Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is justified in deleting the addition of Rs.1,86,00,000/- made by the assessing officer on account of bogus share capital u/s 68 of the Act as the assessee has failed to prove the bonafide of the transactions in terms of identity, creditworthiness and genuineness of such transactions?”*

*2. Whether on the facts and circumstances of the case and in law, the ld. CIT(A) is justified in deleting the addition of Rs.68,50,000/- made by the assessing officer on account of unexplained cash credit u/s 68 of the Act*

*as the assessee has failed to prove the bonafide of the transactions in terms of identity, creditworthiness and genuineness of such transactions?*

*3. It is, therefore, prayed that the order of the ld. CIT(A) may be set aside and that of Assessing Officer may be restored to the above extent.*

*4. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

3. Ground No.1 raised by the Revenue, relates to deleting of addition of Rs.1,86,00,000/- made by the assessing officer, on account of bogus share capital u/s 68 of the Act.

4. Facts of the case, which can be stated quite shortly, are as follows: The assessee before is a Private Limited Company and filed its return of income on 28.09.2011, showing total income at Rs. NIL. The return of income was processed u/s 143(1) of the Income Tax Act. Later on, assessee`s case was selected for scrutiny and notice u/s 143(2) of the Income Tax Act, was issued on 03.08.2012, and duly served upon the assessee. Subsequently, notice u/s 142(1) of the Income Tax Act, dated 11.04.2013 and 18.09.2013 along with detailed questionnaire was issued and duly served upon the assessee. The assessee -company was engaged in the business of processing of Art Silk Fabrics on job work basis during the year under consideration. This is the first year of business of the assessee- company. The main promoters of the company are Shri Jitendra Kumar Arya and family and Shri Ram Nivas Gupta & family. During the year the assessee-company received share capital from 6 persons totalling to Rs.3,60,00,000/-. (Having face value of share is Rs.10/- and premium Rs.110/- per share). The detail of share capital /share premium are as follows:

*(i) Yashasvi Vyapar Pvt Ltd.*

*Rs.1,20,00,000/-*

*(Director of this company, appeared before assessing officer in assessment proceedings as well as in remand proceedings)*

- (ii) *Shri Ratan Kumar Kejriwal* Rs.21,00,000/-  
(Director of this company, appeared before assessing officer in remand proceedings)
- (iii) *Smt. Kavita Kejriwal* Rs.45,00,000/-  
(Director of this company, appeared before assessing officer in remand proceedings)
- (iv) *Shri Rajesh Gupta* Rs.36,00,000/-  
(This person is director of assessee- company's director. The assessing officer had allowed share capital/share premium Rs.36,00,000/-, as genuine)
- (v) *Shri Ramniwas Gupta* Rs.12,00,000/-  
(This person is father of assessee-company. The assessing officer had allowed share capital/share premium Rs.12,00,000/-, as genuine)
- (vi) *Jay Bharat Dyeing and Printing Pvt. Ltd.* Rs.1,26,00,000/-  
(This is associated concern of the assessee-company. The assessing officer had allowed share capital/share premium Rs.1,26,00,000/-, as genuine)

5. During the assessment proceedings, the assessee-company submitted before the assessing officer, for each share applicant, the following documents and evidences, Viz: (i) The bank statement, (ii) Balance sheet and profit and loss account, (iii) PAN Card, Board meetings of assessee company dt. 15.07.2010 and 01.03.2011 respectively to consider applications received for allotment of shares, (iv) Copy of the minutes of the Board Meetings of assessee- company held on 15.07.2010 and 01.03.2011 wherein applications for shares received were discussed and allotment of the shares were approved. (v) Copy of Return of Allotment in Form No. 2 for shares allotted on 15.07.2010 and 01.03.2011, (vi) Printout of shareholders register maintained on computer was produced for verification in assessment proceedings. (vi) Copy of Annual Return filed with the ROC, which contains the information regarding allotment of shares. (vii) Copy of compliance certificate for the year under appeal obtained from consulting Company Secretary. (vii) Certificate of Incorporation,

(viii) Copy of ITR-V and computation of income of investor company. (ix) Copy of audit report and audited financial statements i.e. Balance Sheet, Profit and loss account alongwith schedules, for the financial year ending on 31.03.2011. (x) Copy of the bank accounts/ledger etc. The assessee-company also filed the explanation before the assessing officer to the effect that source of the source has been explained.

6. However, the assessing officer rejected the three share applicants and accepted other three share applicants, as genuine. Therefore, the assessing officer after calling for details and making verification has held that Rs.1,86,00,000/-, (Rs.1,20,00,000 + Rs.21,00,000+ Rs.45,00,000) in respect of above first three share applicants, (received from 3 out of 6 persons) as unexplained share capital/premium and added u/s 68 of the Act.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the Assessing Officer in respect of share capital received from first three share applicants, holding that there were no difference in the documents and evidences submitted by the assessee-company, in respect of three share applicants, as compared to last three share applicants. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

8. The Learned Senior Departmental Representative (Id. Sr. DR) for the Revenue, argued that CIT(A) has failed to appreciate the fact that the Assessing Officer made the addition of Rs.1,86,00,000/- on account of bogus share application money u/s 68 of the I.T. Act, after duly considering the facts brought on record that the assessee has not furnished any evidence to prove the credit worthiness of the

alleged investor and genuineness of the transaction. Mere filing of copy of ITR, computation and copy of bank accounts does not prove the identity, genuineness and creditworthiness of the transactions. The Id DR further argued that Ld. CIT(A) has failed to appreciate the fact that onus has been cast on the assessee to prove the genuineness of the credit entry in its books of accounts. The assessee- company has not declared any dividends on the investments made by the share applicants. It is beyond common comprehension that why the investor became so mesmerized to invest in the assessee- company without earning any income in the entire investment cycle. The Id DR further pointed out that payments received through banking channel are not sacrosanct. Therefore, it is a settled position in law that mere payment by cheque does not establish the creditworthiness of the lender, mere examination of the pass-book or the bank statement or the letter of confirmation or the balance sheet of the lender is also not enough. Therefore, the assessee has failed to establish the creditworthiness of the investor company and genuineness of the transaction made, hence addition made by the assessing officer may be upheld.

9. On the other hand, Shri Rasesh Shah, Learned Counsel for the assessee defended the order passed by the Id. CIT(A) and first drew our attention to the grounds raised by the Revenue in the appeal, each of which related to alleged deletion of addition made u/s 68 on account of share capital and share premium. Thereafter on the merits of the case, our attention was drawn by the Id. Counsel to relevant pages of the paper book from where we note that the three shareholders had been accepted by the assessing officer, as genuine, however, other three shareholders were considered by the assessing officer, as not genuine shareholders. The Counsel argued that the assessing officer should not have differentiated and should not make

discrimination with the other shareholders, as the facts and evidences submitted by the assessee- company were same. The each shareholder/share applicant had submitted the following relevant details as called for and had confirmed the transaction with the assessee -company. The evidences which were filed before the Assessing Officer, included the following details.

- (i) Return of income,
- (ii) Audited balance sheets, profit and loss account and annexures to the financial statements.
- (iii) Bank statements of share subscribing companies, evidencing the payment made to assessee-company.
- (iv) Amount has been paid by account payee cheques to the assessee company to purchase the share capital and share premium.
- (v) ROC details
- (vi) PAN Number
- (vii) Confirmations
- (viii) Share applicant companies/Individual share applicants appeared during the assessment proceedings as well as remand proceedings, before the assessing officer.

10. The Ld. Counsel further submitted that the details of PAN, I.T. Acknowledgment, and the ROC details furnished by the share applicants with the ROC duly proved the identity of the share subscribers. He further pointed out that in all cases the notices issued by the AO were duly served upon the share applicants through the postal authorities, and share applicants provided the confirmations, bank statements and audited accounts, which further fortified the existence of share applicants at their given addresses. The Ld. Counsel thereafter invited our attention to the respective balance sheets of the

share applicants to show that each of them had sufficient funds available at their disposal to make investment in the assessee company. Referring to the respective bank statements, it was further pointed out that the transactions were conducted through proper banking channel. He also invited our attention to the explanation furnished by each of the share applicants regarding their source of funds. It was thus submitted that the fund flow position of the share applicant and not the profitability was the decisive criteria to examine the creditworthiness of the share applicants. Referring to the Ld. CIT(A)'s order, it was submitted that these factual aspects were taken into consideration and thereafter the Ld. CIT(A) was pleased to hold that the creditworthiness of the share applicants had been established. Therefore, Id Counsel contended that genuineness of the transactions as well as the identity & creditworthiness of the share subscribers have been proved, hence order of Id CIT(A) may be upheld.

11. We have heard both the parties and perused the material available on record, we note that according to section 68 of the Income Tax Act, 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 satisfactory in the opinion of the assessing officer, the sum so credited may be charged to income tax as the income of the assessee of that assessment year. The assessing officer may consider such sum as cash credit due to lack of sufficient explanation. It is well known that provisions of section 68 have been introduced into the taxing enactments step by step in order to plug loopholes. Even long prior to the introduction of section 68 of the Act, in the statute book, courts had held that where any amounts were found credited in the books of the assessee in the previous year and

the assessee offered no explanation about the nature and source thereof or the explanation offered was, in the opinion of the assessing officer, is not satisfactory, the sums so credited could be charged to income-tax as income of the assessee of the relevant assessment year. We note that with effect from assessment year 2013-14, section 68 of the Income Tax Act has been amended to provide that if a closely held company fails to explain the source of share capital, share premium or share application money received by it to the satisfaction of the assessing officer, the same shall be deemed to be the income of the company under section 68 of the Act. We note that the amended provisions of section 68, is not applicable to the assessee company under consideration, as the assessee's, assessment year is 2011-12. The Hon'ble Bombay High Court, in the case of **Gagandeep Infrastructure 80 Taxmann.Com 272 (Bom)**, held that amendment to section 68 is prospective and applicable only from assessment year 2013-14.

12. With this background, now we shall proceed to examine in the assessee's case under consideration, whether assessee has discharged his onus to prove, prima facie, the identity, creditworthiness and genuineness of the share capital and share premium received by it from share subscribers companies. We note that assessee-company has received the share capital /share premium from the following six shareholders/share applicants:

*“(i) Yashasvi Vyapar Pvt Ltd.*

*Rs.1,20,00,000/-*

*(Director of this company, appeared before assessing officer in assessment proceedings as well as in remand proceedings)*

*(ii) Shri Ratan Kumar Kejriwal*

*Rs.21,00,000/-*

*(Director of this company, appeared before assessing officer in remand proceedings)*

(iii) Smt. Kavita Kejriwal Rs.45,00,000/-

(Director of this company, appeared before assessing officer in remand proceedings)

(iv) Shri Rajesh Gupta Rs.36,00,000/-

(This person is director of assessee- company. The assessing officer had allowed share capital/share premium Rs.36,00,000/-, as genuine)

(v) Shri Ramniwas Gupta Rs.12,00,000/-

(This person is father of assessee-company's director. The assessing officer had allowed share capital/share premium Rs.12,00,000/-, as genuine)

(vi) Jay Bharat Dyeing and Printing Pvt. Ltd. Rs.1,26,00,000/-

(This is associated concern of the assessee-company. The assessing officer had allowed share capital/share premium Rs.1,26,00,000/-, as genuine)"

13. From that above list of six shareholders/share applicants, the assessing officer has not accepted first three share applicants, as not genuine, however, last three share applicants, were considered by the assessing officer, as genuine share applicants. The assessee-company had submitted during the assessment proceedings, the same evidences and documents for all six share applicants. However, assessing officer had not distinguished these documents and evidences, while rejecting three share applicants. When the same facts and documents and evidences were submitted by the assessee company for six share applicants, then it is the duty of the assessing officer to accept the same without any discrimination. However, the assessing officer has failed to do so. Therefore, this approach of the assessing officer, is not acceptable. The whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the income of the assessee for the year under consideration. For that reliance can be placed on the Judgment of Hon'ble Supreme Court in case of *Sreelekha Bannerjee (491 ITR*

*122), wherein it was held that “..... before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...”*

14. We note that the details furnished during assessment proceedings in case of all six (6) shareholders are on same lines. The premium charged is same. There is no discussion by assessing officer in assessment order on why he has not accepted the share capital in 3 share applicants' cases when he has accepted in another 3 share applicants' cases. Hence, we are of the view that Id CIT(A) has rightly deleted the addition in respect of first three share applicants.

15. We note that in respect of all six share applicants, the details and evidences furnished by the assessee, were same. The assessee furnished documentary evidences such as confirmation, copy of application, agenda of Board meetings, Minutes,, Return of allotment, Share Holder register, Copies of ITR of Share Holder, Copy of bank account of shareholder, financial statements & audit reports of Share Holders, compliances made with ROC etc. It is seen that out of 6 shareholders, one is director of assessee- company, another is the father of the director of assessee -company, next two are individuals who are relatives of main promoter and Director and other two are sister concerns where in the directors of assessee -company are substantially interested. The assessing officer issued summons u/s. 131 to the director in one of the sister concern i.e. Share Holder company (investor) Yashvi Vyapar P. Ltd. Two director and main shareholder appeared and deposed before assessing officer. No summons or notice u/s 133(6) was issued to any other shareholder/share applicants. The assessing officer issued show cause

notice asking why the share capital received from 3 persons (2 individual & one sister concern) should not be added u/s 68. In response to this, the assessee requested the assessing officer to issue summons or notices to the shareholders/share applicants, however, assessing officer has not issued any summons or notices, to them despite of request of the assessee-company.

16. We note that in appellate proceedings, the CIT(A) remanded the matter to assessing officer with directions to do further investigation such as examination of the shareholder and unsecured loans. It is seen that the assessee has furnished details and documentary evidences called for and also produced the impugned shareholders and unsecured loan creditors. The assessing officer has examined them under oath. The assessing officer furnished his report dated. 20.06.2018. The assessee filed rejoinders for the report on 18.07.2018, 12.03.2019 and 25.03.2019. The report of the assessing officer and rejoinders have been reproduced by Id CIT(A) in his appellate order. During the appellate proceedings, the assessee has filed following table of cash profit i.e. Profit before depreciation, for 5 years to show, that investment by shareholders is turned beneficial to them, hence premium is justified.

| <i>AY.</i> | <i>Turnover</i> | <i>Net Profit before Depreciation</i> |
|------------|-----------------|---------------------------------------|
| 2010-11    |                 | 62,22,056                             |
| 2011-12    | 12,13,67,287    | 1,00,06,500                           |
| 2012-13    | 29,25,48,780    | 4,55,72,185                           |
| 2013-14    | 33,37,86,000    | 4,25,83,805                           |
| 2014-15    | 41,40,36,758    | 4,51,91,770                           |

The Id CIT(A) noted that however, for present appeal this is not relevant, because the assessing officer has not held that the premium is unjustified. In fact, assessing officer has held that it is justified in case of 3 shareholders.

17. The Id CIT(A) noted that all the shareholders have furnished all relevant and requisite documentary evidences called for by assessing officer to establish their identity, creditworthiness & genuineness of transaction. The assessing officer has not found any fault in the evidences. The shares are issued at premium of Rs.110 which is the book value during the year. It can be seen that the book value currently 31.03.2019 is around Rs.170. It can be seen that the premium charged and other terms and conditions are same for all six (6) share applicants. The assessing officer has accepted the genuineness in 3 cases which implies he finds that premium is justified.

18. We note that the share applicants are not strangers but either relatives of the Directors and promoters or the associate concerns wherein directors or promoters are substantially interested. The share applicants appeared before assessing officer in response to summons and confirmed their investment in impugned shares during examination under oath either during assessment proceedings or during remand proceedings, as the case may be. From the Income Tax Return, computation of income and annual financial statements of the share applicants, it is clear that the investments are reflected in balance sheets. It is seen that the company Yashasvi Vyapar has gross receipts of Rs.1.29 Crores, and returned income of Rs.21.54 lacs and its net worth is Rs. 11.81 Crores. Hence it cannot be said to be a paper company. In MCA website it is seen to be active status. Further, no cash deposits are found in its bank account. In case of the two individual share applicants, they appeared before assessing officer in remand proceedings & confirmed transactions. It is seen that they have net worth at Rs. 1.07 Crs. and 94.65 lacs. It can be seen that they have investments in share of many companies, both

listed & unlisted ones. They are regularly assessed to tax in Ward-2(3), Cuttack. They are said to be closely related to the J. K. Arya as confirmed in reply to Question No. 11 in both statements which is not rebutted by the Assessing Officer. Further, no cash deposits or suspicious transactions were found in bank accounts of the share applicants. It can be seen that the share applicants were already invested in the group concerns of J. K. Arya. So these investments are not new. It can be seen that some share applicants have just withdrawn their earlier investments in another concern of the group for investing in assessee- company. This establishes that the share applicants are well acquainted with and trust the promoters. It also establishes the immediate source in hands of share applicants. It is noted by Id CIT(A) that the share applicants are not part of any companies or entities floated by accommodation entry providers, nor is there any connection with any accommodation entry provider.

19. We note that Id CIT(A) has relied on the judgment of Hon'ble Gujarat High Court in the case of *M/s Ujala Dyeing and Printing Mills Pvt. (2010) 328 ITR 437(Guj)*, where in the Hon'ble High Court has ruled in favour of assessee. The facts of this case are that the assessee had produced all relevant details in pursuance of the inquiry conducted by the assessing officer with regard to cash credit of Rs. 50 lakhs. The assessing officer had inquired about the share application money and the following documents were submitted during the course of assessment proceedings:

- (i) Confirmation of all five share applicant-companies;
- (ii) Permanent account number (PAN);
- (iii) Resolution passed by all the five applicants for investment in M/s Ujala Dyeing and Printing Mills (P) Ltd.

- (iv) Details of D. D. through which amounts were invested;
- (v) Acknowledgment of return of income held by all the five share applicant- companies for the asst. yr. 2002-03;
- (vi) Duly audited balance-sheet of all the five share applicant-companies for the financial year 2001-02 along with the audit report.

Based on the above facts, the Hon'ble High Court observed that on these very materials, the Tribunal has come to a finding that the assessee has clearly discharged its onus of proving identity of parties, genuineness of transaction and creditworthiness of share applications in as much as evidently their returns of income, assessment orders, balance-sheets showing investment, explanation regarding how they raised funds have been submitted before the lower authorities. The Tribunal has also found that the adverse inference drawn by the assessing officer is misplaced as their expectations from the assessee travelled beyond the ingredients of onus as prescribed by section 68 of the Act. Hon'ble High Court held the Tribunal has considered each and every finding recorded by the assessing officer as well as the CIT(A), Ahmedabad and it cannot be said that the points raised before the assessing officer, as well as the first appellate authority were not dealt with by the Tribunal. Since the Tribunal recorded findings of fact and after appreciation of the evidences has come to the correct conclusion, no substantial question of law arises out of the order of the Tribunal.

20. Thus, Id CIT(A) observed that in instant assessee's case under consideration, not only were the above details furnished, but the impugned share applicants also appeared before assessing officer and confirmed the transaction on oath. They have also established their relationship with the Promoters of Assessee- Company.

21. Further, the facts of the case are also squarely covered by binding decisions in jurisdictional Hon'ble Gujarat High Court and decisions of Hon'ble Supreme Court listed below:

| <i>Sr No</i> | <i>Particulars</i>  |
|--------------|---|
| 1.           | <i>Kishinchand Chellaram v/s CIT 125 ITR 713] [SC]</i>  |
| 2.           | <i>Lovely Exports (P) Ltd. [216 CTR 0195 (SC)]</i>  |
| 3.           | <i>CIT vs. Steller Investment Ltd. [251 ITR 263 (SC)]</i>   |
| 4.           | <i>PCIT VS. Hi Tech Residency [2018] 96 taxmann.com 402 (SC)</i>  |
| 5.           | <i>PCIT vs. Hi Tech Residency [2018] 93 taxmann.com 403 (Bom HC)</i>  |
| 6.           | <i>PCIT vs. Paradise Inland Shipping Pvt Ltd. SLP no. 12644/2018 (SC)]</i>  |
| 7.           | <i>PCITvs. Paradise Inland Shipping Pvt Ltd. [84 taxmann.com 58 (Bom)]</i>  |
| 8.           | <i>Andaman Timber Industries vs. Commissioner of Central Excise [(2015) 281 CTR 0241 (SC)]</i>                              |
| 9.           | <i>Earthmetal electrical Pvt Ltd. vs. CIT [SLP No. 21073/2009 (SC)]</i>   |
| 10.          | <i>Earthmetal electrical Pvt Ltd. vs. CIT [(2005) 4 SOTO4S4 (Mum Trita)]</i>  |
| 11.          | <i>CIT V/s. Kamdhenu Steel &amp; Alloys Ltd. [SLP (Civil) CCI5640 of 2012]</i>  |
| 12.          | <i>CIT V/s. Kamdhenu Steel Alloys Ltd. [(2012) 361 ITR 220 (Delhi) (HC)]</i>  |
| 13.          | <i>DCIT vs. Rohini Builders [SLP CC515 of 2002 (SC)]</i>  |
| 14.          | <i>DCIT vs. Rohini Builders [(2002) 256 ITR 0360 (Guj HC)]</i>  |
| 15.          | <i>CIT v/s Ujala Dyeing and Printing Mills (P) Ltd. [(SLP SC [317 ITR (ST.) (1)]</i>  |
| 16.          | <i>CIT v/s Ujala Dyeing and Printing Mills (P) Ltd. [328 ITR 437 (Guj HC)]</i>  |
| 17.          | <i>Principal CIT vs. D&amp;H Enterprises [(2016) 241 Taxmann 0157 (Guj. HC)]</i>  |
| 18.          | <i>CIT v/s M/s Pankaj Enka Pvt. Ltd. [Tax Appeal no. 967 of 2015 (Guj. HC)]</i>   |
| 19.          | <i>Pr. Commissioner of Income Tax vs. Chartered Speed Pvt. Ltd. (Tax Appeals No. 126 of 2015 with 127 of 201 (Guj. HC)]</i> |
| 20.          | <i>DCIT vs Mahendra Ambalal Pate, (Tax Appeal No. 462 of 1999 (Guj. HC)</i>   |
| 21.          | <i>Hindustan Inks &amp; Resins Ltd. vs. DCIT (20U) 60 DTR 0018 (Guj HC)]</i>  |
| 22.          | <i>CIT vs. RanchodJ Nakhava [21 taxmann.com. 159 (Guj HC)]</i>  |
| 23.          | <i>CTT vs. HimotsuBimet Ltd' f2011j 72 toxmann.com 87 (Gin'j(HC)</i>  |
| 24.          | <i>Mitesh rolling vs. CIT[(2002) 258ITR 0278 (Guj HC)]</i>  |

22. We note that in view of the above binding decisions of Hon'ble Gujarat High Court and the Supreme Court, the impugned addition of Rs.1,86,00,000/- u/s 68 of the Act, on account of share capital was deleted by Id CIT(A). We do not find any infirmity in the conclusion reached by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

23. In the result, ground No.1 raised by the Revenue is dismissed.

24. Coming to ground No.2 raised by the Revenue, which relates to deletion of the addition of Rs.68,50,000/- made by the Assessing Officer on account of unexplained cash credit under section 68 of the Act.

25. Succinct facts qua the issue are that during the assessment year under consideration, the assessee-company has received unsecured loans of Rs.98,50,000/- from four (4) persons, however, the assessing officer accepted unsecured Loan received from one Smt. Bindu Jhaveri of Rs.30,00,000/- as genuine but not accepted the loans from other 3 lenders(individuals). During the assessment proceedings, the assessee stated that all the lenders are individual and are relatives to each other and also family friends of promoter, Director Shri J. K. Arya. In case of all the four (4) lenders assessee has made equal compliances, in terms of furnishing details such as confirmation, copy of bank accounts, ITR, balance sheet etc, as early as October, 2013. The assessing officer did not make any further enquiry after that however in last week of March 2014, the assessing officer issued show cause with regard to only 3 lenders on (26.03.2014). The assessee filed reply reiterating the facts and filed same details again

and also requested the assessing officer to make further enquiry such as issue summons or notice u/s 133(6) of the Act. The assessing officer chose not to do any further enquiry, but made impugned addition of Rs.68,50,000/- (Rs.98,50,000 - 30,00,000) under section 68 of the Act.

26. On appeal, Id CIT(A) deleted the addition, therefore Revenue is in appeal before us. Learned DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. On the other hand, Id Counsel defended the order passed by Id CIT(A). We have heard both the parties. We note that during remand proceedings, the 3 lenders were issued summons and for which 2 lenders appeared and confirmed the loan transaction whereas the 3<sup>rd</sup> lender, Smt. Bhavna Zariwal filed affidavit stating that she is currently not well and not in position to appear on given date. In the affidavit she again confirmed the loan given to assessee- company and furnished the details such as copy of bank account statement, ITR V, Computation etc. and she authorized her Brother in Law to appear on her behalf or in the alternative requested further date to appear before assessing officer after 05.02.2018. She also enclosed copy of Aadhar Card and doctor certificate. The assessing officer has not given any further date for her to appear. The details filed with respect to the unsecured loans are as follows:

- a) All these lenders are close family friends, of Himanshu Jariwal business partner of the main promoter Shri J. K. Arya.
- b) Confirmations from all the lenders; duly conforming unsecured loans given to the Appellant during the year under appeal.

- c) Copy of ITR-V of all the lenders for the year under appeal.
- d) Copy of ITR-V of all the lenders for the immediately preceding three assessment years, i.e. AYs 2008-09, 2009-10 and 2010-11
- e) Copy of computation of Income of all the lenders.
- f) Interests have been paid to all the lenders and TDS have also been made from interest payable wherever applicable. Interest paid is duly reflected in returns of these lenders under the head income from other sources.
- g) Copy of extract from the pass books of all the lenders tracing relevant entries.
- h) Balance Sheet of the lenders, wherein loans advanced to the Appellants are duly reflected.
- i) Though the details / evidences / supporting were furnished as early as October' 2013, during assessment proceedings and in spite of specific request from Appellant, assessing officer didn't issue any summons under section 131 of the Act or didn't call for any information under section 133(6) of the Act. However, Shri Hiren Venilal and Smt. Seema Venilal appeared - before assessing officer in remand proceedings and confirmed loans advanced to the appellant company. Smt. Bhavna Jariwala could not remain present on the designate date 25-01-2018, as she was not well and had some social obligations but she through her brother-in-law, Shri Hiren Venilal furnished Affidavit duly confirming loans advanced to the appellant company. She also furnished Doctor's certificate and further also assured of appearing in person on any day after 05.02.2018. However, the assessing

officer did not grant any further date though assessing officer has furnished remand report on 20.06.2018.

27. From the above facts, the Id CIT(A) observed that :(i) The lenders are individuals and their identity is not in question, (ii) They are also assessed to income tax as per ITR copies filed and have net worth ranges from Rs.75.62 lacs to 1.63 Crs, (iii) They are already invested in other group companies of Shri J. K. Arya since earlier years,(iv) The lenders have also invested in group companies as unsecured loans such as J. Korfin Spinning Pvt. Ltd. & J. Korin Industries as under:

| <b>Sr. No.</b> | <b>Name</b>           | <b>Name of sister concern</b>   | <b>Investment as on 31-3-2011</b>  |
|----------------|-----------------------|---|------------------------------------|
| 1              | Seema H Venilal       | J Korin Spining Pvt. Ltd.<br>JB Syntex Pvt. Ltd.                        | 16,58,605<br>18,01,670             |
| 2              | Hiren K Venilal       | J.Korin Industries<br>J.Korin Spining Pvt. Ltd.<br>J B Sintex Pvt. Ltd. | 10,27,000<br>34,25,045<br>1,76,425 |
| 3              | Bhavna S.<br>Jariwala | J Korin Spining Pvt. Ltd.<br>JB Syntex Pvt. Ltd.                        | 50,00,000<br>51,12,440             |

The assessment in the above two companies have been completed u/s.143(3) for A.Y.2012- 13 wherein no addition u/s 68 has been made on account of these unsecured loans received from above persons. What holds good for one assessee holds good for all assesseees, so if loans received from three lenders are found genuine in one case, the same cannot be held non-genuine in another without any irrefutable evidence. No such evidences are brought on record by assessing officer. Principles of consistency requires that uniform treatment to be given to all assesseees on same facts. Based on the above factual position, the Id CIT(A) held that identity, creditworthiness and genuineness of the loan transaction are established. The Id CIT(A) also noted that assessee`s case is squarely covered by the decision of Honourable Gujarat High court in the case

of **CIT V/s. Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 159 (Guj.)** wherein it was held that “Where lenders of assessee are income-tax assesseees whose PAN have been disclosed, Assessing Officer cannot ask assessee to further prove genuineness of transactions without first verifying such fact from income-tax returns of lenders.”

28. During the appellate proceedings, the assessee also relied on the following decisions of Hon'ble Supreme Court and High Court of Gujarat in favour of the assessee:

- (i) *CIT v Orissa Corporation 159 ITR 78(SC)*
- (ii) *Daulatram Rawatmall 87 ITR 349(SC)*
- (iii) *Dhirajlal Giridharilal v CIT 26 ITR 736(SC)*
- (iv) *Murlidhar Lahorimal v CIT 280 ITR 170 (Guj)*
- (v) *CIT v Pragati Co-Op. Bank Ltd. 278 ITR 170(Guj)*

We note that Coordinate Bench of ITAT, Ahmedabad, in the case of **B. S. Corporation vs. ACIT (2001) 161 Taxman 29** wherein the Tribunal held that “if link is not established that the said amount belongs to the assessee or money is repaid to donor no addition can be made.” Jurisdictional Gujarat High Court in its decision in case of **Dy. CIT v. Rohini Builders. (256 ITR 230) (Guj)** held that no substantial question of law arises where assessee established identity of creditors by giving their complete addresses, GIR numbers/PAN as well as confirmation along with copies of assessment orders wherever available. Based on the above facts and circumstances, the Id CIT(A) deleted the impugned addition of Rs.68,50,000/-. On a careful reading of the Ld.CIT(A) order and the findings thereon, we do not find any valid reason to interfere with the decision and

findings of the Ld.CIT(A). Hence, we dismiss ground No.2 raised by the Revenue.

29. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced on 18/10/2023 in the open court.

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

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

सूरत /Surat

दिनांक/ Date: 18/10/2023

**SAMANTA**

**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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat