

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA 'C' BENCH, KOLKATA

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No. 792/Kol/2023
Assessment Year: 2014-15**

Onkar Parivahan Finance Private Limited	vs.	DCIT, Circle-9(2), Kolkata
PAN: AAACO 3517 D		
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddharth Agarwal, Advocate
Respondent by : Shri Arun Kumar Meena, JCIT, Sr. DR

Date of Hearing : 08.02.2024
Date of Pronouncement : 21.03.2024

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 31.05.2023 passed by the ld. Commissioner of Income-tax Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)'].

2. Brief facts of the case are that assessee filed its return of income declaring loss of Rs. 40,69,584/-. Subsequently, the case of the assessee was selected for scrutiny under CASS followed by notices u/s 143(2) and 142(1) of the Act. In compliance to notices, the ld. AR of the assessee appeared time to time before the assessing office and furnished the details as was asked for. The assessing officer at the time of examining the document furnished by the assessee noticed that inspite of having investment in shares no deduction of expenses have been made by the assessee company u/s 14A of the Act. Therefore, applying the Rule 8D disallowed sum of Rs. 43,078/- in the hands of assessee. Similarly, on verification of the

audited financial statement, the ld. AO noticed that the assessee company has raised capital by issuing 2,91,750 shares at a face value of Rs. 10/- per share and charged a premium of Rs. 90/- from the various investor company. The total funds generated by issuing such equity shares aggregated to Rs. 2,91,75,000/- by the assessee. In the course of hearing, the ld. AO asked the assessee to submit various details pertaining to allotment of equity shares during the year. In response to the query made by the AO, assessee furnished various details which are in following manner:

Sl No	Investor's Name	Investor's PAN	No of shares	Share value	Premium	Total
1	Aastha Vanijya Pvt. Ltd.	AAKCA1502G	15,000	1,50,000	13,50,000	15,00,000
2	Ramdoot Commosales Pvt. Ltd.	AAFRCR0122C	1,23,250	12,32,500	1,10,92,500	1,23,25,000
3	Goodward Tradelink Pvt. Ltd.	AANCG7846G	50,000	5,00,000	45,00,000	30,00,000
4	Saraff Metalising Industries Pvt. Ltd.	AAECS8343K	60,000	6,00,000	54,00,000	60,00,000
5	Woodland Retails Pvt. Ltd.	AABCW1644A	22,500	2,25,000	20,25,000	22,50,000
6	Arrowspace Advisors Pvt. Ltd.	AAKCA2800K	21,000	2,10,000	18,90,000	21,00,000

3. The ld. AO in order to authenticate the claim of assessee regarding issue and subscription of share capital & premium issued summons u/s 131 of the Act to all share applicants requiring their personal attendance to principal officers of each company. But in response to the summons no one turned up before him. Later on, the ld. AO issued a letter to the Principal Director of the assessee

company to submit necessary details in relation with investor companies. In response to the same, the assessee company filed various details like balance sheets, statements of profit and loss account and copies of the bank statement of all the investor companies before the AO. Thereafter, the ld. AO relying on various decisions of the Hon'ble High Court held that share capital aggregating to Rs. 29,17,500/- and share premium aggregating to Rs. 2,62,57,500/- as unexplained cash credit within the meaning of section 68 of the Act and added to the total income of the assessee company.

4. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

5. The first ground of appeal raised by the assessee regarding addition made by the AO of Rs. 2,91,75,000/- by disallowing share capital and premium received during the year u/s 68 of the Act. The ld. AR submitted before the bench that during the assessment proceeding, assessee has submitted all relevant details/documents in connection with share capital at the time of framing of assessment order before ld. AO in order to prove the identity, creditworthiness and genuineness of the transactions which are as follows:

- i. ITR Acknowledgement, computation of income, final accounts*
- ii. List of share applicants and bank statement*
- iii. ITR Acknowledgement, final accounts and bank statement along with share application form, share allotment advice and share certificate."*

6. Further, he stated before the bench that the alleged view taken by the authorities below was not correct since assessee company has

produced all relevant documents in connection with investor companies at the time of framing of assessment order by the ld. AO. The ld. AR further stated that as per balance sheet of the share applicant companies, the amount of the investment in the assessee company was much less than their net worth. Therefore, the identity, genuinity and creditworthiness of the ingredients were proved in the case of assessee. He further submitted that from the facts and circumstances of the case, it is evident that proper compliances have been made from the end of assessee. He stated that when the assessee company discharged its onus in respect of the share application money received by it no addition can be made in the hands of assessee company. The ld. AR in order to substantiate its claim and relied upon the decision of the Hon'ble Supreme Court in the case of Lovely Export (P) Ltd. 319 ITR (St.) 5 (SC) held that addition on account of share capital cannot be made in the hands of recipient company.

7. Similarly, he relied on the Hon'ble Jurisdictional High Court in the case of Dataware Pvt. Ltd. vs CIT ITA No. 263 of 2011 & GA No. 2856 of 11 under similar circumstances held as follows:

“Both the Commissioner of Income Tax (Appeal) and the Tribunal below have in details considered the fact that the share application money was paid by account payee cheque, the creditor appeared before the Assessing Officer, disclosed its PAN number and also other details of the accounts but in spite of that the Assessing Officer did not enquire further from the assessing officer of the creditor But in stead, himself proceeded to consider the profit and loss account of the creditor and opined that he had some doubt about the genuineness of such account.

In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the

creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax(Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities. The appeal is thus devoid of any substance and is summarily dismissed.”

8. The ld. AR further submitted that assessee has already submitted all relevant documents relating to the shareholder companies i.e. ITR Acknowledgement, COI, Final Accounts and bank statement of all the share applicants, copies ITR Acknowledgement, Final Accounts and bank statement of all the share applicants were filed before the ld. CIT(A). The above submitted documents proved all the three ingredients has proved to avoid addition u/s 68 viz. identity, genuinity and creditworthiness of shareholders. In the instant case of assessee all the shareholders are income tax assessee, share applications have been received through account payee cheque and their net worth is much more higher than the investment made by them in assessee's company by way of share application. A table

is prepared and set out hereunder to show their net worth vis-à-vis investment in assessee company-

<i>Sl No</i>	<i>Name of the companies</i>	<i>Net-worth</i>	<i>Investment</i>
<i>1</i>	<i>Aastha Vanijya Pvt. Ltd.</i>	<i>22.55 cr.</i>	<i>0.15 cr.</i>
<i>2</i>	<i>Goodward Tradelink Pvt. Ltd.</i>	<i>4.99 cr.</i>	<i>0.50 cr.</i>
<i>3</i>	<i>Ramdoot Commosales Pvt. Ltd.</i>	<i>26.91 cr.</i>	<i>1.23 cr.</i>
<i>4</i>	<i>Saraf Metalising Pvt. Ltd.</i>	<i>6.42 cr.</i>	<i>0.60 cr.</i>
<i>5</i>	<i>Woodlands retails Pvt. Ltd.</i>	<i>23.11 cr.</i>	<i>0.23 cr.</i>
<i>6</i>	<i>Arrowspace Advisors Pvt. Ltd.</i>	<i>29.62 cr.</i>	<i>0.21 cr.</i>

9. Therefore, the addition made in the hands of assessee is uncalled for. We after hearing the rival submission of the parties and examining all the relevant documents furnished by the assessee find that assessee has discharged onus to prove the identity, creditworthiness and genuineness of the share applicants by providing PAN details, bank account statement, audited financial statement and ITR Acknowledgement which were placed at the time of framing of assessment order. Accordingly, assessee prove all the three ingredients as required u/s 68 of the Act i.e. identity, creditworthiness and genuineness of the transaction which were placed before the AO and the onus shifted to disprove the material placed before him. Without doing so, the ld. AO made the addition based on conjectures and surmises cannot be justified. From the facts and circumstances as discussed above no addition was warranted u/s 68 of the Act, therefore, we set aside the impugned order passed by ld. CIT(A) with the direction to delete the addition

made in the hands of assessee of Rs. 2,91,75,000/-. Accordingly, ground no. 1 is hereby allowed.

10. Ground no. 2 is in relation with disallowance of Rs. 43,078/- applying Rule 8D of the IT Rules, 1962 at the time of determining the taxable income of the assessee by the ld. AO is not proper. The contention of the AR of the assessee is that provisions of section 14A(1) applies only if any exempt income earned by the assessee during the relevant previous year which is not includable in the taxable total income. In the present case, the assessee has not received any exempt income during the relevant previous year (which does not forming part of the total income) therefore, the provision of section 14A of the Act has no application in the case of assessee. The ld. AR stated that during the assessment proceeding, the assessee has clearly stated the fact at the time of framing of assessment order and the ld. AO did not dispute the said contention of the assessee.

11. In this regard, reliance is placed upon the judgement of ITAT, Kolkata's order in the case of REI Agro Ltd., ITA No. 1331/Kol/2011, order dated 19.06.2013. In this case, it was held as under:

“The disallowance under section 14A read with rule 8D is to be in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income.”

12. We after following the judgement of co-ordinate bench by applying the same analogy allow the instant ground raised by the assessee with the direction to AO to delete the alleged addition of Rs. 43,078/- in the hands of assessee by setting the impugned order

passed by the Id. CIT(A). In terms of the above, grounds taken by assessee are allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.03.2024

Sd/-

**(Dr. MANISH BORAD)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 21.03.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Onkar Parivahan Finance Private Limited, 161, Rabindra Sarani, Kolkata-700007.
2. The Respondent: DCIT, Circle-9(2), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata