

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.729/Ahd/2018
(Assessment Year: 2011-12)

Income Tax Officer, Ward-2(1)(3), Ahmedabad	Vs.	M/s. Lydia Construction Pvt. Ltd., 24, Laxmi Chambers, Navjeevan Press Road, Opp. Old Gujarat High court, Ahmedabad
[PAN No.AABCL7441C]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri Kamlesh Makwana, CIT DR
Date of Hearing	30.07.2024
Date of Pronouncement	07.08.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-2, (in short “Ld. CIT(A)”), Ahmedabad, vide order dated 07.12.2017 passed for Assessment Year 2011-12.

2. The Department has taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 7,54,90,000/- made u/s. 68 of the Act as unexplained cash credit on account of share application money/loans received from bogus companies operated and managed by Shri Praveenkumar Jain.

1.1 That the Ld. CIT(A) has erred in law and on facts by deleting the addition of Rs. 7,54,90,000/- out of Rs. 9,00,00,000/- on the ground that such amount was returned to the respective companies, which by itself is contradicting the findings of the Ld. CIT(A) that such companies have been engaged in providing accommodation entries.

1.2 *That the Ld. CIT(A) has erred in law and on facts that provisions of Section 68 apply to individual credit entry in books of accounts of the assessee and not to Net credit balances.*

2. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.”*

3. The brief facts of the case are that assessee filed a “NIL” income tax return for the Assessment Year 2011-12, which was processed under Section 143(1) of the Income Tax Act. Subsequently, information was received from DGIT(Inv) Mumbai about a search on Praveenkumar Jain Group, revealing that Praveenkumar Jain provided bogus loans, share applications, and sales/purchases. The assessee was identified as a beneficiary, having received Rs. 9 crore in accommodation entries during the impugned assessment year. Based on this information, the assessment was reopened, and a notice under Section 148 was issued. The assessee responded by confirming that their original return should be treated as the return of income in response to the notice. The assessee requested the reasons for reopening, which were provided to the assessee. The assessee objected to the reasons for reopening, but the objections were overruled. During the search, key person Shri Praveen Jain of Jain Group admitted to operating companies providing bogus transactions. Multiple notices were issued to verify these transactions under Section 133(6) of the Act, but no responses were received from the concerned companies. The assessee failed to provide necessary details or cooperate, despite multiple requests. The Ld. Assessing Officer was of the view that onus was on the assessee to prove the legitimacy of the transactions, which was not done by the assessee. Consequently, the Ld. Assessing Officer treated the sum of Rs. 9 crore as unexplained cash credit under Section 68 of the Act and added the same to

the assessee's income. Penalty proceeding under Section 271(1)(c) were also initiated for filing inaccurate income particulars.

4. In appeal before CIT(A), the assessee submitted that the Assessing Officer added Rs. 9 crore as unexplained cash credit under Section 68, citing share application money and loans from companies linked to Praveen Kumar Jain. The breakdown of the amounts from the bogus concerns was as follows:

- Ansh Merchandise Pvt. Ltd.: Rs. 3 crore
- Casper Enterprises Pvt. Ltd.: Rs. 1 crore
- Vanguard Jewels Ltd.: Rs. 5 crore

4.1 The assessee contested this, stating it received only Rs. 6.5 crore from these companies:

- Ansh Merchandise Pvt. Ltd.: Rs. 3 crore
- Casper Enterprises Pvt. Ltd.: Rs. 1 crore
- Vanguard Jewels Ltd.: Rs. 2.5 crore

5. Further, it was submitted that out of the sum of Rs. 6.5 crore received, Rs. 5.05 crore was refunded within 15 days. The Assessing Officer, based on bank statements and annual accounts, confirmed the actual receipt was Rs. 6.5 crore, and not Rs. 9 crores, and noted duplicate entries in Vanguard Jewels Ltd. transactions. The assessee submitted before Ld. CIT(Appeals) that Rs. 3 crore was received by the assessee as share application money from Ansh Merchandise Pvt. Ltd., and Rs. 2 crore was

refunded, leaving Rs. 1 crore, and assessee had received a sum of Rs. 1 crore from Casper Enterprises Pvt. Ltd. as share application money, and Rs. 54.9 lakh was refunded back, leaving Rs. 45.1 lakh and from Vanguard Jewels Ltd., the assessee had received a sum of Rs. 2.5 crore as a loan and it was refunded entirely within 15 days. The balance sheet as of 31.03.2011 reflected Rs. 1.45 crore as share application money, with Rs. 1 crore having been received from Ansh Merchandise Pvt. Ltd. and a sum of Rs. 45.1 lakh from Casper Enterprises Pvt. Ltd. The assessee submitted supporting documents, including PAN cards, Tax Acknowledgements, account confirmations, and bank statements, asserting the genuineness of the transactions.

6. Ld. CIT(Appeals), on appreciation of evidence submitted by the assessee, restricted the addition to Rs.1,45,10,000/- with the following observations:

“2.14. The appellant has submitted a copy of PAN Card, Income tax acknowledgement, confirmation of account, bank account etc. in support of the claim of sum credited of Rs. 1,45,10,000/- and relied upon various case laws in which share application money received in respect of above companies have been held to be genuine. The Honourable ITAT, Ahmedabad in the case of Pavankumar M. Sanghvi Vs. ITO, Wd. 3(1)(2), Baroda [2017] 81 Taxmann.com 308 where the accommodation entry was taken from the group company of Shri Praveen Kumar Jain and has observed as under:-

"8. As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-a-vis the ground realities. The facts of the case cannot be considered in isolation with the ground realities. It will, therefore, be useful to understand as to how the shell entries, which the loan creditors are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions - to give it colour of a normal business entity used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal

entity but it is their act of abatement, of, and being part of, financial manoeuvring to legitimize illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business - its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets its apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities."

2.15. It Is noticed that M/s. Ansh Marketing Pvt. Ltd. and M/s. Casper Enterprises Pvt. Ltd. have been engaged in providing accommodation entry and have been used to launder unaccounted money. These companies are shell companies and their names have recently been struck off from Register of Companies in the cracking down the shell companies by government. In view of the above, the share application money of Rs.1,45,10,000/- in respect of M/s. Ansh Marketing Pvt. Ltd. and M/s. Casper Enterprises Pvt. Ltd. appearing in balance sheet is considered to be non-genuine, and hence, the addition made to the extent of Rs. 1,45,10,000/- is confirmed."

7. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). None appeared on behalf of the assessee during the course of arguments. On going through the contents of the order passed by Ld. CIT(Appeals), we are of the considered view that while passing the appellate order, a reasonable view has been taken, wherein on appreciation of evidence and facts placed before him, Ld. CIT(Appeals) granted relief to the extent where he observed that effectively, the assessee had only received, as share application money, a sum of amounting to Rs.1 crores from M/s. Ansh Marketing Private Limited and a sum of Rs.45,10,000/- from M/s. Casper Enterprises Private Limited, during the impugned year under consideration. The balance amount added by the assessing officer amounting to Rs.9 crores, was either not received by the

assessee or even if received, the said amount had been immediately repaid back to the persons from whom such sum was received within a short duration of time. Accordingly, on the basis of evidence placed on record, while Ld. CIT(Appeals) held that M/s. Ansh Marketing Private Limited and M/s. Casper Enterprises Private Limited were bogus companies used for the purpose of providing accommodation entries, and have been used to launder unaccounted money and therefore, by holding that these companies are shell companies whose names have been struck off from the Registrar of Companies, Ld. CIT(A) restricted addition only to the amounts which had been effectively received/retained by the assessee, during the impugned year under consideration. We observe that Ld. CIT(Appeals) on appreciation of facts placed on record has taken a reasonable view, wherein on one hand Ld. CIT(Appeals) has held that on basis of appreciation of facts placed on record, the companies from whom share application money was received by the assessee were bogus/accommodation entry providers and therefore share application money was liable to be added in the hands of the assessee under Section 68 of the Act, however, at the same time Ld. CIT(Appeals) on the basis of appreciation of evidence placed on record before him, restricted the addition to Rs.1,45,10,000/- by observing that it was effectively only this amount which was received by the assessee and the balance amount was either not received by the assessee or the same had been paid back by the assessee to the concerned sources, within a limited period of time.

8. Accordingly, in view of the facts placed on record before us and the observations made by Ld. CIT(Appeals) in the appellate order, we are of the

considered view that Ld. CIT(Appeals) has passed a well reasoned order and we find no infirmity in the order so as to call for any interference.

9. In the result, the appeal filed by the Department is dismissed.

This Order pronounced in Open Court on	07/08/2024
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Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 07/08/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad