

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 60/Mum/2024
Assessment Year 2008-09

Asterix Reinforced Limited, D 608, Crystal Plaza, New Link Road, Andheri West, Mumbai. PAN : AAACO9377P	vs.	ITO-10(3)(2), Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Churghate, Mumbai
(Appellant)		(Respondent)

For Assessee :	Shri Bhupendra Shah
For Revenue :	Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing :	20-08-2024
Date of Pronouncement :	29-08-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt. 08-11-2023 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [Ld.CIT(A)] and it relates to the Assessment Year (AY.) 2008-09. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition of Rs.1 crore made by the AO u/s. 68 of the Income Tax Act, 1961 ('the Act'). The above said addition is related to the share application money received by the assessee.

2. The assessee was earlier known as M/s. Orson Petrochemicals Pvt. Ltd., and prior to that it was known as M/s. Bombay Highpolymer

Chemicals Products Ltd. The original return of income for AY 2008-09 filed by the assessee, declaring total income of Rs. 6,64,500/-, was processed u/s. 143(1) of the Act. The AO received information from the Investigation Wing that a person named Shri Praveen Kumar Jain is providing accommodation entries through various concerns managed by him. In that information, the assessee was shown as one of the beneficiaries, i.e., the assessee has taken accommodation entry of Rs. 5.00 lakhs in the nature of share application money/bogus loan from M/s. Hema Trading Company Pvt. Ltd., a concern managed by Shri Praveen Kumar Jain.

3. Based on this information, the AO reopened the assessment of the year under consideration by issuing notice u/s. 148 of the Act. During the course of assessment proceedings, the AO noticed that the assessee has received share application money from the following parties:-

Sr.No.	Name of the party	Share capital received
1.	Hema Trading Company Pvt. Ltd. (Nakshatra Business Pvt. Ltd)	5,00,000
2.	Rajesh Goods Pvt. Ltd.	15,00,000
3.	Anupriya Vinimay Pvt. Ltd.	15,00,000
4.	Loknath Vyapar Pvt. Lt.	10,00,000
5.	Kamyu Commercial Pvt. Ltd.	10,00,000
6.	Flora Stock Broking Pvt. Ltd.	10,00,000
7.	Multi Phase Engg. Ind. Ltd.	15,00,000
8.	Kirti Goods Pvt. Ltd.	12,00,000
9.	Nilima Goods Pvt. Ltd.	3,00,000
10.	Narayani Texnm Pvt. Ltd.	5,00,000
	Total	1,00,00,000

3.1. In order to examine the share application money, the AO issued notices u/s.133(6) of the Act and all of them were returned by the postal authorities with the noting "left without instruction". When this fact was brought to the notice of the assessee, it submitted that it has already furnished all the information relating to share application

money and discharged its onus u/s. 68 of the Act. Subsequently, the AO issued a commission u/s. 131(1)(d) of the Act to the DDIT, Kolkata and report of the commission was received on 28-03-2016. In the report it stated that four companies were not available in the given address and three companies did not respond to the summons issued to them. In view of the above report, the AO issued show cause letter dt. 28-03-2016 to the assessee, seeking clarifications. However, it appears that the assessee did not respond to the same and hence, the AO assessed the said application money of Rs.1 crore as 'un-explained income' u/s. 68 of the Act. The Ld.CIT(A) also confirmed the addition and hence the assessee has filed this appeal.

4. The Ld.AR submitted that the AO has reopened the assessment for examining share application money received from only one share applicant, namely, M/s. Hema Trading Company Pvt. Ltd.. However, the AO has made addition of Rs.1.00 crore relating to the share application money received from ten persons. The Ld.AR submitted that the assessee has furnished all the relevant details relating to the share applicants, viz., their financial statements; proof of their existence by downloading data from the website of the Registrar of Companies and also the PANs of all these concerns. He submitted that the AO did not examine those documents and entirely placed his reliance on the report given by the investigation wing and the report received on the commission issued u/s 131(1)(d) of the Act. The Ld A.R submitted that the assessee has proved their identity, creditworthiness and genuineness of the transactions. Accordingly, he submitted that the addition made by the AO should be deleted.

5. The Ld. DR, on the contrary, supported the orders passed by the tax authorities.

6. We heard the Ld.DR and perused the record. From the paper book filed by the assessee, we notice that the assessee has furnished financial statements of all the share applicants, their respective PAN number and also copies of data relating to the share applicants downloaded from the website of the Registrar of Companies. We notice that the AO did not discuss anything about these documents. Hence, it is not clear as to whether the AO has examined these details. As submitted by Ld A.R, the AO has proceeded to make the addition on the basis of information received from Investigation Wing and report given by the Commissioner u/s. 131(1)(d) of the Act. We also notice that the Ld CIT(A) also did not give any finding on the documents furnished by the assessee.

7. Under these circumstances, we are of the view that the documents furnished by the assessee require proper examination in terms of section 68 of the Act. Accordingly, we set aside the order passed by the Ld.CIT(A) and restore all these issues to his file for examining it afresh in terms of sec.68 of the Act. After affording adequate opportunity of being heard to the assessee, the Ld.CIT(A) may take appropriate decision in accordance with law.

8. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 29th August, 2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date : 29-08-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai