

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
DELHI**

**BEFORE: SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1126/Del/2019  
(Assessment Year: 2012-13)**

IOT, Ward-17(1), Delhi	Vs.	M/s Molycoddle Fashions Pvt. Ltd., E-1/7, 2 <sup>nd</sup> Floor, East Patel Nagar, New Delhi 110008
<b>PAN/GIR No. AAECM 8862 F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri Subhra Jyoti Chakraborty, CIT-DR
<b>Date of Hearing</b>	<b>19/10/2023</b>
<b>Date of Pronouncement</b>	<b>30/10/2023</b>

**ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.1126/Del/2019 for A.Y. 2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-33, Delhi in appeal No.267/16-17 dated 12.09.2018 (hereinafter referred to as Id. CIT(A) in short) against the order of assessment passed u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 18.03.2015 by the Id. Income Tax Officer, Ward-17(1), New Delhi (hereinafter referred to as Id. AO).

2. None appeared on behalf of the assessee right from the inception of the appeal. Since sufficient opportunities were granted to the assessee, we deem

it fit to dispose of this appeal on hearing the Id DR and based on materials available on record.

3. The revenue has raised the following grounds of appeal before us:-

1. *Whether on the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the disallowance made u/s 69 of the I.T. Act, 1961 on account of share capital and share premium to the extent of Rs. 2,00,00,000/-*
2. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance u/s 68 of the I.T. Act, 1961 on account of unsecured loans of Rs. 1, 12,85,000/-*
3. *Whether on facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance u/s 68 of the I.T. Act, 1961 on account of sundry creditors of Rs.4,75,00,950/-*

4. We have heard the Id DR and perused the materials available on record. The assessee is engaged in the business of export of readymade garments. The return of income for the Asst Year 2012-13 was filed by the assessee company on 29.9.2012 declaring total income of Rs 19,72,500/-. During the course of assessment proceedings, the Id AO directed the assessee to file certain details as noted in the order sheet dated 27.1.2015. This was not complied with by the assessee. Notice u/s 133(6) of the Act was sought to be issued to following parties shown as sundry creditors and directors to verify the genuineness of transactions carried out with the assessee:-

- a) *M/s Sharma Textiles Pvt Ltd*
- b) *M/s SSK India Fashions Pvt Ltd*
- c) *M/s Ranu Enterprises Pvt Ltd*
- d) *M/s Aman Exports*
- e) *M/s ISR Exports Pvt Ltd*
- f) *M/s Shangrila Impex*
- g) *Sh. Satvinder Singh*
- h) *Sh. Inderpal Singh*

5. Though all the notices were duly served on the aforesaid parties, still no replies were filed by them before the Id. AO. Since there was complete non-

cooperation from the side of the assessee in furnishing the requisite details, the Id. AO issued final show cause notice dated 10.2.2015 fixing the case for hearing on 18.2.2015, which was returned back. Another show cause notice dated 17.2.2015 was issued and served fixing the date of hearing on 25.2.2015, for which also no compliance was made by the assessee. Further another opportunity was given to the assessee vide letter dated 12.3.2015 fixing the date of hearing on 18.3.2015, which also remained uncomplied by the assessee. Due to continuous non-cooperative attitude of the assessee company, the Id. AO proceeded to complete the assessment u/s 144 of the Act by treating the receipt of share capital of Rs 40 lacs and share premium of Rs 1.60 crores as unexplained cash credit u/s 68 of the Act.

6. With regard to receipt of unsecured loans of Rs 1,15,85,000/- , the Id. AO observed that the assessee had not proved the three ingredients of section 68 of the Act, as the notices issued u/s/ 133(6) of the Act to the following persons were returned unserved:-

- a) M/s ISR Exports Pvt Ltd*
- b) M/s Shangrila Impex*
- c) M/s Aman Exports*
- d) M/s Ranu Enterprises Pvt Ltd*
- e) M/s SSK India Fashions Pvt Ltd*
- f) M/s Sharma Textiles Pvt Ltd*

6.1. Accordingly, the Id. AO added the receipt of unsecured loans of Rs 1,15,85,000/- as unexplained cash credit u/s 68 of the Act in the assessment completed u/s 144 of the Act.

7. The Id AO observed that the assessee had shown sundry creditors of Rs 12,74,91,547/- as on 31.3.2012 in the balance sheet. Vide letter dated 27.1.2015, the assessee was asked to submit the copies of purchase bills together with the corresponding sundry creditors mentioning their names and

addresses. Notices u/s 133(6) of the Act were also issued by the Id. AO on test check basis to the parties to verify the genuineness of claim of the assessee. Notices issued to 4 parties returned unserved viz M/s Aman Exports, M/s Sharma Textiles Pvt Ltd . M/s Ranu Enterprises Pvt Ltd and M/s SSK India Fashions Pvt Ltd. Since no details were filed by the assessee, the Id AO concluded that the said sundry creditors remained unverified and the assessee had not proved the three ingredients of section 68 of the Act in respect of the sundry creditors and proceeded to add the entire sundry creditors of Rs 12,74,91,547/- as unexplained cash credit u/s 68 of the Act in the assessment framed u/s 144 of the Act.

8. Before the Id CIT(A), the assessee furnished all the details and evidences in the form of additional evidences containing the following:-

*a) In respect of addition towards share capital and share premium*

*-Confirmation from share holders of having made the investment at a premium*

*- Ledger account for FY 2010-11*

*- Ledger account for FY 2011-12*

*- Bank statements of shareholders*

*- ITR acknowledgement of shareholders*

*- Financial statements of shareholders*

*b) In respect of addition towards unsecured loan, confirmations, bank statements of loan parties, bank statement of assessee, copy of ITR acknowledgements of lenders and copy of financial statements of lenders.*

8.1. It was submitted that the share capital and share premium was issued by the assessee company to Sh Inderpal Singh Wadhawan and Sh Satvinder Singh Wadhawan and that no monies were received from them during the year under consideration. Hence it was pleaded that no addition could be made u/s 68 of the Act. The detailed documentary evidences however to establish the genuineness, identity and creditworthiness of two shareholders were duly filed before the Id CIT(A).

8.2. With regard to unsecured loans, the assessee submitted the unsecured loans were standing in the name of the following parties :-

- a) *Inderpal Singh Wadhawan*
- b) *Satvinder Singh Wadhawan*
- c) *DNK Creation*
- d) *DNK*

8.3. The detailed documentary evidences however to establish the genuineness, identity and creditworthiness of the aforesaid lenders were duly filed before the Id CIT(A).

8.4. All these additional evidences were duly forwarded to the Id. AO for seeking a remand report. The Id AO vide his letter dated 21.3.2017 submitted at the outset, since sufficient opportunities were given to the assessee at the time of assessment proceedings, these additional evidences should not be admitted. Moreover, the case of the assessee does not fall under the ambit of provisions of Rule 46 A of the Income Tax Rules. Without prejudice to the above, the Id AO however proceeded to examine the veracity of the additional evidences. The Id AO observed that in order to verify the genuineness of the share capital / share premium and unsecured loan transaction, the notices u/s 133(6) of the Act was issued by the Id AO to the various parties. The Id AO observed that in respect of Sh. Inderpal Singh from whom share capital and unsecured loan was received by the assessee, notice u/s 133(6) was issued and served upon him. But no reply was received from him in response to notice u/s 133(6) of the Act. In respect of Sh. Satvinder Singh from whom share capital and unsecured loan was received by the assessee, notice u/s 133(6) of the Act was issued in the address mentioned in the additional evidences, which was returned unserved with postal remarks 'insufficient address'.

8.5. The aforesaid remand report was sent to the assessee for its comments. The assessee filed its rejoinder to the said remand report. It was

submitted that the assessee had submitted the entire set of facts as stated in the original application for admission of additional evidences ; that the same issue emerged in other sister concerns of the assessee where the additional evidences submitted in those cases were admitted by the CIT(A) and the Director of the assessee company had also filed a sworn affidavit showing the causes. Vide letter dated 11.6.2018, the assessee again made a request for admission of some evidences with regard to addition made towards sundry creditors outstanding as on 31.3.2012 in the name of M/s Sharma Textile Private Limited amounting to Rs 1,75,00,350/- and M/s SSK India Fashions Private Limited amounting to Rs 3,00,00,600/-. It was submitted that these sundry creditors were paid by the assessee in Asst Year 2013-14 through regular banking channels. The certified copy of ledger account for AY 2012-13, confirmation, ledger account for AY 2013-14 and bank statement showing the payments to those creditors were enclosed by the assessee.

8.6. Vide letter dated 22.6.2018, the Id. CIT(A) again sought for a remand report from the Id. AO with regard to the issue of sundry creditors. The Id. CIT(A) also observed that though the Id AO had made an addition of Rs 12,74,91,547/- on account of sundry creditors, on verification it was found that out of six parties which were termed as sundry creditors, actually four of them were sundry debtors of the assessee. Only two parties i.e. M/s SSK India Fashion Pvt Ltd and M/s Sharma Textiles Pvt Ltd were sundry creditors of the assessee. The Id. CIT(A) sought for a remand report from the Id. AO to examine the veracity of the documents furnished by the assessee in respect of these two sundry creditors. The Id AO submitted his remand report on 17.8.2018 stating that notice u/s 133(6) of the Act was issued by him to the aforesaid two sundry creditors; that those creditors filed their ledger account and bills of sale made to assessee herein which reveal that assessee has made purchases of cotton fabrics from them. The Id AO observed that

however no purchase book / sale book/ bank statement or other details filed by both the creditors.

9. The Id. CIT(A) observed in para 4.7. of his order stating that the assessee was prevented from sufficient causes by not furnishing the details called for before the Id. AO and accordingly the additional evidences filed before him deserve to be admitted.

9.1. With regard to the addition made on account of share capital of Rs 40 lacs and share premium of Rs 1.60 crores , the Id. CIT(A) appreciated the fact that no amounts were credited in the books of accounts of the assessee during the year under consideration and hence the provisions of section 68 of the Act cannot be applied at all. The Id CIT(A) also observed that the assessee company had share application money pending allotment as on 31.3.2011 at Rs 2,01,00,000/- and in AY 2012-13, the assessee company had allotted shares amounting to Rs 40,00,000/- to Mr Inderpal Singh and Mr Satvinder Singh and remaining Rs 1,60,00,000/- was reflected in securities premium account. This factual finding of the Id CIT(A) was not controverted by the revenue before us with cogent evidences and hence we do not find any infirmity in the order of the Id CIT(A) deleting the addition of Rs 2 crores towards share capital and share premium. Accordingly, the Ground No. 1 raised by the revenue is dismissed.

10. With regard to addition made on account of unsecured loans of Rs 1,15,85,000/- made u/s 68 of the Act, the Id AO in the remand report observed that notice u/s 133(6) of the Act issued to the loan creditors were returned unserved and hence genuineness of the transaction could not be verified. The assessee filed a rejoinder enclosing all the relevant documents in the form of ledger account of parties, confirmation from the lenders, bank statement of assessee, bank statement of creditors, copy of ITR of creditors and balance sheet of the creditors. The assessee also submitted that the loans

were predominantly received from its directors. The assessee also submitted that merely because the notice sent by the Id AO u/s 133(6) of the Act were returned unserved, it cannot be concluded that the additional evidences furnished by the assessee were not genuine. Infact the Id AO had not made any adverse observations on the additional evidences submitted by the assessee. Further the Id AO was asked to examine the loan creditors and the Id AO vide letter dated 21.3.2018 submitted that notices issued to the lenders were responded to and the authorized representative submitted all the details that were called for by him. The Id CIT(A) observed that the assessee had furnished all the evidences before him and the Id AO in the remand proceedings and no adverse inferences were drawn on those evidences by the Id AO in the remand report. The Id CIT(A) also examined those additional evidences and found that there were some cash loans received from directors to the tune of Rs 3,00,000/- which stood unexplained and accordingly confirmed the addition u/s 68 of the Act. However, with regard to the balance sum of Rs 1,12,85,000/- , since all the details were found to be correct after examination by the Id AO in the remand proceedings, the Id CIT(A) deleted the addition of Rs 1,12,85,000/- u/s 68 of the Act in respect of loan creditors. We find that the relief is granted by the Id CIT(A) after duly considering all the evidences submitted by the assessee and also after considering the fact that no adverse inferences were drawn on those evidences by the Id AO in the remand report. Hence there cannot be any grievance left for the revenue. The Id DR before us was not able to controvert the evidences placed before the lower authorities with any contrary materials. Hence we do not find any infirmity in the order of the Id CIT(A) deleting the addition of Rs 1,12,85,000/- and confirming the addition of Rs 3,00,000/-. Accordingly, the Ground No.2 raised by the revenue is dismissed.

11. With regard to the addition made on account of sundry creditors, the Id AO in the remand report admitted that the two sundry creditors i.e M/s

Sharma Textiles Private Limited and M/s SSK India Fashions Pvt Ltd had furnished their ledger accounts and copy of sale bills made to the assessee before him in the remand proceedings in response to the notice issued u/s 133(6) of the Act. The Id CIT(A) had observed that these evidences are sufficient to prove the genuineness of the creditors and the Id CIT(A) also observed that the assessee had made payments to the said creditors in the subsequent assessment year. None of these factual findings were controverted by the revenue before us with factual findings. Hence we do not find any infirmity in the order of the Id CIT(A) granting relief to the assessee with regard to the sundry creditors addition. Accordingly, the Ground No 3 raised by the revenue is dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 30/10/2023.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Delhi; Dated 30/10/2023

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**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Delhi