

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोराड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.837/Kol/2023
Assessment Year: 2012-13

Florence Dealer Pvt. Ltd.....Appellant
56E, Hemanta Basu Sarani,
Room No.2, West Bengal-700001.
[PAN: AAACF4357L]

vs.

ITO, Ward-9(2), Kolkata..... Respondent

Appearances by:

Shri D. K. Patni, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 09, 2024

Date of pronouncing the order : July 02, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.06.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated against the confirmation of addition of Rs.2,00,00,000/- made by the Assessing Officer treating the share application money/share premium received by the assessee as unexplained income of the assessee u/s 68 of the Act.

3. At the outset, the ld. counsel has invited our attention to the impugned assessment order to submit that the only observation made by the Assessing Officer in the impugned order is that the assessee during the year had received share capital/share premium of

Rs.2,00,00,000/- and he treated the said amount as unexplained income of the assessee by way of a non-speaking order and in a mechanical manner. The assessee had duly furnished all the details relating to the identity and creditworthiness of the creditors and genuineness of the transaction. During the year under consideration, the assessee company had received the amount in question from the four share subscribers. During the course of assessment proceeding, the Assessing Officer issued u/s 142(1) of the Act asking for details and explanations relating to the aforesaid transactions, to which the assessee duly furnished its reply. The Assessing Officer also issued summons u/s 131 of the Act to the directors of the four share-subscriber companies for personal appearance and also asked to produce the relevant details/evidences. The Assessing Officer noted that in compliance to summons u/s 131 of the Act, “Shri B. K. Jain, director of one share subscriber company appeared and made deposition but satisfactory reply was not received regarding vital questions. Other directors for remaining share allottee company were not appeared”.

3.1 The ld. counsel has submitted that the assessee had duly furnished the relevant documents such as copies of balance sheets, copies of ITRs for the assessment year 2012-13, copies of bank statements, copies of identity proof of the directors and source of funds in respect of each of the share subscribers. Apart from that, it was submitted that the identity of the share subscriber was duly proved, transactions were carried out through banking channel, the source of funds of the share subscriber was duly furnished. The Assessing Officer, however, without examination any of the documents, straightway and in a mechanical manner, treated the entire share

application money as bogus. That even the Assessing Officer did not point out any defect, discrepancy or infirmity in the evidences furnished by the assessee and made the impugned addition u/s 68 of the Act in a mechanical manner.

3.2 The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that even the ld. CIT(A) without considering any of the submissions and evidences furnished by the assessee confirmed the addition in a mechanical manner.

4. We find that the only observation made by the assessing officer in the impugned order is that the burden was upon the assessee to prove the identity, and creditworthiness of the subscribers and genuineness of the transaction. Thereafter he straightaway held that there was no compliance on the part of the assessee and that the assessee has failed to prove satisfactorily the source and nature of the amount credited in its accounts. On the other hand, the ld. Counsel for the assessee, referring to the paper book has demonstrated that all the necessary documents establishing the identity and creditworthiness of the share subscribers and proving the genuineness of the transactions including the source of the funds of the subscribers were duly furnished before both the lower authorities. Though the Assessing Officer has noted in the assessment order that the assessee has filed its submissions, but there is no discussion about any of the documents furnished by the assessee. Even the Assessing Officer has not mentioned in the assessment order as to what was the name of the share subscriber companies from whom the share subscription was received and how much amount was received from each of the share subscriber what to say of other documents furnished by the assessee to prove the identity and creditworthiness of the creditors and genuineness of the

transaction. The Assessee, in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company. The Assessing Officer, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details furnished before him. Even, one of the directors of the share subscribers namely Shri B. K. Jain appeared and deposed before the Assessing Officer confirming the aforesaid transaction. However, the Assessing Officer simply wrote that his deposition was not satisfactory without pointing out which part of his statement/deposition was not satisfactory and why the Assessing Officer was not satisfied from his deposition. The Assessing Officer has made the addition in a mechanical manner.

4.1 Even the ld. CIT(A) has also dismissed the appeal of the assessee without pointing out any defect or discrepancy in any of the documents furnished by the assessee. It was also pointed out before the CIT(A) that the assessee has received share application money from the four share subscribers, the details of which is as under:

Name, Address & PAN of the Allottees	No. of Shares allotted	Total Amount (Rs.)
Vardhaman Textiles Co. Pvt. Ltd.	50,000	50,00,000
Swift Realcon Pvt. Ltd.	50,000	50,00,000
Almighty Mercantile Pvt. Ltd.	50,000	50,00,000
Aakruti Infrarealty Pvt. Ltd.	50,000	50,00,000
Total	2,00,000	2,00,00,000

4.2 It was also submitted that all the share subscribers have sufficient net worth to invest in the assessee company. The assessee explained the financial worth of the share subscriber companies and

genuineness of the transaction and also made the following written submissions before the ld. CIT(A):

“While finalizing the assessment, the Ld. A.O. has treated the amount received towards subscription of equity share capital as unexplained cash credit u/s 68 of Income tax Act, 1961. Main Contention of Ld. A.O. was that identity as well as credit worthiness and genuineness of the shareholders could not be established by- the assessee company. Further the Ld. A.O has stated in his order that summon u/s 131 Of the Income Tax Act, 1961 Was issued to directors of the subscriber company for personal attendance and to produce the details. In compliance, Mr. Binod Kumar Jain director of one subscriber company appeared and made deposition but satisfactory reply was not received regarding vital questions. The Ld. A.O has not specify the reason for dissatisfaction in respect of reply by the director appeared before him, Ld. A.O. also stated that other directors for the remaining subscriber companies were not appeared. As the summon has been served to the respective subscribers, the identity of the subscriber has been proved. Even the Ld. A.O. has also not informed assessee that other subscriber has not appeared. As per section 68 of the L T, Act, 1961 - “The onus lies on the assessee to satisfy the department about the identify of art investor, its credit Worthiness and genuineness of the transaction⁰. So to decide whether section 68 should be applied on the assessee company, let us first examine the details of the allottee companies.

1. Vardhaman Textiles Co Pvt. Ltd is one of Hon Banking Financial Company. The Authorized share capital of Vardhaman Textiles Co. Pvt. Ltd was £ 2,80,00,000/- divided into 28,00,000 equity shares of £10/- each and the paid up equity share capital was £ 2,73,27,000/- divided into 27,32,700 equity shares of Rs. 10/- each. The net-worth of Vardhaman Textiles Co. Pvt. Ltd as on 31.3.2012 was £ 12,51,21,244/- . Vardhaman Textiles Co. Pvt, Ltd has applied 50,000 equity shares of the Assessee company at the rate of Rs. 100/- each (Face value Rs.10/- and premium Rs. 90/-). The company has paid Rs.50,00,000/- out of the fund received from Global Vision Securities Pvt Ltd on account of loan refund. Balance Sheet, Income Tax Acknowledgement for the Asst Year 2012-13, highlighted Bank statement. Identity Proof of the directors and source of Fund certificate of Vardhaman Textiles Co. Pvt. Ltd is enclosed herewith for your verification.

2.Swift Realcon Pvt Ltd is another subscriber company of the Assessee Company, The Authorised Share, capital of Swift Realcon Pvt. Ltd. was Rs.54,00,000/- divided into 5,40,000 equity shares of Rs.10/- each and the paid up equity share capital was Rs. 53,74,600/- divided into 5,37,460 equity shares of Rs. 10/- each. The net worth of Swift Realcon Pvt. Ltd as on 31.3.2012 was Rs. 27,96,71,710/-. Swift rate of Rs. 100/- each (Face value Rs. 10/-

and premium Rs. 90/-, The company has paid Rs. 50,00,000/- out of the fund received from Aakruti Infrarealty Pvt, Ltd on account of share application money. Balance Sheet, Income Tax Acknowledgement for the Asst Year 2012-13, highlighted Bank statement, Identity Proof of the directors and source of Fund certificate of Swift Realcon Pvt. Ltd is enclosed herewith for your Verification.

3. Almighty Mercantile Pvt. Ltd is another subscriber company of the Assessee Company. The Authorized share capital of Almighty Mercantile Pvt, Ltd was Rs. 2,16,50,000/- divided into 21,65,000 equity shares of Rs. 10/- each and the paid up equity sham capital was Rs. 2,16,38,650/- divided into 21,63,865 equity shares of Rs. 10/- each. The net worth of Almighty Mercantile Pvt. Ltd as on 31.3.2012 was Rs.105,92,01,050/-, Almighty Mercantile Pvt Ltd has applied 50,000 equity shares of the Assessee company at the rate of Rs. 100/- each (Face value Rs. 10/- and premium Rs. 90/-). The company has paid Rs.50,00,000/- out of the fund received from Ortem Commercial Pvt, Ltd on account of share application money. Balance Sheet, Income Tax Acknowledgement for the Asst Year 2012-13, highlighted Bank Statement, Identity Proof of the directors and source of Fund certificate of Almighty Mercantile Pvt. Ltd is enclosed herewith for your verification.

4. Aakruti infrarealty Pvt. Ltd is another subscriber company of the Assesses Company. The Authorised share capital of Aakruti infrarealty Pvt. Ltd was Rs. 2,50,00,000/- divided into 25,00,000 equity shares of Rs. 10/- each and the paid up equity share capital was Rs.2,46,24,450/- divided into 24,62,445 equity shares of Rs. 10/- each. The networth of Aakruti Infrarealty Pvt. Ltd as on 31.3.2012 was Rs. 104,79,96,097/-. Aakruti Infrarealty Pvt. Ltd has applied 50,000 equity shares of the Assessee company at the rate of Rs. 100/- each (Face value Rs. 10/- and premium Rs. 90/-). The company has paid Rs. 50,00,000/- out of the fund received from Vendure Agents Pvt Ltd on account of share Application money. Balance Sheet, Highlighted Bank statement source of Fund certificate, PAN Card of Aakruti Infrarealty Pvt Ltd is enclosed herewith for your verification.

From the details of allottee companies given above, identity of all the allottee companies is established as all the allottee companies are regularly assessed with Income Tax and identity Proof of all the directors has been submitted. Credit worthiness of all the companies is also established by the fact that all the companies have got the substantial net worth and they have given funds to assesses companies out of explainable and proper source. As all the allottee companies have confirmed the transaction and therefore genuineness of the transactions cannot be questioned.

Source of fund of the shares subscribed is enclosed herewith for your record.

Our above mentioned contention is duly supported by the following judicial pronouncement.

1. *CIT Vs Lovely Exports Pvt Ltd. 216 CTR 195*
2. *Anshika Consultants Pvt Ltd Vs. GIT (A) (Delhi High Court)*
3. *CIT VS Steller Investment Ltd, (2001) 251ITR 263 (SC & HC)*
4. *CIT Vs Gagandeep Infrastructure: Pvt. Ltd, Bombay High Court*

Considering the above facts, the Ld. A.O was not justified in treating the share capital issued by Assesses Company as unexplained cash credit u/s 68 of the Income Tax Act, 1961 and therefore, the order of the A. O. should be quashed.”

4.3 However, a perusal of the order of the CIT(A) would reveal that the ld. CIT(A) has rejected the contentions of the assessee only on the ground that the revenue from operations of the subscriber companies was low as compared to the investments made by them. However, the ld. Counsel for the assessee has explained that the subscriber companies were investment companies. That there was no denial of the fact that the subscriber companies have sufficient net worth to invest in the assessee company. The ld. CIT(A) even has failed to observe that the assessee has duly proved the source of the source of the share subscribers. He simply held that it were the accommodation entries received by the assessee. The observations of the ld. CIT(A) are nothing more than suspicions, whereas, the assessee has duly proved his case. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon’ble Bombay High Court in the case of ‘PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd.’ reported in (2017) 84 taxman.com 58 (Bom), wherein, the Hon’ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High

Court in the case of “Crystal networks (P) Ltd. vs CIT” (supra) has held as under:

“We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding.”

5. So far as the reliance of the Ld. DR on the decision of the hon’ble Supreme Court in the case of “PCIT v/s NRA Iron & Steel (P) Ltd.” (supra) has taken note of the observations made by the Supreme Court in the “the land mark case of *Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC)* and *Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC)* laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”

Thereafter the hon’ble Supreme court summed up the principles which emerged after deliberating upon various case laws as under:

“11. *The principles which emerge where sums of money are credited as Share Capital/Premium are:*

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound conduct to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view

of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., impugned additions are not warranted in this case.

6. In view of the above discussion, we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 2nd July, 2024.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 02.07.2024.

RS

Copy of the order forwarded to:

1. Florence Dealer Pvt. Ltd
2. ITO, Ward-9(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches