

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT  
AND  
SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No.803/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19

ITO, Ward-1, Ichalkaranji	Vs.	Jaikishan Textile Traders LLP, Shop No.1, Cloth and Yarn Mer. Asso. Bldg, Kagwade Mala, Ichalkaranji – 416115 PAN : AAMFJ9148E
Appellant		Respondent

Assessee by Shri Pramod S Shingte  
Revenue by Shri Ravi Prakash

Date of hearing 14-10-2024  
Date of pronouncement 15-10-2024

आदेश / ORDER

PER S.S. GODARA, JM :

This Revenue's appeal for AY 2018-19 arises against the NFAC, Delhi's order dated 17-05-2023 passed in case No. ITBA/NFAC/S/250/2023-24/1052902100(1) in proceedings under Section 250 of the Income Tax Act, 1961, in short 'the Act'.

Heard both the parties at length. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal:

*Grounds of Appeal*

1. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.29,61,06,768/- made u/s 68 of the I.T. Act, on account of unexplained cash credit raised during the year without appreciating the fact that the assessee failed to prove the nature and source of the capital introduced by the partners.*
2. *On the facts and circumstances of the case and in law the Ld.CIT(A) erred in disregarding the fact that the assessee's submissions were found not satisfactory by the AO(Assessment Unit) which is why a final opportunity was given to the assessee vide notice dated 26.03.2021 in response to which the assessee made no submissions.*
3. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not considering that the nature and source of the capital introduced by the individual partners remain unexplained in spite of various opportunities given to the assessee.*
4. *On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) is justified in holding that the evidences/documents produced before him would not constitute additional evidences under Rule 46A as the same were not produced before the AO.*
5. *The appellant craves leave to add, alter, amend, modify any of the grounds or raise any other grounds at the time of proceedings before the ITAT, which may be granted.*

3. Ld. CIT-DR next takes us to the CIT(A) / NFAC's lower appellate discussion reversing assessment findings making section 68 addition of Rs.29,61,06,768/-; and that too, after allegedly admitting the assessee's additional evidence, in violation of rule 46A of the Income Tax Rules, 1962 as follows:

*"6.Adjudication:*

*I have gone through the appellant's submission and the AO's reasoning for the assessment order making the impugned additions. The appellant has let in undisputable evidence that all the documents relevant to the issue on hand have already been submitted to the AO during the course of assessment. The appellant also submitted that ground 1 may not be pressed if ground no 2 is adjudicated on merits*

*It is beyond doubt that the LLP came into existence only during the previous year relevant to the assessment year. The preexisting business of the present partners of the LLP were carrying on the business as proprietary concerns earlier and therefore the capital balances in the erstwhile proprietary business have been integrated into the books of accounts of the LLP. As these documents were already proved to have been submitted to the AO, they would not constitute additional evidence under Rule 46A. On careful consideration of the documentation filed as part of appellant's submission, the impugned addition was not warranted and therefore the AO is directed to delete the same.*

*Ground No2 is allowed on merits and Ground no 1 not being insisted in that event.*

*Therefore, this appeal stands allowed."*

This leaves the Revenue aggrieved.

4. Ld. CIT-DR has vehemently reiterated the Revenue's pleadings in the foregoing substantive grounds seeking to revive the Assessing Officer's action.

5. The assessee's case on the other hand is that he had not filed any additional evidence; whatsoever, before the CIT(A) / NFAC much less than that violating rule 46A of the Income Tax Rules. It has filed a detailed paper book running into 474 pages with due certification that all the relevant material had indeed been placed on record before the lower authorities. We raised a specific question as to whether the assessee had filed any reply explaining the source of the impugned credits during the course of assessment or not. Mr. Singte has taken us to pages 466 onwards running up to page 474 between 13.10.2019 to 12.04.2021. He next refers to the Assessing Officer's corresponding show cause notices as well to this clinching effect. It is lastly submitted by the assessee's side that even the Assessing Officer's assessment itself is very far in coming to the conclusion that the amount herein of Rs.29.61 crores assessed u/s 68 came by way of capital introduction by its twin

partners Shri Prakash Jaikishan Vyas and Shri Vikas Jaikishan Vyas to the tune of Rs.5,34,10,500/- and Rs.24,26,96,268/-; respectively. It seeks to buttress the point that the assessee / LLP has been established only in the relevant previous year and therefore, once the impugned sum forms capital introduced by its partners, no section 68 addition could be made in its hands as per Kapil Alcotech LLP vs. DCIT, ITA No.557/PUN/2024, order dated 09.08.2024.

*“41. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We find the Assessing Officer in the instant case made addition of Rs.1,18,82,797/- being the capital introduced by Shri Harleensingh Sethi on the ground that the assessee could not substantiate the creditworthiness of the partner with necessary material evidence for capital introduction. We find the CIT(A) / NFAC sustained the addition, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that an amount of Rs.1,18,82,797/- was transferred from CC account of Satyam Spirit Pvt. Ltd. on 01.06.2019 and despite giving full details the CIT(A) / NFAC has sustained the addition which is not correct. It is also his submission that the capital contribution of partner cannot be added u/s 68 of the Act. We find merit in the alternate submission of the Ld. Counsel for the assessee. The Hon’ble High Court of Gujarat in the case of PCIT vs. Vaishnodevi Refoils & Solvex (89 taxmann.com 80 (Guj) has held that on account of introduction of capital by the partner, addition, if any, can be made in the hands of the partner and not in the hands of the firm. The relevant observations of the Hon’ble High Court read as under:*

*“8. In the facts of the present case, when the assessee has furnished the details with regard to the source of the capital introduced in the firm and the concerned partner had confirmed*

*such contribution, the assessee had duly discharged the onus cast upon it. Thereafter, if the Assessing Officer was not convinced about the creditworthiness of the partner who had made the capital contribution, the inquiry had to be made at the end of the partner and not against the firm. The controversy involved in the present case, therefore, stands squarely covered by the decision of this court in the case of Commissioner of Income-tax v. Pankaj Dyestuff Industries, rendered on 6.7.2005 in Income Tax Reference No.241 of 1993.”*

*42. Respectfully following the decision of the Hon’ble High Court of Gujarat in the case of PCIT vs. Vaishnodevi Refoils & Solvex (supra), we hold that the addition, if any, on account of introduction of capital by the partner can be made in the hands of the partner only and not in the hands of the firm. The order of the CIT(A) / NFAC on this issue is accordingly set aside and the Assessing Officer is directed to delete the addition. Thus, the ground of appeal No.10 is accordingly allowed.”*

6. We have given our thoughtful consideration to the foregoing vehement rival submissions and find no merit in the Revenue’s substantive grounds raised in the instant appeal. We wish to emphasize here that not only the impugned sum(s) has been credited by the assessee’s partners in its books as capital introduced not assessable u/s 68 but also we do not find any additional evidence filed by the assessee before the CIT(A) / NFAC which could violate rule 46A of the Income Tax Rules, 1962. We conclude in these peculiar facts and circumstances as well as in light of the foregoing judicial precedent(s) that the

CIT(A) / NFAC has rightly deleted the impugned addition made by the Assessing Officer in assessee's hands. Ordered accordingly.

7. This Revenue's appeal is dismissed in above terms.

Order pronounced in the Open Court on 15<sup>th</sup> October, 2024.

Sd/-  
**(R.K. PANDA)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 15<sup>th</sup> October, 2024  
GCVSR

Sd/-  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT(A), Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A', ITAT, Pune
5. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	14-10-2024	Sr.PS
2.	Draft placed before author	15-10-2024	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		