

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2758/Chny/2017
निर्धारण वर्ष/Assessment Year: 2008-09

M/s.Rai Ispat Pvt. Ltd., 6/13, North Avenue, Kesava Perumal Puram, Chennai-600 028.	v.	The Income Tax Officer, Corporate Ward-5(4), Chennai.
[PAN: AAACR 1743 C]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri B. Ramakrishnan, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri G. Suresh, JCIT
सुनवाईकीतारीख/Date of Hearing	:	12.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Learned Commissioner of Income Tax (Appeals)-3, (hereinafter in short "the Ld.CIT(A)"), Chennai, dated 31.07.2017 for the Assessment Year (hereinafter in short "AY") 2008-09.



:: 2 ::

2. Ground No.2 to 4: The main grievance of the assessee is against action of the Ld.CIT(A) confirming the addition of Rs.3.60 Crs. which assessee claimed to have been received as 'share application money' from its own group company M/s.Chandan Credit Ltd., (hereinafter in short "M/s.Chandan").

2.1 The brief facts are that the assessee company is a part of M/s.RKKR Group and was in the business of trading in steel and it also invested in shares of other companies in the year under consideration (AY 2008-09). The assessee company filed its return of income admitting a total income of Rs.16,82,427/- on 11.09.2008. The AO noted that search was conducted in the premise of M/s.SBQ Steels Ltd., on 26.09.2012 u/s.132 of the Act; and that assessee was also one of the group companies of M/s.SBQ Steels Ltd. The AO on perusal of the balance sheet of the assessee as on 31.03.2008 noted that the assessee during the relevant assessment year has received '*share application money*' to the tune of Rs.3.60 Crs. The AO, thereafter, re-opened the assessment u/s.147 of the Act and asked the assessee to prove the *nature and source* of credit entry of Rs.3.60 Crs. Pursuant to which, the assessee filed its reply which showed that assessee received Rs.3.60 Crs. from M/s.Chandan on various dates through cheque (*banking channel*) from 07.03.2008 to 31.03.2008; and that the '*share application money*' is pending for



:: 3 ::

allotment of its shares to M/s.Chandan. The AO took note of the assessment order passed on 31.08.2015 in the case of searched person i.e. M/s.SBQ Steels Ltd. for AY 2008-09 and noted that similar investment has been made by M/s.Chandan in the group companies of M/s.SBQ Steels Ltd., only after the Directors of the M/s.SBQ Steels Ltd., became the Directors of M/s.Chandan. Further, it was noted that the income of M/s.Chandan was from "*supervision, commission, operating profit, other income, etc., and the income was only a few thousand rupees after expenses*". The AO noted from the balance sheet of M/s.Chandan (share-subscriber in the present case) that a sum of Rs.36,94,04,745/- was shown as share capital and Rs.29,57,58,423/- was shown as share premium received by it. The AO suspected the credibility of the huge share premium of Rs.29,57,58,423/- in the balance sheet of M/s.Chandan with no asset backing; and according to the AO, from a perusal of the assessment order of M/s.SBQ Steels Ltd., it revealed that source for the investment in share capital of M/s.SBQ Steels Ltd., by M/s.Chandan could not be proved beyond doubt. Therefore, the AO of the assessee reproduced the assessment order in the case of M/s.SBQ Steels Ltd., for AY 2008-09 from Page Nos.3 to 5 of the Assessment Order and held that M/s.Chandan is only a paper company and therefore, the 'share application money' of Rs.3.60 Crs. shown in the books of the assessee was brought to tax u/s.68 of the Act.



:: 4 ::

2.2 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO.

2.3 Aggrieved, the assessee is in appeal before us.

2.4 We have heard both the parties and perused the material available on record. We note that the assessee company has filed return of income on 11.09.2008 admitting total income of Rs.16,82,427/- and is noted to be engaged in the business of steel and also it invests in shares of other companies. Later on, the case of the assessee was re-opened u/s.147 of the Act and the AO from perusal of the balance sheet noted that the assessee has received 'share application money' to the tune of Rs.3.60 Crs. and asked the assessee to prove the nature and source of said amount. Pursuant to which, the assessee brought to his notice that the nature of the credit entry was 'share application money' and source of the credit entry was from M/s.Chandan. According to the assessee, M/s.Chandan applied for the shares of the assessee-company by filing application for it and issued cheque from 07.03.2008 to 31.03.2008 in different tranches as under:

Details of share application money pending for allotment:



:: 5 ::

Name of the party	Check No.	Cheque date	Amount (in Rs.)
Chandan Credits Ltd.	000030	07.03.2008	56,00,000
Chandan Credits Ltd.	000031	10.03.2008	80,00,000
Chandan Credits Ltd.	000032	18.03.2008	43,00,000
Chandan Credits Ltd.	000033	20.03.2008	29,00,000
Chandan Credits Ltd.	000034	26.03.2008	52,00,000
Chandan Credits Ltd.	000042	31.03.2008	55,00,000
Chandan Credits Ltd.	000043	31.03.2008	45,00,000

2.5 The AO after receiving the reply of the assessee merely relied on the order of the assessment dated 31.08.2015 passed in the case of group company M/s.SBQ Steels Ltd., for AY 2008-09, which was completed pursuant to search conducted u/s.132 of the Act on 26.09.2012, wherein, that case, the AO disbelieved the creditworthiness of M/s.Chandan; and the AO thereafter, reproduced the order of M/s.SBQ Steels Ltd., from Page Nos.3 to 5 of his order and was pleased to make an addition of Rs.3.60 Crs. u/s.68 of the Act (unexplained credit). On appeal, the Ld.CIT(A) confirmed the action. Before us, the Ld.AR drew our attention to sec.68 of the Act and submitted that as per sec.68 of the Act, if the AO finds that any sum is credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not in the opinion of the AO satisfactory, then the sum so credited may be charged to tax as the income of the assessee for that previous year. According to the Ld.AR, assessee in this case when asked by the AO to prove the nature and source of the credit entry to the tune of Rs.3.60 Crs. had filed relevant documents to show that the nature of the credit entry was `share



:: 6 ::

application money' and the source of it was M/s.Chandan. According to the Ld.AR, identity of the creditor (M/s.Chandan) cannot be doubted, because, the assessee has filed the PAN of M/s.Chandan, which is AAACC 6074 D and it is a group company of M/s.SBQ Steels Ltd., M/s.RKKR Steels Ltd., group (Rama Krishna Kulvanth Roy Group) which was in the production of TMT Steel Bars for the past five decades. According to the Ld.AR, M/s.Chandan has already undergone scrutiny assessment of the Department and the AO has made an addition of Rs.9,03,00,000/- in the hands of M/s.Chandan for AY 2008-09 vide order dated 22.03.2024 framed u/s.143(3) r.w.s.254/153C of the Act. According to the Ld.AR, since the 'share application money' to the tune of Rs.3.60 Crs. has been given through cheque, the genuineness of the transaction cannot be doubted. According to the Ld.AR, from a perusal of the Assessment Order itself it can be seen that the AO himself has admitted that M/s.Chandan has share capital of Rs.36,94,04,745/- which itself shows it got sufficient creditworthiness to invest mere Rs.3.60 Crs. in assessee company. According to the Ld.AR, it can be seen that the AO of M/s.Chandan has made an addition of Rs.9 Crs. in its hand for AY 2008-09. Therefore, the identity, creditworthiness and genuineness of M/s.Chandan cannot be doubted; and further the Ld.AR pointed out that relevant assessment year under consideration is AY 2008-09 and therefore, as per law in existence/in force, the assessee is duty bound to prima facie prove only



:: 7 ::

the nature and source of the credit entry, and need not have to prove the "source of source" which requirement of law came only from the AY 2013-14 onwards. We find force in the submissions of the Ld.AR and note that in the year under consideration, the assessee need to only prove the source of credit as well as nature of it and not the "source of source", which requirement came only from AY 2013-14. Having said so, we find from perusal of the Assessment Order passed in the case of M/s.Chandan (share-subscriber) that the AO has added in its hands for AY 2008-09 an amount of Rs.9 Crs. It is also noted from the balance sheet of M/s.Chandan as on 31.03.2008, it has a sum of Rs.36,94,04,745/- as its share capital which shows that it has creditworthiness; and we note that Rs.3.60 Crs. has been given in cheque to the assessee company by M/s Chandan in the year under consideration. In such a scenario, the addition made u/s.68 of the Act by relying only on the order of the DCIT Circle-2, Chennai, dated 31.03.2015 in the case of M/s.SBQ Steels Ltd., cannot be countenanced. According to us, when the AO notes that there was a credit entry of Rs.3.60 Crs. shown as 'share application money' from M/s.Chandan, and the assessee has placed documents to prove the nature ('share application money' source through cheque from M/s.Chandan), according to us, the assessee has discharged its initial burden to prove the *nature and source* of Rs.3.60 Crs. and the AO has not rebutted the same by pointing out any defects/infirmities in the evidence



:: 8 ::

filed by the assessee. Once, the assessee has discharged the burden casted upon it as envisaged u/s.68 of the Act and as rightly pointed out by the Ld.AR in the relevant Assessment Year (2008-09), the assessee was bound by law only to prove the nature and source of the credit entry and not "source of source" which obligation was cast upon the assessee only from AY 2013-14 onwards. Therefore, the addition of Rs.3.60 Crs. received from a group company of the assessee itself cannot be sustained and therefore, directed to be deleted.

3. Ground No.5 to 7 relates to the addition of Rs.4,62,01,000/- sustained by the Ld.CIT(A):

3.1 Brief facts are that the AO noted that assessee has shown in its balance sheet to have invested in M/s.SBQ Steels Ltd., an amount of Rs.4,62,01,000/-. Therefore, he asked the assessee to prove the investments made in M/s.SBQ Steels Ltd., and thereafter, he relied on the decision of assessment framed in M/s.SBQ Steels Ltd., by another Assessing Officer dated 31.03.2015 which he reproduced at page 3-5 of his Assessment Order and added it u/s.69 of the Act to the tune of Rs.4,62,01,000/-.

3.2 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the same.



:: 9 ::

3.3 Aggrieved, the assessee is in appeal before us.

3.4 We have heard both the parties and perused the material available on record. The Ld.AR of the assessee brought to our notice that financials placed at Page No.65 of the Paper Book shows the investments break-up made by the assessee, and it can be seen that a sum of Rs.3.62 Crs. has been invested in the shares of M/s.SBQ Steels Ltd., in the relevant year under consideration. Turning our attention to the next Page No.66 of Paper Book, he pointed out that another amount of Rs.1 Cr. was shown under *loan and advances* and particularly as advance/loan towards shares of M/s.SBQ Steels Ltd. Therefore, the AO has noted that assessee has made an investment of Rs.4.62 Crs. as investment for shares of M/s.SBQ Steels Ltd. According to the assessee, since assessee was able to prove that it had received share application money of Rs.3.60 Crs. from M/s.Chandan, therefore, this money was available with the assessee which has been utilized for making investment in shares of M/s.SBQ Steels Ltd., to that extent. The balance will be Rs.1.02 Crs. which Ld.AR explained by drawing our attention to the "mutual fund statement" which showed that assessee has redeemed a sum of Rs.32 lakhs on 20.03.2007, [Rs.32 lakhs in its account in DCB] which we find it to be correct and he drew our attention to ledger account of M/s.RKKR Holdings Pvt. Ltd., in the books of the assessee which showed the assessee received Rs.20



:: 10 ::

lakhs on 26.02.2008. Thus, according to the Ld.AR, a sum of Rs.52 lakhs stands explained, which we agree; and for the balance amount of Rs.50 lakhs, assessee explained that the amount has been paid as per the running account maintained with M/s.RKKR Holdings Pvt. Ltd. & others. Since the nature and source of Rs.50 lakhs, which is required to be verified/proved and which requires examination of records, we are inclined to restore this issue back to the file of the JAO for limited purpose to verify whether the unexplained balance portion of Rs.50 lakhs invested in the shares of M/s.SBQ Steels Ltd., stands explained or not ? The assessee is at liberty to file relevant documents to prove the balance amount of Rs.50 lakhs invested in the shares of M/s.SBQ Steels Ltd. And we are remitting this issue back to the AO, because he has not made any enquiry leave alone looked into relevant documents filed by the assessee which is found placed from Page Nos.1 to 114 of the Paper Book. Therefore, we are of the view that the AO didn't give proper opportunity to the assessee during the course of assessment proceedings; and he merely relied on the assessment order of M/s.SBQ Steels Ltd.(supra), to draw adverse inference against the assessee which cannot be countenanced. The assessment has to be made by the AO/ITO in this case, who has not applied his mind to the documents filed by the assessee. Therefore, in the interest of justice and fair play, this issue is partly set aside to the file of the JAO for enquiry/verification of Rs 50



ITA No.2758/Chny/2017 (AY 2008-09)
M/s.Rai Ispat Pvt. Ltd.

:: 11 ::

Lakhs invested in the shares of M/s.SBQ Steels Ltd. as discussed supra; and if assessee fails to prove the same in accordance to law, addition be confirmed to that extend only.

4. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 10th day of July, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 10th July, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

1. ँ पीलर्षी/Appellant
2. प्रत्यर्षी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभर्षीयप्रतिनिधि/DR
5. गार्डफाईल/GF