

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No: 425/AHD/2019 &
ITA No: 28/AHD/2018
Assessment Years: 2012-13 & 2013-14**

Roselabs Polymers Ltd., 6-7, Vireshwar Estate, Survey No-4-15p, Kerala, N H-8, Bavla, Bagodara Road, Ahmedabad, Gujarat-382020 PAN: AAFCR2445A (Appellant)	Vs	The DCIT, Circle-3(1)(2), Ahmedabad (Respondent)
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Assessee Represented: None
Revenue Represented: Dr. Darsi Suman Ratnam, CIT-DR

Date of hearing : 01-02-2024
Date of pronouncement : 21-02-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These appeals are filed by the Assessee as against two appellate orders dated 09.11.2016 and 03.10.2017 passed by the Commissioner of Income Tax (Appeals)-8, Ahmedabad arising out of the assessment orders passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2012-13 & 2013-14. Since common issues are

involved in both the appeals, the same are disposed of by this common order.

2. Today is the 46th time of hearing of the above appeals, None appeared on behalf of the assessee in spite of service of notice through Income Tax Department. Even in the earlier occasions, the assessee has not given any authorization in favour of any Representatives. Even before Ld. CIT(A) for the Assessment Year 2012-13 an exparte appellate order was passed. For the Assessment Year 2012-13 one Shri Sagar Vasoya appeared before Ld. CIT(A), however the assessee appeal was dismissed by a detailed speaking order.

3. **ITA No. 425/Ahd/2019** relating to the Asst. Year 2012-13 is taken as the lead case. The brief facts of the case is that the assessee is a Company engaged in the business of manufacture of Pharmaceuticals and Plastic empty syringes. For the Asst. Year 2012-13, assessee filed its Return of Income on 23.09.2012 declaring total income of Rs.53,720/-. The return was taken up for scrutiny assessment, the Assessing Officer noticed that the assessee company had received investment in shares from four parties as follows:

Sr. no	Name of share holder	Amount of investment Rs.
1	M/s, Gopalka Investo Motors Pvt. Ltd.	9,50,00,000
2	M/s. Pushpadant Commotrade Pvt. Ltd.	4,12,50,000
3	Shri Pawankumar Agarwal	1,83,40,000
4	Smt. Zameer Pawankumar Agarwal	1,16,40,000

3.1. On detailed verification of the investments made by the above parties, the assessee could not prove identity, genuineness of the

transaction and creditworthiness of the parties. Therefore the A.O. treated the entire investment as the undisclosed income of the assessee.

4. Aggrieved against the assessment order, the assessee filed an appeal before Commissioner of Income Tax (Appeals). Even before Ld. CIT(A), None appeared on behalf of the assessee in spite of six opportunities given to the assessee. Further no materials was placed before Ld. CIT(A) to take a different view with that of the Assessing Officer. Thus Ld. CIT(A) confirmed the addition by observing as follows:

“.....5.1 I have carefully gone through the observations made by the AO, in the assessment order while making said addition. It is observed that A.O. has made addition of Rs.16,61,50,000/- u/s.68 of the Act being the amount of investment made by various persons in the shares of the appellant company Further, AO has also made addition of Rs.3,75,50,000/- u/s 68 of the Act being the amount of advance received from various persons by the appellant company. It is seen from the order of assessment that M/s, Gopalka Motor Investo Pvt. Ltd. and M/s Pushpadant Commotrade Pvt. Ltd. have made investment in the shares of the appellant company similarly, two individuals namely, Shri Pawankumar Agarwal and Smt. Zameer Pawankumar Agarwal have also made investments in the shares of the appellant. M/s, Gopalka Motor Investo Pvt. Ltd. has invested Rs.9,50,00,000/- and Mis Pushpadant Commotrade Pvt. Ltd has invested Rs.4,12,50,000/- in the shares of the appellant. Shri Pawankumar Agarwal has invested Rs.1,83,40,000/- and Smt. Zameer Pawankumar Agarwal Rs.1,16,40,000/- in the shares of the appellant company It is seen from para 5 of the order of assessment that as far as investments made by the two individuals is concerned, appellant company has issued shares to these two individuals at its face value of Rs 10/- per share However, as far as issuance of shares to two corporate entity is concerned, appellant company has issued shares at premium The rate of premium is also differed for two corporate entities Appellant company has issued shares to M/s Gopalka Motor Investo Pvt. Ltd in November 2011 at a premium of Rs. 30/- i.e. Rs 40/- per share and in December, 2011 shares were issued at premium of Rs.90/ i.e. Rs. 100/- per share to Mis Gopalka Motor Investo Pvt. Ltd. Similarly appellant has issued shares at premium of Rs. 140/ i.e. Rs. 150/- per share to M/s Pushpadant Commotrade Pvt. Ltd in March, 2012 It is not known how the appellant company has fixed premium on its shares. It is evident that shares were issued at different rate of premium to M/s Gopalka Motor investo Pvt. Ltd. and M/s Pushpadant Commotrade Pvt. Ltd, whereas during the same period when the shares of the appellant company have been issued to two individuals and no premium has

been charged by the appellant company. As per the details furnished by the appellant during the assessment proceedings, A.O. has mentioned that money was given by M/s Gopalka Motor Investo Pvt. Ltd to these two Individuals enabling them to make investment in the shares of the appellant company. Shri Pawankumar Agarwal has received Rs.1.83 crores whereas Smt.Zameer Pawankumar Agarwal has received Rs 1.16 crore from M/s. Gopalka Motor Investo Pvt. Ltd. in the form of loan in order to make investment in the appellant company.

5.2 In order to check identity, genuineness and creditworthiness of the Investors, A.O. has taken efforts to reach out to the investors. M/s Gopalka Motor Investo Pvt. Ltd. was not found at the address furnished by the appellant. Since the funds for investment made by Shri Pawankumar Agarwal and Smt. Zameer Pawankumar Agarwal came from M/s Gopalka Motor Investo Pvt. Ltd., A.O was of the opinion that even the identity, genuineness and creditworthiness of investments made by these two Individuals remains unproved On 14/03/2015 AO informed the appellant with regard to the inquiries made through DDIT (Investigation), Kolkata with regards to the non-availability of these corporate entities at the address given by the appellant. AO has mentioned at para 5 of the assessment order that appellant had informed A.O that it had furnished the address as available on its records. Appellant has further stated that it is not in a position to understand why summons could not be served by the Investigation unit in Kolkata It was also suggested by the appellant that these two corporate entities might have moved to new place and that can be the reason the summons could not be served to them and parties could not be found by the Inspector of department Further appellant has also mentioned that it has made contacts with the two corporate entities and has now ascertained their new address which appellant has provided to the AO. Both addresses were of Kolkata as appellant has also provided that these companies are existing companies in the records of ROC and both companies have filed Return of Income. Appellant has submitted acknowledgment of their Return of Income Appellant has also submitted audited balance sheet of these two companies and the certificate of registration issued by Reserve Bank of India to M/s. Gopalka Motor Investo Pvt. Ltd. Thus, according to the appellant it has submitted all the information before A.O. and has discharged onus of proving the credits in the books of account as well as investment in the shares of the appellant as genuine Appellant has further submitted that money have been received through banking channel. The A.O. at page 8 of the order of assessment has mentioned that when the appellant submitted audited accounts of M/s Gopalka Motor Investo Pvt.Ltd A.O. could gather that two individuals namely, Shri Pawankumar Agarwal and Smt. Zameer Pawankumar Agarwal are directors of M/s Gopalka Motor Investo Pvt. Ltd A.O. has further studied from the audited accounts and it became clear that both persons are also directors of the appellant company. As both were directors in the appellant company, AO has expressed his dissatisfaction over the submission made by the appellant on 14/03/2015 wherein appellant has referred to the reason why the summons could not be served on the corporate entities by the investigation unit of Kolkata A.O, has concluded that appellant was trying not to co-operate with the department and delaying the assessment proceedings. At page 8 of the assessment order, A.O. has also made financial analysis of M/s Gopalka

Motor Investo Pvt. Ltd arid M's Pushpardant Comiotrade Pvt Ltd AD has observed that during A Y 2011-12 income of M/s Gopalika Motor Investe Pvt. Ltd was only Rs. 1,41,814/- and whereas for AY 2012-13 M/s Gopalka Motor Investo Pvt. Ltd have incurred loss of Rs.8,78,679/ Similarly, M/s Pushpadant Commotrade Pvt. Ltd had filed income of Rs.2,906/- for AY 2011-12 and Rs. Nil for AY 2012-13 and A Y. 2013-14 Therefore, A. O has raised strong doubts matching the creditworthiness of these two corporate, entities for making investment of more than Rs. 15.60 crores in the shares of the appellant AO has also further soserved that bank account of M/s Pushpadant Commarade Pvt. Ltd was maintained with Bank of Baroda New Cloth Market branch, Ahmedabad and the address given on the bank account was that of Ahmedabad only Further, Shri Pawankumar Agarwal AY:2017/13

was joint holder of the said bank account. It is a matter of fact that Shim Pawankumar Agarwal is also director of the appellant company. All these efforts by the M/s Gopalka Motor Investo Pvt.Ltd. Mis Pushpadant Commotrade Pvt.Ltd as well as appellant goes on to prove beyond doubt according to A.O. that appellant has failed to prove identity, creditworthiness and genuineness of the transactions with respect to all investments made by Mis Gopalka Motor Investo Pvt.Ltd., M/s Pushpadant Commotrade Pvt Ltd Shri Pawankumar Agarwal and Smt Zameer Pawankumar Agarwal amounting - to Rs. 16,61,50,000/- Thus, by invoking section 68 of the Act A.O. has made an addition of this amount into total income of the appellant.

5.3 In August, 2016 Hon'ble ITAT, Ahmedabad in its judgment in the case of ACIT v/s Nakoda Fashion Pvt. Ltd. ITA No. 1716/Ahd/2012 dtd. 18/08/2016 has dealt with the issue of addition u/s 68 of the Act in the hands of a person by means of share capital or application in the company. Although in the said judgment it was established that investment was made through accommodation entry operator, going to the facts of the case under consideration and although it is not proved that M/s. Gopalka Motor Investo Pvt. Ltd. and others were accommodation entry operators, the facts and circumstances go on to prove that A.O, was right in questioning identity, genuineness and creditworthiness of the investors in its share capital in the said judgment delivered by Hon'ble Tribunal, appellant had also submitted all the necessary documentation such as audited accounts, Return of Income: PAN Registration with ROC. Etc. to prove identity, genuineness and creditworthiness of the share investors. At para 13 Hon'ble Tribunal has held that amendment to section 68 by inserting proviso which relates to getting into source of source as far as investment in shares of Pvt. Ltd company are concerned, said amendment has retrospective effect. Further Hon'ble Tribunal at para 18 has also held that non-attendance of the equity share holders makes the situation little grimy which further gets suspicious when the financial statements are gone through it has been uniform situation in all the 5 parties that transactions totaling in crores are routed through bank accounts, huge reserve and surplus is appearing in the balance sheet along equal amount of investment, but when the profits and loss account is looked into it seems complete dry as interest against investment running in crores the income shown is few thousand and so is the total trnover". The facts of the case under consideration are very similar to the facts of the case deliberated by Hon'ble Tribunal. Hon'ble Tribunal has also relied upon judgment of

Hon'ble Supreme Court in the case of Navodaya Castle Pvt. Ltd. v/s CIT 56 taxmann.com 18 (SC), CIT vs. Maithan International 375 ITR 123 (Cal), CIT vs. Empire Builtech P. Ltd. 361 ITR 258 (Del) etc. Relying upon various case law quoted by Hon'ble Tribunal as well as judgment of Hon'ble Tribunal in the case of Nakoda Fashion Pvt. Ltd (supra) I completely, agree with conclusion drawn by the A.O and hereby confirm the addition of Rs.16,61,50,000/- made by the A.O on account of investments made to its share capital Thus ground of appeal No. 2,3 & 5 raised by the appellant are hereby dismissed

5.4 The A.O. has further mentioned at para 3 9 of the assessment order that Shri Pawankumar Agarwal has advanced of Rs. 1.83 crores, Smt. Zameer Pawankumar Agarwal had advanced of Rs 2 lacs, M/s Gopalka Motor Investo Pvt Ltd had made advance of Rs.1,90,50,000/- to the appellant company Both individuals had received funds through M/s Gopalka Motor Investo Pvt Ltd As the genuineness, identity and creditworthiness of these two individuals as well as Ms. Gopalka Motor Investo Pvt. Ltd have been failed to be proven by the appellant AO, has also questioned the genuineness of the advances amounting to Rs. 3,75,50,000/-. I agree with the contentions of the AO that appellant has completely failed to establish identity, genuineness and creditworthiness of Shri Pankajkumar Agarwal, Smt. Zameer Pawankumar Agarwal as well as M/s Gopalka Motor Investo Pvt. Ltd Accordingly. I hereby confirm the addition of Rs.3,75,50,000/- on account of advances received through Shri Pawankumar Agarwal, Smt Zameer Pawankumar Agarwal and Mis Gopalka Motor Investo Pvt. Ltd. by the appellant The addition of Rs.3,75,50,000/ is hereby confirmed. Thus ground of appeal No raised by the appellant is hereby dismissed. Accordingly Ground Nos. 2 to 5 raised by the appellant are hereby dismissed.”

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of appeal:

1. The Ld. AO has passed the assessment order in violation of the principles of natural justice and equity by not providing the copy of the report of DDIT(Inv) Unit 3(3), Kolkata on which reliance has been place to the issuance of the show cause notice dated 11.03.2015. Hence, the assessment so made requires to be cancelled.

2. The Ld. AO has erred in making addition of Rs.16,61,50,000/- u/s 68 being investments made by following parties in the shares of appellant company:

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|--|-------------------------|
| <i>1. Gopalka Motors Investo Pvt. Ltd.</i> | <i>Rs.9,50,00,000/-</i> |
| <i>2. Pushpadant Commotrade Pvt Ltd.</i> | <i>Rs.4,12,50,000/-</i> |
| <i>3. Shri Pawan Kumar Agrawal</i> | <i>Rs.1,83,00,000/-</i> |
| <i>4. Shri. Zameer Pawankumar Agrawal</i> | <i>Rs.1,16,00,000/-</i> |

On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in holding that AO is correct and justified.

3. The Ld.AO has erred in making addition of Rs.3,75,50,000/-u/s 68 being an amounts for the advances received by Shri Pawankumar Agrawal of

Rs.1,83,00,000/-, Shri Zameer Agrawal of Rs.2,00,000/- and Rs.1,90,50,000/-received from Gopalka Motors Investo Pvt. Ltd & Pushpadant Commotrade Pvt. Ltd by the appellat company.

On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in holding that AO is correct and justified.

4. The Ld. AO has completed the assessment in hurried manner without complete verification of the facts including the submissions of the latest address of share applicant companies namely Gopalka Motors Investo Pvt. Ltd. & Pushpadant Commotrade Pvt. Ltd.

On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in holding that A.O. is correct and justified.

6. As stated earlier, None appeared on behalf of the assessee in spite of service of notices, the assessee in its letter head sought for adjournment on 16.03.2021, whereby the appeals were adjourned to 15.04.2021. Again another adjournment was sought for 29.12.2022 and the appeals adjourned to 13.02.2023. It is thereafter, eleven occasions the above appeals were adjourned from time to time and finally on 01.02.2024, none appeared on behalf of the assessee, in spite of service of notices to the assessee. This clearly shows that the assessee is not interested in pursuing the appeal. Further the assessee failed to file any documents in support of its Grounds of appeal.

6.1. It is also noticed there is delay of 790 days in filing this appeal, but the assessee has not filed any Affidavit explaining the delay. In the absence of condonation petition explaining the delay, the present appeal is not maintainable and liable to be dismissed in limine.

7. In the result, the appeal filed by the assessee is hereby dismissed.

ITA No. 28/AHD/2018 relating to the Assessment Year 2013-14

8. In this case, the assessee filed its Return of Income on 14.10.2013 declaring a loss of Rs.9,52,27,210/-. During scrutiny assessment, the Assessing Officer made addition of -

(a) Rs.24,74,05,000/- as unexplained cash credit u/s. 68 of the Act being the share application money received from various parties,

(b) Rs.6,94,61,653/- being the purchases are not genuine and also disallowed proportionate depreciation claim thereon and

(c) disallowed Rs.7,49,41,352/- being the sale transactions with various parties as not genuine.

8.1, Thus the Assessing Officer made an addition of Rs.25,52,18,259/- and demanded tax thereon.

9. Aggrieved against the assessment order, the assessee filed an appeal before Commissioner of Income Tax (Appeals). By a very detailed order, the Ld. CIT(A) confirmed the additions of Rs.25,51,37,259/- and deleted the addition of Rs.80,600/- being the nearest value of the share price and premium thereon.

10. Aggrieved against the same, the assessee is in appeal before us raising various grounds. Today is the 46th hearing of this appeal, as stated in Paragraph No. 6 above, None appeared on behalf of the assessee, no Authorization or Paper Book filed by the assessee in support of its Grounds of Appeal. In the absence of the details and absolute non-cooperation from the assessee, we have no other

option than to confirm the additions made by the Lower Authorities. This view of ours is supported by the following judicial precedents:

10.1. The principle that every court that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for default, has been upheld by the Hon'ble Supreme Court in case of Dr. P. Nalla Thampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242. In the latter case, the Apex Court has held as under:-

"That every court or judicial body or authority, which has a duty to decide a list between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the court will be will without its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

10.2. The Hon'ble Bombay High Court has also laid down preposition that where the appellant in spite of notice is persistently absent and the Tribunal on facts of the case is of the view that the appellant is not interested in prosecuting the appeal, it can in exercise its inherent power to dismiss the appeal for non-prosecution. In the case of CIT Vs. B. N. Bhattacharya reported at 118 ITR 461, it was held that appeal does not mean merely filing of appeal but effectively pursuing it.

11. In the result, the appeal filed by the Assessee is dismissed *in limine*.

12. In the result, both the appeals filed by the Assessee are hereby dismissed.

Order pronounced in the open court on 21 -02-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 21/02/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद