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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri K. Narasimha Chary, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.59/Hyd/2018**
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Agarwal Sponge & Energy (P) Ltd., Hyderabad PAN:AAECA8680P	Vs.	Dy. C. I. T. Circle 1(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Sunil Kumar Jain, CA	
राजस्व द्वारा / Revenue by:	Ms. Sheetal Sarin, DR	
सुनवाई की तारीख / Date of hearing:	27/05/2024	
घोषणा की तारीख / Pronouncement:	28/06/2024	

आदेश / ORDER

Per Madhusudan Sawdia, A.M:

This appeal is filed by Agarwal Sponge & Energy (P) Ltd. ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-1, Hyderabad ("Ld.CIT(A)") dated 31.08.2017 for A.Y.2010-11.

2. *The assessee has raised the following concise grounds:*

"1. *The order of the learned CIT(A) dated 31/8/2017 is contrary to law and facts.*

2. The disallowance of the sum of Rs. 49,65,602/- as speculation loss is erroneous. The learned Assessing Officer and CIT(A) erred in not accepting the contention that the said amount cannot be treated as speculation transaction as it is exempted under clause (a) of sub-section (5) to section 43 or in the alternative under clause (d) to sub-section (S) of section 43 of the Income Tax Act.

3. The disallowance of notional interest Rs,27,97,525/-and Rs.9,27,900/-on amounts advanced free of interest is erroneous. The learned CIT(A) erred in not accepting that the appellant has enough interest free funds and adequate receipts free of interest out of which the interest free advances were given. The learned CIT(A) also support that the disallowance is uncalled for. failed to consider the decisions cited before him in

4. The learned CIT(A) erred in upholding the addition of amounts borrowed aggregating to Rs.65,41,407/- as appellant's income. On the facts and circumstances of the case, the addition is uncalled for.

5. The learned CIT(A) erred in confirming the addition of Rs.3,50,000/ being money borrowed from Arun Kumar Kedia as income.

6. The learned CIT(A) erred in confirming the addition of Rs.65,00,000/- being money borrowed from Purushotham Lalwani as appellant's income.

7. The appellant contends that all the loans and borrowals are genuine and are supported by proof. The learned Assessing Officer as well as CIT(A) erred in not properly appreciating the factual position.

8 The learned CIT(A) erred in confirming the addition of share application money of Rs.1,87,50,000/- as appellant's income. The said share application moneys have been received from three applicants and are supported by documentary evidence.

9 The learned CIT(A) erred in confirming the addition without putting to the assessee whatever doubts he had about the receipt of share application moneys. He drew adverse conclusion without giving the appellant adequate opportunity of being heard.

10. The levy of interest u/s. 234A, 234B and 234C is not correct and the appellant denies its liability for the levy of interest amounts.

11. The appellant craves leave to add, amend or alter any of the aforesaid grounds as the occasion may require.”

3. Facts of the case, in brief are that the assessee company is engaged in the business of manufacture of sponge iron lumps, filed its return of income on 15/10/2010, declaring loss of Rs.3,32,93,668/- under the normal provisions of Income Tax Act, 1961 ("the Act") and profit of Rs.17,28,396/- u/s 115JB of the Act. The case of the assessee was selected under manual scrutiny and the assessment was completed by the Learned Assessing Officer ("Ld. AO") u/s. 143(3) of the Act on 28.03.2013 determining total income at Rs.76,56,198/- under the normal provisions of the Act.

4. The assessee raised as many as 11 grounds in this appeal. The ground No.1 & 11 are general in nature and hence do not require any separate adjudication.

5. Ground No.2 of the assessee relates to disallowance of Rs.49,65,602/- on account of speculation loss. The brief facts with regard to this ground are that, during the year the assessee company incurred loss of Rs.49,65,602/- from Future & Option ("F&O") transactions and setoff the said loss from the net profit of regular business. The Ld. AO disallowed this claim of the assessee treating the loss of Rs.49,65,602/- from F&O transactions as

speculation loss contending that the same cannot be setoff from the regular business income.

5.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A) who dismissed the claim of the assessee contending the same as speculation loss.

5.2 Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that during the year the assessee had earned some profit from F&O transactions for purchase and sale of US\$. However, in respect of sales and purchase in derivative commodities in “steel long”, the assessee suffered a loss of Rs.56,50,762/-. Hence there was net loss of Rs.49,65,602/- on account of F&O transactions. In this regards the argument placed by the Ld. DR are in two folds.

a) The Ld. DR submitted that the assessee is engaged in manufacturing of sponge iron and hence the business of assessee is related to iron and steel. He also submitted that the assessee is also engaged in trading of iron and steel. Therefore, the assessee entered into derivative contracts in commodities to safeguard the rates in steel commodities. Hence the transaction entered into by the assessee to safeguard the rates in future cannot be treated as speculative as per the proviso (a) to section 43(5) of the Act.

However, the Ld. AO without appreciating the facts of the assessee treated the transaction as speculative and disallowed the claim of the assessee. Hence the Ld. AR requested the Bench to allow the claim of the assessee.

b) In alternative argument the Ld. AR submitted that the transaction undertaken by the assessee are covered under the proviso (e) of section 43(5) of the Act and hence it cannot be treated as speculative transaction. Therefore, the Ld. AR requested the Bench to allow the claim of the assessee.

5.3 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

5.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. So far as the first argument of the Ld. AR is concerned, the assessee has entered into F&O transactions in steel products. However, the assessee is engaged in the production of sponge iron, which is the finished product of the assessee, by use of iron ore as its raw material. The item in which the assessee has entered into F&O transactions are neither the finished product nor the raw material of the assessee. Further, the assessee did not able to justify from the Profit & Loss account that it is engaged in the trading of iron

and steel. In support of his argument the assessee relies on the decision of coordinate bench in the case of Asstt. CIT v. Surya International (P.) Ltd.[2018] 97 taxmann.com 428/258 Taxman 172 (All.), in which the ITAT has held that, "Where assessee, manufacturer of edible oil, entered into forward contracts for purchase and sale of raw materials from abroad in order to protect itself from future price fluctuations because market for procurement of raw material was seasonal as well as volatile, loss incurred by assessee on aforesaid contracts was not speculative in nature rather same was to be allowed as business loss." However in the case of the assessee the item in which the F & O transactions have been entered into, is neither a rawmaterial/finished products nor a trading item for the assessee. Therefore the case of the assessee is not covered by the decision of coordinate bench in the case of Asstt. CIT v. Surya International (P.) Ltd.[supra] and also not under Proviso (a) of section 43(5) of the Act. Hence on this count the F&O transactions are speculative business for the assessee. Therefore, we dismiss this ground of the assessee on this count.

5.5 The alternative ground of the assessee is that , the transactions undertaken by the assessee is covered under Proviso (e) of section 43(5) of the Act and for this the Ld. AR brought our attention to page No. 49 to 201 of the Volume-2 of the paper book, in which the copies of contracts notes related to F & O transactions of steel longs are filed. By going through the said copies of contracts notes it can be persued that no commodity transaction tax (“CTT”) has been paid on the said F & O transactions. However to fall within Proviso (e) of section 43(5) of the Act, the payment of CTT is a pre conditions. As no CTT has been paid on the said F & O transactions, the transactions undertaken by the assessee will be in the nature speculative in nature. Therefore, we dismiss this ground of the assessee on this count also.

5.6 Hence the Ground No.2 of the assessee is dismissed.

6. Ground No.3 raised by the assessee is with regard to the disallowance of notional interest of Rs. 27,97,525/- and Rs.9,27,900 on amount of advance given free of interest. The brief facts with regard to this ground are that, the assessee company had given some interest free loan to sister concern and the company had an expenditure towards interest of Rs. 2,72,97,315/-.

Hence the Ld. AO disallowed an amount of Rs.27,97,525/- u/s.36(1)(iii) of the Act. The assessee had also made interest free advance to its Director and their relative. Hence the Ld. AO disallowed an amount of Rs.9,27,900/- u/s.36(1)(iii) of the Act on account of this also.

6.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A) who dismissed the claim of the assessee contending the same is disallowable u/s.36(1)(iii) of the Act.

6.2 Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the assessee had an interest free fund of Rs.36,07,48,379/-, the details of which were also furnished before the revenue authorities. However, the interest free advances given to sister concern and Directors & their relatives are Rs.2,33,12,710/- and Rs.1,03,10,310/- respectively. Hence the assessee had surplus interest free fund over the interest free advances given by the assessee. Therefore the disallowance made by the revenue authorities on account of notional interest are to be deleted. In support of his claim the Ld. AR relied on the

decision of co-ordinate bench in the case of Agarwal Industries Pvt. Ltd. in ITA No.812/Hyd/2019 and ITA No.629/H/2012.

6.3 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

6.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. There is no dispute about the facts that the assessee was having interest free fund of Rs.36,07,48,379/-, which is more than the total amount of interest free advances given by the assessee to its sister concern, Director and their relatives. However the Ld. AO made a disallowance of notional interest of Rs. 27,97,525/- and Rs.9,27,900 on account of interest free advances given out of available interest free funds. The identical issues were came before the co-ordinate bench in the case of Agarwal Industries Pvt. Ltd. (supra) in which the Hon'ble Bench held that if the interest free and own funds are advanced to sister concern and others, the charging of notional interest does not arise. Following the view taken by the Hon'ble Bench in the case of Agarwal Industries Pvt. Ltd. (supra), we also hold that the disallowance of notional interest of Rs.27,97,525/- and Rs.9,27,900/- does not arise. Hence we delete

the addition made by Ld.AO amounting to Rs.27,97,525/- and Rs.9,27,900/-. Accordingly, the ground no.3 of the assessee are allowed.

7. The next ground raised by the assessee in Grounds of appeal No.4 is with regard to the addition of Rs.65,41,407/- on account of sundry creditors. The Ld. AO made an addition of Rs.65,41,407/- on account of differences found between the closing balances as per creditors and the closing balances as shown by the assessee in the case of six creditors. The observation of the Ld.AO for making the said addition are contained in para No.6 of his order, which is reproduced as under :

“6. The assessee was asked to furnish the list of creditors and letters were issued to the creditors. The information received in the following cases resulted in difference in the creditors account which is tabulated as under :

<i>Sl.No.</i>	<i>Name of Creditor</i>	<i>Amount as per creditor</i>	<i>Amount as per assessee</i>	<i>Difference</i>
1.	<i>M/s. SPIC Services.</i>	<i>Cr. Balance 19809</i>	<i>3,85,183/-</i>	<i>3,65,374/-</i>
2.	<i>M/s. Sairose Project Services</i>	<i>11,18,116/-</i>	<i>11,02,508/-</i>	<i>15,659/-</i>

3.	Sri Lakshmi Transport	18,40,916/-	15,27,032/-	3,13,884/-
4.	M/s. Garima Enterprises	NIL	54,04,608/-	54,04,608/-
5.	Swastik Transport Carriers	6,03,912/-	3,66,305/-	2,37,607/-

In the account of M/s. SIPC services the assessee is showing him as creditor however M/s. SPIC services is showing the assessee as having credit balance, therefore the net credit balance shown by the assessee at Rs.3,65,374/- is added back to IR. In the case of M/s. Garima Enterprises, the creditor denied any liability and hence the amount of Rs.54,04,608/- is added back to the IR. However the assessee came up with the plea on 26.03.2013 that the address of M/s. Garima Enterprises was wrongly given and the stated that a copy of the invoice is enclosed to that letter, but the same was not enclosed. In four cases i.e. M/s. Jeevan Transport, Sairose project services, Lakshmi Transporters and Swastik Transport carriers the total payable by the assessee was more by Rs.7,71,625/- as per the confirmation letters given by them. Since the as. Did not reconcile the differences the same was treated as excess of liability over assets / unsubstantiated liability. Hence the same is treated as income of the assessee.”

7.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A). The assessee did not able to reconcile the said differences in the closing balances of creditors before the Ld.CIT(A) also. Hence the Ld.CIT(A) upheld the stand of Ld. AO and dismissed the appeal of the assessee. The

observation of the Ld.CIT(A) for making the said addition are contained in para No.9.3 of his order, which is reproduced as under :

“ 9.3 The submissions of the appellant have been carefully considered. Only submissions has been made in case of M/s. Garima Enterprises. Appellant has submitted that LC was opened for' payment to M/s. Garima Enterprises, however, the payment was made by RTGS. No reconciliation has been made regarding the difference of figures nor supporting evidence were submitted before me/ to confirm the difference in payment, The Assessing Officer has categorically pointed out the difference between appellant's and the M/s, Garima Enterprise's accounts. This has not been explained by the appellant, If at all, there was a mistake/difference in the figures both the parties should have had the same figures. Since no explanation has been adduced on this issue nor any evidence has been submitted in contrary to the Assessing Officer. The stand of the Assessing Officer is upheld in case of M/s. Garima Enterprises In cases of remaining creditors, the appellant has not submitted any documentary evidence or any conclusive explanations to justify the claim. The stand of the Assessing Officer is upheld in the scenario.”

7.2 Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld. AR in his written submission before us on 29.5.2024 explained the reason of difference in the closing balance in the case of M/s. Garima Enterprises. He also submitted that the same was also filed before the Ld.CIT(A) on page Nos.4 & 5 and 25 &

26 of the petition under Rule 46A. Further, with regard to other differences in the case of other five creditors, the Ld. AR submitted that if an opportunity is given, the assessee is ready to reconcile all the differences before the Ld.AO. Therefore, he requested the Bench to remand the matter back to the file of the Ld.AO for fresh consideration.

7.3 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

7.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. The Ld. AR in his written submission before us on 29.5.2024 explained the reason of difference in the closing balance in the case of M/s. Garima Enterprises. He also submitted that the same was also filed before the Ld.CIT(A) on page Nos.4 & 5 and 25 & 26 of the petition under Rule 46A. We have gone through the submissions filed by the Ld. AR and are of the opinion that the same is required to be verified from the records of the assessee. With regard to differences in the closing balances of other five creditors, the assessee is ready to explain and reconcile the differences before the Ld. AO. For the

cause of justice, we remand this issue to the file of Ld.AO with a direction to verify the differences with the records of the assessee and give relief to the assessee as per the law after providing an opportunity of being heard to the assessee. Accordingly, the ground of the assessee is allowed for statistical purposes.

8. The next ground raised by the assessee in ground No.5 is with regard to the addition of Rs.3,50,000/- made on account money borrowed from Arun Kumar Kedia. The brief facts with regard to this ground are that, the assessee had taken a loan of Rs.3,50,000/- from Arun Kumar Kedia. During the assessment proceedings, the Ld.AO treated the same as income of the assessee due to the reason that no confirmation letter from Arun Kumar Kedia was furnished.

8.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A) who dismissed the claim of the assessee contending that no confirmation letter from Arun Kumar Kedia was furnished.

8.2 Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the confirmation of Arun Kumar Kedia along with a copy of PAN had been submitted

before the Ld.CIT(A) as enclosure on page No.24 of the petition under Rule 46A filed with the Ld.CIT(A) for the admission of additional evidence. However, without verifying the same the Ld. CIT(A) disallowed the claim of the assessee. Hence the Ld. AR requested the Bench to delete the addition of Rs.3,50,000/- made by the revenue authorities.

8.3 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

8.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. There is no dispute about the facts that the assessee had submitted the confirmation of Arun Kumar Kedia along with a copy of PAN before the Ld. CIT(A). However, without verifying the same the Ld. CIT(A) disallowed the claim of the assessee. The Ld. AR brought our attention to page no. 85 of the P.B. filed on 03/05/2024, which is the copy of confirmation of Arun Kumar Kedia along with a copy of PAN filed before the Ld. CIT(A). In our considered opinion, as the required documents have already been

submitted before the Ld.CIT(A), the same should not have been disallowed. Hence we hereby delete the addition of Rs.3,50,000/- made by the revenue authorities. Accordingly, the ground no. 5 of the assessee is allowed.

9. The next ground raised by the assessee in Grounds of appeal No.6 & 7 are with regard to the addition of Rs.65,00,000/- on account of money borrowed from Purushotham Lalwani . The Ld. AO added the amount of Rs.65,00,000/- borrowed from Purushottam Lalwani as assessee's income by observing in para No.7 of his order as under :

“ 7. During the course of scrutiny, the assessee-company furnished confirmation letters from unsecured loan creditors except from shri Arun Kumar Kedia and the amount of Rs.3,50,00/- lent by him is treated as cash credit in hands of the company, and assessed accordingly. In the case of Shri Purushotam Lalwani, resident of Mumbai, Confirmation letter furnished by the AR has a peculiar feature, to say that the paper on which such confirmation letter was given is not folded, and this paper gives rise to suspicion that it has not come from Mumbai. It is common knowledge that any paper which is sent from far off place will be put in a cover and then transmitted. Even if a cover of the paper's size is used at least there will be some folds that occur during handling. Therefore the confirmation letter by itself is doubtful and cannot be accepted. Hence this amount of Rs.65,00,000/- is treated as income u/s 68.”

9.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A) who dismissed the

claim of the assessee having doubt on genuinity of the loan transaction on the ground that confirmations does not contain the details of the receipt of money and partial repayment thereof .

9.2 Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the Ld.AO never doubted the receipt of money and partial repayment thereof . The only doubt in the mind of Ld. AO was that, how there was not a single fold in the confirmation which is received from Mumbai through courier. However before the learned CIT (A), the assessee submitted the original envelope alongwith the copy of the shipper's receipt and convinced the Ld. CIT(A) regarding not having any fold in the confirmations. However, the Ld.CIT(A) sustained the addition made by the Ld.AO contending that the loan transactions are not genuine because the confirmations does not contain the details of the receipt of money and partial repayment thereof. However there were no such objections made by the Ld. AO. Hence the Ld. AR requested the Bench to delete the addition of Rs.65,00,000/- made by the revenue authorities.

9.3 Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

9.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. There is no dispute about the facts that the Ld.AO never doubted the receipt of money and partial repayment thereof . The only doubt in the mind of the Ld. AO was that, how there was not a single fold in the confirmation which is received from Mumbai through courier. However before the learned CIT (A), the assessee submitted the original envelope along with the copy of the shipper's receipt and convinced the Ld. CIT(A) regarding not having any fold in the confirmations. By this in our view the assessee has satisfied the objections raised by the Ld. AO and hence the addition of Rs.65,00,000/- made by the Ld. AO is required to be deleted. Accordingly we delete the addition of Rs.65,00,000/- and allow the appeal of the assessee. Accordingly the Ground no. 6 & 7 of the assessee are allowed.

10. In Ground No.8 & 9, the assessee submitted that the Ld.CIT(A) erred in confirming the addition of share application

money of Rs.1,87,50,000/- as income of the assessee. The said share application moneys have been received from three companies. During the assessment proceedings, the Ld. AO called information from these three companies by issuing notices u/s. 133(6) of the Act. However, no reply was received from these companies. Therefore, the Ld.AO make addition to the total income of the assessee the amount of Rs.1,87,50,000/- received as share application money from these companies. The observation of the Ld. AO for making such addition are covered under para No.8 of his order which is reproduced hereunder :

“ 8. During the scrutiny proceedings, the assessee furnished the details of Share Application Money as under: -

<i>a) Minolta Finance Limited, Kolkata</i>	<i>Rs. 25,00,000/-</i>
<i>b) Jugantar Mercantiles (P) Ltd., Kolkata</i>	<i>Rs.87,50,000/-</i>
<i>c) I.F.S.L. Ltd., Indore :</i>	<i>Rs.75,00,000/-</i>
	<i>Total : Rs.1,87,50,000/-</i>

Letters were issued to the above three companies u/s 133(6) on 8,03,2013 which were duly served to them on 21.03.2013, 21.03.2013 & 25.03.2013 respectively, as per the 'India Post' website. However, no reply was received from any of the above three companies. In view of the non-compliance to the above letters the amount of Rs.1,87,50,000/- is treated as unexplained

investment and the same is added to IR of the assessee company.”

10.1 Feeling aggrieved by the order passed by Ld. AO, the assessee filed an appeal before the Ld.CIT(A). The assessee filed the details called by Ld. AO by issue of notice u/s.133(6) of the Act from three companies before the Ld.CIT(A). The Ld.CIT(A) found various deficiencies in the said documents filed by the assessee. With his observations in para No.12.4 of his order, the Ld.CIT(A) dismissed the ground of the assessee, which is reproduced as under :

“ 12.4 The analysis of all the subscribers to share application reveals stereotype contention. They are as follows :

- a) All the issue of cheques / payments to assessee company by the subscribers (mentioned above) is preceded by deposit of same amount of money in their bank account. This is done on the same day or a day before.*
- b) All of them are assessee's of Income Tax, however, showing an income of negligible or NIL income for the relevant Financial Year.*
- c) The bank account shows very less amounts to their credit before the issue of funds / cheques.*
- d) All the companies mentioned above, have not submitted complete bank account details.*
- e) All the companies do not have much business activity.*
- f) No annual accounts submitted of any of these three companies.*
- g) For A.Y. 2010-11, none of these companies have given details regarding the source of funds.*

h) All the companies claimed to be in the financial services company. However, they do not have their own funds for business purposes.

In light of the above, it is clear that all the three companies have given bogus confirmations. Neither the companies are genuine nor the transactions appear to have been genuine. The contention of the Assessing officer regarding investment of its own funds as share capital has strength. This also has confirmed by the fact that no share application register was submitted nor any share was allotted to any of the three companies. The appellant has not argued to the findings/of the Assessing officer' The Assessing officer has issued a letter to these three companies and had received acknowledgment, However, the companies did not directly replied to the Assessing officer. However, before me, the appellant submitted letters, all were dated as follows :

- i) M/s.Minolta Finance Limited, Kolkata : 20.04.2013*
- ii) M/s. Jugantar Mercantiles (P) Ltd., Kolkata: No date.*
- iii) M/s. I.F.S.L. Ltd., Indore: No date.*

This itself shows that the recipient three companies did not choose to reply to Income Tax u/s.133(6) dated 18,03,2013, The confirmation submitted before me are an afterthought and with connivance with the appellant company. Appellant did not file any explanation regarding the non-submission of the confirmation before the Assessing officer. It is pertinent to note that ail the third party confirmations were Xerox copies which itself makes it unacceptable.

In light of the above, the analysis and findings the contention of the appellant that Rs.1,87,50,000/- has been subscribed by M/s.Minolta Finance Limited, M/s.Jugantar Mercantiles (P) Ltd and M/s.I.F.S.L. Ltd are bogus. I uphold the addition made by the Assessing officer on this issue.

- Ground Dismissed.”

10.2 Feeling aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us. The Ld.AR submitted that the details called by Ld. AO vide his notice u/s.133(6) of the Act were submitted before the Ld.CIT(A). He further submitted that all the amounts were received from the companies are through banking channel only and there were no cash deposit in their bank accounts before issue of cheques to the assessee. He further submitted that all the credits in the bank accounts of the companies were through Account Payee Cheque only. However, Ld.CIT(A) sustained the addition made by the Ld. AO contending that the money has come into the bank account of the company on the same day of issue of cheques. Further, the other reasons cited by Ld.CIT(A) for sustaining the addition made by the Ld.AO, is requiring the assessee to prove the source of the sum so credited in the bank account of the company. However, in fact the requirement of furnishing source of the source has been introduced by the Finance Act, 2012 w.e.f. 1.4.2013. Therefore, the requirement of justifying the source of the source is not applicable to the assessee. As there were sufficient funds in the bank account of the company and there being no cash deposits in the bank account before issue of the cheques, the credit worthiness of the company was sufficiently proved.

10.3 Per contra, the Ld. DR submitted that as pointed out by Ld. CIT(A) the share application money received by the assessee is doubtful on account of following reasons :

- a) All the issue of cheques / payments to assessee company by the subscribers (mentioned above) is preceded by deposit of same amount of money in their bank account. This is done on the same day or a day before.
- b) All of them are assessee's of Income Tax, however, showing an income of negligible or NIL income for the relevant Financial Year.
- c) The bank account shows very less amounts to their credit before the issue of funds / cheques.
- d) All the companies mentioned above, have not submitted complete bank account details.
- e) All the companies do not have much business activity.
- f) No annual accounts submitted of any of these three companies.
- g) For A.Y. 2010-11, none of these companies have given details regarding the source of funds.
- h) All the companies claimed to be in the financial services company. However, they do not have their own funds for business purposes.

Further, the Ld. DR submitted that notice u/s. 133(6) of the Act was issued to all the subscribers calling certain information. However, the subscribers did not respond to the said notice before

the Ld. AO. The assessee submitted the information / documents called u/s.133(6) of the Act before the Ld. CIT(A). The Ld. DR argued that submission of information / documents by the assessee himself cannot be equated with the information / documents to be submitted u/s.133(6) of the Act directly by the subscribers. Hence the Ld. DR submitted that the information / documents directly submitted by the assessee before the Ld. CIT(A) cannot be treated as compliance made to notice issued u/s.133(6) of the Act. Therefore, he requested to uphold the order of the revenue authorities.

10.4 We have heard the rival contentions and gone through the record in the light of submissions made by either side. The Ld. AR submitted that all the amounts were received from the companies are through banking channel only and there were no cash deposit in their bank accounts before issue of cheques to the assessee. He further submitted that all the credits in the bank accounts of the companies were through Account Payee Cheques only. The Ld. AR also submitted that the information / documents called by the Ld. AO were submitted before the Ld. CIT(A). Hence the Ld. AR requested before the Bench to delete the addition. However, the Ld.

DR submitted that there were many discrepancies as cited above under para No.10.3. Further, the subscribers did not respond to the notices issued u/s.133(6) of the Act before the Ld. AO and the submission of information / documents directly by the assessee before the Ld. CIT(A) cannot be treated as compliance to the notice issued u/s.133(6) of the Act. In our view, every section in the statute has some specific purpose to serve and if notice u/s.133(6) of the Act has been issued by the Ld. AO, it must have been complied in accordance with the requirements of the section. Hence the compliance must have been made by the subscribers themselves instead of furnishing of the information / documents directly by the assessee. As there were many discrepancies in receipt of the share application money as cited by the Ld. DR and there were non-compliances to the notice issued u/s.133(6) of the Act by the subscribers, we are of the opinion that the assessee is not able to substantiate the genuineness of the share application money received by him. Hence we dismiss the claim of the assessee and uphold the view of the lower authorities. Accordingly, the grounds of the appeal are dismissed.

11. Since ground no. 10 is related to levy of interest u/s 234A, 234B & 234C of the Act, which are consequential in nature, no separate adjudication is required on the same.

12. To sum up, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 28/06/2024.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad,
dated 28/06/2024.

* **Reddy gp**

Copy to:

S.No	Addresses
1	M/s. Agarwal Sponge & Energy Ltd, 15-1-52/1 Jagdish Nivas, Old Feelkhana Hyderabad
2	Dy.CIT, Circle 1(1) Hyderabad
3	Pr. CIT -1, Hyderabad.
4	DR, ITAT, Hyderabad.
5	Guard File

By Order

Asst. Registrar, ITAT, Hyderabad.