

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3554/Del/2017, A.Y.2012-13

M/s. QNS Castings Pvt. Ltd. 4 th K.M.Stone, Meerut Road, Muzaffar Nagar PAN: AAACQ2131R	Vs.	ITO Ward-2(2), Muzaffarnagar
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Dharam Veer Singh, CIT-DR

Date of Hearing	28/05/2024
Date of Pronouncement	26/07/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Assessment Year [In short, the 'AY'] 2012-13 preferred by the assessee is directed against the order dated 28.03.2017 passed by the Commissioner of Income Tax (Appeals), Muzaffarnagar [In short, the 'CIT(A)']. By the order under challenge, the CIT(A) dismissed the appeal of the assessee on the reasoning that the assessee failed to discharge the onus cast upon it under section 68 of the Income Tax Act, 1961, (In short, the 'Act').

2. We are tasked to decide the core issue, raised vide 10 grounds, that whether the taxability of share application money and share premium aggregating to Rs.10,27,14,000/- upheld by the CIT(A) is justified in accordance with the provisions of section 68 of the Act. Besides the core issue, the assessee had also challenged the chargeability of interest under the Act.

3. The relevant facts giving rise to this appeal, in brief, are that the appellant/assessee, involved in Casting of metals, filed its Income Tax Return (In short, the 'ITR') on 29.03.2013 declaring 'NIL Income'. It had not commenced its business during the relevant year. The case was selected for scrutiny. The Assessing Officer (In short, the 'AO'), vide the assessment order dated 30.03.2015, passed under section 143(3) of the Act, taxed share application money and share premium aggregating to Rs.10,27,14,000/- as under: -

S. No.	Nature of Addition	Amount
1.	On account of Share application Money	Rs. 1,02,71,400/-
2.	On account of Share Premium	Rs. 9,24,42,600/-
3.	Total Addition	Rs. 10,27,14,000/-

4. During the course of scrutiny proceedings, the AO sent 5 statutory notices to the assessee, as detailed mentioned in Para 4 of the assessment order, which remained uncomplied with except on 26.12.2014 and 09.03.2015, when the assessee submitted part replies. Based on these submissions, the AO issued fresh show-cause

notice dated 16.03.2015 to explain the genuineness of transactions. The AO noticed that there were credits in shareholders' bank accounts before issuing the cheques for allotment of shares as detailed on page 03-05 of the assessment order. The assessee showed inability to explain the same.

4.1 In such facts and circumstances of the case, the AO held that the appellant/assessee failed to discharge the onus cast upon it, as detailed on page 03-05 of the assessment order, under section 68 of the Act and taxed the share money and share premium aggregating to Rs.10,27,4,000/- in accordance with the provision of section 68 of the Act. The assessee did not succeed before the CIT(A). Therefore, this appeal is here.

5. This case was scheduled for hearing many times; viz, 21.01.2021, 05.04.2021, 02.09.2021, 16.11.2021, 02.02.2022, 26.04.2022, 16.07.2022, 31.10.2022, 24.01.2023, 27.04.2023, 06.07.2023, 21.08.2023, 05.10.2023, 20.12.2023, 07.03.2024 and 28.05.2024. However, most of the times, either none attended from the appellant/assessee side or sought adjournment only. We heard the Senior Departmental Representative (In short, the 'Sr. DR') at length. Due to consistent non-prosecution from the appellant/assessee side for more than 3 &

1/2 years, we have no option except to decide this case after hearing the CIT-DR. Accordingly, we proceeded with.

6. The Ld. CIT-DR, emphasizing on page 28-42 of the impugned order, submitted that the AO, on direction of the CIT(A) under section 250(4) of the Act, issued notices under section 133(6) of the Act to all 27 share applicants on all addresses (new and old). However, almost all such notices were received back unserved with the remarks; no such address, left, no such company, refused, untraceable and closed. Thereafter, the AO requested the appellant/assessee to produce directors/responsible persons of share applicants in person to demonstrate the genuineness of transactions. But the same was in vain. Non-production of directors/responsible persons of share applicants in person either before the AO or CIT(A), in pursuance of specific requests/directions of the CIT(A) was inferred adverse by the CIT(A).

6.1 The Ld. Departmental Representative (In short 'DR') also emphasized on the fact that out of 27 share applicants, the audit of 17 companies were done by one CA; R. R. Singh & Company and 4 persons were non-filers of the ITRs. It is very remote to have auditing by one CA Firm, when these companies are different, independent and stationed at different places. However, such facts and circumstantial

evidence question the genuineness of such entities. Similarly, credits in the bank account of almost all share applicants before applying for share in the appellant/assessee's company also pointed the peculiarity, submitted the Ld. DR.

6.2 The Ld. DR reiterated the facts and details mentioned on page 38-42 of the CIT(A)'s order. For the sake of proper appreciation of the facts of the case, the Para 15-20 of the CIT(A)'s order are reproduced as under:

“15. From the above analysis, it is noted that the above entities are not doing any real business activities to support the availability such large funds of getting share capital, share application money at huge share premium at their disposal to make such investment with the appellant. These entities are paper companies. These companies are being controlled and managed on papers. These entities have been created by having common auditors, common directors and having bank accounts with the same bank and being run from common addresses. Further, the appellant has filed return for AY 2012- 13 at Rs.Nil. These financial results do not justify the investment made by such entities at such huge premium. In the view of the above facts, it is noted that identity, creditworthiness and genuineness of the above entities is not established from the above documents. The above entities have been found to have been existing only on papers without having any real or physical worth to support the alleged investments made with the appellant. Therefore, appellant has failed to explain/ prove the identity, creditworthiness and genuineness of the sum credited satisfactorily by furnishing relevant documents. The appellant has failed to discharge the onus cast upon it. It is found that the alleged shareholders are non-existent and are just paper companies. It is noted in this case that the appellant has not provided any satisfactory document during the assessment proceedings as well as appellate proceedings to establish the identity and creditworthiness of the shareholders and genuineness of transaction. The submission of the appellant that the amounts have been received through banking channel and information regarding PAN, ITR, MCA record etc. are not

relevant to explain the transactions in the absence of facts as discussed above.

16. From these facts it is difficult to imagine the genuineness and creditworthiness of the transactions from their profile of balance sheet /profit loss account/income. These companies in fact do not have any infrastructure or business to justify this kind of flow of funds. Even there is no fixed assets in the balance sheet. All the entities have been audited by common auditors and have common Directors. From these facts it can be safely concluded that though these are companies registered with ROC, having PAN but in fact these are just existing of papers. In fact a web of transactions has been created through banking channels to hide the real transactions. Therefore, the claim of the appellant that it has proved the identity, creditworthiness and genuineness of transaction in respect of sum of Rs.3 crore by furnishing copy of ITR, bank account, balance sheet, confirmations is not proved. Even otherwise, mere filing of ITR, PAN and transaction through banking channel is not enough to prove genuineness and creditworthiness of the cash credits. It is also important to note that these alleged share applicants are corporate entities set up for earning of profits and it has been gathered that have not received any income from these transactions with the appellant in last so many years. It is also relevant to note that there is no track/contact/correspondence with these entities by the appellant in past so many years in spite of the fact that these entities have allegedly invested huge funds with the appellant. The AR has argued that the status of these companies is ACTIVE as per ROC. It is pointed out here that most of these companies have not filed balance sheets after 31-03-2013 and even merely filing balance sheet with the ROC does not prove its creditworthiness and genuineness automatically. Other corroborating observations are relevant to decide these factors. These observations lead to conclusion that these transactions are not genuine. In view of the above facts, the reliance of the AR on the case laws referred above does not help its case as facts of this case are entirely different from the referred cases.

17. It has been held by Hon'ble Delhi High Court in the case of Navodaya Castie Pvt. Ltd. in ITA No.320/2012 that certificate of incorporation, PAN etc. are relevant for the purpose of identification but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor. The SLP against the ruling of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. Further, it has been held by Hon'ble Delhi High Court in the case of Youth Construction Pvt. Ltd. 357 ITR 197 (Delhi) that mere proof of identity without genuineness and creditworthiness is not enough for share application. Further, it has

been held by the Hon'ble Delhi High Court in the case of N.R. Portfolio Pvt. Ltd. 87 DTR 0162 (Del) that the onus to prove the three factum is on the assessee as the facts are within his knowledge. Mere furnishing names address and PAN particulars or relying on entries in the ROC website is not enough. If upon verification or during the proceedings, the AO cannot contact the share applicant or information becomes unverifiable or there are further doubts in pursuit of such details, onus shifts back to the assessee to explain the same. The relevant part of the order of the Hon'ble Delhi High Court is reproduced as under:-

'30. What we perceive and regard as correct position of law is that the court or Tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them.

31. The respondent herein is a Private Limited Company. It is not the case of the respondent that the Directors or persons behind the companies making the investment in their shares were related or known to them. It is highly implausible that an unknown person had made substantial investment in a private limited company to the tune of Rs.63,80,100/- and Rs.75,60,200/- in two consecutive, assessment years 2002-03 and 2003-04, respectively without adequately protecting the investment and ensuring appropriate returns. Other than the share application forms, no other agreement between the respondent and third companies had been placed on record. The persons behind these companies were not produced by the respondent. On the other hand, respondent adopted prevaricate and non-cooperation attitude before the Assessing Officer once they came to know about the directed enquiry and the investigation being made. Evasive and transient approach before the Assessing Officer is limpid and perspicuous. Identity, creditworthiness or genuineness of the transaction is not established by merely showing that the transaction was through

banking channels or by account payee instrument. It may, as in the present case required entail a deep scrutiny. It would be incorrect to state that the onus to prove the genuineness of the transaction and creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Whether or not onus is discharged depends upon facts of each case. It depends on whether the two parties are, related, or known to each, the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are basically and primarily in knowledge of the assessee and it is difficult for revenue to prove and establish the negative. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The facts of the present case noticed above speak and are obvious. What is unmistakably visible and apparent, cannot be spurred by formal but unreliable pale evidence ignoring the patent and what is plain and writ large.

32. In view of the aforesaid discussion the substantial question of law framed in the two appeals is answered in favour of Appellant Revenue and against the Respondent.

Further reliance is put on the decisions of the Hon'ble High Courts in the cases of Titan Securities Ltd. (2013) 357 ITR 184 (Delhi), Empire Builtech Pvt. Ltd. 366 ITR 110 (Delhi), Nova Promoters & Finlease Pvt. Ltd. (Delhi), Nipun Builders & Developers 350 ITR 407 (Delhi), Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT 241 ITR 801, Ridhi Promoters Pvt. Ltd. 58 Taxman.com 367 (Delhi).'

18. After going through the ratio of above decisions as referred above it is noted that on the facts of the present case, the appellant has failed to prove identity, creditworthiness and genuineness of transaction in respect of share application money along with premium of Rs.10.27 crore. It is also relevant to mention here that in view of the facts of the case as discussed above, even the identity of the share applicants has not been proved and established. Mere filing of names, addresses, copies of ITRs, balance sheets, ROC record is not enough to establish the identity and creditworthiness and genuineness in respect of share applicants. This are paper documents which are prepared in each and every case of the corporate entity (real or paper entity) but are not

adequate enough to show their actual creditworthiness and genuineness particularly in view of the fact that all the letters sent u/s 133(6) sent by the AO have remained uncomplined returned back unserved by the postal department and copies of relevant documents have not been furnished. It has also been gathered during discussion that these applicants have not been paid any dividend till date by the appellant. It is also important to note that these alleged share applicants are corporate entities set up for earning of profits and have not received any income from these transaction with the appellant in last so many years. The profile of these companies was analysed and it was found that all these companies are paper companies without having any real base. These observations lead to conclusion that these transactions are not genuine. Further, it is noted that the verification letters sent by the AO have remained uncomplined with, whereas, the appellant has produced certain documents as discussed above. This also leads to the suspicion on the genuineness of transactions. Once it is proved that share application money has not been explained then, there is no duty upon the AO to point out the source from which the money was received by the assessee. Reliance is put on the decision of the Hon'ble Apex Court in the case of A. Govindarajulu Mudaliar v. CIT (1958) 34 ITR 807.

19. It is observed from the above that the above adverse finding has been made on the strengthen of enquiries conducted u/s 133(6) of the Act and by making independent analysis of the documents to arrive at the conclusion that the appellant has failed to prove identity, creditworthiness and genuineness in respect of credits of Rs.10.27 crore as discussed above. As per the requirement of section 68 of the Act, onus has been shifted back on the appellant by confronting the adverse findings as a result of enquiries conducted u/s 133(6) of the Act to verify the genuineness of documents submitted by the appellant and about noncompliance and non-existence of companies at the addresses given by the appellant. The appellant has asked to explain the credits by producing the directors of the entities. The appellant has failed to comply with the same. Therefore, the appellant has failed to discharge the onus cast upon it u/s 68 of the Act to explain the credits. The various adverse observations made above in the cases of these alleged shareholders entities are corroborating to infer that their identity, genuineness and creditworthiness has not been proved.

In this case the ratio of decision of the Hon'ble Supreme Court in the case of Lovely Export is not applicable as in that case the AO has not conducted any enquiry in consequence to the information furnished by the assessee, whereas in the present case there are adverse

findings as a result of enquiries made by the AO and confronted to the appellant. Further, in the case of Lovely Export it was a public limited company which has accepted the share capital, whereas, the present case is of a private limited company. Even the identity of the shareholders has not been proved in the present case. Similarly, the reliance of the appellant upon the decision of the Hon'ble Allahabad High Court in the case of Jay Dee Securities & Finance Ltd. and Rana Girders does not help its case as even the identity of the shareholders has not been proved and initial onus has not been discharged by the appellant as the initial documents furnished by the appellant in support of the identity have remained unverifiable.

20. In this case it is noted that keeping in view the surrounding circumstances and by applying the test human probabilities, there are reasons to believe that the apparent is not real. Reliance is placed on the decision of the Hon'ble Supreme Court in the CIT vs. Durga Prasad 82 ITR 540 (SC). In the circumstances after considering all the facts from record, respectfully following the ratio of the decisions relied of the Hon'ble Courts (supra) and principle of preponderance of probability upon which the Income-tax Law is based, it is noted that the appellant has failed to explain the credits of Rs.10.27 crore and therefore the AO was justified to make addition of Rs.10.27 crore on account of unexplained share capital and share premium. Addition of Rs.10.27 crore is hereby confirmed. Ground of appeal No. 2 to 7 are dismissed.”

6.3 The Ld. CIT-DR, placing emphasis on the CIT(A)'s order and submissions of the assessee extracted in the CIT(A)'s order, demonstrated that the assessee had failed to discharge the onus cast upon it under section 68 of the Act. To buttress his claim, the Ld. DR drew our attention to the following case laws:-

- i. SumanGupta-(SLP(C)CC-2152-2013)(2013-LL-0122-69)SLP dismissed by the Hon'ble Supreme Court on 22.01.2013,*
- ii. Pradhan Telecom India Pvt. Ltd. 2018-TIOL-1983(Mum.),*
- iii. Seema Jain [2018] 96 taxmann.com 307 (Del),*
- iv. Bikram Singh 399 ITR 407 (Del),*
- v. Sidharth Export [2019] 112 taxmann.com 193 (Del),*
- vi. Krishna Kumar Sethi 92 taxmann.com 324 (Del),*
- vii. Sitaram Ramchanddas Patel [2018] 95 taxmann.com 290 (Guj),*
- viii. Mangi Lal 315 ITR 105 (Mad),*

- ix. Pavankumarm Sanghvi 90 taxmann.com 386 (Guj),*
- x. Upendra Singh Raghav 88 taxmann.com 95 (Alld),*
- xi. Toby Consultants (P.) Ltd. 324 ITR 338 (Del),*
- xii. Sanraj Engineering Pvt. Ltd. (ITA 79/2016) (Del),*
- xiii. N.R.Portfolio Pvt. Ltd. in ITA No. 134/2012 dated 21.12.2012*
- xiv. Precision Finance (P.) Ltd. 208 ITR 465 (Cal).*

7. Heard the Ld. DR at length and perused the case record and the above case laws. The sole issue for our consideration here is the taxability of the cash credits/share application money including share premium. We find force in the argument of the Ld. DR that the appellant/assessee did not bring any material on the record to contradict the finding of the CIT(A).

8. According to the Section 68 of the Act, where any sum is found credited in the books of assessee, the assessee offers no explanation about the nature and source of the same or explanation offered by him is not found satisfactorily in the opinion of the AO, the sum credited may be charged to tax as the income of the assessee of the relevant year. The identity, creditworthiness and genuineness of transactions have to be explained by the assessee if in his books of account that sum is found credited. In the present case, the identity, creditworthiness/financial strength of the shareholders and genuineness of such credits/share application money including share premium have to be proved/established by the appellant/assessee. The burden of proof of these is on the appellant/assessee as the AO

was not able to serve the notice on share applicants or to trace share applicants and the appellant/assessee was specifically required to produce all share applicants, but in vain.

9. Here, in this case, we are of the considered opinion that the identity of shareholders had been proved by filing ITR and copy of the bank accounts of shareholders. However, the other two limbs of Section 68 of the Act were not explained properly by the appellant/assessee. The appellant/assessee had not explained the credits in the bank accounts of share applicants. The creditworthiness of shareholders for making payment of share application money & share premium were not established/demonstrated beyond doubt. The Hon'ble Supreme Court in the case of N. R. Iron and Steel Pvt. Ltd. SIP No. 29855 of 2018, referring the decision of Hon'ble Delhi High Court in the case of Oasis Hospitalities Pvt. Ltd. 333 ITR 119 (Del.) observed that merely proving the identity of the investor does not discharge the onus of the taxable in the capacity or creditworthiness has not been established.

10. In view of the above, we are of the considered opinion that the appellant/assessee failed to bring any material on the record to controvert the finding of the CIT(A). Hence, we decline to interfere with

the decision of the Ld. CIT(A). Thus, this appeal stands dismissed on merit.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in open Court on 26th July, 2024

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 26/07/2024
Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. CIT-DR

ASSISTANT REGISTRAR
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