

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No.1063/Hyd/2017		
Assessment Year: 2012-13		
Dy.CIT Circle 16(2) Hyderabad	Vs.	M/s. M.S Agarwal Foundries (P) Ltd, Hyderabad PAN:AAICS4832K
(Appellant)		(Respondent)
Revenue by:	Shri K. Madhusudan, CIT(DR)	
Assessee by:	Shri Sunil Kumar Jain, CA	
Date of hearing:	04/01/2024	
Date of pronouncement:	05/01/2024	

ORDER

Per Laliet Kumar, J.M

This appeal filed by the Revenue is directed against the order dated 23.03.2017 of the learned CIT (A)-4, Hyderabad relating to A.Y.2012-13.

2. Facts of the case, in brief, are that the assessee company is engaged in manufacture of sponge iron. It filed its return of income for the A.Y 2012-13 admitting income of Rs.5,730/- and also revised return of income admitting income of Rs.9,760/-. Subsequently, the case was converted into scrutiny under CASS and statutory notices u/s 143(2) and 142(1) of the I.T. Act, 1961 were issued and served on the assessee to which

the Authorised Representative appeared before the Assessing Officer and furnished the requisite details as called for.

3. It is the case of the Assessing Officer that during the year under consideration, the assessee had received huge share capital of Rs.21,85,00,000/- from M/s. Shri Kamal Fashion (P) Ltd. The Assessing Officer completed the assessment by making addition of Rs.21,85,00,000/- in the hands of the assessee. In para 5.2 to 5.6 of the assessment order, the Assessing Officer mentioned as under:

5.2 Response of the assessee:

During the scrutiny proceedings, assessee has requested time to produce these directors before this department. The assessee's request has been conceded everytime and time has been granted. But in the process the assessee has followed delayed strategies and buying time from the department. Still the assessee's requests were considered, keeping in view of principles of natural justice. But in the fog end of the assessment proceedings, it has left the option to the department itself, to verify the genuinity & identity of investment companies. Still the department has tried to verify the genuineness and identity of these investment companies, by issuing summons. But returning of the envelopes, establishes the fact that the some of the investment companies are non existing. Hence, the submissions made by the assessee – company cannot be given any credence.

6.0 Additions

The assessee – company has given quite number of opportunities to prove the genuinity of share application money received from the companies. But the assessee – company did not relieve itself from its burden of proof. In the absence of sufficient evidence and based on the observations made during the survey proceedings, it is concluded that the share application received during the relevant AY is found to be not – genuine and accordingly considered as unexplained credits in the books of the assessee. Hence, the share application money of Rs. 21,85,00,000/-, disallowed and is added back as per the provisions of I.T.Act. Out of this share application money, shares were allotted, with premium, to some of the companies amounting to Rs. 7,66,50,000/-. As the share application money, outstanding against these companies is already disallowed, no fresh disallowance is called for the share premium.

[Addition: Rs. 21,85,00,000]

Subject to the above remarks, taxable income of the assessee-company is computed as under:

	Returned Income	--	Rs.	9,760
Add:	Unexplained credits	--	Rs.	21,85,00,000
	Assessed Income	--	Rs.	21,85,09,760

Taxable Income			Rs.218500000/-
Tax thereon			Rs.67307865/-
Add : Surcharge	Rs.3365393/-		
Education Cess	Rs.2120198/-	Rs.5485591/-	Rs.72793456/-
Add:234 B	Rs.24405660/-		
234 C	Rs.37497/-	Rs.24443157/-	Rs.97236613/-
Balance payable			Rs.97236610/-

Notice of Demand u/s 156 of the Act in Form No.7 is enclosed.
Penalty proceedings u/s 271(1)(c) of the Act are initiated separately.

4. Aggrieved with such order of the Assessing Officer, the assessee filed appeal before the learned CIT (A), who in turn had allowed the appeal of the assessee while observing as under:

7. I have carefully considered the assessment order and submissions of the appellant. In this case the Assessing Officer mainly added Rs. 21,85,00,000/- share application money as unexplained credits u/s 68. During the course of appeal proceedings, the submissions of the appellant and details filed were verified. From the Balance sheet, it is evident that the appellant is having opening share capital of Rs. 1,86,66,080/- and share application money pending for allotment was of Rs. 36,15,20,000/- as on 31-03-2012. As per the details furnished, there are certain other parties also from whom the share capital was already allotted. During this financial year i.e., 2011-12 being A.Y. 2012-13, the share capital introduced by the appellant from Srikamal Fashions was of Rs. 35,30,000/- and share premium of Rs. 4,69,50,000/-. In addition, the share application money pending for allotment was shown during this year was of Rs. 36,15,20,000/- which was allotted during next financial year 2012-13 i.e., next assessment year 2013-14. Therefore, the total share application money received from Srikamal Fashions Pvt. Ltd., was of Rs. 41,20,00,000/-. Out of which Rs. 36,15,20,000/- was allotted in next financial year and balance already allotted during this financial year. But the Assessing Officer without verifying this fact, simply added Rs. 18,65,00,000/- as unaccounted from same party by accepting certain shares which were already allotted during this assessment year. Therefore, this action of Assessing Officer is not justified.

7.1 Further, as submitted by appellant that the Supreme Court's decision in the case of CIT vs. Lovely Exports (P) Ltd., (2008) 216 CTR 195(SC) applicable. Since, the appellant has proved the genuineness of the transactions by providing evidences of party Srikamal Fashions and they were continuing from earlier years, therefore, the addition made by the Assessing Officer to the tune of ~~Rs. 18,65,00,000/-~~ on this account is deleted.

7.2 Further, as per the assessment order, the Assessing officer treated Rs. 50,00,000/- received from the Neel Kamal Deolcom Pvt. Ltd., as unaccounted. But as per the information and details furnished by the appellant, the amount introduced from the above party was Rs. 1,00,00,000/-. From the party Snehsil Marketing Pvt. Ltd., Rs. 50,00,000/- and Sugam Vinimay Pvt. Ltd., Rs. 50,00,000/- were also introduced by the appellant during this assessment year as unexplained income in the books of accounts. This amount was adjusted against the extraordinary items of Electricity bills and the net amount was debited to P & L account as Electricity Expenses. This break up of extraordinary items were already submitted to the Assessing Officer and furnished before me also, are as under:

Extraordinary Items	Amount(Rs.)
Additional Power Charges –Expenses	2,58,01,415
Less: Balances Written off-Income	
Neel Kamal Deolcom Pvt. Ltd.	1,00,00,000
Snehsil Marketing Pvt. LTd.	50,00,000
Sugam Vinimay Pvt. Ltd.	50,00,000
Net Amount transferred to P & L account	58,01,415*

*As reflected in Point VI of Profit and Loss Account.

Hence, this amount of Rs. 2,00,00,000/- already considered by appellant as income and so the addition of Rs. 1,50,00,000/- made by the Assessing Officer not justified. Hence, deleted.

7.3 With regard to remaining two parties of Pushpanjali Hirisie Pvt. Ltd., Rs. 20,00,000/- and Sanskar Commodeal Pvt. Ltd., Rs. 50,00,000/- as discussed in assessment order, were verified with details submitted and Balance sheet, and found that there is no share capital introduced from these parties in the books of account of the appellant. The Assessing Officer in the assessment order simply added the amounts from these parties as unaccounted without evidence or proper proof. Therefore, the submissions of the appellant in this regard are accepted and the additions made on this account deleted.

7.4 Further, it was observed that the Assessing Officer in the assessment order discussed the amount of investments from the parties comes to Rs. 20,85,00,000/-, but finally the Assessing Officer added Rs. 21,85,00,000/- instead of Rs. 20,85,00,000/-. Hence, this is treated as totaling mistake.

7.5 Hence, as discussed above, the addition made u/s 68 deleted.

5. Now the Revenue is in appeal before the Tribunal and raised the following grounds:

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in admitting additional evidence in contravention of Rule 46A without giving reasonable opportunity to the Assessing Officer to examine the additional evidence.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the Addition made on amount of Unexplained Cash Credits in the form of share application money of Rs. 18,65,00,000/- introduced in the name of M/s Kamal Fashions Pvt. Ltd.

3. On the facts and in the circumstances of the case and in law, the CIT(A) erred by not enhancing the addition made on amount of Unexplained Cash Credits in the form of share application money of M/s Kamal Fashions Pvt. Ltd., by Rs. 22,55,00,000/- which is the remaining amount of share application money introduced in the name of M/s Kamal Fashions Pvt. Ltd.

4. The Ld. CIT(A) erred in not appreciating the fact that AO has brought on record (page no.10 and page no.15 of assessment order), while discussing about survey material and in show- cause notice that total investment from M/s Kamal Fashions Pvt. Ltd., is Rs. 41.20 crores in the computation.

5. The CIT(A) ought to have corrected this bonafide mistake by enhancing the addition on account of bogus investment from M/s Kamal Fashions Pvt. Ltd., by Rs. Crores instead of deleting the whole addition.

6. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made on amount of Unexplained Cash Credits in the form of share application money of Rs. 1,50,00,000/- introduced in the name of M/s Neelkamal Dealcomm Pvt, Ltd., M/s Sneshsil marketing Pvt. Ltd., and M/s Sugam Vinimay Pvt. Ltd.

7. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made on amount of Unexplained Cash Credits in the form of share application money of Rs.70,00,000/- introduced in the name of M/s Pushpanjali Hirise Pvt. Ltd., and M/s. Sanskar Commodeal Pvt.Ltd.

8. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that share application money of Rs. 70,00,000/- was not introduced in the name of M/s Pushpanjali Hirise Pvt. Ltd., and M/s. Sanskar

Commodeal Pvt.Ltd., in the previous year relevant to A.Y. 2012-13.

9. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not following the ratio laid down in the case of Subhalakshmi Vanijya (P) Ltd vs. CIT (ITA No.1104/Kol/2014).

10. The appellant prays that the order of the CIT (A) on the grounds be set aside and that of the Assessing Officer be restored.

11 The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary”.

6. The learned CIT (DR) submitted that the Tribunal vide its earlier direction had directed the Revenue to file the report with respect to the settlement of M/s. Shrikamal Fashions (P) Ltd from which the assessee had revised the amount. The learned CIT (DR) had filed the report which is as under:

**Office of the
Deputy Commissioner of Income Tax,
Circle-5(1), Room No.224, 2nd Floor, B-Block,
Income Tax Towers, A C Guards, Masab Tank, Hyderabad-4.
Telephone:040-23425138, Email: : hyderabad.dcit5.1@incometax.gov.in**

F.No.DCIT/Cir-5(1)/Hyd/ITAT/2023-24

Dated: 01-12-2023.

To
The Income Tax Officer (DR)-II,
ITAT, B-Bench, Hyderabad.

Sir,

Sub : M/s Agarwal Foundation Private Limited (PAN: AAICS4832K) -
A.Y. 2012-13 – Submission of factual report – Regarding.

Ref: Email dated 02-11-2023.

Please refer to the above.

As per the assessment order of M/s Agarwal Foundation Private Limited (PAN: AAICS4832K), out of the total investments made by M/s Srikamal Fashions Private Limited of Rs. 41,20,00,000/-, the AO has disallowed only Rs. 18,65,00,000/- and has allowed the balance of Rs. 22,55,00,000/- since the assessee could not prove the identity, creditworthiness of the investors.

2. On perusal of the assessment order in the case of M/s Srikamal Fashions Private Limited, for the A.Y. 2012-13, it was noticed that the assessee company received an amount of Rs. 56,20,00,000/- towards equity shares and an amount of Rs. 3,45,00,000/- towards preference shares during the financial years 2010-11 & 2011-12. The total amount received towards share application money during the previous year relevant to A.Y. 2011-12 is Rs. 2,25,00,000/- and the total amount received towards capital including premium during the previous year relevant to A.Y. 2012-13 is Rs. 57,40,00,000/-. The assessee company had utilized the above amounts for making the following investments in two companies based at Hyderabad.

S.No	Name of the company	No. of equity shares applied for	Amount invested in Rs.
1	M.S Agarwal Foundries Private Limited	13,859	41,20,00,000
2	Sitaram Spinners Private Ltd	12,300	18,45,00,000
	Total		59,65,00,000

3. Since the assessee company failed to discharge onus cast upon it under the provisions of section 68 of the I.T. Act, 1961, the amount of Rs. 57,40,00,000/- was treated as unexplained credit representing share capital and added back to the income of the assessee.

4. Since the assessee M/s Srikamal Fashions Private Limited has opted for VsV scheme and paid taxes thereon, the contentions of the assessee that the amount invested by Sri. Kamal Fashions cannot be taxed again in the hands of the assessee as unexplained credit is found to be acceptable. Therefore, the case may be decided on merits.

Yours faithfully,

B.V.Nirmala

Encl: A.R. in 6 Vols.

(B.V.NIRMALA)
Deputy Commissioner of Income Tax,
Circle-5(1), Hyderabad.

7. The learned CIT (DR) further submitted that after the settlement of the amount, nothing remained to be explained and therefore, the matter is required to be decided in accordance with the law.

8. Per contra, the learned AR submitted that the order passed by the Assessing Officer was not in accordance with the law as the Assessing Officer had made glaring errors while passing the order. It was submitted that the Assessing Officer has relied upon the statement given by one Shri Praveen Agarwal (Calcutta based company) which leads to the addition made by the Assessing Officer. It was submitted that in fact, the assessee has not received the money under consideration from the above person or from a company operated and managed by Shri Praveen Agarwal (Calcutta based company). In fact, it was submitted that the Assessing Officer obtained the statement of the Managing Director of Shri Kamal Fashion which was recorded on 25.03.2015 by the Revenue during the assesment proceedings. However, despite recording the statement of Shri Gopal Babu Agarwal, the Assessing Officer has wrongly mentioned herein above that the assessee has not given the details of persons from whom the money was received. It was submitted that the assessee had proved the identity, genuineness and creditworthiness of M/s. Shri Kamal Fashion (P) Ltd. The learned AR drew our attention to the paper book filed on 11.5.2021 whereby the assessee had filed Form I, II and III issued by the Department and thereafter, the order passed by the Tribunal in the case of Shri Kamal Fashion (P) whereby the appeal of Shri Kamal Fashion (P) Ltd was dismissed bearing No.895/Hyd/2019 being settled under the vivad-se-vishwas scheme. It was submitted that once the said assessee namely Sri Kamal Fashion (P) Ltd had stated in

the assesment proceedings that the amount was paid to the assessee by the said Shri Kamal Fashion (P) Ltd and thereafter the said company paid due taxes to the Department on the amount given by Shri Kamal Fashion (P) Ltd to the assessee. Therefore, the appeal of the revenue is to be dismissed. It was submitted that once Shri Kamal Fashion (P) Ltd had declared and disclosed the income, though under the vivad-se-vishwas scheme, then the amount on which the tax was paid would have been available with Sri Kaman Fashion (P) Ltd for giving it to the assessee. Thus, the assessee explained the legitimate source of income of the assessee namely Shri Kamal Fashion (P) Ltd and the amount received by the assessee was adequately been explained.

9. We have heard the rival arguments made by both the sides, perused the available material on record. We find from the perusal of the report filed by the Revenue, it is abundantly clear that the Revenue had accepted the settlement under vivad-se-vishwas scheme with Shri Kamal Fashion (P) Ltd. In fact, in the report the Assessing Officer had mentioned that the amount of Rs.41,20,00,000 were invested by the said company in the assessee company and the said Shri Kamal Fashion (P) Ltd had availed the benefit under vivad-se-vishwas scheme and paid the due taxes and further it was mentioned “that the amount incurred by Sri Kamal Fashions (P) Ltd cannot be taxed again in the hands of the assessee as unexplained credit is found to be acceptable”.

10. Once Shri Kamal Fashion (P) Ltd had paid the due taxes on the amount invested by the said company in the assessee company, then the necessary sequence to that the

money received by the assessee become the legitimate and explained money. Thus, the assessee was able to explain the source of the investment made in the assessee company by Shri Kamal Fashion (P) Ltd.

11. Since the learned CIT (A) decided the issue in favour of the assessee by relying upon the judgment of the Lovely Exports (Supra) and thereafter Shri Kamal Fashion (P) Ltd as mentioned herein above has availed the benefit under vivad-se-vishwas scheme and paid the due taxes, therefore, it is now essential for the Assessing Officer to examine afresh and record an independent finding whether the assessee was able to prove the identity, creditworthiness and genuineness of the transactions having regard to the said settlement made by M/s.Shri Kamal Fashion (P) Ltd under vivad-se-vishwas scheme. In the light of our above discussion, the matter is remanded back to the file of the Assessing Officer for fresh adjudication. Needless to say, the Assessing Officer shall decide the issue after affording due opportunity of being heard to the assessee.

12. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 5th January, 2024.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 5th January, 2024

Vinodan/SPS

Copy to:

S.No	Addresses
1	Dy. CIT, Circle 16(2) 2 nd Floor, B Block IT Towers, AC Guards, Masab Tank, Hyderabad
2	M/s. MS Agarwal Foundries (P) Ltd., 5-4-83 Rama Towers, 2 nd Floor, TSK Chambers, Opp: Ranigunj Bus Depo, MG Road, Secunderabad
3	Pr. CIT – 4, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order