

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.145/Ahd/2024
(Assessment Year: 2018-19)

Sustainable Spinning and Commodities Pvt. Ltd., 1, Bhalgamda Gate Limbdi, Surendranagar, Gujarat-363421	Vs.	Assistant Commissioner of Income Tax, Circle-4(1)(1), Ahmedabad
[PAN No.AASCS2009Q]		
(Appellant)	..	(Respondent)

I.T.A. No.416/Ahd/2024
(Assessment Year: 2018-19)

Sustainable Spinning and Commodities Pvt. Ltd., N.H. 8A, Bhalgamda Gate Limbdi, Limbdi, Gujarat-363421	Vs.	Principal Commissioner of Income Tax-3, Ahmedabad
[PAN No.AASCS2009Q]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Chetan Agarwal, A.R.
Respondent by:	Shri A. P. Singh, CIT-DR & Shri Rignesh Das, Sr. DR

Date of Hearing	09.10.2024
Date of Pronouncement	23.10.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These appeals are emanating from orders passed by Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi under Section 250 of the Act and order passed by Principal Commissioner of Income Tax, (in short “PCIT”), Ahmedabad-3, under Section 263 of the Act vide orders dated 08.01.2024 & 06.02.2024 for Assessment Year 2018-19. Since the

facts and issues for consideration are common, both appeals filed by the assessee are taken up together.

We shall first deal with assessee's appeal in ITA No. 145/Ahd/2024 for A.Y. 2018-19.

2. The Assessee has taken the following grounds of appeal:-

“1. Ld. CIT(A) erred in law as well as in fact in confirming addition of Rs.3,77,39,430/- being addition made by ld. AO u/s. 68 of Income Tax Act, 1961.”

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of cotton yarn. The original Return of Income (ROI) for the Assessment Year (A.Y.) 2018-19 was filed electronically by the assessee company on September 17, 2018, declaring a total income of Nil. The case was selected for limited scrutiny under the Computer Aided Scrutiny Selection (CASS) due to specific reasons outlined in the assessment order. Following this, a notice under Section 143(2) of the Income Tax Act was issued and served on September 23, 2019 requesting the assessee to furnish detailed information regarding the increase in share capital and details on unsecured loans repaid during the year. During the assessment process, the Assessing Officer noted that the assessee company had a substantial increase in share capital amounting to Rs. 10,00,20,000/- and further the assessee company repaid unsecured loans totaling to Rs. 6,22,80,570/- during the financial year. The assessee company was asked to provide clarity regarding the genuineness, creditworthiness, and source of funds for these transactions. In response, the assessee provided detailed submissions, including a breakdown of the

share capital increase, which was attributed to four shareholders. The assessee claimed that the unsecured loans of Rs. 6,22,80,570/- had been converted into share capital, rather than repaid. The assessee gave details regarding the contributions of each shareholder and submitted that the funds had been brought in through legitimate means. However, upon reviewing the submissions, the Assessing Officer was of the view that while the company has stated the source of funds, the assessee company gave insufficient evidence to establish the creditworthiness of the shareholders and the genuineness of the transactions. The Assessing Officer held that the funds introduced were primarily from self-business activities and loans, but the significant amount of cash deposits raised concerns regarding their legitimacy and genuineness. The Assessing Officer was of the view that despite requests for further documentation, including confirmation letters from loan creditors and comprehensive financial statements, the assessee failed to provide adequate evidence to substantiate the claims made. Notices were issued under Section 133(6) of the Act to obtain necessary information from the shareholders and loan creditors, yet the responses were limited, primarily consisting of account statements without additional corroborating documentation. The Assessing Officer was of the view that the inability of the assessee and its shareholders to provide satisfactory evidence led to the inference that the share capital raised was unexplained cash credit under Section 68 of the Income Tax Act, which was accordingly added to the total income of the assessee. Consequently, the assessed income was determined as a figure

of Rs. 3,77,39,430/-, and penalty proceedings were initiated under Section 271AAC of the Income Tax Act.

4. In appeal, Ld. CIT(Appeals) observed that during the assessment process, the AO had identified a significant increase in share capital amounting to Rs. 10,00,20,000/-, alongside repayments of unsecured loans totaling to Rs. 6,22,80,570/-. The assessee was asked to provide evidence demonstrating the genuineness, creditworthiness, and identity of the lenders. However, the AO found deficiencies in the details provided by the assessee company. The absence of confirmation letters, PAN details, bank statements, or substantial supporting evidence raised questions about the genuineness of these transactions. The Assessing Officer issued notices to loan creditors and shareholders, but they gave insufficient responses, consisting mainly of account statements, lacking any further detail. The inability of the assessee company to substantiate the source of cash deposits, alongside unverified claims relating to fixed deposits and insurance, led the AO to hold that the share capital was derived from unexplained cash, routed through bank accounts, thereby indicating dubious transactions. Since the shareholders, the loan creditors, and the assessee company could not provide adequate evidence, failing to meet the burden of proof for the genuineness of the transactions, the Assessing Officer made additions in the hands of the assessee company by treating share capital amount of Rs. 3,77,39,430/- as unexplained cash credit under Section 68, read with Section 115BBE of the Act.

5. In appeal, Ld. CIT(Appeals) held that in light of the assessee's argument regarding the conversion of loans into equity shares, it is important to note the legal framework established under the Companies Act, 2013. The process involves several steps, beginning with passing a special resolution to approve the terms of the loan, which must be filed in E-form MGT 14. Subsequently, a Board Resolution must be passed for conversion, followed by filing E-form PAS3 within 30 days. This structured process mandates timely filings with the Registrar of Companies to ensure transparency and legal compliance. To substantiate claims of loans, the company is required to maintain comprehensive documentation, including written agreements, invoices, bank statements, signed receipts, and detailed accounting entries. These documents serve as critical evidence of credit transactions, helping to uphold financial transparency and legal standards. Furthermore, Ld. CIT(Appeals) referred to judgment by the Hon'ble Supreme Court, in which it has been held that the assessee has a legal responsibility to prove the legitimacy of transactions, identify creditors, and demonstrate the creditworthiness of investors. In the instant case, Ld. CIT(Appeals) was of the view that the inquiries revealed that several investor companies were either non-existent or they lacked sufficient creditworthiness. Some companies showed minimal taxable income, casting doubt on their ability to make significant investments in the assessee company. The AO found insufficient explanations regarding high share premiums and was not satisfied with the evidential support provided by the assessee. Accordingly, Ld. CIT(Appeals) held that the onus of proof did not shift with the submission

of primary evidence by the assessee. Ld. CIT(A) held that the assessment order revealed that the assessee failed to substantiate the creditworthiness of investor companies, leading to the conclusion that the transactions in question were not genuine. Consequently, Ld. CIT(Appeals) upheld the order of AO and confirmed the addition of these amounts to the assessee's income, and the appeal filed by the assessee was dismissed.

6. The assessee is in appeal before us against the order passed by Ld. CIT(Appeals) upholding the additions made by the Assessing Officer. We observe that the present case revolves around the addition made to the income of the assessee under Section 68 of the Income Tax Act, concerning share capital received from four specific parties. The Assessing Officer found the share capital to lack genuineness, leading to the contested addition. The counsel for the assessee argued that necessary evidence had been submitted to the AO during the assessment process. It was submitted that the four parties had **undergone scrutiny assessments aimed at verifying their sources of investment in the share capital. The counsel for the assessee contended that the AO had, in fact, accepted the genuineness of these sources during those assessments.** To substantiate this claim, the assessee submitted a paper book containing the assessment orders of the four investors, along with all relevant documents presented during their respective assessment proceedings. Before us, the Ld. D.R. admitted orally that the assessment orders have been passed correctly in the hands of the persons who had made investment in the share

capital of the assessee company and hence on this account, no adverse inference can be drawn against the assessee.

7. In the present case, we observe that no additions have been made in the hands of the four investors, regarding the source of their investment during the course of scrutiny assessments in their respective hands. We are therefore, of the considered view that that if the investments had indeed been confirmed as genuine in the assessments of the respective investors, there would be little justification for the AO/CIT(A) to classify these same investments as bogus in the hands of the company receiving the share capital.

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

Now we come to Assessee's Appeal in ITA No. 416/Ahd/2024 for A.Y. 2018-19

9. The Assessee has taken the following grounds of appeal:

“1. Ld. PCIT erred in law as well as on fact in assuming jurisdiction and passing order u/s. 263 of the Act.”

10. The second appeal in ITA No. 416/Ahd/2024 relates to 263 order passed by Ld. PCIT holding that the assessment order dated 15.04.2021 as erroneous in so far as prejudicial to the interest of the Revenue. During the year under consideration, the assessee had received an amount of Rs. 4,63,29,433/- from certain depositors, which became shareholders at a subsequent stage. However, the PCIT was of the view that the AO erred

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in making addition of a sum of Rs. 3,77,39,430/- whereas, the remaining amount of Rs. 85,90,003/- was also required to be added by the AO under Section 68 of the Act.

11. However, since in the preceding paragraphs, we have held that the assessee has been able to substantiate the genuineness of the investors and have directed that no addition is liable to be sustained in the hands of the assessee company under Section 68 of the Act, accordingly, the present appeal of the assessee is also allowed is against the order passed under Section 263 of the Act.

12. In the combined result, both the appeals filed by the assessee are allowed.

This Order pronounced in Open Court on

23/10/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 23/10/2024

TANMAY, Sr. PS

TRUE COPY

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