

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.87/Nag./2024
(Assessment Year : 2012-13)

Dayal Cotspin Ltd.
New Radhakishan Plots
Akola 444 001 PAN – AACCD4041K

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Akola Circle, Akola

..... Respondent

Assessee by : Shri Kishore P. Dewani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 26/11/2024

Date of Order – 12/12/2024

ORDER

PER K.M. ROY, A.M.

This appeal by the assessee is against the impugned order dated 04/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2012-13.

2. The assessee has raised following grounds:-

- "1. Notice issued u/s 148 of I.T. Act 1961 is illegal, invalid and bad in law and thus consequent assessment framed there upon is liable to be cancelled.*
- 2. Notice issued u/s 148 of I.T. Act 1961 is bad in law in view of same having been issued on mere change of opinion and in absence of any tangible material on record to derive satisfaction of escapement of income.*
- 3. No notice u/s 148 of I.T. Act 1961 could be issued on the basis of seized material found in search action u/s 132(1) of I.T. Act 1961 on the premises of Amarpali group in October 2012.*

4. *The learned CIT(A) erred in upholding the validity of notice u/s 148 of I.T. Act 1961 and dismissing the grounds challenging the validity of notice u/s 148 in the case of assessee.*
5. *The addition made by A.O. at Rs.180 lacs u/s 68 of I.T. Act 1961 in respect to share capital contribution is unjustified, unwarranted and bad in law.*
6. *The learned A.O. erred in making addition at Rs.180 lacs u/s 68 of I.T. Act 1961 on account of share capital at the hands of assessee.*
7. *The learned A.O. ought to have accepted the issue of share capital as shown in books of account and accepted in regular assessment framed u/s 143(3) of I.T. Act 1961. No addition ought to have made of same u/s 68 of I.T. Act 1961.*
8. *The learned CIT(A) erred in upholding the addition u/s 68 of I.T. Act 1961 by A.O. and thereby dismissing the ground of appeal of assessee.*
9. *The learned CIT(A) erred in not granting personal hearing as prayed in written submission at pra 8 uploaded on 21/10/2023. Order passed by CIT(A) is in violation of principles of natural justice and is not in accordance with law.*
10. *The assessee denies liability to pay interest u/s 234A, 234B and 234C of I.T. Act 1961. Without prejudice, levy of interest under section 234A, 234B and 234C of I.T. Act 1961 is unjustified, unwarranted and excessive.*
11. *Any other ground that shall be prayed at the time of hearing."*

3. Facts in Brief:- In this case, the assessee, for the year under consideration, filed its return of income on 29/09/2012, which was accepted by the Assessing Officer during the regular assessment framed under section 143(3) of the Income Tax Act, 1961 ("*the Act*"). During the year, share capital of Assessee-Company was subscribed by four corporate shareholders to the tune of ₹ 180 lakh. The issue of share capital was examined by the Assessing Officer by issue of notice u/s 142(1) of the Act during the regular assessment framed under section 143(3) of Act. All corporate shareholders were assessed to income tax and transactions of subscription of share capital were through proper banking channel. Regular assessment was framed under

section 143(3) of the Act, on 23/03/2015, by accepting share capital contribution and income as shown in return of income. Notice under section 148 of the Act has been issued on 29/03/2017, and share capital issued was re-examined by the Assessing Officer in the light of information received from Investigation Wing of the Department. The assessment has been framed under section 143(3) r/w section 147 of the Act 1961 by the Asstt. Commissioner of Income Tax, Akola Circle, Akola, vide order dated 26/12/2017. The Assessing Officer made addition of ₹ 265.50 lakh in the assessment framed under section 143 r/w section 147 of the Act and the same was reduced to ₹ 180 lakh by passing a rectification order under section 154 of the Act on 28/12/2017. The relief prayed in the grounds of appeal was, therefore, made at ₹ 180 lakh being addition finally made after passing rectification order under section 154 of the Act.

4. In grounds no.1 to 4, the assessee has challenged the validity of notice issued under section 148 of the Act.

5. Notice under section 148 of the Act was issued on 29/03/2017, after recording reasons for escapement of income. The reasons recorded for issuance of notice, as provided to the assessee are reproduced hereunder for ready reference:-

"2. The reason recorded for issue of notice u/s 148 of the Income Tax Act, 1961 for the A.Y. 2012-13 is given below:-

"Reasons recorded for issuance of notice u/s 148

The assessee has filed the return of income for A Y 2012-13 on 28.09.2012 declaring total income of Rs.52,08,020/-. The order u/s 143(3) was passed on 23.03.2015 and the total income was assessed at Rs.52,08,020/-

2. As per information in hand, a search and seizure action u/s 132 of the Income Tax Act 1961 was conducted in the cases of Amrapali Group in October 2012. The said group had introduced capital of 100 crores. It was revealed that actually there was no business conducted and the said companies had dummy directors. The companies had given accommodation entries regarding share capital, share premium, bogus LTCEG etc. which are controlled by Mr. Shirish Chandrakant Shah of Mumbai. A search & seizure action u/s 132 was carried out at residential and business premises of Mr. Shirish Chandrakant Shah on 13.04.2013. His statement u/s 132(4) was recorded. During the search the incriminating documents were found. It was revealed that there was a chain of transfer of funds by way of cash/RTGS/cheques through bank accounts of various listed companies to ultimate beneficiaries. The accommodation entries were provided by the companies controlled by Mr. Shirish Shah.

Shirish Shah is a commission agent who provides various kinds of accommodation entries, such as entry for short term capital gains, long term capital gains, share premium, unsecured loans. He is managing hundreds of fictitious concerns/shall companies/paper companies (both listed and unlisted) to provide accommodation entries and charges commission in return.

3. During the course of search and assessment proceedings of Mr. Shirish Shah the following modus operandi was found:

- Sale/Purchase of the Shares of the companies controlled by Shirish Shah, for the purpose of introducing the unaccounted income of the Beneficiary in the form of Long Term Capital Gain or Short Term Capital Gain, receipt and payment of cash against such purchase and sale of shares.
- The records of transactions for the purpose of giving the entries of bogus share application money, share capital, share premium, share purchase known as "one time entries" or unsecured loan entries.

The accommodation entry includes providing share application money, share premium at huge figures to the beneficiaries.

16.1 One time accommodation entries referred to as "OT Entries" by the assessee i.e. Shri Shirish C Shah. This is a type of accommodation entry wherein the recipient party does not have liability to repay the funds received in its books of account e.g. share capital, share premium, purchase and sale of shares of unlisted private limited companies etc. in this type of accommodation entries the assessee. i.e. Shri Shirish C Shah received cash from the client directly or through the intermediary and against receipt of cash pays back RTGS to the entity of the client as per his directions. This entry is recorded in its books of accounts as share application money, consideration towards sale of shares. However, it is also pertinent to record here that the said accommodation entry may or may not be reversed immediately, but, the beneficiary gets the blank share transfer forms and other documents signed from the assessee i.e. Shri Shirish C Shah (authorized signatory of the paver entity.) These facts are admitted by Mr. Shirish Shah in his statement recorded u/s 132(4) of the Act as under:

Relevant extract of the Statement of the assessee i.e. Shri Shirish C. Shah dated 13.04.2013.

"Q. In your reply to Q. No.4 you have stated that you are engaged in the business of providing accommodation entries to various clients/beneficiaries against cash received from them through various modes such as subscription to share capital at high premium, booking bogus expenditures extending funds by way of loans and advances, raising capital through Long Term Capital Gain (LTCG). Please explain in detail all such modes employed by you for providing accommodation entries.

Ans. Sir, The modes employed by me for providing accommodation entries against commission are as under:

1. Subscription to share capital at premium:- Sir, in such cases shares of the companies of clients/beneficiaries are subscribed at high premium by the companies floated/managed/controlled by me against the cash received from such clients/beneficiaries. The funds received from such clients/beneficiaries are rotated through various companies controlled/floated/managed by me (termed as 'Chakri Ghumana' in our parlances) and ultimately introduced in the client's/beneficiary companies. Such types of accommodation entries are referred by us as one time entry (OT). It is called as one time entry because the client has no liability to pay it back. Sir, primarily cash is generally collected from 'Angadiyas' (cash courier) of the clients/brokers by our agent who provides RTGS into our companies through entities managed by him. These funds are then rotated in the web of my companies generally into the listed companies, managed by me and from there accounts cheques are issued to the clients/beneficiaries from whom cash has been received. This payment of funds into the beneficiary companies is recorded as investment in the books of the listed company and the beneficiary company shows as receipt of share capital/premium or share application money in its books of accounts.

Relevant extract of answer to Q. No.18 of the Statement of the assessee i.e. Shri Shirish C Shah dated 13.01.2014

Ans: Sir I have rightly said in my statement dated 11.06.2013 that these funds paid into Jhaveri Trading & Investment Private Limited are one time accommodation entries against receipt of cash. Sir, One Time accommodation entries are of two types in one case first shares are subscribed by my companies at premium against receipt of cash, in other case already issued shares are shown to have been purchase against payment of funds. In both cases the investments are not genuine but, are only used to give the transactions a color of investment. Infact, these are squaring off transactions wherein the liability to square off the books of accounts of the recipient for the funds received from my companies does not arise in future. In both the cases he share transfer forms duly filled by my company to whom the shares have been allotted or sold are filled in and given to the client from whom cash is received. In this case as already explained by me in earlier answer the cash was received by me from the promoter or the main persons the shares of whose company were purchased and the RTGS was made to Jhaveri Trading & Investment Private Limited as per the instructions of the promoters or key persons of these companies.

4. From the seized material it was established that M/s. Dayal Cotspins Ltd. is one of the beneficiaries which has received bogus accommodation entries. From the case records the details are noticed as under:

Sr No	Name	Address	PAN	No. of shares	Share Capital	Share Premium	Total amount
1.	Prabhav Industries Ltd.	Chinoi Bldg. Station Road, Vadodara	AAACE4 2___Q	25000	125000	4875000	50,00,000/-
2.	Secundrabad Healthcare Ltd.	S-1 Vimal, Road No.5, Jubilee Hall, Hyderabad	AACCS2 _____	25000	125000	4875000	50,00,000/-

From the case records it was seen that the assessee has furnished the share application forms which confirms that the bogus share allotment accommodation entries was obtained by way of preferential allotment. The shares are not applied for & also not purchased online.

The above two companies are camouflage of companies managed & controlled by Mr. Shirish Shah. All the funds were arranged by Mr. Shirish Shah. The companies allowed their bank accounts with user ID and password to Shirish Shah. By using the bank accounts of various companies including even public limited companies the funds were managed and accommodation entries were provided.

In view of above credible information revealed in search & seizure action u/s 132 in the case of Mr. Shirish Shah, I have reason to believe that M/s Dayal Cotspins Ltd. has taken bogus accommodation entries regarding investment in shares and thus the income to the extent of Rs.1,00,00,000/- plus incidental expenses/returns of investment etc. has escaped assessment within the meaning of provisions of section 147 Explanation 2(c) of the Income Tax Act 1961.

Apart from the information in respect of companies mentioned in above table, the case records show that the assessee has claimed investment in shares M/s Alpha Graphic India Ld. and ACIL Cotton Industries Ld. from which investment in shares of Rs.50 lacs and Rs.30 lacs respectively which also needs through investigation reassessment proceedings".

6. The gist of submissions, as submitted by learned Counsel for the assessee in respect of grounds no.1 to 4, is reproduced hereunder for ready reference:-

"Validity of notice issued u/s 148 of I.T. Act 1961.

- A) *In the case of assessee regular assessment was framed u/s 143(3) on 23/03/2015 accepting income as declared. Share capital contribution received was accepted after due verification.*
- i) *Notice u/s 142(1) Seeking details of share capital
(P- 166 – 167) (Vol. – I]*
- ii) *Details of share capital submitted
(P- 168 – 170) [Vol. – I]*
- iii) *Assessment order (P- 171 – 173) [Vol. – I]*
- B) *Reasons recorded are at page 6 to 9 of order of CIT(A). Perusal of reasons recorded indicates that search action was carried out at the premises of Amarpali group in October 2012 and on Shri Shirish Chandrakant Shah on 13/04/2013. On the basis of statement of Shri Shirish Shah it has been concluded that assessee is one of the beneficiary of bogus accommodation entries. It has been further concluded that share capital contribution of M/s Alpha Graphic India Ltd. and M/s ACIL Cotton Industries Ltd. at Rs.50 lacs and Rs.30 lacs respectively needs thorough investigation in reassessment proceedings. Notice u/s 148 is issued on 29/03/2017.*
- C) *Statement of Shri Shirish Shah is general statement and is not in respect to transaction of assessee company. It was not recorded for verification of capital contribution of assessee company. It appears that same was recorded for Jhaveri Trading & Investment Pvt. Ltd. (P- 8) CIT(A) order. It does not contain date or year of transaction of assessee company. No valid belief is recorded for escapement of income. Reliance on Lakhmani Mewaldas reported at 103 ITR 437(SC). (P- 21 to 31) (30) [Vol. – II]*
- D) *Reasons recorded are mere change of opinion. No new tangible material has comes on record. Notice issued u/s 148 is not in accordance with law. Reliance on Kelvinator of India Ltd. reported at 320 ITR 561(SC).
(P- 1 to 5) (2) [Vol. – II]*
- E) *Reasons recorded indicate that notice u/s 148 has been issued on the basis of mere receipt of information received in respect to search at the premises of Shri Shirish Shah through Intra Departmental Authorities. Reasons recorded does not indicate that A.O. has made any independent enquiry before concluding that assessee is in receipt of accommodation entries by way of share capital contribution. Reasons recorded does not indicate date, year or name of person to whom any cash is given as alleged for obtaining accommodation entry. Reasons recorded does not indicate any evidence on the basis of which it is concluded that corporate entities contributing share capital are of Shri Shirish Shah. It does not refer to any enquiry made by JAO. It is settled proposition of law that notice u/s 148 cannot be issued on the basis of mere receipt of information and in the absence of any tangible material/evidence on record.*

Reliance on:

- i) [2019] 104 taxmann.com 216 (Bom.)
South Yarra Holdings vs. ITO
(P- 42 - 45) (45) [Vol. - II]
- ii) [2017] 395 ITR 0677 (Delhi)
PCIT vs. Meenakshi Overseas Pvt. Ltd.
(P- 46 - 58) (53 to 58) [Vol. - II]
- iii) (2020) 422 ITR 0337 (Bom.)
CIT vs. Shodiman Investments Pvt. Ltd.
(P- 13 - 20) (20) [Vol. - II]
- F) *In the case of assessee it is evident from reasons recorded that information received is pursuance to search action u/s 132(1) of I.T. Act 1961. No valid notice u/s 148 could be issued in the case of assessee pursuance to information received and found in the course of search. Notice issued u/s 148 is not in accordance with law.*
- Reliance on:
- i) (2024) 161 taxmann.com 255 (Raj.)
Shyam Sunder Khandelwal vs. ACIT
(P- 250 - 256) (254, 255) [Vol. - II]
- ii) Hon'ble High Court of Karnataka at Bengaluru order
in ITA No.32 of 2020 in the case of M/s. VSL Mining
Company Pvt. Ltd. vide order dated 20/09/2024
(P- 257 - 270) (268 - 270) [Vol. - II]
- iii) ITAT, 'B' Bench, Bangalore in the case of M/s Ickon Projects in
ITA Nos.771&772/Bang/2017 vide order dated 26/10/2023.
(P- 74 - 81) (79, 80) [Vol. - II]
- iv) ITAT, 'E' Bench, Delhi in the case of Narendra Kumar in ITA
No.1218/Del/2019 vide order dated 19/07/2023.
(P- 82 - 89) (85, 86) [Vol. - II]
- G) *Share capital contribution in respect to M/s Alpha Graphic India Ltd. and M/s ACIL Cotton Industries Ltd. has been noted in reasons recorded to require thorough investigation in reassessment proceedings. It is settled proposition of law that reasons recorded for verification of transaction are not in accordance with law.*
- H) *Reasons recorded does not indicate any date, year of transaction and link of assessee with statement of Shri Shirish Shah and thus it is no valid reasons for issue of notice u/s 148 in the case of assessee.*
- I) *It is settled proposition of law that reasons to suspect is not sufficient to issue notice u/s 148 of I.T. Act 1961.*
- i) [1981] 130 ITR 0001 (SC)
Ganga Saran & Sons Pvt. Ltd. Vs. ITO"
(P- 32 - 41) [Vol. - II]

7. In grounds no.5 to 8, assessee has challenged the addition of ₹ 180 lakh under section 68 of the Act.

8. The gist of submission, as submitted by the learned Counsel for the assessee is reproduced hereunder for ready reference:-

"Addition of Rs.180 lacs u/s 68 of I.T. Act 1961.

- A) *Assessee has placed on record confirmation. Financial statements, acknowledgement of Income Tax Return and bank statement of corporate share holders. Assessee has placed reasonable evidence on record to discharge its onus to explain the contribution of share capital. Transaction of receipt of share capital is through proper banking channel. Financial statement of corporate share holders indicates substantial creditworthiness to contribute share capital.*
- B) *CIT(A) has reproduced the written submission at pages 22 to 27 partly. The complete submission as made before CIT(A) is at of CIT(A) has recorded no justification/reasons for not accepting the submission of assessee. Rejection of explanation of assessee by CIT(A) is unjustified and not in accordance with law.*
- C) *A.O. has made the addition primarily on the basis of statement of Shri Shirish Shah. The aforesaid person was examined by Income Tax Authorities in the case of Chain House International Pvt. Ltd. Attention of CIT(A) was invited to facts of Shri Shirish Shah as noted in judgment of Hon'ble High Court of Madhya Pradesh dated 07/08/2018. It has been concluded by Hon'ble High Court that addition made on the basis of statement of Shri Shirish Shah is unjustified and unsustainable. Attention was invited to observation in the judgement of Hon'ble High Court at para 14 to 19, 26, 52 & 53 to submit that there is nothing adverse from the statement of Shri Shirish Shah to make addition in respect to share capital/loan in the aforesaid case SLP filed by Revenue in respect to decision of Hon'ble High Court of Madhya Pradesh has been dismissed by Apex Court vide judgment dated 18/02/2019. (P- 90) [Vol. - II]*
- D) *In the case of M/s. Esspal International Pvt. Ltd. share capital contribution was added u/s 68 based on statement of Shri Satish Shah. Addition made is deleted in appellate proceedings.*

Reliance on:

- i) *ITA No.288/Jodh/2018 in the case of M/s. Esspal International Pvt. Ltd. vide order dated 03/01/2024.
(P- 213 - 242) (231 to 235) [Vol. - II]*
- ii) *Appeal of revenue dismissed by Hon'ble Rajasthan High Court in ITA No.25/2024 in the case of M/s. Esspal International Pvt. Ltd.*

vide judgement dated 03/09/2024. (P- 243- 249) (248) [Vol. II]

- E) *Perusal of details of corporate shareholders (P- 32, 57, 93 & 152) (Vol. - I] does not indicate that Shri Shirish Shah is director or subscriber of the aforesaid company. Allegation of A.O. in the assessment order as aforesaid company is under the control of Shri Shirish Shah is not borne out of any legal evidence on record. Allegation made not based on any evidence on record does deserves no credence. Addition made in the case of assessee is thus unjustified and unsustainable.*
- F) *No cross examination was offered/allowed of Shri Shirish Shah before making addition at the hands of assessee. Assessee had made specific request before A.O. Evidence collected behind the back of assessee and not stood to the test of cross examination cannot be used to make addition at the hands of assessee.*

Reliance on:

- i) *[2015] 281 CTR 0241 (SC)
Andaman Timber Industries vs. CCE*
- ii) *(2010) 327 ITR 0290 (Guj)
Heirs and Lrs of Late Laxmanbhai S Patel vs CIT
(P- 59 – 73) (72) [Vol. – II]*

G) Reliance on:

- i) *Hon'ble High Court of Judicature at Bombay order in ITA No.1613 of 2014 in the case of M/s. Gagandeep Infrastructure Pvt. Ltd. vide order dated 20/03/2017
(P- 171 – 177) [Vol. – II]*
- ii) *(2008) 6 DTR 0308 (SC)
CIT vs. Lovely Exports (P) Ltd.
(P- 178 – 179) [Vol. – II]*
- iii) *Hon'ble High Court of Bombay at Goa order in Tax Appeal No.16 of 2012 in the case of Goa Sponge And Power Ltd. vide order dated 13/02/2012.
(P- 180 – 181) [Vol. – II]*
- iv) *(1999) 237 ITR 0570 (SC)
CIT vs. Smt. P.K. Noorjahan (P- 182 – 185) [Vol. – II]*
- v) *(2002) 256 ITR 0360 (Guj.)
DCIT vs. Rohini Builders (P- 186 – 187) [Vol. – II]*
- vi) *(2007) 291 ITR 0278 (SC)
CIT vs. P. Mohanakala & Ors. (P- 188 – 197) [Vol. – II]*
- vii) *(1986) 159 ITR 0078
CIT vs. Orissa Corporation (P) Ltd.
(P- 197 – 203) [Vol. – II]*

viii) (2013) 358 ITR 0295 (SC)
CIT vs. Excel Industries Ltd. (P- 204 - 212) [Vol. II]

9. The learned D.R. relied upon order of the Assessing Officer and the learned CIT(A). He submitted that detailed reasons indicated in the assessment order and in order of the learned CIT(A) clearly explain that there is no merit in the submission of assessee. The addition made by the Assessing Officer and upheld by the learned CIT(A) is correct and proper and thus learned D.R. submitted that no interference is called for in the order of learned CIT(A) and appeal of assessee needs to be dismissed.

10. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. The assessee submitted various documents and judicial precedents which are placed in Paper Books in two Volumes (I & II) comprising of 179 pages and 270 pages. It is seen that the assessee furnished voluminous evidence before the authorities below and the same is also furnished before us which are placed on record. We find that the addition made is in respect to share capital contribution of four corporate shareholders at ₹ 180 lakh. The assessee had explained the receipt of share capital contribution in the course of regular assessment by submitting requisite details. The share capital contribution was enquired into by the Assessing Officer at item no.5, in the notice issued under section 142(1) of the Act dated 16/12/2014. The details of fresh issuance of share capital were submitted before Assessing Officer vide communication dated 16/01/2015. The Assessing Officer after considering details of share

capital issued had accepted the share capital contribution in the assessment framed under section 143(3) of the Act on 23/03/2015, by accepting income as shown in the return of income.

11. The Assessing Officer has issued notice under section 148 of the Act pursuant to information received in respect to search conducted on the premises of Amarpali Group in October 2012 and Shri Shirish Chandrakant Shah, on 13/04/2013. The notice under section 148 of the Act was issued on 29/03/2017. The assessee filed return of income declaring same income on 05/05/2017. The reasons recorded for issue of notice under section 148 of the Act were provided to assessee on 20/06/2017.

12. Perusal of reasons recorded indicates that the search action was carried out at the premises of Amarpali Group in October 2012 and Shri Shirish Shah on 13/04/2013. It is on the basis of statement of Shri Shirish Shah, it was concluded that the assessee is one of the beneficiaries of the bogus accommodation entry. In the reasons recorded, it has been concluded that share capital contribution received from M/s. Prabhav Industries Ltd., and M/s. Secundrabad Healthcare Ltd. at ₹ 100 lakh is the bogus allotment of share capital accommodation entries and, therefore, it is escaped assessment at the hands of assessee. In the reasons recorded, it has been noted that share capital contribution of M/s. Alpha Graphic India Ltd., and ACIL Cotton Industries Ltd., at ₹ 50 lakh and ₹ 30 lakh respectively, needs thorough investigation in re-assessment proceedings. The reasons recorded clearly

indicate that belief of escapement of income is primarily based on statement of Shri Shirish Shah, during search conducted at his premises.

13. The assessee in the course of re-assessment proceedings had submitted the complete details of contribution of share capital and same has been submitted before us in the Paper Book. The details submitted by the assessee to explain share capital contribution before the Assessing Officer and/or the learned CIT(A) and before us is as under:-

"a) <u>M/s. ACIL Cotton Industries Limited</u>		
Audited Financial Statement	P- 32 – 53	[Vol. – I]
Share Application Form	P- 54	[Vol. – I]
Extract of Bank Account	P- 55	[Vol. – I]
Acknowledgement of ITR	P- 56	[Vol. – I]
b) <u>M/s. Alpha Graphics India Ltd.</u>		
Audited Financial Statement	P- 57 – 85	[Vol. – I]
Confirmation of company affirming share capital contribution	P- 86	[Vol. – I]
Share Application Form	P- 87 – 88	[Vol. – I]
Extract of Bank Account	P- 89 – 90	[Vol. – I]
Acknowledgement of ITR	P- 91	[Vol. – I]
c) <u>M/s. Secundrabad Health Care Ltd.</u>		
Audited Financial Statement	P- 92 –147	[Vol.- I]
Confirmation of company affirming share capital contribution	P-148	[Vol. – I]
Share Application Form	P-149 – 150	[Vol. – I]
Extract of Bank Account	P-151	[Vol. – I]
d) <u>M/s. Prabhav Industries Limited</u>		
Company/LLP Master data	P- 152	[Vol. – I]
Confirmation of company affirming share capital contribution	P-153	[Vol. – I]
Share Application Form	P-154 – 155	[Vol. – I]

<i>Extract of Bank Account</i>	<i>P- 156</i>	<i>[Vol. – I]</i>
<i>Acknowledgement of ITR</i>	<i>P- 157</i>	<i>[Vol. – I]”</i>

14. The assessee having furnished the legal evidence which is available on record, it has discharged its onus to explain the share capital contribution received from the corporate shareholders. The documentary evidences submitted clearly explains the identity and creditworthiness of the corporate shareholders to contribute the share capital and genuineness of transactions. The above fact is evident from the financial statements placed on record before us as well as before lower authorities. Transactions are through proper banking channel. Considering the evidence on record genuineness of transaction is established. It is worthwhile to note that the Assessing Officer has made no independent verification/enquiry in respect to legal evidence placed on record. No shred of adverse evidence is brought on record subsequent to the assessee having furnished legal evidence to discharge its onus to explain the credits. The Assessing Officer merely on the basis of information of statement given by Shri Shirish Shah, during his search has taken adverse view in the case of assessee to make addition under section 68 of the Act. The reasons recorded and discussion in the assessment order do not indicate that the statement of Shri Shirish Shah, was in respect to any enquiry or verification of transaction of contribution of share capital received by assessee company. There is nothing on record to show that the share contribution received from corporate shareholders has nexus with Shri Shirish Shah, except for mere observation in the reasons recorded. Considering the facts and evidences on record, we are of the considered view that assessee had discharged its onus to explain the share capital contribution of corporate

entities. Identity, creditworthiness and genuineness of share capital contribution is established and there remains no justification to make any addition under section 68 of Act at ₹ 180 lakh as made by Assessing Officer.

15. It is noted that addition made on the basis of statement of Shri Shirish Shah, was considered in the case of Chain House International Pvt. Ltd. by the Hon'ble High Court of Madhya Pradesh in its judgment dated 07/08/2018. It has been concluded by the Hon'ble High Court that the addition made on the basis of statement of Shri Shirish Shah, is unjustified and unsustainable. The judgment of the Hon'ble High Court of Madhya Pradesh in ITA no.112/2018 in the Chain House International Pvt. Ltd. vide order dated 07/08/2018, has been upheld by dismissing the SLP by the Hon'ble Supreme Court, vide judgment dated 18/02/2019 vide SLP(C) Diary no(s).1992/2019. The aforesaid judgments are placed in Paper Book at Pages-90 to 166 [Vol. – II]. Attention was invited to the observation in the judgment of Hon'ble Madhya Pradesh High Court at Para-14 to 19, 26, 52 & 53 to submit that the addition in respect to share capital/loan in the aforesaid case based on statement of Shri Shirish Shah, was held to be not justified. We have perused the relevant paragraphs of judgment placed in the Paper Book and find that the submission made before us fully supports case of assessee that there is no warrant or justification to make addition under section 68 of the Act on the basis of mere statement of Shri Shirish Shah. Respectfully following the decision of the Hon'ble High Court of Madhya Pradesh cited supra, we find that the addition of ₹ 180 lakh made is unjustified and unsustainable.

16. It is also seen that the Hon'ble Rajasthan High Court in ITA no.25/2024 in the case of M/s Esspal International Pvt. Ltd. vide judgment dated 03/09/2024, has upheld the order passed by the Co-ordinate Bench of the Tribunal, Jodhpur Bench, in ITA no.288/Jodh/2018, dated 03/01/2024. The Hon'ble High Court has considered the Co-ordinate Bench decision of the Tribunal, Jodhpur Bench, in the case of M/s Esspal International Pvt. Ltd. (supra) and at Para-11 has noted that it is a matter of record that Shri Shirish Shah, has retracted his statement given before the Assessing Officer. Copy of the Co-ordinate Bench decision of the Tribunal, as well as the copy of Hon'ble High Court judgment in M/s Esspal International Pvt. Ltd. are placed at Paper Book at Page-213 to 249. In the aforesaid case, the addition made on account of bogus share application money based on statement of Shri Shirish Shah, has been held to be unjustified and unsustainable. The facts and law laid down by the Hon'ble High Court of Rajasthan fully supports the case of assessee and there remains no case for making any addition under section 68 of the Act on the basis of statement of Shri Shirish Shah, at the hands of the assessee. Respectfully following the same addition made in the case of assessee at ₹ 180 lakh on the basis of statement of Shri Shirish Shah is held to be unjustified and unsustainable.

17. We also find that various submissions made by the assessee, as reproduced at Para-8 of the order hereinabove has substantial force. The statement of Shri Shirish Shah, was not tested on cross examination before making addition at the hands of the assessee. Request for grant of cross-examination and providing of statement in communication dated 19/12/2017,

was not acceded to by Assessing Officer before making the addition (P- 179 of Paper Book) [Vol.-I]. The addition made is not in accordance with law considering the judgment of Hon'ble Supreme Court in Andaman Timber Industries v/s CCE, [2015] 281 CTR 241 (SC) and the Hon'ble Gujarat High Court in Heirs and L.Rs of Late Laxmanbhai S. Patel, [2010] 327 ITR 290 (Guj.). Respectfully following the same, addition made in assessee's case at ₹ 180 lakh is held to be unjustified and unsustainable.

18. It is also seen that the assessment year under consideration is assessment year 2012-13. The assessee has established identity, creditworthiness and genuineness of share capital by adducing legal evidence on record. The law laid down by the Hon'ble Jurisdictional High Court in M/s Gagandeep Infrastructure Pvt. Ltd. ITA no.1613 of 2014, vide order dated 20/03/2017, squarely applies to the facts in the assessee's case. Considering the same addition made in the case of assessee at ₹ 180 lakh is held to be unjustified and unsustainable. Various judicial precedents referred to in the submission of assessee in support of grounds no.5 to 8 reproduced hereinabove supports the case of assessee. Respectfully following various judicial precedents discussed hereinabove, it is held that addition made in the case of assessee under section 68 of the Act is unjustified and is directed to be deleted.

19. It is seen that the regular assessment was framed under section 143(3) of the Act on 23/03/2015. In the course of regular assessment, notice under section 142(1) of the Act was issued seeking details of share capital (Pages 166 & 167) dated 16/12/2014. Details were furnished on 16/01/2015 (Pages

167 to 170). Share capital contribution received was examined and regular assessment was completed accepting receipt of share capital contribution. No new tangible material has come on record subsequent to passing of order passed under section 143(3) of the Act. Reasons recorded merely indicate that information was received as regard to statement given by Shri Shirish Shah in the course of search conducted at his premises. The aforesaid statement given by Shri Shirish Shah, during the course of search at his premises was general statement and was not in respect to transaction of assessee. No date of transaction, as made by the assessee is noted/observed in the reasons recorded and linked-up with the statement of Shri Shirish Shah. Nowhere in the reasons recorded, it has been noted that Shri Shirish Shah, has made any adverse observation with regard to transaction of receipt of share capital by the assessee. Information found in search is sought to be utilized for issuance of notice under section 148 of the Act, and it is not in accordance with law. The Assessing Officer has not indicated any reason as to how corporate entities contributing share capital received by assessee company are linked to Shri Shirish Shah. Ratio laid down in the following case laws fully supports the case of the assessee:-

- i) *(2010) 320 ITR 561(SC).
Kelvinator of India Ltd.*
- ii) *[2019] 104 taxmann.com 216 (Bom.)
South Yarra Holdings vs. ITO*
- iii) *[2017] 395 ITR 0677 (Delhi)
PCIT vs. Meenakshi Overseas Pvt. Ltd.*
- iv) *(2020) 422 ITR 0337 (Bom.) CIT vs. Shodiman Investments Pvt.
Ltd.*
- v) *(2024) 161 taxmann.com 255 (Raj.)*

Shyam Sunder Khandelwal vs. ACIT

- vi) *Hon'ble High Court of Karnataka at Bengaluru order in ITA No.32 of 2020 in the case of M/s. VSL Mining Company Pvt. Ltd. vide order dated 20/09/2024*
- vii) *ITAT, 'B' Bench, Bangalore in the case of M/s Ickon Projects in ITA Nos.771&772/Bang/2017 vide order dated 26/10/2023.*
- viii) *ITAT, 'E' Bench, Delhi in the case of Narendra Kumar in ITA No.1218/Del/2019 vide order dated 19/07/2023.*
- ix) *[1981] 130 ITR 0001 (SC)
Ganga Saran & Sons Pvt. Ltd. Vs. ITO"*

20. The ratio laid down by the aforesaid case laws fully applies to the facts in the present case and considering the same notice issued under section 148 of Act, in the assessee's case is not in accordance with law and hence re-assessment framed is hereby cancelled.

21. Considering the totality of facts and evidence, grounds no.1 to 8 of appeal of assessee are allowed as discussed hereinabove. Grounds no.9 & 10 do not require any independent adjudication being consequential.

22. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 12/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 12/12/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur