

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "B", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.2329/Ahd/2018
Assessment Year : 2012-13

M/s.Alang Metal Exim Pvt.Ltd. Shop No.3, Arpan Flat Shishuvihar Circle, Bhavnagar - 364 001 (Gujarat)	Vs	The ACIT Circle-1 Bhavnagar
PAN:AAECA 9651 Q		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	-------	--------------------------

Assessee by :	Shri Tushar Hemani, Sr.Adv. & Shri Parimalsinh B. Parmar, AR
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 13 /06/2024
घोषणा की तारीख /Date of Pronouncement: 19/06/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

This appeal is filed by the Assessee against the order dated 20-9-2018 passed by the Ld.Commissioner of Income Tax (Appeals)-6, Ahmedabad [hereinafter referred to as "the Ld.CIT(A)"] in confirming the addition of Rs.7,00,00,000/- under Section 68 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and disallowance of Rs.3,30,000/- out of loading and unloading charges made by the Assessing Officer (hereinafter referred to as "AO") in his assessment order passed under Section 143(3) of the Act for the Assessment Year (AY) 2012-13.

Facts of the Case:

2. The assessee filed its return of income on 28-09-2012 declaring a total income of Rs.1,13,98,610/-. The case was selected for scrutiny under CASS, and the AO completed the assessment under Section 143(3) of the Act. The AO made an addition of Rs.7,00,00,000/- under Section 68 of the Act in respect of share capital and share premium received from the following parties during the year under consideration, which was confirmed by the Ld.CIT(A):

Name of the Party	Share Capital (Rs.)	Share Premium (Rs.)	Total (Rs.)
Golden Beach Infracon Pvt. Ltd.	50,00,000	4,50,00,000	5,00,00,000
Marker Infracon Pvt. Ltd.	10,00,000	90,00,000	1,00,00,000
Able Realty Pvt. Ltd.	10,00,000	90,00,000	1,00,00,000
Total	70,00,000	6,30,00,000	7,00,00,000

2.1. The assessee could not produce necessary details and evidence before the AO to prove genuineness and creditworthiness of the transaction after several opportunities and even after issuing show cause notice dated 20-03-2015.

2.2. The assessee placed following documents relating to share applicants as additional evidence before the Ld.CIT(A) by filing an application under Rule 46A of Income Tax Rules, 1962:

- i. Acknowledgment of ITR
- ii. Confirmation
- iii. Bank statement of share applicant

- iv. Bank statement of assessee
- v. Audited financial statements of share applicants
- vi. Memorandum of Association and Articles of Association of share applicants.

2.3. As claimed by the assessee, he was prevented by sufficient cause from producing before the AO these documents and reasons were beyond control of the assessee. The Ld.CIT(A) forwarded the application for admission of additional evidence to the AO. The AO in his remand report stated that since the case is not covered by exceptional circumstances as mentioned in Rule 46A and the assessee was given sufficient opportunity during the course of assessment, the assessee's request to produce the additional evidence be rejected.

2.4. The assessee submitted in his reply to the AO's remand report that -

1. *The appellant was not in possession of adequate and necessary evidence during the course of assessment proceedings and hence the requisite evidence was being submitted as additional evidence because the evidence so submitted being related to the root cause of matter of addition.*
2. *Further the Show Cause Notice to prove genuineness of transaction of addition in share capital was issued on 20.03.2015 and the deadline to produce the evidence was 24.03.2015 and hence this does not seem to be a proper opportunity of being heard offered to the appellant.*
3. *Further we request your good honour to consider the following judgement as cited by the ITAT Delhi in the case of Sh. Dharampal Tyagi Vs. ITO "CIT(A) should admit the additional evidences under rule 46A which are relevant and goes to the root of the matter" Thus in light of the above judgement we request your good honour to kindly consider the additional evidence.*

4. *Further CIT(A) has power to admit the fresh evidence despite of failure to produce evidence during assessment proceedings as held in the case of Cit v. Ranjit Kumar Choudhary (2007) 288 ITR 179 (Gau).*
5. *Further your lordship shall consider that it has been held in number of cases including in the case of Keshav Mills Co. Ltd. V. CIT [1965] 56 ITR 365 (SC) and now recognised as Rule 46A, that the appellate authority has a right to admit additional evidence in the interest of justice. Thus considering this judgement the appellant seeks your favour as the evidence so submitted are in the interest of justice.*
6. *It was also held in the case of Anmol Colours India (P) Ltd. V. ITO BCAJ p.24 Vol. 408 Part Oct., 2008 that If Counsel failed to appear and file evidence before Assessing officer, CIT (A) not justified in refusing to accept additional evidence Under Rule 46A.*
7. *Further as regards to the power of appellate authority are concerned, it is well settled that the appellate authority's powers are wide enough to cover power to admit additional evidence. [Babulal Chhapalia (1966) 18 STC 17(SC)].*

Thus it is requested to the Honourable CIT(A) that since the material produced as Additional Evidence is a most relevant material and being a paradigm to the case shall be admitted as the assessee was prevented by sufficient cause and thus he was unable to submit the said evidences during the course of assessment proceedings.

2.5. However, the Ld.CIT(A) without going into the merits of evidence, concluded that the reasons given by the assessee to admit additional evidence are not valid and dismissed the appeal.

3. Aggrieved by the order of the Ld.CIT(A), the assessee in appeal before us with following grounds of appeal:

- “1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO of making an addition of share capital and share premium of Rs.7,00,00,000/- as unexplained income u/s.68 of the Act.
2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition on considerations not arising from the Remand Report of the AO and without giving a notice to the appellant, which is in gross violation of the Principles of Natural Justice.
3. The learned CIT(A) has erred both in law and on the facts of the case in not appreciating that once identity is proved, addition of share capital and premium as unexplained income u/s.68 of the Act is not sustainable.
4. The learned CIT(A) has erred both in law and on the facts of the case in confirming the disallowance of loading and unloading charges of Rs.3,30,000/-.
5. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.
6. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

On grounds of appeal:

4. The Ld.Counsel for the assessee contended that all three ingredients as prescribed under Section 68 of the Act, i.e., identity, genuineness, and creditworthiness of the lenders, were proved by the assessee. The Ld.CIT(A) has confirmed the addition on the grounds that certain observations cast a shadow of doubt on the companies which have paid share capital and share premium and questioned the genuineness of transactions and creditworthiness of the parties.

5.1. The Ld.Counsel for the assessee further argued that the initial burden of proving identity, genuineness, and creditworthiness was discharged by placing documentary evidence on record. Having discharged this burden, the onus shifted to the revenue. The AO did not make any adverse observations in the remand report regarding the additional evidence, implying that the documentary evidence was in order.

5.2. The Ld.Counsel for the assessee further stated that neither the AO nor the Ld.CIT(A) made efforts to cross-verify the transactions with the concerned investors by issuing notices under Section 133(6) of the Act or summons under Section 131 of the Act. The Ld.CIT(A) confirmed the addition based on suspicion, which cannot substitute evidence. The Ld.CIT(A) made a factually incorrect statement that the confirmations did not bear the signatures of the investors. However, the confirmations contained both stamps and signatures.

5.3. Regarding the disallowance of loading and unloading charges, the counsel for the assessee argued that these expenses were part of the duly audited books of accounts, and no defects were pointed out by the auditor, the AO, or Ld.CIT(A). The AO made an ad-hoc disallowance of Rs.3,30,000/- at the rate of 5% of the total loading and unloading charges of Rs.1,21,11,325/-, which was confirmed by the Ld.CIT(A).

6. On the other hand, the Ld.Departmental Representative relied on the order of Ld.CIT(A).

7. We have gone through the contentions of both the parties and perused the material available on record. Upon review, it is evident that the Ld.CIT(A) has not decided the case on merit. The AO did not comment on the additional evidence submitted by the assessee in the remand report. The Ld.CIT(A) failed to consider this additional evidence while deciding the appeal.

7.1 We find that the assessee has duly discharged the initial burden of proving the identity, genuineness, and creditworthiness of the share applicants by furnishing the necessary documentary evidence. The AO and the Ld.CIT(A) did not make any adverse comments in the remand report regarding this evidence. Suspicion, however strong, cannot replace evidence, and the Ld.CIT(A) should not have confirmed the addition merely based on suspicion. He was required to conduct the detailed inquiry and pass a reasoned order. The Ld.CIT(A) in his order has relied on some judicial pronouncements which are required to be distinguished on the basis of additional evidence produced by the assessee before the Ld.CIT(A).

7.2. **In the case of Tin Box Company vs. CIT (2001) 249 ITR 216 (SC)**, the Hon'ble Supreme Court has held that when the appellate authority has not decided the case on merits and additional evidence is submitted, the matter should be remanded back to the appellate authority for reconsideration.

7.3. Regarding the disallowance of loading and unloading Charges, we conclude that the expenses were part of the duly audited books of accounts with no defects pointed out by the auditor. Neither the AO nor the Ld.CIT(A) identified any specific defect in the claim of these expenses.

The *ad-hoc* disallowance is not justified in the absence of any specific defect or irregularity. Therefore, the disallowance of Rs.3,30,000/- out of loading and unloading charges is hereby deleted. Hence, Ground No.4 of the assessee's appeal is allowed.

7.4. In light of the above facts and the aforesaid decision of the Hon'ble Apex Court, we deem it fit to restore the matter back to the file of the Ld.CIT(A) with a direction to decide the matter afresh on the basis of additional evidence submitted by the assessee in case of Ground Nos. 1 to 3. The Ld.CIT(A) is directed to provide a fair opportunity of being heard to the assessee and to pass a reasoned order considering all the evidences on record.

8. Ground Nos. 5 and 6 are general and consequential in nature, hence not adjudicated.

9. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 19th June, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 19/06/2024

टी.सी.नायर, व.नि.स।T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-6, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad