

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.48 & 09/SRT/2020

(AYs 2012-13 & 2013-14)

(Hearing in Virtual Court)

Kaviish Focus Pipes Pvt. Ltd. (now known as GSPL Seamless Pipes Pvt. Ltd.) Survey No.389 Orma, Taluika Olpad, Surat-394 540 [PAN AAECK 0608 B]	Vs	Income Tax Officer Ward-1(1)(3), Surat, 1 st Floor, Room No.113, Aaykar Bhawan, Majura Gate, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारितीकीओरसे /Assessee by	Shri Manish J Shah, Advocate
राजस्वकीओरसे /Revenue by	Shri S M. Keshkamat, CIT-DR
सुनवाई की तारीख/Date of hearing	31.10.2023
उद्घोषणाकीतारीख/Date of pronouncement	01.11.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-1, Surat [for short to as "Ld. CIT(A)"] dated 16.01.2018 & 15.11.2019 for the assessment years 2012-13 & 2013-14 respectively, which in turn arose out of separate assessment orders passed by Assessing Officer under section 144 of Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 25.02.2015 & 30.01.2016. In both the appeals, assessee has raised certain common grounds except variation of addition of share application and share premium and unexplained cash credits. Therefore, with the consent of both the parties, both appeals were clubbed, heard together and are decided by common order to avoid conflicting decision. For narration and appreciation of fact, facts in

assessment year 2012-13 is treated as “**lead**” case. The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law the ld. CIT(A) erred in upholding the assessment order passed by the AO u/s 144 of the I.T Act without taking into consideration the submissions filed by the appellant during the course of appellate proceedings. Therefore, the order so passed violating the principles of natural justice deserves to be quashed of this point alone.

2. Without prejudice to the above, on the facts and in the circumstances of the case and in law the ld. CIT(A) erred in confirming the order of the AO merely relying on the remand report of the AO and without taking into consideration the submissions filed by the appellant during the course of appellate proceedings before the ld. CIT(A). Therefore, the order so passed is bad-in-law and deserves to be annulled.

3. Without prejudice to the above, on the facts and in the circumstances of the case and in law the ld. CIT(a) erred in upholding the addition of Rs.8,42,71,580/- treated by the AO as unexplained share application money and share premium and taxed u/s 68 of the Act without giving due consideration to the submissions and evidences filed before the ld. CIT(A). Therefore, the addition so made may kindly be deleted.

4. Without prejudice to the above, on the facts and in the circumstances of the case and in law the ld. CIT(A) erred in upholding the addition of Rs.3,65,39,335/- treated by the AO as unexplained cash credit and taxed u/s 68 of the Act without giving due consideration to the submissions and evidences filed before the CIT(A). Therefore, the addition so made may kindly be deleted.

5. The appellant craves leave to add, alter, modify or delete any of the grounds of appeal on or before the date of hearing of the appeal.”

2. Facts in brief are that assessee is a Company and was not involved in business activity in relevant financial year i.e., 2012-13 as

recorded by Assessing Officer in the title of assessment order. The assessee filed its return of income for assessment year 2012-13 on 09.01.2013 declaring Nil income. The case was selected for scrutiny. During the assessment, Assessing Officer noted that assessee has received share application money and share premium from five investors out of which two are foreign investors. The Assessing Officer in order to verify the fact, issued notice under section 133(6) to Indian Investors-company. The Assessing Officer noted that no reply was received from such investors. The assessee was issued show cause notice to prove identity, creditworthiness and genuineness of such transactions. As per contents of assessment order no details were furnished despite issuing repeated show cause notice and to proceed under section 144, no explanation regarding share capital and share premium was filed, the assessing officer treated Rs.8.42 crores, as unexplained cash under section 68 of the Act. The Assessing Officer further noted that assessee has shown unsecured loan of Rs.3,65 crores during the relevant period under consideration. The assessee was asked to produce such copy of account and confirmation along with bank statements of the persons from whom loan was received. The Assessing Officer noted that no compliance was made by assessee. Therefore, unsecured loan was also treated as unexplained cash credit under section 68 of the Act. The assessing officer passed assessment order under section 144 on 25.02.2015.

3. Aggrieved by the additions made in assessment order, the assessee filed appeal before Ld. CIT(A). Before CIT(A) the assessee filed detailed written submission as recorded in para-5 of impugned order. The assessee also filed application under Rule 46A, 1962 dated 19.12.2016 for seeking permissions for additional evidence. The submissions and additional evidences on both the additions were and same was forwarded to Assessing Officer. The Assessing Officer vide his report dated 06.07.2017 objected for admission of additional evidence. The ld. CIT(A) in para-6.2.5 at page No. 12 of his order noted that assessing officer asked the assessee to file required details on both the issues.
4. The Ld. CIT(A) again via his query letter dated 26.07.2017 issued to the assessee under section 250(4) directly asked for various details on both the issues. All such queries and questionnaire are recorded in para-6.2.5 of the order of Ld. CIT(A). The Ld.CIT(A) noted that despite sending query letter at the address mentioned in Form-35, no response made by assessee. The assessee has not produced any investor as per the direction issued under section 250(4) of the Act. The Ld. CIT(A) confirmed both the additions on his after making discussion and referring various case law. The Ld. CIT(A) also held that onus lies on assessee and assessee failed to discharge its onus thereby both the additions were confirmed. Further, aggrieved, assessee has filed present appeal before the Tribunal.
5. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income-tax

Departmental-Representative (Ld. CAT-DR) for the Revenue. The Ld.AR for the assessee submits that during the relevant period of assessment stage as well as appellate proceedings before Ld.CIT(A) the assessee-company could not make full compliance regarding issuance of various notices. The promoter-company belong to “Bhagat Family” who were passing through difficult time as a young kid named “Kavish” was suffering from leukaemia, who ultimately not survive. The entire family remained in shock and trauma. Now the assessee-company has been reviving with the help of new investors and started making sufficient turnover as their desired business last two years. Though before Ld.CIT(A) the assessee-company made entire efforts to submit relevant documents, however, they could not furnish complete set of evidence. The Ld. AR for the assessee submits that as the Assessing Officer also passed the assessment order under section 144, therefore the matter may be restored back to the file of Assessing Officer with the liberty to assessee to file complete evidence to prove the identity, creditworthiness and genuineness of transaction of investors and lenders. The Ld. AR fort the assessee submits that both years cases may be set aside and restore back to the file of Assessing Officer with directions of giving liberty to assessee and that he under take on behalf of the assessee to be more vigilant in attending and making compliance to the notices of lower authorities. The Ld. AR for the assessee also relied on various case law as mentioned in his short written submissions to substantiate his contention that assessment

year 2012-13, the assessee was not required to prove the source-of-source as per the decision of Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure (P.) Ltd. (2017) 394 ITR 680 (Bom) and in assessment year 2013-14, the share capital and share premium by foreign investors and the proviso inserted in Section 68 is applicable in respect of resident investors as apparent from said proviso.

6. On the other hand, the Ld.CIT-DR for the Revenue supported the order of lower authorities. The Sr. DR for the Revenue submits that more than sufficient opportunities were given to assessee by Assessing Officer as well as Ld.CIT(A). The order of Ld.CIT(A) is self-explanatory and he fully supported. However, in his alternative and without prejudice submissions, the Ld.CIT-DR for the Revenue submits that in case Hon'ble Bench is of the view that assessee deserve opportunity of fresh hearing by lower authorities, the matter may be remitted back to the file of Assessing Officer to avoid the technical glitches and seeking remand report of assessing officer on various evidences of assessee.
7. We have considered the rival submission of both the parties and perused the records carefully. As recorded above, the Assessing Office passed assessment order under section 144. The Ld. CIT(A) confirmed the action of Assessing Officer on both the issues by taking view that assessee was given several opportunities to prove identity, creditworthiness and genuineness of such transactions. On both the issues and that assessee failed to discharge its onus. Before

us, Ld. AR for the assessee vehemently argued that the family of promoter-company was facing tough time due to the ailment of their family member who ultimately not survived and they could not have filed complete evidence to substantiate their genuineness of share application and share premium as well as unsecured loan. Considering the facts and circumstances of the case, the fact narrated by Ld.AR for the assessee that family of Director -promoter has suffered death of young family member “Kavish” and was under mental trauma and stress. Now the assessee has undertaken to participate the proceedings and discharge their onus in proving their claim. Therefore, considering the principle of natural justice, the assessee deserves one more opportunity to contest on merit and to prove their case before lower authorities. Hence, the matter is restored back to the file of Assessing Officer. The assessee is given liberty to file all documents / evidence to probe triple parameters on both the issues. The assessee further given liberty to raise all factual and legal issue about the applicability and / or non-applicability of proviso to Section 68 about source-of-source with respect to Indian investors as well as foreign investors. The Assessing Officer is directed to consider all such plea and pass the order on merit in accordance with law after providing reasonable opportunity of being heard to assessee. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, assessee’s appeal is allowed for statistical purposes.

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9. The assessee has similar ground of appeal which relates to investment in shares by foreign investor, which is common with one of the issue in AY 2012-13, which we have restored to assessing officer, therefore, following the principles of consistency this appeal is also restored back to the file of Assessing Officer with similar directions. In the result, the ground of appeal raised by the assessee are allowed for statistical purposes.
10. In the result, both appeals of assessee allowed for statistical purposes.

Order pronounced in the open court on 01/11/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat,

Dated: 01/11/2023

Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat,

Dated: 01/11/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

// True Copy //

Sr. Private Secretary/Private
Secretary/Assistant Registrar, ITAT, Surat