

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1364/Mum/2023
(Assessment Year :2011-12)**

| | | |
|--|-----|---|
| ACIT, CIR 4(2)(1) Room No.642, 6 th Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020 | Vs. | Merchant Agri Global Private Limited 74, Krishna Niwas 496, Kalbadevi Road Kalbadevi, Mumbai – 400 002 |
| PAN/GIR No.AAJCS56333B | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|--------------------|
| Assessee by | Shri Vimal Punmiya |
| Revenue by | Smt. Mahita Nair |
| Date of Hearing | 31/10/2023 |
| Date of Pronouncement | 07/11/2023 |

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 22/02/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2011-12.

2. In the grounds of appeal, Revenue has challenged the deletion of addition of Rs.2,35,00,000/- as 'unexplained cash credit' u/s.68 of the Act which represent share application money of

Rs.47,00,000/- and share premium amount of Rs.1,88,00,000/-. Apart from that Revenue has challenged addition of Rs.20,00,000/- as unexplained cash credit u/s.68 and the loan taken from M/s. Strong Suppliers Pvt. Ltd.

3. The brief facts are that assessee is a private limited company engaged in the business of trading in DORB, Rapeseed DOC, Rice Bran, Cotton DOC and Sal DOC. In the return of income filed on 30/09/2011, assessee had declared income of Rs.63,11,310/-. Thereafter, assessee's case was selected for scrutiny and accordingly, notice u/s.143(2) was issued on 26/09/2012. During the course of assessment proceedings, ld. AO noted that assessee has received share application money including premium from various entities. The details of which are as under:-

| S.N | Name & Address of the entity | No. of Shares | Application Money | Premium | Total Amount |
|-----|--|---------------|-------------------|---------|--------------|
| 1 | Empower Industries India Limited 25/25A, Iind Floor, 327, Nawab Building, D. N. Road, Fort, Mumbai-400001 | 200000 | 1000000 | 4000000 | 5000000 |
| 2 | Dhanus Technologies Limited 6-B Mena Kampala Arcade 113/14 Theyagaraya, T-Naga Chenna 600017 | 100000 | 500000 | 2000000 | 2500000 |
| 3 | Allied Computer International (Asia) Limited 501/503, Morya, Estate New Lib Road, Andheri (West) | 80000 | 400000 | 1600000 | 2000000 |

| | | | | | |
|---|---|--------|---------|----------|----------|
| | Mumba 400053 | | | | |
| 4 | Venmax Drugs And Pharmaceuticals Limited 1-8/12, Pent House, SV Co-Op Industrial Estate, Balanagar Hyderabad-500072 | 180000 | 900000 | 3600000 | 4500000 |
| 5 | L.N. Polyesters Limited Plot No.424/A, Road No. 18. Jubilee Hills, Hyderabad-500033 | 180000 | 900000 | 3600000 | 4500000 |
| 6 | Channel Guide India Limited A-203, 2 nd Floor, Greenvilla, Lokhandwala Complex, Andheri (W) Mumbai – 400 053 | 200000 | 1000000 | 4000000 | 5000000 |
| | Total | 940000 | 4700000 | 18800000 | 23500000 |

4. In response to show-cause notice, assessee vide letter dated 17/12/2013 submitted details of shareholders including name, address, number of shares allotted, share application money, amount of premium received, their PAN and also copies of the bank statement. The assessee also submitted copy of return of allotment of shares submitted to the Registrar of companies. Further, assessee also submitted working of premium amount and acknowledgment return of income and copies of balance sheet of all the aforesaid shareholders.

5. The ld. AO then issued notice u/s. 133(6) to all the aforesaid parties to furnish various details as was asked by him. However, two of the parties namely, M/s. Empower Industries India Ltd and M.s, Dhanus Technologies Ltd., had not received any

confirmation as sought from them. In respect of other parties, the notices sent returned unserved with postal remarks 'left'. Accordingly, the ld. AO asked the assessee to produce the said parties on 24/03/2014. However, the assessee could not produce these parties. In absence of any details, he added the entire sum of Rs. 2,35,00,000/- u/s. 68 giving following reasons:-

- As discussed supra the assessee is in receipt of substantial sums Le., Rs. 47,00,000/ being share application money and Rs. 1,88,00,000/- being premium thereon from the entities mentioned above. Thus, the assessee has credited an amount of Rs.2,35,00,000/- in the balance-sheet' as share application money from the aforesaid parties.
- During the course of assessment proceedings vide questionnaire dated 14-08-2013 the assessee has been specifically asked to file relevant material to justify its claim of receipts of money alongwith working of premium thereon. In response, the assessee simply furnished the list of such persons
- Thereafter, vide order sheet noting dated 14-02-2014 the assessee has again been asked to file the relevant details for which the assessee vide its letter dated 03-03-2014 simply furnished the copy of return of income and the balance-sheet of the entities from whom it has shown receipt of share application money. Since the assessee has not furnished relevant details viz., copies of correspondences made with the entities, copy of bank statements highlight the said receipts, and other material such as Board resolutions to justify its claim, notices u/s 133(6) of the Act were issued to all the said parties. However, no details were filed in two cases despite the service of the said notice upon them. In rest of the case the notices have returned 'un- served' with postal remark 'left'.
- With this background, vide letter dated 14-03-2014 the assessee has been requested to produce the parties with

relevant material to justify the claim by fixing the hearing on 24-03-2014, however, no one attended nor any details were filed to justify the claim.

➤ In absence of any details and material to justify the receipt of such substantial money by way of share application money the receipts in the hands of the assessee 'remain unexplained, More so the-onus is upon the assessee to justify its claims of receipt of money from the said entities by filing the relevant details viz., correspondences made by the assessee company with the aforesaid entities in respect of acceptance of share application money, copies of bank statements highlighting the receipts of funds a share application money and the premium thereon, banks of valuation of premium thereon, copies of Boards resolution, dispatch registers in respect of issues of share certificates, and any other material, which it failed to do. Lastly the assessee has been requested to produce the parties for verification, which it has failed to do.

➤ Importantly, assessee company was Incorporated 16-01-2006 i.e., in the FY.2005-06 relevant to AY 2006-07 and On it is into the business of trading in DORB, Rapseed Doc, Rice Bran, Cotton Doc, and Sal Doc'. Further, the analysis of financials for the last two years reveal that the assessee has a net profit after taxes of Rs.4,03,221/- with an earning per share of Rs.0.36/- for the year ended 31-03-2010. For the year under consideration the assessee has shown net profit after tax of Rs.39,87,969/- with an earning per share of Rs.2.54/- however, it has issued shares at a value of Rs.50/- per share including premium of Rs.40/-. Further, the assessee has not provided any justification for fixing the value of per share at Rs.50/- including premium of Rs.40/-.

➤ Moreover, the assessee is an unlisted company and in the past it has not declared any 'dividend' Therefore, neither the past performance of the company nor its present earning justify the amount of premium worked out by it on which it has issued shares to the aforesaid entities the confirmation of which has not yet been filed, even when specifically asked to do so.

➤ From above background it can be concluded that the objective of the assessee was not to attract the genuine investors but to bring in large amount of unaccounted funds in the guise of share capital. Further, the assessee has not provided any substantiating evidences in respect of issue of shares to the aforesaid entity and how the said entities have applied for allotment of shares at a premium of Rs.40/-.

➤ Further, the copies of returns and the balance-sheets submitted pertaining to A.Y.2010-11 (in the cases of M/s. Empower Industries India Ltd., M/s. Dhanus Technologies Ltd., M/s. Allied Computers International (Asia) Ltd.) and A.Y.211-12 (in the case of M/s. L.N. Industries Ltd., M/s. Channel Guide India Ltd.) reveal that most of the companies are loss making except in the case of M/s. Empower Industries Ltd. Further, the balance-sheet submitted in the each of the companies does not bear any seals and signature evidencing the authenticity of the figures.

➤ The onus to prove the identity, creditworthiness, genuineness of the transactions lies with the assessee and it has failed to discharge the same, Accordingly, in absence of substantiating details as discussed above, the claim of receipt of such substantial amounts as share capital and share premium remain unexplained. More importantly, the notices returned with postal remark left itself create the suspicion on the existence of the said entities. Since the assessee has failed to establish the identity, creditworthiness and genuineness of the receipt of share application money from the entities, the said credit reflected in its accounts remain unexplained.

6. Thereafter, he relied upon the judgment of Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT reported in 214 ITR 801 and certain other judgments and added the entire sum of Rs.2,35,00,000/- to the total income of the assessee u/s.68.

7. Before the ld. CIT(A), assessee submitted that once the entire details as was required from the assessee was filed to prove the

identity, creditworthiness of the subscriber companies and genuineness of the transaction. When ld. AO informed about the non-service of notice u/s.133(6), assessee had duly brought to the notice of the ld. AO that these companies have shifted to other addresses and gave the printouts of companies master details available on Ministry of Corporate Affairs website. In case of notices serviced to two entities, it was submitted that assessee is trying its best to contact the parties to make compliance u/s. 133(6) and also requested the ld. AO to issue summon u/s.131. However, the ld. AO without taking into cognizance the present address of the companies had drawn adverse inference in order to issue any summon u/s.131. In so far as assessee was asked to produce the shareholders on 24/03/2014, it was pointed out that notice was served on 20/03/2014 and in between there were two holidays, so, practically it had just one working day and was not sufficient time so that assessee could contact individually all the companies to produce. Further, it was stated that ld. AO should issue summon u/s.131.

8. Ld. CIT (A) noted that assessee has discharged the onus for establishing the identity, creditworthiness of the shareholder and genuineness of the transaction from the following details and documents filed before the ld. AO.

- i. Name Address and PAN of the subscribers, share application money received and number of shares allotted.
- ii. Copies of return of income, audited financial statement, bank statement, copies of share certificate explaining the source of fund and nature of receipts.

iii. Copy of return of allotment filed with ROC.

9. Further it was stated that three ingredients are fulfilled in the following manner:-

(i) Identity: The subscribers are body corporate, registered under the Companies Act, 1956 & being assessed to income tax for the last several years. For the year under consideration, all the shareholders filed their income tax returns.

ii. Creditworthiness. The shareholders made investment of Rs.2,35,00,000/- out of the sufficient owned funds in forms of shareholders' funds, which is duly reflected in the financials of the share applicants

iii. Genuineness of transaction - Share application money was received through proper banking channel and the investments are reflected in the respective files/accounts. Thus, the genuineness of transactions is not in doubt. The decision of investment by a company can't be restricted other than the shareholder of the company. Such independence is well given under the provisions of the companies Act, 1956 in this regard. For the benefit of the stake holder, they can indulge into the transactions they think fit.

10. Assessee also submitted the justification of share premium of Rs.40/- and also stated the reason that the shares were issued at a premium to minimize the ROC fees and also if the shares had been issued at par, the company would have to increase its authorised capital more. It has also submitted the

working of the premium on which no adverse inference has been made by the ld. AO. Apart from that assessee had filed the documents before the ld. CIT (A) which was as under:-

| S. No. | Particulars | Page No. |
|--------|--|----------|
| 1 | Copy of Bank Statement of assessee with HDFC Bank | 1-14 |
| 2 | <p>M/s. Empower Industries India Ltd (Name Charged to Empower India Ltd)</p> <ul style="list-style-type: none"> • Acknowledgement of Return of Income • Audit Report and Audited Accounts with schedules • Copy of Share Certificate • Copy of Share Application Form • Copy of Letter dated 12.03.2014 alongwith copy of Postal Acknowledgement • Copy of master data available on MCA-21 | 15-40 |
| 3 | <p>M/s. Dhanus Technologies Ltd</p> <ul style="list-style-type: none"> • Acknowledgement of Return of Income • Audit Report and Audited Accounts with schedules • Copy of Share Certificate • Copy of Share Application Form. • Copy of master data available on MCA-21 | 41-66 |

| | | |
|---|---|---------|
| 4 | <p>M/s. Channel Guide India Ltd (Name Changed to Iris Media works Ltd)</p> <ul style="list-style-type: none"> • Acknowledgement of Return of Income • Audit Report and Audited Accounts with schedules • Copy of relevant pages of Bank Statement • Copy of Share Certificate • Copy of Share Application Form • Copy of Letter dated 03.06.2014 • Copy of master data available on MCA-21 | 67-95 |
| 5 | <p>M/s. L N Polysters Ltd (Name Changed to L N Industries India Ltd)</p> <ul style="list-style-type: none"> • Acknowledgement of Return of Income • Audit Report and Audited Accounts with schedules • Copy of relevant pages of Bank Statement • Copy of Share Certificate • Copy of Letter dated 07.03.2014 • Copy of master data available on MCA-21 | 96-117 |
| 6 | <p>M/s. Venmax Drugs & Pharmaceuticals Ltd</p> <ul style="list-style-type: none"> • Copy of Share Certificate • Copy of Share Application Form • Copy of master data available on MCA-21 | 118-121 |
| 7 | <p>M/s. Allied Computers International (Asia) Ltd</p> <ul style="list-style-type: none"> • Acknowledgement of Return of Income • Audit Report and Audited Accounts with schedules • Copy of ledger account in books of M/s. Allied Computers International (Asia) Ltd | 122-145 |

| | | |
|--|---|--|
| | <ul style="list-style-type: none"> • Copy of relevant pages of Bank Statement • Copy of Share Certificate • Copy of Share Application Form • Copy of Letter dated 14.06.2014 • Copy of master data available on MCA-21 | |
|--|---|--|

11. Based on these documents and considering the observation and the reasoning of the AO, ld. CIT (A) has deleted the addition after observing as under:-

8.12. I have carefully considered the submission put forth along with supporting documents furnished perused the facts of the case including the impugned assessment order and other material brought on record and the appellant relied u on various court cases mentioned in its submission. Be that as it may, it is found though the assessee in the course of the proceedings before the A.O as well as in this forum has placed on record copies of the returns of income a/w computation of income, bank details etc. to substantiate its claim of having received share application money from the aforementioned parties, however, the Assessing Officer had failed to place on record any material which would dislodge the authenticity of the said documents. In the backdrop of the aforesaid facts, as the assessee had discharged the primary onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of the transaction of having received share application money from the aforesaid parties, which the Assessing Officer had failed to dislodge by placing on record any such material which would prove to the contrary, therefore, the adverse inferences so drawn by him as regards the authenticity of the transactions in question cannot be sustained and is liable to be vacated.

8.13 Therefore, in my considered opinion, the appellant proved the identify, genuineness and creditworthiness of all the share applicants on 3 touchstones incorporated in Section 68 of the IT Act Hence, the addition of Rs. 2, 35,00,000/- by the AO were

not justified, and therefore are deleted in appeal. The ground of the appellant is therefore allowed.

12. We have heard both the parties at length and also perused the relevant finding given in the impugned order as well as material referred to before us. The entire case of the department which was argued by the ld. DR was that ld. AO during the course of assessment proceedings has conducted enquiry by issuing notices u/s.133(6) which will either comply with or not served as these parties were not available at the given address. Apart from that, when ld. AO asked assessee to produce the shareholders, the same was also not produced before the ld. AO. Thus, ld. AO had doubted the entire documents which were submitted before him as per the reasons given in the impugned order. On the other hand, the case of the assessee is that the entire onus for discharge by filling all the details before the ld. AO as well as the ld. CIT(A) and also proving the creditworthiness of these subscribers from the balance sheets, income tax returns and other documents. During the course of assessment proceedings itself assessee had intimated the present address of all the entities from the MCA website and ld. AO has failed to take cognizance of such of the changed addresses or issued any summon u/s.131.

13. On perusal of the documents it is seen that all the shareholders who have subscribed for the shares and were also allotted shares and still they continue to be shareholder of the assessee company. All the subscriber companies had filed their acknowledgement of return of income, audit report, and audited

accounts with schedules, copy of share application form and share certificate and their copy of master data available on MCA-21, that these companies still existed. From the perusal of the balance sheets, we find that these entities had substantial net worth as compared to the total value of share application and security premium subscribed by them which for the sake of ready reference is reproduced hereunder:-

| DETERMINATION OF CREDITWORTHINESS OF INVESTEE COMPANIES | | | | | |
|---|--|----------------------------|----------------------|---|---|
| | TOTAL NETWORTH OF THE INVESTOR COMPANIES AS ON 31.03.201 1 | | | TOTAL VALUE OF SHARE APPLICATION AND SECURITY PREMIUM | SHARE APPLICATION MONEY PAID IN % OF TOTAL NETWORTH |
| NAME OF THE INVESTEE COMPANY | SHARE CAPITAL (Rs) | RESERVES AND SURPLUS (Rs.) | TOTAL NET WORTH (Rs) | | |
| EMPOWER INDUSTRIES INDIA LIMITED | 1,59,60,17,625.00 | 2,15,37,42,175.00 | 3,74,97,59,800.00 | 50,00,000.00 | 0.133% |
| DHANUS TECHNOLOGIES LIMITED | 5,71,00,49,420.00 | 3,89,16,040.00 | 5,74,89,65,460.00 | 25,00,000.00 | 0.043% |
| CHANNEL GUIDE INDIA LIMITED | 83,41,74,300.00 | 2,80,67,775.00 | 86,22,42,075.00 | 20,00,000.00 | 0.232% |
| L.N. POLYSTERS LIMITED | 1,02,08,09,400.00 | 98,19,34,577.00 | 2,00,27,43,977.00 | 45,00,000.00 | 0.225% |
| VENMAX DRUGS AND PHARMACEUTICAL S LIMITED | 4,36,76,500.00 | 63,11,284.00 | 4,99,87,784.00 | 45,00,000.00 | 9.002% |
| ALLIED COMPUTER INTERNATIONAL(A SIA) LIMITED | 1,19,00,49,520.00 | 1,82,04,771.00 | 1,20,82,54,291.00 | 50,00,000.00 | 0.414% |
| TOTAL | | | 13,62,19,53,387.00 | 2,35,00,000.00 | 0.173% |

15. Thus, it cannot be said that the creditworthiness of these creditors have not been proved by the assessee before the ld. AO. Another important fact is that assessee before the ld. AO has also given the working of the premium amount of the shares issued in the following manner:-

| PARTICULARS | AMOUNT |
|---|---------------|
| Net profit after Taxes | 3987969 |
| Share capita! | 15700000 |
| Face Value of shares | 10 |
| Earning per shares (NPA TAX / Share Capital) X Face value of share | 2.54 |
| Issue price approximately 20 times of EPS | 51 |
| Shares issued at Rs. 50/- per shares | SO |

16. Here it is not a case that the premium subscribed by the shareholders was without any financial credibility. In so far as identity is concerned, assessee had submitted the details and the copy of master data available on MCA sites, copy of acknowledgement of return alongwith PAN, copy of audit report and audited balance sheets alongwith share certificate issued to them. The genuineness of the transaction is proved by the bank statements of these companies and also the bank statements of the assessee. To doubt such genuineness, there is no such information or material on record either in the form of any information or enquiry conducted by the Investigation

Wing or by the ld. AO that these entities or companies were mere paper entries providing any kind of accommodation entry. If these companies are still existing and complying with the income tax laws and under the companies Act, it could not be held to be mere paper entries. Their audit report and profit and loss account also shows huge operations being carried out by these companies. Thus, genuineness of this transaction cannot be doubted.

17. In so far as non-service of notice u/s. 133(6), assessee before the AO had provided current addresses of the subscriber companies, which AO had not taken into cognizance nor he has sent any notice to them. In so far as non-production of the parties, as noted above only one day was allowed and ld. AO could have issued summon u/s.131 to the companies. Merely non-production of the shareholders will not make the transaction non-genuine unless there is some other clinching information or material on record to doubt the genuineness and creditworthiness of these companies. Thus, this reason alone cannot discharge the onus on the. AO that parties could not be produced ignoring all the documents submitted by the assessee. Without any further information or enquiry, the entire share application money and the allotment of shares cannot be held to be non-genuine or bogus when they continue to be shareholder of the assessee company. Thus, on these facts, we do not find any reason to devoid from the finding of the ld. AO which is based on material placed on

record. Accordingly, the ground raised by the department is dismissed.

18. Another issue which has been raised by the Revenue with regard to deletion of addition of Rs.20,00,000/- on account of loan taken from one party, M/s.Strong Suppliers Pvt. Ltd. In the course of assessment proceedings assessee furnished confirmation account by the said party, however, ld. AO held that in absence of any supporting evidences, assessee has not proved the genuineness of the transaction. Accordingly, he has confirmed the said loan u/s.68.

19. Ld. CIT(A) had deleted addition holding that assessee had discharged the onus by providing loan confirmation which bears PAN, address of the loan creditors and mode of payment and assessee has filed bank statement to show that the said loan amount was received through cheque and through proper banking channel. He held that if the ld. AO had any doubt, he could have issued notice u/s.133(6) or summon u/s.131 and therefore, such a loan cannot be doubted and accordingly, he deleted the said addition.

20. After hearing both the parties we find that assessee during the course of assessment proceedings confirmed the copies of account from M/s. Strong Suppliers Pvt. Ltd. alongwith other details stating that this amount was received through cheque from the said party and also furnished copy of bank account. After furnishing these documents, ld. AO had not carried out

any enquiry and had simply made addition on the ground that assessee has not filed copy of income tax returns of the said company and audited accounts. However, the finding of the Id. CIT(A) for deleting the said addition after going through the records reads as under:-

“11.3 To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income In the facts of the present case, both the nature & source of the Unsecured Loan received was fully explained by the assessee. The assessee had discharged its primary and initial onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record Accordingly all the three conditions as required u/s 68 of the Act i.e the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him Without doing so, the addition made by the AO is in my considered opinion, based on conjecture and surmises which cannot be justified Accordingly, in the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 at the Act.

21. In view of the aforesaid finding and without any material to disclose the said finding and lack of any enquiry by the Id. AO, we do not find any reason to deviate from such decision and accordingly, the order of the Id. CIT(A) is confirmed. Thus, the grounds raised by the revenue are dismissed.

22. In the result, appeal of the Revenue is dismissed.

Order pronounced on 7th November, 2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai; Dated 07/11/2023
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai