

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील (एसएस) सं./I.T (SS).A. No. 81/Ahd/2021
(निर्धारण वर्ष / Assessment Years : 2014-15)

Asstt. Commissioner of Income-tax Central Circle-3, Vadodara	बनाम/ Vs.	M/s. Cube Mines and Minerals Pvt. Ltd. 11/C Ground Floor, Jaishri Narayan Co-Operative Hsg. Society, Subhanpura, Gorwa, Vadodara, Gujarat 390015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCC5761D		
(Appellant)	..	(Respondent)

&

आयकर अपील (एसएस) सं./I.T (SS).A. No. 82/Ahd/2021
(निर्धारण वर्ष / Assessment Years : 2014-15)

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आयकर अपील सं./I.T.A. No. 159/Ahd/2021
(निर्धारण वर्ष / Assessment Years : 2015-16)

Asstt. Commissioner of Income-tax Central Circle-3, Vadodara	बनाम/ Vs.	M/s. Iolite Cube Inframaterial Ltd. 1, Chandamani Nagar, Vidhya Vihar School Lane, Subhanpura, Vadodara,
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCI5944A		
(Appellant)	..	(Respondent)

&

आयकर अपील सं./I.T.A. No. 160/Ahd/2021
(निर्धारण वर्ष / Assessment Years : 2015-16)

Asstt. Commissioner of Income-tax Central Circle-3, Vadodara	बनाम/ Vs.	M/s. Aikya Chemicals Pvt. Ltd. 1, Chandamani Nagar, Vidhya Vihar School Lane, Subhanpura, Vadodara,
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKCA0136G		
(Appellant)	..	(Respondent)

Assessee by :	Shri Jigar Adhiyaru, A.R.
Revenue by :	Shri H. Phani Raju, CIT. DR

Date of Hearing	05/09/2024
Date of Pronouncement	01/10/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These four appeals are filed by the Revenue against the order of CIT(A)-12, Ahmedabad and relate to different assessees as under:

Appeal No.	Name of Assessee	A.Y.	CIT(A)'s order
IT(SS)A No. 81/Ahd/2021	M/s. Cube Mines and Minerals Pvt. Ltd.	2014-15	09/03/2021
IT(SS)A No. 82/Ahd/2021	M/s. Iolite Cube Inframaterial Ltd.	2014-15	10/03/2021
ITA No. 159/Ahd/2021	M/s. Iolite Cube Inframaterial Ltd.	2015-16	10/03/2021
ITA No. 1609/Ahd/2021	M/s. Aikya Chemicals Pvt. Ltd.	2015-16	10/03/2021

2. All the assesseees are part of Cube Group and the facts involved in these four cases are identical and were heard together. Therefore, these appeals are being disposed of vide this common order.

3. We will take IT(SS)A No.81/Ahd/2021 for A.Y. 2014-15 as the lead case.

4. A search under Section 132 of the Income Tax Act, 1961 (in short 'the Act') was conducted on 12.02.2015 in Cube Group of cases. In the course of search, the premises of the assessee was also covered and, therefore, proceedings u/s.153A/143(3) of the Act was initiated in this case. The only issue involves in these cases is addition in respect of unsecured loan received from a company M/s. Blackberry Ventures Pvt. Ltd. ('BVPL'), which was floated in Kolkata in the year 2010. This company was floated by an accommodation entry operator of Kolkata, namely, Mr. Pankaj Agrawal who had admitted that BVPL was a paper company. BVPL had raised funds of about Rs.40 Crores by issuing shares with premium in F.Y. 2010-11. Subsequently, BVPL was acquired by Cube Group in F.Y. 2013-14 and the new Directors were Shri Sanjay Shah and Smt. Bindiya Shah who had full control over BVPL. The entire investment of BVPL of around Rs.40 Crores was sold in F.Y. 2013-14 and 2014-15 and the sale consideration was utilized for giving loan to the companies of the Cube group including the assessee company. The assessee had

received unsecured loan of Rs.11,08,18,000/- during A.Y. 2014-15 from BVPL. In the course of assessment proceeding, the assessee company had furnished copy of confirmation, bank statement, income tax return and balance sheet of BVPL to establish the genuineness of transaction and creditworthiness of the lender i.e. BVPL. The assessee had, thus, duly established the identity and substantiated the creditworthiness of BVPL to advance the loan.

5. The AO, however, rejected the evidences filed by the assessee on the ground that BVPL was floated by an accommodation entry operator of Kolkata, namely, Mr. Pankaj Agrawal who had accepted in his statement that BVPL was a paper company. As mentioned earlier, the company BVPL had raised funds of Rs.40,16,29,000/- during F.Y. 2010-11, by issuing share capital at premium through private placement. BVPL had issued 7,57,900 shares of face value of Rs.1/- at a premium of Rs.509/- per share, whereas another 1,50,00,000 shares were allotted at face value to a company Merit Sales Pvt. Ltd. ('MSPL'). The AO held that these transactions did not have any financial merit as there was no business acumen to explain issue of shares at premium of Rs.509/- when the majority of the shares were issued to MSPL on face value. Further, BVPL did not have any substantial fixed asset or investment to justify the premium as charged. The AO, therefore, held that the purchase of investment of BVPL by the paper companies and credit of

Rs.40 Crores as sale proceeds in the books of BVPL were not genuine transactions. The AO had accepted that the source of funds of BVPL was the payments made by various companies against their purchase of investment/shares from BVPL at Rs.21.7 Crores in F.Y. 2013-14 and Rs.18.13 Crores in F.Y. 2014-15. However, it was presumed by AO that all the companies who had purchased the investment of BVPL were paper companies and the amount paid by them was nothing but the unaccounted cash of assessee company (Cube group of company), which was transferred to the account of BVPL and the same was brought back in the books of the assessee company in the form of unsecured loans. Therefore, the AO rejected the contention of the assessee company and treated the unsecured loan of Rs.11,08,18,000/- taken from BVPL as non-genuine and made addition u/s.68 of the Act.

6. Aggrieved with the order of the AO, the assessee company had filed an appeal before the First Appellate Authority. The addition made u/s.68 of the Act on account of unsecured loan received from BVPL was deleted by the Ld. CIT(A), against which the Revenue is in appeal.

7. Following grounds have been taken in this appeal:

“(1) On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred deleting the addition of Rs. 11,08,18,000/- made on account of unexplained cash credit ignoring the fact that the assessee has failed to explain the

sum so credited, to the satisfaction of the Assessing Officer, in terms of Section 68 of the I. T. Act read with first proviso.

- (2) *On the facts and in the circumstances of the case and law, the Ld. CIT(A) has erred in holding that the assessee has not only furnished the source of credit entries but also explained the source of source.*
- (3) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred deleting the addition, ignoring the complete facts brought out by the Assessing Officer to establish that the transactions were not genuine and funds were brought in by layering of transactions by depositing cash in bank accounts of different parties and transferring the funds to the bank accounts of the persons who have purchased the share from Blackberry Ventures Pvt. Ltd.(BVPL) and subsequent transfer to the assessee under the guise of unsecured loans.*
- (4) *On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the Assessing Officer has merely relied upon the statement of Shri Pankaj Agarwal without considering the details and facts brought out independently by the Assessing Officer in the assessment order.*
- (5) *On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting both the substantive addition made in the case of the assessee as well as the protective addition made in the case of BVPL.*
- (6) *It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*
- (7) *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

8. Shri H. Phani Raju, Ld. CIT. DR submitted that the AO had relied upon the report of the Investigation Wing that BVPL was floated by an accommodation entry operator of Kolkata, namely, Shri Pankaj Agrawal who had admitted in his statement that

BVPL was a paper company. He further submitted that the enquiries conducted by the department had established the cash trail which was related to the assessee and which established that unaccounted cash was introduced by Cube group, which was subsequently routed as sale of shares in the books of BVPL. The sale proceeds of the shares in BVPL were subsequently transferred to Cube Companies as unsecured loans. The Ld. CIT. DR submitted that the ultimate beneficiary of the cash introduced was the assessee company. He further submitted that merely because the loans were advanced by cheque, it doesn't establish the genuineness of transaction. According to the Ld. CIT. DR considering the totality of the transaction and the adverse evidences collected by the department, the Ld. CIT(A) was not correct in deleting the additions. The Ld. CIT. DR further submitted that the case for A.Y. 2014-15 was an abated assessment and, therefore, the AO was competent to make addition on the basis of findings of the enquiries carried out in the course of assessment proceedings.

9. Per contra, Shri Jigar Adhiyaru, the Ld. AR appearing for the assessee, submitted that the AO had made the addition on the basis of presumption and without bringing on record any evidence that the cash was introduced by the assessee company. He further submitted that the accommodation entry provider of Kolkata, Mr. Pankaj Agrawal, whose statement has been relied upon by the AO, had nowhere stated that the assessee company was engaged

in providing accommodation entry to BVPL. Further, the assessee was not allowed any opportunity to cross examine the said Mr. Pankaj Agrawal. The Ld. AR contented that the immediate source of loan was BVPL and the assessee has brought on record all the evidences to establish the identity, creditworthiness and genuineness of the transactions. Therefore, the Ld. CIT(A) had rightly deleted the addition. The Ld. AR further submitted that identical issue was involved in the case of *M/s. Sphere Cube Infrastructure Pvt. Ltd. & M/s. Sancube Infra Projects Pvt. Ltd.*, which was decided by the Co-ordinate Bench of this Tribunal in *IT(SS)A Nos. 73 to 75 & 136/Ahd/2021 & Ors. vide order dated 30.06.2023* and the Ld. Tribunal had upheld the order of Ld. CIT(A) deleting the addition in respect of unsecured loan from BVPL. The Ld. AR also relied upon the decision of this Tribunal in the case of *ACIT vs. M/s. Blackberry Ventures Pvt. Ltd. in IT(SS)A Nos. 84, 85 & 161/Ahd/2021, dated 26.04.2023*.

10. We have carefully considered the rival submissions. The only issue involved in the case is the genuineness of loan taken from BVPL. The identity of BVPL was not under question. In order to establish the genuineness of the transaction and the creditworthiness of the lender i.e. BVPL, the assessee had furnished the copy of confirmation, bank statement, income tax return and balance sheet of BVPL. Thus, the assessee had duly substantiated the identity of BVPL and its capacity to advance

the loan. The loans were advanced out of the sale proceeds of investment of shares of BVPL. From the careful appraisal of the materials and evidences as brought on record, it is found that the AO had made the addition based on mere presumption rather than on any concrete evidence. In the course of search, no evidence was found that the Cube Group, including the assessee company, had routed its unaccounted income in the form of unsecured loan from BVPL. No evidence of any cash deposit made by the Cube group (including the assessee company) in any third-party account was found during the search. The AO has brought on record certain instances of cash deposits vide Annexure A-1 to A-7 of assessment order. It is found there from that the cash deposits in third party accounts were first transferred to Bigbull Goods Pvt. Ltd. (BGPL) and others accounts through various intermediaries. Thereafter, BGPL had transferred the funds to BVPL, which was allegedly utilized for advancing loan to the assessee and other Cube Group companies. However, it is seen that there is no one-to-one correlation between the cash deposits in the original accounts and their ultimate transfer to the account of the assessee. The cash might be belonging to any of the intermediaries. As already mentioned earlier, there was no evidence found during the search or any other evidence brought on record by the AO to co-relate the source of cash deposits with the assessee company. The immediate source of the loan taken by the assessee from BVPL was the sale proceeds of shares of BVPL, which has not been disputed by the Revenue. If so, the cash

deposits in various third-party accounts can't be attributed to the assessee company.

11. Further, the accommodation entry provider Mr. Pankaj Agrawal, whose statement has been heavily relied upon by the Revenue, had also not stated that the cash deposits were made by the assessee company or that the assessee company was engaged in providing accommodation entry. Therefore, the conclusion of the AO that the ultimate source of the loans taken from BVPL was the cash deposit in various accounts made by the assessee company, was based on mere presumption rather than on any concrete evidence. The Revenue has not controverted the fact that the source of unsecured loans was the sale proceeds of the shares held by BVPL. Since, the sale proceeds of shares sold by BVPL remains undoubted, the utilization/application of such sale proceeds by BVPL for granting loan to the Group companies has to be treated as fully explained. Thus, the assessee had established the identity, genuineness and creditworthiness of the transactions with BVPL and, therefore, the Ld. CIT(A) had rightly deleted the addition.

12. The AO has doubted the genuineness of issue of shares by BVPL in A.Y. 2011-12 and, therefore, had also doubted the veracity of loan advanced to the assessee in A.Y.2014-15. The Ld. CIT(A) has correctly held that once addition was made in the case of BVPL treating the share application as unexplained cash credit

u/s 68 of the Act in A.Y. 2011-12, no addition could have been made on that basis in the hands of the assessee in the A.Y.2014-15. In fact, double addition was made in the case of BVPL for the same amount – once on issue of shares in A.Y.2011-12 and again in A.Y.2014-15 on sale of shares that were acquired out of share application money. The addition in respect of unsecured loan made in the hands of the borrowers was the third addition for the same amount. The ld. CIT(A) had rightly held that no addition can be made for the source as well as for the application of the same fund. Since the source of funds was already added in the hands of BVPL it was not correct for the AO to make addition in the hands of the assessee which was mere application of the funds by BVPL and particularly when no evidence was found in the course of search that the assessee had laundered its own cash in the form of these loans.

13. It is thus found that the assessee had discharged its onus to establish the identity and creditworthiness of the creditor and the genuineness of the transaction. The capacity of BVPL to advance the loan was also duly substantiated. The co-ordinate Bench of this Tribunal in the case of *ACIT vs. M/s. Blackberry Ventures Pvt. Ltd. in IT(SS)A Nos. 84, 85 & 161/Ahd/2021, dated 26.04.2023* had given the following finding vis-à-vis the loans advanced to Cube group companies, which establishes the creditworthiness of BVPL:

“20.3 Coming to the facts of the case to hand, the AO based on the statement one Shri Pankaj Aggarwal held that the assessee company is a paper company. There was no nexus whatsoever established between assessee company and Pankaj Aggarwal neither his statement provided to the assessee for rebuttal, nor the cross examination was provided. Likewise, the AO also held the companies in which the assessee company made investment and the companies to whom assessee company sold its investment as paper company without assigning any cogent reason or material facts/evidence. The AO in his finding discussed the trail of fund in case of one company namely M/s Bigbull Goods Pvt Ltd (BGPL) to whom assessee company sold its investment for Rs. 1.4 crore in the A.Y. 2015-16. The AO found that just before making payment to the assessee company the bank of BGPL was credited for same amount from different persons in whose bank account cash was deposited. Accordingly, the AO presumed the cash deposits in the bank account of the person who transferred fund to BGPL are unaccounted cash of Cube-Group of companies without establishing nexus between those person and cube-group. The AO further presumed the entire sale proceeds on investment which received from more than 30 different companies as unaccounted money of cube group. It is settled position of law that the no income can be assessed based on presumption, surmise, and conjecture whatsoever strong it is. In the case on hand, the entire basis of AO treating the sale proceeds as unaccounted money of cube group are based on presumption and surmises.

20.4 Further, the AO lost the sight to the fact that the assessee company was having fund in the form of share capital and premium which was invested in the shares of different companies and finally the investment was sold, and the amount was lent to the cube group as loan. Thus, the origin of funds in dispute starts when the assessee company issued shares in the A.Y. 2011-12. Therefore, any action or doubt can only be raised at origin i.e. in A.Y. 2011-12. However, we note that the AO has made the addition of the credit of share capital along with premium in the A.Y. 2011-12 which has been deleted by us on technical ground vide paragraph no. 10.4 of this order. In our considered opinion, the same amount cannot be added again in the year under consideration in the hands of the assessee company. In view of the above and considering the facts and

circumstances on record, we do not find any reason to interfere in the finding of the learned CIT(A). Hence, the grounds of appeal of the Revenue for both the assessment years viz 2014-15 and 2015-16 are hereby dismissed.

21. In the result, both the appeals of the Revenue are hereby dismissed.”

14. Further, identical issue was involved in the case of *M/s. Sphere Cube Infrastructure Pvt. Ltd. & M/s. Suncube Infra Projects Pvt. Ltd. in IT(SS)A Nos. 73 to 75 & 136/Ahd/2021 & Ors. vide order dated 30.06.2023*, wherein, the addition in respect of unsecured loan taken by other Cube group companies from BVPL was deleted by the Ld. CIT(A) and which was upheld by the Co-ordinate Bench of this Tribunal.

15. Respectfully following the ratio of the above judgments of the Co-ordinate Bench of this Tribunal, we upheld the deletion of addition made by the AO u/s.68 of the Act in respect of unsecured loan taken by the assessee from BVPL and the order of the Ld. CIT(A) is confirmed. The grounds taken by the Revenue are found to be devoid of merits and are dismissed.

16. In the result, the appeal filed by the Revenue is dismissed.

17. The grounds taken in *IT(SS)A No. 82/Ahd/2021* and in *ITA Nos. 159 & 160/Ahd/2021* are identical to the grounds as raised in *IT(SS)A No. 81/Ahd/2021*, except the quantum of addition. The issue involved in all these cases are identical and pertain to

addition in respect of unsecured loan taken from BVPL, which was deleted by the Ld. CIT(A). As the facts of all these cases are pari-passu, the decision taken in the case of IT(SS)A No.81/Ahd/2021 shall apply mutatis mutandis in these case as well. Hence, these appeals filed by the Revenue are also dismissed.

18. In the result, all the four appeals of the Revenue are dismissed.

This Order pronounced on	01/10/2024
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

(True Copy)
Ahmedabad; Dated 01/10/2024
S. K. SINHA