

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं./ ITA No.637/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2018-19)**

<b>ITO</b> Non-Corporate Ward-1(2), Chennai-34.	<b>बनाम/</b> Vs.	<b>M/s. IWell Investments</b> No. 4, 2 <sup>nd</sup> floor, Shriram House, Burkit Road, T. Nagar, Chennai-600 017.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAGFI-3235-D</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri Nilay Baran Som (CIT)- Ld. DR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri R. Sivaraman (Advocate)- Ld.AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	22-11-2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	17-01-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 27.03.2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28.04.2021. The grounds taken by the Revenue read as under:

1. The order of the CIT(A) is contrary to law, facts and circumstances of the case.

2. Whether the Ld.CIT(A) had erred in deleting the addition made u/s. 68 in the absence of Return of Income of Iwell Trust wherein as per the fourth proviso to section 139(1) a person who holds as a beneficial owner any asset located outside India or is a beneficiary of any asset located outside India is required to file return of income even if he is not required to furnish a return u/s 139(1) of the Act?

3. Whether the Ld. CIT(A) had erred in deleting the addition made u/s. 68 where the quantum of actual income received on behalf of and for the benefit of the beneficiaries of Iwell Trust is not known in the absence of return of income of the trust?

4. Whether the Ld. CIT(A) had erred in deleting the addition made u/s. 68 where the specific receipt of funds into the bank account of Iwell trust constitutes loan or income in the hands of Iwell trust is not ascertainable in the absence of the books of accounts, financial statements and return of income of Iwell trust?

5. Whether the Ld. CIT(A) had erred in deleting the addition made u/s. 68 where the nature of credit, whether revenue or capital is not ascertainable in the absence of return of income or financial statements of Iwell Trust?"

Evidently, the sole issue that arises for our consideration is addition made by Ld. AO invoking the provisions of Sec.68.

2. The Ld. CIT-DR advanced arguments supporting the assessment framed by Ld. AO whereas Ld. AR submitted that the assessee fulfilled the requirements of Sec.68 and therefore, the impugned additions have rightly been deleted in the impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Assessment Proceedings**

3.1 The assessee being a resident firm is stated to be engaged in the business of investment in shares, securities, assets & money etc. An assessment was framed against the assessee on 28.04.2021 to examine the issue of receipt of loans and foreign outward remittances made by the assessee. It transpired that the assessee made investment of USD 1 million (INR 65.31 Crores) in ordinary shares of a Singapore based foreign entity viz. Eywa Pharma Pte. (M/s Eywa Pharma) The said entity was stated to be engaged in sale of pharmaceuticals products in regulated markets. The assessee submitted that it was long-term

strategic investment. The investment has been made along with another high quality investing group i.e. Fidelity International of USA.

3.2 The source of this investment was stated to be capital contribution by the 4 partners, 3 of which had capital of Rs.100/- each. However, almost all the capital contribution of Rs.65.33 Crores was made by 4<sup>th</sup> partner i.e. Iwell Trust. The assessee could not furnish Income Tax Return of this entity as demanded by Ld. AO. The assessee also failed to provide financial statements of Iwell Trust.

3.3 It further transpired that the Iwell Trust was established by trust deed dated 07.03.2017. The assessee submitted that each of the 38 beneficiaries was specified in the deed and their share was also known and determinate. Therefore, it was left for the beneficiaries to include in their individual ITRs their respective share of income from the trust. There was no requirement for the trust to file the return of income. The assessee also furnished a statement giving total income of the trust and its distribution amongst 38 beneficiaries. It was further submitted that the source of investment as made by the trust was investment in trust by Shriram Ownership Trust (SOT). The entire capital investment was stated to be sourced by Iwell Trust from SOT.

3.4 On the basis of these facts, Ld. AO held an opinion that the sole motive of establishing the Iwell Trust was to influx the money to assessee firm who, in turn, was to invest in M/s Eywa Pharma. There were common directors in assessee firm and M/s Eywa Pharma. The Ld. AO concluded that, in terms of requirements of Sec.68, the assessee failed to prove the identity and creditworthiness of the source of funds which were utilized to invest in shares of M/s Eywa Parma. Further, the assessee could not establish the genuineness of the transaction.

Accordingly, the sum of Rs.65.31 Crores was added u/s 68 r.w.s. 115BBE.

### **Appellate Proceedings**

4.1 During appellate proceedings, the assessee reiterated that Iwell Trust was private discretionary trust and it was not required to file Income Tax Return. The income of the trust was assessable in the hands of the beneficiaries only. Attention was further drawn to the fact that Iwell trust filed return of income in response to notice u/s 148 on 27.04.2022 and an assessment was framed u/s 143(3) accepting the returned income. The trust deed of Iwell trust, bank statement of Shriram Ownership Trust, Envestor Trust and Iwell Trust was stated to be already uploaded on 25.01.2021, 05.02.2021 and 04.03.2021 on e-filing portal during the assessment proceedings but NeAC failed to consider the same and made impugned additions. On the basis of these submissions, the assessee assailed the impugned addition made by Ld. AO u/s 68.

4.2 The Ld. CIT(A) appreciated the letter filed by the assessee on 05.02.2021 during the course of assessment proceedings. In this letter, the assessee fully explained the credit received by it in its bank account along with copy of bank statements. The assessee also furnished document supporting foreign outward remittances. It was submitted that the investment in M/s Eywa Pharma was funded out of capital contribution by one of the partners i.e., Iwell Trust. The confirmation of Iwell Trust was also furnished.

4.3 The Ld. CIT(A) noted that the funds were transferred from Shriram Ownership Trust (SOT) and Envestor Trust to Iwell Trust and Iwell Trust transferred the same to the assessee i.e., Iwell Investment which was utilized to make investment in M/s Eywa Pharma. In the light of these

facts, Ld. CIT(A) concurred with assessee's submissions that the ingredients of Sec.68 were duly fulfilled and impugned additions were to be deleted. The relevant findings of Ld. CIT(A) were as under: -

5.11 As seen above the appellant had already submitted the fund flow to the AO vide submission dated 30.03.2021. The appellant also submitted these details to the undersigned. These details prove that the Iwell Trust -source of 65,31,66,662/- had sufficient funds for contributing the capital. Hence creditworthiness is proved. The Appellant also claimed that the partner was not liable for tax and hence it did not file its return. The same was claimed to be filed later in response to the notice u/s 148. The copy of the notice was enclosed.

5.12 The above discussion clearly proves that the appellant had provided all details to the AO during the assessment. The appellant has also enclosed the acknowledgment sheet showing the said details enclosed with its submissions dated 30.03.2021 addressed to the AO. The appellant has submitted all these details afresh during the appeal proceedings

5.13 Therefore the addition made u/s 68 at Rs. 65,31,66,662/-is directed to be deleted. The ground no 1 ,2 15 and 16 raised against the action of the AO to make the said addition and levy interest are hereby allowed.

Aggrieved as aforesaid, the revenue is in further appeal before us.

### **Our findings and Adjudication**

5. From the facts, it emerges that the assessee has made outward foreign investment in M/s Eywa Pharma which is not in dispute. This investment has been sourced out of capital contribution made by major partner i.e. Iwell Trust. Iwell Trust is a duly constituted trust having specified beneficiaries with determinate share. The investment in Iwell Trust has come from M/s Shriram Ownership Trust and Envestor Trust. The relevant documents including bank statements of all these entities were furnished by the assessee during the course of assessment proceedings. The assessee fully explained the flow of funds with documents which remain undisputed before us. The only reason for making addition was the fact that the assessee could not furnish Income Tax Return of Iwell Trust. During appellate proceedings, it transpired that notice u/s 148 was issued to Iwell Trust and that entity filed its return of

income on 27.04.2022. This return has been subjected to scrutiny assessment and an order has been passed u/s 147 r.w.s. 144B on 23.03.2023 accepting the returned income of that entity. A copy of the same has been placed on page nos. 123 to 130 of the paper book. In Para 3.8, Ld. AO has drawn conclusion that the deposits made by the assessee were out of funds received from M/s Shriram Ownership Trust for Rs.34 Crores and from M/s Envestor Trust for Rs.6.30 Crores. Therefore, the source of time deposit made by that assessee during that year stood explained. This being the case, there remain nothing with revenue to doubt the credit received by present assessee before us.

6. In the light of given facts and circumstances, as rightly concluded in the impugned order, the assessee successfully proved the identity and creditworthiness of the investor and also the genuineness of the transactions. Therefore, impugned order does not require any interference on our part.

7. The appeal stands dismissed.

*Order pronounced on 17<sup>th</sup> January,2024*

*Sd/-*

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

*Sd/-*

**(MANOJ KUMAR AGGARWAL)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :17-01-2024

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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF