

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1398/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2015-2016

The D.C.I.T, Circle-4(1)(1), Ahmedabad.	Vs.	West Side Cars Pvt.Ltd., A/1-4, Solitaire Corporate Park, Nr. Divya Bhaskar, Makarba, S.G Highway, Ahmedabad. PAN: AABCW5506D
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(Applicant)		(Respondent)
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Revenue by	:	Shri Ashok Kumar Suthar, Sr. DR
Assessee by	:	Shri Tushar Hemani, Sr. Advocate

सुनवाई की तारीख/Date of Hearing : 25/01/2024

घोषणा की तारीख /Date of Pronouncement: 20/03/2024

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-16.

2. The Revenue has raised following grounds of appeal:

1) Whether the Ld. CIT(A) is correct in Law and on facts to delete the addition u/s. Rs. 68 of Rs. 2.99 crores merely on the ground that months has not been credited in bank despite it being credited in books during the year.

2) Whether the Ld. CIT(A) correct in law to delete the addition of Rs. 1,03,49,000/- credited being cooks of account in the name of Shri Devendrasingh Bagga being contribution towards share capital despite entry not being reversed - neither in this A.Y. nor in subsequent A.Y."

3) Whether the Ld. CIT(A) is correct in law to delete the addition of Rs. 1,95,51,000/- credited in the books of account in the name of Smt. Sukhleenkaur Bagga being contribution towards share capital despite entry not being reversed - neither in this A.Y. nor in subsequent A.Y."

2.1 The interconnected issue raised by the Revenue is that the Id. CIT-A erred in deleting the addition made by the AO for Rs. 2,99,000.00 on account of unexplained cash credit under section 68 of the Act.

3. The facts in brief are that the assessee, a private company, is engaged in the business of car dealership. The AO during the assessment proceedings noticed that the assessee has shown receipt of share application money of Rs. 2,99,00,000/- through banking channel from its director detailed as under:

- | | |
|------------------------------|-------------------|
| 1. Shri Devendra Singh Bagga | Rs. 1,03,49,000/- |
| 2. Smt. Sukhleen Kaur Bagga | Rs. 1,95,51,000/- |

3.1 The above amount was duly reflected in the ledger account of the respective directors and bank ledgers maintained in the books of accounts of the assessee. However, on perusal of the bank statement of Shri Devendra Singh Bagga, only an amount of Rs. 40 Lakh (2 payment of Rs. 20 Lakh) matches with bank entry whereas in the case of Smt. Sukhleen Kaur Bagga no such entry was found in her bank statement. The AO, in view of the above, treated the amount of Rs. 63,49,000/- (Rs. 1,03,49,000 minus 40,00,000.00) and Rs. 1,95,51,000/- aggregating to Rs. 2,59,00,000.00 not reflected in the bank account of Shri Devendra Singh Bagga and Smt. Sukhleen Kaur Bagga as unexplained cash credit

under section 68 of the Act. Thus, the AO made addition of Rs. 2,59,00,000/- to the total income of the assessee under section 68 of the Act.

4. The aggrieved assessee preferred an appeal before the learned CIT(A). The assessee before the learned CIT(A) submitted that the share was proposed to be allotted to the existing directors/ shareholder and accordingly various cheques aggregating to Rs. 1,03,49,000/- and Rs. 1,95,51,000/- were received from Shri Devendra Singh Bagga and Smt. Sukhleen Kaur Bagga respectively. Out of cheques received from Shri Devendra Singh Bagga, only 2 cheques for an amount aggregating to Rs. 40 lakhs were presented to the bank during the year and the remaining cheques were presented in the immediate next year. Subsequently, it was decided not to allot the share to the directors discussed above. Therefore, the amount received from Shri Devendra Singh Bagga was returned through the banking channel whereas the cheques received from Smt. Sukhleen Kaur Bagga were not presented to the bank. All these facts were duly explained to the AO during the assessment proceeding which were also verifiable from their respective ledger account, bank statement but the AO ignoring the fact explained, treated the amount of share application money credited in books as unexplained credit under section 68 of the Act to the extent of Rs. 2,59,00,000/- only. Further, the burden cast under section 68 of the Act regarding identity of creditor, genuineness of transaction and creditworthiness was also duly discharged as the person in whose name the amount credited were the existing shareholders/ director who were regularly filing their respective income tax returns.

5. The learned CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

5.1 In the course of appellate proceedings, appellant reiterated the submissions made before the AO and contended that the confirmation/bank statements and copies of the acknowledgment of Returns of Income filed by both the directors were submitted to the AO; the fact that only cheques worth Rs.40 lac were encashed during the year was also not controverted by the AO and was proved by the bank statement of both the company as well as the director Shri Devendrasingh Bagga; the fact that no amount was debited in the bank account of Smt. Sukhleenkaur Bagga and credited in the bank account of

In view of the above discussion, the additions made amounting to Rs. 2,59,00,000/- are not justifiable and hence, the same is deleted AO is directed to delete the same. Ground No.2 of the appeal is allowed.

6. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

7. The learned DR before us submitted that the assessee has credited the share application money from the director but the same was not reflecting in the bank statements of the directors except in one case for the amount of ₹ 40 lakhs only. Thus, the Id. DR was of the view that share capital represents the unexplained cash credit under section 68 of the act.

8. On the other hand, the learned AR before us filed a paper running from pages 1 to 161 and contended that there were made book entry only for share capital in the name of Smt. Sukhleen Kaur Bagga which cannot be treated as unexplained cash credit under section 68 of the Act. Such an entry was also reversed in the subsequent assessment year. The Id. AR further contended that amount of share application money received from Shri Devendra Singh Bagga was returned in the subsequent year and therefore the same cannot be treated as unexplained cash credit under section 68 of the Act.

9. Both the Id. DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

10. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the assessee in the books of account prepared for the year under consideration credited share application money from its existing director/shareholders as discussed in preceding paragraphs. The provision of section 68 of the Act suggests that if there is any sum credited in books of account maintained for the any previous year then the assessee is required to offer proper and reasonable explanation regarding nature and sources

of such credit to the satisfaction of the AO. Thus, the primary onus lies with the assessee to explain the source of credit in the books. Over the period, the courts have laid down that the assessee to discharge its onus is required to furnish evidence with respect to identity of the creditor, genuineness of transaction and credit worthiness of the creditor. If the assessee fails to discharge the primary onus cast or the explanation and evidence submitted by the assessee was not found satisfactory by the AO, then the sum credited in the books shall be deemed as income of the assessee. The Hon'ble Supreme Court in case of CIT vs. P. Mohanakala reported in 291 ITR 278 while dealing with scope of provision of the section 68 of the Act held that "*the opinion of the AO that the explanation furnished by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion.*" In other words, once the assessee submits primary evidence regarding identity and credit worthiness of creditor and the genuineness of the transaction, the onus shifts on the AO to consider the materials provided and make independent inquiry to find out genuineness of the evidence or bring material contrary to fact explained by the assessee. The AO cannot reject the primary evidence furnished by the assessee without appreciating the facts available on record or without bringing contrary materials to form the belief that primary document or explanation furnished by the assessee is not satisfactory.

10.1 In the present case, the AO treated the share application money credited in the books of assessee from its directors because such amounts were not found debited in the bank account of the directors. However, we note that the assessee has explained that the car supplier was pressurizing it to increase the capital therefore, it (assessee) proposes to allot fresh share and cheque aggregating to Rs. 1,03,49,000/- and Rs. 1,95,51,000/- were received from Shri Devendra Singh Bagga and Smt. Sukhleen Kaur Bagga respectively. The cheques received from

Shri Devendra Singh Bagga were partly cleared during the year and partly in the immediate next assessment year whereas the cheques received from Smt. Sukhleen Kaur Bagga were not presented to the bank for clearance. This is the precise reason the amount credited as share application from impugned directors was not found in their respective bank accounts during the year. The assessee further explained that it subsequently decided not to allot the fresh share as the promotor/ directors were not willing to block the fund in the form of share capital. Accordingly, the amount credited from Shri Devendra Bagga was returned in the next year whereas amount credited in the name of Smt. Sukhleen Kaur Bagga was reversed in the next year.

10.2 However, the above explanation furnished by the assessee was not considered by the AO which was duly supported by the ledger account of the directors and bank statement. The AO treated the credit of share application money as unexplained merely for the reason cheque amount shown as credited from respective director were not found in their bank statements in the year under consideration. The AO without properly considering the explanation and evidence provided by the assessee proceeded to make the addition under section 68 of the Act which is against the ratio laid down by the Hon'ble Supreme court in the case of CIT vs. P. Mohanakala as discussed in preceding paragraph. As far as the question of identity and creditworthiness of the directors in whose name the credit of share application money shown is not in doubt and neither doubted by the AO in his order. Likewise, the question of creditworthiness of the directors, in the given facts and circumstances, does not arise as all the entries representing the credit entries were undoubtedly reversed. Therefore, considering the facts in totality, we hold that the assessee has duly discharged the onus cast under section 68 of the Act. Hence, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue is hereby dismissed.

11. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the Court on 20/03/2024 at Ahmedabad.

**Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
20/03/2024