

**आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"A" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकरअपीलसं./ITA Nos.716&717/AHD/2023  
(निर्धारणवर्ष/Asstt. Years: 2012-13 & 2017-18)

Akar Laminators Ltd., B-505, Infinity Tower, Corporate Road, Pralad Nagar, Ahmedabad-380015  <b>PAN: AABCA2778H</b>	Vs.	ITO Ward-1(1)(1), Ahmedabad (Current Jurisdiction DCIT, Circle-1(1)(1), Ahmedabad)
<b>(Applicant)</b>		<b>(Respondent)</b>

Assessee by :	Shri Sunil Talati, A.R.
Revenue by :	Shri H. Phani Raju, CIT D.R. & Ms. Saumya Pandey Jain, Sr. D.R.

सुनवाईकीतारीख/**Date of Hearing** : **27/03/2024**

घोषणाकीतारीख/**Date of Pronouncement**: **17/05/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

These captioned appeals have been filed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide orders dated 22.08.2023 & 23.08.2023 passed for A.Ys. 2012-13 & 2017-18.

2. First, we take up ITA No. 716/AHD/2023, an appeal by the assessee for the AY 2012-13. The assessee has raised following grounds of appeal:

"1. The Ld. CIT(A) has erred in confirming an addition of Rs. 17,20,55,000/- as unexplained cash credit from an undisclosed source without any basis, material, or evidence whatsoever. It is submitted that the order passed by Ld. CIT(A) is blatantly incorrect, unlawful, and the addition so confirmed is prayed to be deleted.

2. *Without prejudice to the above, the Ld. CIT(A) has erred in confirming an addition of Rs.17,20,55,000/- as unexplained cash credit in spite of the fact that the appellant has not received any money from M/s. Khetan Overseas Corporation in cash or by cheque, as deposit or loan but made the transaction in nature of sale with the said party. It is submitted that all the materials and evidence with regard to such sales including ledger accounts, ledger confirmation, and sample copies of sales bills, were submitted but the same has been totally ignored and brushed aside by Ld. CIT(A). It is submitted that addition so confirmed u/s. 68 of the Act is prayed to be deleted.*

3. *Without prejudice to the above, it is submitted that Ld. CIT(A) has erred in confirming an addition made without considering the facts presented in the video hearing regarding the identity, genuineness of the transaction, and creditworthiness of the said party and treating it as an accommodation entry. It is submitted that the addition so confirmed is based on a prejudiced mindset and hence prayed to be deleted.*

4. *The order passed by Ld. CIT(A) is bad in law and is contrary to the provisions of law and facts. It is submitted that the same be held now.*

5. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing of appeal."*

3. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 17,20,55,000/- as unexplained cash credit under section 68 of the Act.

4. The facts in brief are that the assessee in the present case, a public company, is engaged in the business of manufacturing, trading, and job work of flexible packing materials. The assessee for the year under consideration was selected under scrutiny assessment under CASS and the assessment under section 144 of the Act was made as on 18<sup>th</sup> March 2015 assessing the income at Rs. 5,20,10,020/- only. Subsequently, information from DDIT(Inv) unit5(4) Mumbai was received regarding accommodation entry taken by the assessee for Rs. 16,14,55,000/- from a company namely M/s Khaitan Overseas Corporation, a concern not filing the return of income. Accordingly, the assessment was reopened by issuing notice u/s 148 of the Act dated 31<sup>st</sup> March 2019. During the reopening proceedings, the assessee, through several notices, was asked to furnish the requisite details such as ledger copy of the impugned party with narration, ledger confirmation from the party, bank statement & copy of ITR of the party, details of interest or TDS if any etc. However, the assessee only furnished a ledger copy of the impugned party. As per the ledger copy, the assessee has shown an opening receivable balance of Rs. 3,98,24,625/- only and from 1<sup>st</sup> April 2011 to 30<sup>th</sup>

November 2011, the assessee has shown sales to impugned party for Rs. 15,10,03,200/- without being in receipt of any payment. Thereafter, the ledger account shows journal adjustment entries for Rs. 3 crores, Rs. 55,47,000/- and Rs. 4,99,60,000/- in the month of January-February 2012 from 3 different parties. Finally, the assessee has shown receipt of Rs. 17,20,55,000/- through banking channel from the party in dispute namely M/s Khaitan Overseas Corporation and accordingly the ledger account converted from receivable to payable and reflects a closing credit payable balance of Rs. 6,67,34,175/- only. The assessee contended that the transaction entered with the impugned party is a genuine one as the transaction is in the nature of sales which was duly offered to tax. Therefore, no further addition can be made on account of such a transaction with M/s Khaitan Overseas Corporation.

5. The contention of the assessee was not accepted by the AO for the reason that the assessee failed to furnish contra confirmation from the party, copy of bank statement showing the amount debited in party's bank account and credited in assessee's bank account, and also failed to furnish other requisite details. The AO was surprised with such huge transactions carried out by the assessee with the impugned party which was not filing the return of income. The AO further referred to the investigation report of the DDIT(Inv) Unit-5(4) of Mumbai highlighting the suspicious nature of transactions. The party was also summoned by issuing notice under section 131(1) of the Act, but the notice was not served as the party was not found/available at the given address. Hence, the AO held that the genuineness of the amount received by the assessee for Rs. 17,20,55,000/- was not established and treated the same as unexplained cash credit under section 68 of the Act. Hence, the AO added the same to the total income of the assessee.

6. The aggrieved assessee preferred an appeal before the learned CIT(A). The assessee before the learned CIT-A submitted that it has filed a detailed submission vide letter dated 22<sup>nd</sup> December 2019 containing the following information:

- i. Ledger confirmation from the party

- ii. Sample copies of the sale bills to the party
- iii. Bank statement reflecting receipt of payment from the party against the sales from the party.

7. However, the AO, without considering the above details, has doubted the amount received from the party for the reason that the party was not filing the income tax return. As such, no fault can be attributed to the assessee for non-filing of the return of income by the party.

8. Likewise, the assessee submitted that it has furnished the necessary details about the sales to the parties with the corresponding purchases and stock registers. As such, the transaction of sale made by the assessee was duly recorded in the books of accounts and therefore the receipt of ₹ 17,20,55,000/- cannot be treated as unexplained cash credit under section 68 of the Act.

9. However, the Id. CIT-A disagreed with the contention of the assessee and confirmed the order of the AO by observing as under:

*"4.1 Now before me in the appellate proceedings, written submission has been filed. Video hearing was also given to the appellant. The appellant has submitted that it has done genuine transaction with M/s. Khaitan Overseas Corporation and hence the addition is unjustified. The identity, the genuineness of the transaction and the creditworthiness of M/s. Khaitan Overseas Corporation could not be proved before me. Only contention has been made that the books of accounts of the appellant company have been audited u/s. 44AB of the Income Tax Act and sale bills are raised. The Hon. Delhi High Court in the case of M/s N.R Portfolio vs. CIT [Delhi ] has held that mere transaction through banking channel does not help the appellant to prove paper transaction as genuine transaction. This judgement of the Hon. Delhi High Court has been approved by Hon. Supreme Court. This judgement is clearly applicable in this case. In this case, it has been proved by the Investigation Wing and the Assessing Officer that appellant has done accommodation transaction with M/s. Khaitan Overseas Corporation. Hence the addition made by the Assessing Officer is confirmed and appeal of the appellant is dismissed on this ground."*

10. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.

11. The Id. AR before us filed a paper book running from pages 1 to 55 and contended that the sale shown by the assessee to the party has been duly admitted as genuine which was duly recorded in the audited financial statements.

Such transaction of sale was duly supported by the confirmation, sample bills along with the corresponding purchase invoices. The assessee also filed a copy of the bank statement showing the receipt of money from the impugned party. The learned AR also filed the affidavit of the party demonstrating that transaction of sale was genuine.

12. On the other hand, the Id. DR before us submitted that the ledger account does not establish that the transactions between the assessee and the impugned party were genuine. There was no movement of goods as supported by the documentary evidence. The affidavit was not filed before the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has claimed to have received a sum of ₹ 17,20,55,000/- from the party namely M/s Khaitan Overseas Corporation against sales. However, the Revenue disbelieved the impugned transaction and reached the conclusion that the receipt of ₹ 17,20,55,000/- represents the unexplained cash credit under section 68 of the Act. However, we find fault with the approach of the revenue. If the revenue disbelieves the receipt of the Rs. 17,20,55,000/- against the sale made by the assessee, then it is transpired that the sale shown by the assessee to the party is also bogus in nature but surprisingly the revenue has not tinkered with the sale shown by the assessee in the books of accounts. In simple words, the revenue has admitted the sales as genuine and doubted the corresponding receipt shown by the assessee against such sales. Thus, the stand taken by the revenue is contradictory. It is for the reason that if the revenue disbelieves the receipts against the sales, then the sale value shown by the assessee should also be reduced by such an amount of bogus sales. But the revenue has not done so. On this count only, the addition made by the AO is not sustainable.

14. Nevertheless, we note that the assessee has furnished the necessary details as discussed above in the order of the Id. CIT-A, meaning thereby, the assessee has discharged the onus cast upon it under the provisions of the Act. The onus

now shifts upon the revenue to disprove the submissions of the assessee based on cogent materials. Simply, there cannot be any adverse inference against the assessee on the reasoning that the party namely M/s Khaitan Overseas Corporation, to whom the assessee has made sales merely on the ground that such party does not file the return of income. If the party doesn't file the return of income, no fault can be attributed to the assessee. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is hereby allowed.

14.1 In the result, the appeal filed by the assessee is allowed.

**ITA No. 717/Ahd/2023, an appeal by the assessee for AY 2017-18.**

15. The assessee has raised the following grounds of appeal:

"1. *The Ld. CIT(A) has erred in confirming an addition of Rs. 21,16,73,489/- as unexplained investment from the undisclosed source of income u/s. 68 of the Income Tax Act, 1961. It is submitted that the said loans and advances were in nature of trade advances given to the creditors and/or outstanding receivables from debtors. It is submitted that all materials and evidence with regard to such loans and advances including audited accounts of the last 2years, ledger confirmations, ledgers, ITR acknowledgments were submitted, but the same has been totally ignored and brushed aside by Ld. CIT(A). It is submitted that the order passed by Ld. CIT(A) is blatantly incorrect, unlawful, and the addition so confirmed is prayed to be deleted.*

2. *The Ld. CIT(A) has erred in confirming addition of Rs.21,16,73,489/- as unexplained cash credit u/s. 68 of the Act. It is submitted that these are loans and advances given and all material evidence was submitted in this regard, but the same has been totally ignored by Ld. CIT(A) while confirming the addition. It is submitted that additions made and confirmed of Rs.21,16,73,489/- are totally incorrect and illegal both on facts and on law and the same be deleted.*

3. *The Ld. CIT(A) has erred in confirming an addition of Rs.53,43,897/- as unexplained cash credit from the undisclosed source of income u/s. 68 of the Act. It is submitted that the appellant has filed complete details of short-term borrowings of Rs.53,43,897/- but Ld. CIT(A) has not considered the same while confirming the said addition. It is submitted that addition so confirmed u/s. 68 of the Act is prayed to be deleted.*

4. *Without prejudice to the above, it is submitted that Ld. CIT(A) has erred in confirming an addition made stating that a video hearing was given to the appellant, but no one attended. It is submitted that the appellant has taken adjournment against the hearing scheduled on 22/08/2023, but the same has not been considered by Ld. CIT(A) while passing the order confirming the additions. It is submitted that the addition so confirmed is based on a prejudiced mindset and hence prayed to be deleted.*

5. *The order passed by Ld. CIT(A) is bad in law and is contrary to the provision of law and facts. It is submitted that the same be held now.*

6. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing of appeal."*

16. The first effective issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 21,16,73,489/- under section 68 of the Act.

16.1 The assessee in the year under consideration has shown advance money to the directors and the body incorporates which was claimed to have been given in the course of the business. But the AO during the assessment proceedings made certain observations as detailed below:

- i. That the assessee failed to furnish the purpose for which such amount was advanced to the parties.
- ii. The assessee failed to furnish the details of the parties to whom such advances were given.
- iii. The assessee failed to furnish the details whether any interest was charged against such advances given to the parties.
- iv. The assessee failed to furnish the copies of the ITR of the parties to whom such advances were given.
- v. The assessee failed to furnish the business connection with the parties to whom the advances were given.

17. In the absence of the above details, the AO treated the amount of advances made during the year under consideration as an unexplained investment and added to the total income of the assessee.

18. Aggrieved assessee preferred an appeal to the Id. CIT-A who confirmed the order of the AO by observing as under:

*"4.4. Now before me in the appellate proceedings, written submission has been filed. I have gone through the written submission. Video hearing was also given to the appellant but no one attended.*

*I have gone through the written submission. Nature of advances given has not been proved. No details have been filed regarding the sources of deposits and the purpose*

*of the advances. Even relationship with the parties whom trade advances has been given has not been proved. Whether there is business relationship with the parties whom trade advances has been given has not been proved. Purchase/ sale relationship has not been mentioned. Nothing is clear from the submission of the appellant. Whether business relationship existed in earlier years has not been mentioned. Hence, I am of the view that the Assessing Officer is justified in making addition of Rs.21,16,73,489/- as explained short term loan and advances. Addition of the Assessing Officer is sustained and appeal of the appellant is dismissed."*

19. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.

20. The Id. AR before us filed a paper book running from pages 1 to127 and contended that all the necessary details of the parties hearing whose name the advances were shown were furnished during the assessment proceedings which can be verified from the details available on the paper book. Furthermore, all the advances were duly recorded in the accounts and the source of which was nowhere doubted by the authorities below. Therefore, no addition is warranted in the given fact and circumstances.

21. On the other hand, the Id. DR before us submitted that the assessee has not furnished any documentary evidence during the assessment proceedings suggesting that the loans and advances were given in the course of the business and therefore the learned DR prayed that the matter can be set aside to the file of the AO for fresh examination as per the provisions of law.

22. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the loans and advances shown by the assessee have been treated as unexplained investment under section 69B of the Act by the Revenue Authorities. Admittedly, the source of money utilized for such loans and advances has nowhere been questioned/ doubted by the authorities below. Furthermore, such loans and advances were duly recorded in the audited books of accounts. Accordingly, we are of the view that the provisions of section 69B of the Act cannot be attracted. Under the provisions of law, the amount of loans and advances duly recorded in the books of accounts cannot be subject to the addition. What can be added at the most if the source of money is

not explained for such advances by the assessee and that too under the deeming provisions of section 68 of the Act and not under section 69B of the Act i.e. unexplained investment. Accordingly, we are of the view that the addition has been made by the authorities below on wrong assumption of facts.

23. Besides the above, we note that the assessee has duly furnished the details of the parties such as ITR, bank statement and ledger copies/confirmation of the body corporates which can be verified from pages 47 to 83 of the paper book. In view of the above and after considering the facts in totality, we of the view that no such addition is warranted in the given facts and circumstances. Accordingly, we set aside the finding of the Id. CIT-A and direct the AO to delete the addition made by him.

24. The next issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹ 53,43,897.00 under section 68 of the Act.

25. The assessee in the year under consideration has shown unsecured loans amounting to Rs. 53,43,897.00 as short-term borrowings from the party namely M/s High Performance Products Industries Pvt. Ltd. But the AO, in the absence of necessary supporting documents, treated the same as unexplained cash credit under section 68 of the Act, and added to the total income of the assessee.

26. The assessee carried the matter before the learned CIT-A and submitted that there was no question raised by the AO during the assessment proceedings about the short-term borrowings and therefore no detail was furnished. The assessee further submitted that short-term borrowings were received from the party namely M/s High Performance Products Industries Pvt. Ltd. with whom it was maintaining the running account/ledger. The assessee also filed the confirmation of the respective party along with its ITR acknowledgement. However, the learned CIT-A confirmed the order of the AO.

27. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.

28. The Id. AR before us contended that the revenue authorities have disbelieved the closing balance of the party as discussed above by treating the same as unexplained cash credit under section 68 of the Act. As per the learned AR, the assessee was having current account/ running ledger from the impugned party which has not been doubted by the authorities below meaning thereby all the transactions with the party were admitted as genuine barring the closing balance which is contrary to the provisions of law. Thus, no addition is warranted in the given case. Furthermore, the assessee has filed the ledger confirmation and the acknowledgement of the ITR in support of the genuineness of transaction. Thus, the learned AR prayed before us to delete the addition made by the revenue authorities. On the other hand, the Id. DR before us vehemently supported the order of the authorities.

29. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the borrowing shown by the assessee at the end of the financial year from the party, namely M/s High Performance Products Industries Pvt. Ltd., has been treated as an unexplained cash credit under section 68 of the Act. We have perused the ledger account of the party placed on page 122 of the paper book and note that the assessee was having made various transactions which was duly supported by its confirmation and ITR acknowledgement. At the threshold, we hold that the basis adopted by the revenue authorities is vague. All the running transactions between the assessee and the party have been admitted as genuine by the revenue authorities except the closing balance. In our considered view, the revenue cannot pick and choose the transactions holding them as bogus. If the transactions were not genuine with the party discussed above, the entire receipt of money shown by the assessee in the year under consideration should have been deemed as an unexplained cash credit under section 68 of the Act, but the revenue has not done so. Thus, we are not satisfied with the findings of the authorities below.

Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him.

30. In the result, the appeal filed by the assessee is allowed.

31. In the combined result, both the appeals filed by the assessee are allowed.

**Order pronounced in the Court on 17/05/2024 at Ahmedabad**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**  
Ahmedabad; Dated 17/05/2024

*Tanmay*

**TRUE COPY**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad