

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA NO.1428/MUM/2024

Assessment Year: 2009-10

U.S. Instruments Pvt. Ltd.
C/o. Dalal Desai & Kumana,
Union Co-operative Insurance Building,
2nd Floor, Above Vodafone Store,
23 P.M.Road, Fort, Mumbai – 400 001
PAN: AAACU-0667-J.

---- Appellant

Vs.

DCIT- (1)(3)(1), Mumbai
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

--- Respondent

Appellant by : Shri H.N.Motiwala
Respondent by : Ms. Rajeshwari Menon

Date of Hearing : 06/06/2024
Date of Pronouncement : 18/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in directing the AO to examine the credit worthiness of share applicants and two other parties in assessment year 2008-09/ relevant year in which money was received.

2. The facts relating to the above said issue are discussed in brief. During the year under consideration, the assessee had issued shares at a premium of Rs.39/- per share. The details of shares issued and premium collected by the assessee is tabulated below:-

	Name of share allottee	Face Value received (Rs.)	Premium received (Rs.)	Total receipt (Rs.)
1.	V.K.Trust	48,58,612	18,94,85,868	19.43.44.480
2.	R.K.Trust	12,97,135	5,05,88,265	5,18,85,400
3.	Umesh Zadgoankar	3,23,950	1,26,34,050	1,29,58,000
4.	Arun Babulal Shah	25,00,000	7,75,00,000	10,00,00,000
	Total	89,79,697	35,02,08,183	35,91,87,880

The assessing officer assessed the share premium amount of Rs.35.02 crores as unexplained cash credit u/s 68 of the Act.

3. In the appellate proceedings, the assessee furnished details relating to the share capital/premium received by it. It was submitted that the share application money was received in the earlier years and during the year under consideration, the shares were allotted. Accordingly, it was submitted that the addition u/s 68 of the Act could not have been made in this year, as there was no receipt of money during the instant year. The Ld CIT(A) called for a remand report from the AO and in the remand report, the assessing officer also accepted that the addition u/s 68, if any, is required to be examined in AY 2008-09 or relevant year in which the money was received. Based on the remand report, the Ld CIT(A) deleted the addition of Rs.35.02 crores made by the AO u/s 68 of the Act in the year under consideration, i.e., assessment year 2009-10.

4. The share applicants, viz., V.K.Trust and R.K.Trust have not filed return of income of AY 2009-10 on the plea that they did not have taxable income. Further, it was submitted that both these trusts have held shares in a company named M/s Asian Electronics Ltd and both the trusts have sold those shares in the earlier year. It was submitted that a part of sale consideration received was claimed to have been invested in purchasing shares of the assessee company. In view of the above said submissions and

further, since the share application money was received by the assessee from them in the year relevant to AY 2008-09, the Ld CIT(A) directed the AO to examine the creditworthiness of VK Trust and RK Trust by reopening the assessment for AY 2008-09 of the assessee company in terms of sec.150 of Income tax Act.

5. In respect of share application money received from Shri Arun B Shah, it was submitted that the balance outstanding in the names of M/s Pranam Ghar (India) P Ltd and M/s Raymold Lighting P Ltd were used to allot shares to Shri Arun B Shah. The Ld CIT(A) took the view that the details of receipt of money from the above said two companies require to be examined and accordingly directed the AO to examine the credit entries by reopening the assessment of the year in which money were received from the above said two companies by the assessee as per law provided in sec.150 of the Act.

6. The assessee is aggrieved by the above said directions given by Ld CIT(A). According to the assessee, the Ld CIT(A) should not have given such directions.

7. We heard the parties and perused the record. We noticed that the assessee had received share application money in the earlier years and not during the year under consideration. Hence, the AO and Ld CIT(A) have accepted that the addition u/s 68 of the Act could not have been made in the year under consideration. We notice that the Ld CIT(A) has only directed the AO to examine the receipt of money in the year in which they were received by reopening the assessment of the relevant years. Even without such specific direction, it is always open for the AO to reopen the assessment of the year in which the amounts were claimed to have been received. This is so provided in sec.150 of the Act. Hence we do not find any reason to interfere with the directions so given by the Ld CIT(A).

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 18th June, 2024.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai, Date : 18th June, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, " F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai