

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.2319/Del/2023  
[Assessment Year : 2016-17]**

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| M/s. Mili Marketing Pvt.Ltd.,<br>H-108, Connaught Circus,<br>New Delhi-110001.<br><b>PAN-AABCM7097H</b> | vs   | ITO,<br>Ward-16(4),<br>New Delhi. |
| <b>APPELLANT</b>  |  | <b>RESPONDENT</b>                 |
| <b>Appellant by</b>   | Shri Ved Jain, Adv &<br>Shri Aman Garg, CA |                                   |
| <b>Respondent by</b>  | Ms. Smita Singh, Sr.DR                     |                                   |
| <b>Date of Hearing</b>  | 12.09.2024                                 |                                   |
| <b>Date of Pronouncement</b>  | 12.12.2024                                 |                                   |

**ORDER**

**PER PRADIP KUMAR KEDIA-A.M.:**

The captioned appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 22.06.2023 passed by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre, Delhi [“Ld.CIT(A)”] arising from the assessment order dated 19.12.2018 passed u/s 143(3) of the Income Tax Act, 1961 [“the Act”] pertaining to assessment year 2016-17.

2. Grounds of appeal raised by the assessee read as under:-

1. *“On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)], Income Tax Department (ITD), National Faceless Appeal Centre (NFAC) is bad both in the eye of law and on facts.*
2. (i) *On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the addition of Rs. 2,94,80,000/-made by the AO on account of share capital under section 68 of the Income Tax Act.*  
(ii) *That the learned CIT(A), ITD has erred both on facts and in law in confirming the abovesaid addition despite the fact the assessee has submitted detailed submissions and explanations along with the evidences before the AO to prove the identity and creditworthiness of*

*the investor and without there being any adverse material on record whatsoever.*

*(iii) That the learned CIT(A), ITD has erred both on facts and in law in confirming the abovesaid addition despite the fact that the investors have confirmed the transactions with the assessee in independent enquiry conducted by the AO.*

3. *On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the addition of Rs. 5,30,640/- made by the AO holding that the assessee has paid the commission at the rate of 1.8% for arranging the accommodation entry in the grab of above alleged amount of Share capital.*

3. As per grounds of appeal, the assessee has challenged the additions of INR 2,94,80,000/- made by the Assessing Officer ("AO") on account of share capital under s. 68 of the Act. The assessee has also challenged the addition of INR 5,30,640/- made by the AO holding that the assessee has paid the commission @ 1.8% for arranging accommodation entries in the garb of alleged amount of share capital.

4. Briefly stated, the assessee e-filed return of income on 30.09.2016, declaring NIL income for Assessment Year 2016-17 in question. The return was filed by the assessee was selected for scrutiny on the grounds of large share premium received during the year with a view to examine source of funds received in the form of share premium. In the course of assessment proceedings, it was noticed by the AO that there is an increase in the share capital and the security premium account by an amount of INR 2,94,80,000/-. On inquiry, it was found that the assessee company has issued equity shares of INR 10/- each at premium of INR 258/- per shares to subscriber namely M/s. Udhyam Mercandise Pvt.Ltd. based on book value of the assessee company. Consequently, 1,10,000 equity shares were issued @ INR 268/- per share including premium to the subscriber. For the purposes of enquiry. the AO issued notice u/s 133(6) of the Act to collect information from the subscriber. On perusal of the bank account statement of the subscriber, it was noticed by the AO that a transfer entry of INR 3,00,00,000/- was shown to the credit of the subscribers account from another concern M/s. Kamdhenu Enterprises Ltd. and the source of the acquisition of share in the assessee company is out of such funds received from M/s. Kamdhenu Enterprises Ltd.

From the information collected, it was found by the AO that entity namely, M/s. Kamdhenu Enterprises Ltd. had received business advance from the assessee company given in earlier years and in the current year. On perusal of the bank statement of M/s. Kamdhenu Enterprises Ltd. it was further observed to the AO that M/s. Kamdhenu Enterprises Ltd., Delhi entered into bank transactions with the assessee company. The AO concluded that money routed from banking channels in the various companies are in the shape of accommodation entries. It was noted that the Directors and shareholders of these companies are common and the amount credited through RTGS/Cheques/transfer entries were transferred to other accounts on same day. The AO further observed that there were material evidences available on record that the assessee is beneficiary of accommodation entries as per Income Tax Return of M/s. Kamdhenu Enterprises Ltd., Delhi & M/s. Udhyam Mercandise Pvt.Ltd. It was further observed that contradictory claims have been made by M/s. Udhyam Mercandise Pvt.Ltd. while M/s. Udhyam Mercandise Pvt.Ltd. is claiming the money trail as loan, the assessee claims it to be issue of share capital. The AO also cast aspersion on the financial statement of these companies and observed such company to be dummy/paper companies. It was also observed that investment was made by share applicant company in the assessee company that too at premium where neither return was assured nor safety of investment was guaranteed, not to speak of capital appreciation. Besides, such investment are totally illiquid. The nature of such investment defies logic or rational of conventional investment decision making process. The AO observed that such investment decision cannot be taken by any genuine company. The AO eventually concluded that these companies engaged themselves in providing bogus loans/advances/share application money/share premium by way of accommodation entry to willing tax evaders. The assessee is one of the beneficiaries of such accommodation entries. The AO thus, treated the receipt of credit of INR 2,94,80,000/- as accommodation entry in the garb of receipt by way of share capital and share premium. The AO thus invoked the provision of section 68 of the Act and made addition of INR 2,94,80,000/-. The AO also made addition of INR 5,30,640/- towards

commission under section 68 of the Act to have been paid for receiving such accommodation entries. The return of income was accordingly enhanced by the aforesaid amounts.

5. Aggrieved, the assessee preferred appeal before the Ld.CIT(A). The assessee contended before the Ld.CIT(A) that the AO has ignored the explanation/evidences/confirmations about the nature of transactions entered into between the assessee company M/s. Udhyam Mercandise Pvt.Ltd. and M/s. Kamdhenu Enterprises Ltd. and proceeded on conjectures and surmises while treating such credits as accommodation entry. Ld.CIT(A) however, did not file any force in the plea of the assessee and endorsed the action of the AO. The relevant para dealing with the controversy by Ld.CIT(A) are restricted hereunder:-

7. *Decision*

*“The brief facts of the case are that the case of appellant was taken up for scrutiny on a specific point of huge Share Capital and Premium received during the year it was noted that the assessee company has issued 1,11,000 shares having face value of Rs. 10/- at a premium of Rs. 258/- to one of the company namely Udhyam Merchandise Pvt. Ltd. In order to verify and examine the genuineness the details were called by the AD vide notice u/s 133(6) of the Act to the investor companies, seeking the justification for the investment made by them at such a huge premium in the assessee's company. The details were filed and the AO concluded that the amount of huge premium paid by the investor company is not commensurate vis-à-vis the financial results of the assessee and held that the genuineness of the transaction being highly doubtful is not proved. The assessment was completed by making an addition of Rs.2,94,80,000/- u/s. 68 of the Act. Aggrieved by the order the appellant has filed this appeal.*

*7.1 The fundamental question involved is that whether or not the AO was justified in making the addition of Rs 2,94,80,000/- as unexplained credit under section 68 in the hands of the assessee, and the most critical thing to be examined in this regard is explanation of the assessee with respect to these credits. There is no, and there cannot be any dispute on the fundamental legal position that the onus is on the assessee to prove 'bonafides' or genuineness' of the share application money credited in his books of accounts This approach finds support from the scheme of Section 68, which provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum*

*so credited may be charged to income tax as the income of that assessee for that previous year. The burden is thus on the assessee to prove the nature and source thereof, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation given by the assessee and on how acceptable is the explanation so given by the assessee. The next question is as to what the kind of explanation that the assessee is expected to give.*

*7.2 As noted by Hon'ble Delhi High Court, in the context of issuance of share capital and in the case of PCIT Vs Youth Construction Pvt Ltd [(2013)357ITR197 (Del)], "it involves three ingredients, namely, the proof regarding the identity of three applicants, their creditworthiness to purchase the shares and the genuineness of the transaction as a whole".*

*7.3 That is the approach adopted by Hon'ble Courts above all along. In the case of CIT v. United Commercial and Industrial Co (P.) Ltd [1991] 187 ITR 596 (Cal), Hon'ble Calcutta High Court has held that under the scheme of Section 68"*

*It was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions".*

*7.4 Similarly, in the case of CIT v. Precision Finance (P.) Ltd [1994] 208 ITR 465 (Cal), it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions".*

*7.5 It is thus also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. The genuineness of the transaction as a whole is thus a very important and critical factor in the examination of explanation of the assessee, as required under section 68, with respect to the share application monies received by an assessee.*

*7.6 It would thus appear that the appellant is not really right in approaching on the basis as if the onus is on the Assessing Officer to prove the alleged money laundering racket - an onus that may perhaps be relevant only when the money laundering racket is being prosecuted, but that is not an issue at hand. As far as the issue involved in appeal is concerned, one need only to remain confined to the narrow issue of onus on the assessee to prove 'bonafides' or 'genuineness' of the share application money credited in his books of accounts, and that is the call needs to be taken in the light of facts available on record and the ground realities of the commercial world. While proceeding to deal with the genuineness aspect, it is also important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-a-vis the ground realities. The facts of the case cannot be considered in isolation from the ground realities.*

7.7 The main indication of the AO is that the assessee has received share application money through a pre-meditated plan by involving complex web of shell entities and multiple layering of the transfers from one company to another.

It will, therefore, be useful to understand as to how the shell entities, which the share applicants are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity, but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even laymen, much less the responsible public servants like revenue officers and very well educated and very well-informed people like the learned counsel(s), cannot be oblivious of these ground realities.

7.8 While examining the issue of genuineness of the transactions entered into by the assessee, it is also important to keep in mind Hon'ble Supreme Court's observation, in the case of CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)], to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities".

7.9 Similarly, in a later decision in the case of Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)], Hon'ble Supreme Court rejected the theory that it is for the assessee to prove that the apparent and not real, and observed that, "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities..... Similarly the observation.....that if it is alleged that these tickets were obtained through fraudulent means, it is upon the assessee to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available.....In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities

*has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably".*

*7.10 It would be a superficial approach to examine the claim of the assessee solely on the basis of documents filed by the assessee and overlook the clear unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra), ..... "it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents".*

*7.11 An Appellate Authority cannot be superficial in its assessment of the genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted / placed by the appellant on the record but also in the light of all the surrounding circumstances, the preponderance of human probabilities and ground realities. There may be a difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the appellate authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidence. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact-finding authority is made conclusive by law". This faith in the appellate authorities by Hon'ble Courts above makes the job of the appellate authorities even more onerous and demanding and, it does require an appellate authority to take a holistic view of the matter in the light of surrounding circumstances, the preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, documents and examining them, in a pedantic manner, with the blinkerson.*

*7.12 It would not be out of place to mention here that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of the financial world, about modus operandi of entry operators running shell entities. There were, therefore, not many questions*

*raised about the genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation as well.*

*7.13 As Hon'ble Supreme Court has observed in the case in Mumbai Kamgar Sabha v. Abdul bahi Faizulla bhai AIR 1976 SC 1455 "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark".*

*Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent.*

*7.14 The above approach has met the judicial approval as recently as 2018 when one of the decision of the Tribunal, in the case of Pawan kumar M Singhvi came up for consideration before Hon'ble Gujarat High Court, and Their Lordships of Hon'ble Gujarat High Court, in the judgment reported as Pawan kumar M Sanghvi Vs ITO [(2018) 90 taxmann.com 386 (Guj)] approved the said approach and declined to interfere in the matter by observing that "the Tribunal has minutely examined the position of the lenders, the circumstances under which, the amounts were allegedly loaned to come to the conclusion that the transactions were not genuine ".The genuineness of the transactions and examination of circumstances in which money was received was thus approved to be the determinative factor. The matter did not end there. The assessee brought the matter before Hon'ble Supreme Court in a special leave petition, and Their Lordships of Hon'ble Supreme Court, in the judgment reported as Pawan kumar M Sanghvi Vs ITO [(2018) 97 taxmann.com398 (SC)], dismissed the SLP and declined to interfere as well.*

*7.15 What essentially follows is that genuineness of a transaction is one of the most important, foundational and critical factors in determining whether explanation given by the assessee is acceptable or not is its genuineness and this genuineness is to be examined in the light of ground realities, rather than random extracts from judicial precedents isolated from their true context as an exposition of law on standalone basis. Undoubtedly, that is a subjective exercise, but that cannot be excuse enough to not to probe the matter properly for taking a well-considered call on whether the impugned share application monies received, in this case, a genuine transaction or not.*

7.16 On a somewhat similar note, and particularly in the context of issuance of shares at high premium to the companies which are seemingly shell companies, Hon'ble Supreme Court has, in the case of PCIT Vs NRA Iron and Steel Pvt Ltd (2019) 412ITR161 (SC)] observed that "The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under illegal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee".

Taking note of these words of guidance of Their Lordships, it is clear that a superficial and pedantic approach would not suffice, and it is essential to examine the facts of the case in order to take a call on the genuineness of these transactions.

8. With these observations as made above, the actual facts of these cases are to be examined. The assessee has received share application monies from one Pvt. Ltd. Company namely M/s. Udhya Merchandise Pvt. Ltd. The Share having a face value of Rs. 10 were issued at huge Premium of Rs.258/-

8.1 Undoubtedly, the legal existence of the share applicant is not in doubt. The assessee has produced sufficient evidences about its existence. The next question is whether this entity namely M/s Udhya Merchandise Pvt. Ltd. (UMPL) had the means to enter in to this transaction and whether 'the transaction as a whole', could be said to be genuine, When we look at the financial statements of UEMPL, the company has disclosed a meagre profit of Rs 41,679/- on the overall revenue receipts of merely Rs. 3,95,425/-, Further. er as per the balance sheet of UEMPL as on 31.03.2016, the c company is having the subscribed share capital of Rs.2.54 crores which have been issued inter-alia on huge premium of Rs.259.42 crores. The entire funds collected on account of share capital/share premium is in turn invested by UEMPL in other Pvt. Limited Companies by subscribing their shares at huge premiums. The assessee's company is one such company in which the funds have been invested to subscribe shares at huge premium without any adherent justification.

This is difficult to believe that a company (UMPL) handling investments in excess of Rs 250 crores and making such aggressive investments as buying shares for Rs 2,94,80,000/-, at huge premium of twenty-five times the face value of shares, in the private limited in a wholly unconnected companies like the assessee company- without any management control, will operate in such a modest manner. The UEMPL thus has thus primarily acted as a conduit company, raising funds at high share premium and siphoning off the almost entire fund to other companies in similar manner by subscribing to shares at high premium, and has no independent business activities of its own.

8.2 *The profit and loss account of UMPL for the year ending 31.03.2016, would show that there were practically no business operations during the year, unless, of course, routing the monies to other companies, or being a conduit company facilitating financial manoeuvrings, per se is treated as main business operations of the company. In any case, it is difficult to understand what business can assessee carry on when it passes on 99% of its capital base in subscribing to shares in the other companies- and all these investments are in private limited companies, the investments are with huge premiums, and in none of the companies the investing company has acquired any management participation.*

8.3 *There is not even whisper of an idea about who are the persons behind UMPL and other associated companies constituting this complex web of companies, in different tiers, and transferring monies from one company to another manner in almost a mechanical manner. There is complete opacity so far as the individuals behind this funding and the complex web of companies are concerned. The entities involved in the transactions only provide different layers to the transaction and de facto hide the true investor.*

8.4 *It is worth to note that the investments are in private companies, these investments are substantial vis-à-vis the size of the companies, are at huge premiums and without any management participation in the entities in which investments are made. These features are, by any standard, most unusual in real life business situations- and more so, when justifications for share premium are absolutely untenable.*

8.5 *Buying shares at a huge premium of the equity capital in nondescript small private limited companies, without a share in management and control, is something extremely unusual unless the investor is very well known or close associate of the company in which investment is being made. However, in this case, the assessee has no clue about the actual beneficial investor in his company. Here are tiers after tiers of the companies and there is nothing to show light on the actual owners. The share capital of the UMPL seems to be issued at huge premium, once again to shell entities which are similarly funded by other shell entities- constituting a different layer of this multi-layer transaction, and, as evident from share premium reserve of Rs 281 crores- as against share capital of Rs 2.54 crores. Once again, the shares are issued at premium that too in a company which has no other activity except for routing the funds to another company, i.e. the assessee, by making investments therein at a huge premium. That defies logic, and such transactions do not take place in the real-life world. The assessee company is stated to be not connected with UMPL in any manner, and yet the share subscriber had such a faith in the assessee company that it subscribed to the shares at 2580% premium. That is something quite unusual.*

8.6 *The assessee has sought to justify the same on the basis of valuation report being prepared by none other than the auditors of the assessee. In the valuation report the amount under the head "Long term loans and advances", on the asset side has been shown as 10,55,56,960/- as on 31.03.2015 for the purpose of arriving at the valuation of share at Rs.268/-. Surprisingly, this figure gets reduced to merely Rs. 1,95,74,964/- as on 31.03.2016. It is not clear as to where these assets, which were the main foundation for valuation of shares, got vanished from the balance sheet of the assessee in the immediate succeeding financial year. Clearly the basis for premium valuation suffers from severe infirmities and hence, is incorrect and fallacious.*

8.7 *The explanation for the share premium in the shares of the assessee company is not acceptable for the detailed reasons set out above. As observed by Hon'ble Supreme Court, in the case of NRA Iron and Steel Pvt Ltd (supra), "The assessee is under*

*a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee", and once his explanation for premium is rejected, for this reason alone, alone, the addition under section 68 is justified.*

8.8 *It is worth to note that the investments are in private companies, these investments are substantial vis-à-vis the size of the companies, are at huge premiums and without any management participation in the entities in which investments are made. These features are, by any standard, most unusual in real life business situations- and more so, when justifications for share premium are absolutely untenable.*

*That defies logic, and such transactions do not take place in the real-life world.*

8.9 *All these factors regarding analysis of financial statements, analysis of bank account transactions and analysis of the nature and price of investment, the investments made by all the investing companies in the shares of the appellant company, at 25.8 times of face value and by entering into circular transactions, does not seem to bonafide transaction. In view of the detailed analysis above, it is difficult to accept that it is a genuine transaction.*

8.10 *Buying shares at a huge premium (2580% of the face value) in a nondescript small private limited company, without a share in management and control, is something extremely unusual unless the investor is very well known or close associate of the company in which investment is being made.*

8.11 *It is again reiterated that during the course of appellate proceedings, the appellant has not produced any cogent evidence in support of the Grounds of appeal raised by him. Having considered entire facts of the case and evidences brought on record I find no infirmity in the order of AO,*

hence, addition made of Rs. 2,94,80,000/- is confirmed. As a result, Ground No.1 of the appeal is dismissed.

9. Ground No.2 of the appeal is in respect of an addition of Rs.5,30,640/- which is made on account of commission which must have been paid by the appellant in order to obtain the funds using the network of entry operators providing accommodation entries. Definitely, such services comes at a price which varies from operator to operator. The AO has held the rate of commission paid by the appellant at 1.8%, which appears to be fair. In the absence of any fresh evidence submitted by the appellant, I see no reasons to interfere with the findings of the AO and accordingly, Ground No.2 of the appeal is also dismissed.”

6. Further aggrieved by the denials of relief the assessee preferred appeal before the ITAT.

7. Before the Tribunal, the Ld. Counsel for the assessee made wide ranging submissions to defend the bonafides of the receipts by way of share capital/share premium. The contentions raised and reduced in writing on behalf of the assessee are noted hereunder:-

1. *“This is an assessee appeal against CIT(A) dated 22.06.2023, whereby CIT(A) confirmed the following additions made by AO-*
  - \* *Addition of Rs.2,94,00,000/- made by AO u/s 68 of Income Tax Act on account of share capital and share premium received by the assessee.*
  - \* *Addition of Rs. 5,30,940/- made by AO alleging that assessee has paid commission to entry to arrange the above-mentioned funds.*

Addition Rs. 2,94,80,000/- u/s 68 of the Act (Ground No.2)

2. *The material issue in the appeal is the addition of Rs. 2,94,80,000/- received by the assessee company during the year as share capital and share premium.*
3. *Assessing officer made addition by alleging it to be an accommodation entry ignoring the explanation and evidence submitted by the assessee as well as the enquiry carried out by the assessing officer.*
4. *In this case, it is important to point out that share capital has been received from the group company namely Udyam Merchandise Pvt. Ltd. In this regard it is relevant to point out that during the course of assessment proceedings the assessing officer has called for the information from Udyam Merchandise Pvt. Ltd by issue of notice under section 133(6) of the Act.*
5. *In response thereto the Udyam Merchandise Pvt. Ltd. has submitted its reply along with necessary evidences including the Balance*

*Sheet, Audited Account and the assessment order for AY 2013-14 & AY 2017-18.*

6. *As per the Audited Financial Statement of Udyam Merchandise Pvt. Ltd as on 31.03.2012, it has earned the profit of Rs. 4,75,08,653/-. Further for the year ended 31.03.2013, it has earned a profit of Rs. 6,32,29,789/- Further for the year ended 31.03.2014, it has earned a profit of Rs. 3,80,73,467/-. For the year ended 31.03.2015, it has earned profit of Rs. 2,40,66,027/-.*
7. *Out of the above stated profits, Udyam Merchandise Pvt. Ltd. has advanced money from time to time to another associated concern i.e. Kamdhenu Enterprises Ltd. as is evident from the copy of Ledger Account.*
8. *The Kamdhenu Enterprises Ltd. in turn has advanced money to the assessee company i.e. Mili Marketing (P) Ltd. as is evident from Ledger Account.*
9. *Thus, at the beginning of this year in the books of the Udyam Merchandise Pvt. Ltd. there was a debit balance of Rs. 6,90,00,000/- in the name of Kamdhenu Enterprises Ltd. and in the books of Kamdhenu Enterprises Ltd. there was debit balance of Rs. 2,86,75,000/- in the name of the assessee company.*
10. *Now, in order to square up these transactions, the Kamdhenu Enterprises Ltd. repaid Rs 3,00,00,000/- to Udyam Merchandise Pvt. Ltd. as is evident from copy of account at PB Page 149 and the bank statement of Kamdhenu Enterprises Ltd. at PB Page 150-152.*
11. *The money so received by the Udyam Merchandise Pvt. Ltd. was paid to the assessee company as share capital of Rs. 2,94,80,000/- as is evident from the bank statement of Udyam Merchantile (P) Ltd. (PB Pg.76), whereby it has received back of Rs.3,00,00,000/- from Kamdhenu Enterprises Ltd. and paid Rs. 2,94,80,000/- to the assessee company as share capital.*
12. *The money so received by the assessee company was utilized to repay the amount to Kamdhenu Enterprises Ltd. of Rs. 2,87,75,000/- as is evident from copy of ledger account at PB Page 154 and the bank statement of Kamdhenu Enterprises Ltd. (PB Page 267-269, relevant page 269).*
13. *Thus, it is a case where transaction has moved within the three group companies namely assessee company, Udyam Merchandise Pvt. Ltd. and Kamdhenu Enterprises Ltd. There is no movement of any funds from outside. It is a movement within the group company and the funds as stated hereinabove is the substantial income earned by Udyam Merchandise Pvt. Ltd. over the period.*
14. *During the course of assessment proceedings, the assessing officer has carried out a verification by issue of notice under section 133(6) and in response thereto all the necessary evidences and the bank statement and the Assessment Order were submitted. It is important to point out that assessment of Udyam Merchandise Pvt. Ltd. and the Kamdhenu Enterprises Ltd. over the period have been completed*

*under section 143(3) of the Act. Copy of these assessment orders were duly filed before the assessing officer and the same are placed at PB Page 301-309 & 332-337, respectively. Nothing adverse inference has been taken in any of these Assessment Orders. It is a case of the transaction within the group company and hence the allegation of the assessing officer that it is an accommodation entry is absolutely against the facts.*

15. *It is important to point out that assessing officer as well as CIT(A) has referred to the various judgments which are not applicable at all in the present case. The present case is not entry operator. There is no adverse statement by anyone. There is no cash deposit in any bank account. All the companies are existing companies and available and have duly responded to all the notices and provided all the information. There is no allegation by the assessing officer that any particular information required by him has not been given. The Audited Balance Sheet of each of the companies are part of the paper book which are filed before the assessing officer. The allegation that there is no business does not mean that addition under section 68 can be made. The assessee has duly explained not only source, but also source of source of income.*
16. *It may also be relevant to point out that during the course of the assessment, the assessing officer has raised the issue of value of share in response thereto. The assessee has duly filed the computation and justified the value in terms of Rules 11UA read with section 56(2)(vii) (b) (PB Pg.51-54) and no adverse view has been taken by the assessing officer. Thus, the share capital and the share premium received by the assessee company is as per the Rules and it is not a case where the shares have been taken at higher premium without being any justification for the same. There is no an iota of evidence against the assessee. It is a case where the assessee has fully discharged its onus under section 68.*
17. *It may be important to point out that Udyam Merchantile (P) Ltd. has made investments out of the money received back from Kamdhenu Enterprises Ltd. which it has advanced in earlier years out of its income. An idea of the strength of Kamdhenu Enterprises Ltd. can be had from the Investment holding on 31.03.2015 and 31.03.2016 from PB Page 247. The investment by Kamdhenu Enterprises Ltd. in mutual fund was of Rs. 42.77 Crores. In addition, thereto, it was having bank balance of Rs. 3.90 Crores as is evident from PB Page 248. It has an interest income of RS. 2.55 Crores and dividend income of more than Rs. 41.00 Lacs. Thus, the assertion of the assessing officer that Kamdhenu Enterprises Ltd. does not have the creditability against the facts.*
18. *Pictorial representation of fund flow among assessee, M/s Kamdhenu Enterprises Ltd and M/s Udhyam Merchandise Pvt. Ltd is represented below-*

*M/s Kamdhenu Enterprises Ltd. received Rs. 2,00,00,000/- from Umra Securities Pvt Ltd. Rs. 25,00,000/- from Monet International Ltd, Rs. 61,00,000/- from Purusharth Associates Pvt Ltd. and Rs. 22,55,000/- from maturity of flexi deposit and the same is evident from PB Pg. 268.*

*M/s Kamdhenu Enterprises Ltd. has returned the outstanding advance of Rs. 3,00,00,000/- it has received M/s Udhyaam Merchandising.*

*M/s Udhyaam Merchandising Pvt Ltd utilised the funds received to invest Rs. 2,94,80,000/- in the share capital of Assessee.*

*Assessee utilised the fund received to repay the loan received from M/s Kamdhenu Enterprises Ltd.*

19. *The above chart, highlight the fact that the entire transaction is rotation of funds from one group to another and there is no involvement of any entry operator.*
20. *However, Ld AO ignoring the detailed submissions and documentary evidences furnished by the assessee, made the addition of Rs. 2,94,80,000/- u/s 68 of the Act.*
21. *Aggrieved by the order of AO, assessee filed an appeal before CIT(A).*
22. *Before CIT(A), assessee reiterated its stand taken before the AO.*
23. *However, Ld.CIT(A) ignoring the submissions made by the assessee, confirmed the addition made by the AO.*
24. *Aggrieved by the order of CIT(A), assessee is in appeal before the Hon'ble Tribunal.*
25. *At the outset it is relevant to highlight few important facts-*
  - *Share capital received from group companies/director.*
  - *There is no allegation of any accommodation entry against the assessee.*
  - *There is no adverse statement made against the assessee by any person.*
  - *There is no investigation report.*
  - *Present case is the case of regular scrutiny assessment u/s 143(3) of the Act.*
  - *There is no allegation of any income escaping assessment against the assessee.*
  - *Assessee has provided details in respect of source of the source of investment.*
26. *The above-mentioned facts, highlight the important point that Ld.AO has made addition of Rs. 2,94,80,000/- by engaging in surmises and conjectures and without bringing any corroborative evidence on record to support his allegations.*
27. *It is also relevant to mention that assessee has received share capital from a group concern and assessee has duly explained the source and source of the source of investment. It is also relevant to*

*mention that funds have followed from one group concern to another and there is no adverse material or statement by any person about the transactions.*

28. *It is submitted that AO was not justified in drawing adverse inference in respect of amount received from its group concern and AO cannot sit into the judgment of the assessee Group Company about rotation of the funds so long the sources of the funds are explained and this contention of assessee is supported by ITAT Delhi judgement in the case of THE DY. C.I.T, CIRCLE -1 (1), NEW DELHI VERSUS M/S ABHINAV STEELS PVT. LTD., 2017 (11) TMI 1546 ITAT DELHI, Dated.- November 20, 2017, relevant finding of the Hon'ble Tribunal are as under-*

19. *We are of the view that the AO in this case got carried away on account of the fact that assessee company has received Share Capital during the year and there are rotation of cheques from one company to another company, ignoring the fact that these were transactions within the Group Companies and assessee has not only explained the immediate source but also source of source. As rightly contended by the learned AR, this is not a case of accommodation entries. There is no adverse material or statement by anyone about these transactions. The learned DR during the course of the hearing was fair enough to admit that there is no adverse material or statement by any person alleging accommodation entries. There is no adverse material about any of these Group Companies. As regard the allegation of the AO that these companies do not have much income, we are of the view that under Section 68, assessee is required to explain the source of the funds so as to establish the creditworthiness. This source of fund need not necessarily flow from the income of the creditors and that too income earned during that year. Our this view is supported by the judgment of the Hon'ble Jurisdictional Delhi High Court in the case of Commissioner of Income Tax - IX erstwhile CIT-VI vs Vrindavan Farms Pvt. Ltd (Supra) where the Hon'be court has held that the lower return of income is not sufficient to doubt the creditworthiness of the shareholder. Similar view has been taken by the Hon'ble Delhi High Court Principal Commissioner of Income Tax (Central) vs M/s Goodview Trading Pvt. Ltd. (Supra) where the court has held that the AO was not justified in drawing adverse inference in respect of minimal or insubstantial of amount paid as tax ignoring the net worth of the companies that had invested in the Share Capital of the assessee company.*

20. *In view of the above facts, we hold that the AO was not justified in making sweeping observations such as fabricated and prepared documents as a made-up affair and AO was not justified in drawing adverse inference against the assessee when the assessee company has led all the evidences including bank statement etc. The learned AO has further gone wrong in drawing adverse inference on the basis of excel sheet which in fact support the case of the assessee. The AO was not justified in drawing adverse inference in respect of amount received from its director. The Director having appeared himself and having confirmed the amount being paid to the company and the assessment of the Director being made under Section 143(3), there was no reason for AO to make addition in the hands of the appellant company. The AO went wrong in drawing adverse inference on account of rotation of money from one Group Company to another Group Company. The AO cannot sit into the judgment of the assessee Group Company about rotation of the funds so long the sources of the funds are explained. The various case laws cited by the AO in the assessment order on share capital are not applicable to the facts of the present case as in all these cases there was allegation of accommodation entry. In these case laws there was statement recorded by the Investigation Wing to the effect that the share capital received is not genuine but accommodation entries. In the present case there is no such allegation nor any finding. The assessee having discharged its onus fully, the Assessing Officer has made the addition merely on the basis of surmises and doubts. The CIT(A) has also examined each of the issue raised by the AO in detail and has come to the right conclusion. In view of the above facts and our analysis, we do not find any infirmity in the order passed by the CIT(A) and accordingly, the same is upheld.*

*In the view of the above-mentioned submissions, it is evident that assessee has duly explained the source and source of investment in share capital and Ld.AO has made the addition by engaging in surmises and conjectures. Therefore, addition made by AO and confirmed by CIT(A) should be deleted.*

*Addition of Rs. 5,30,940/-*

29. *In this regard, it is submitted that Ld.AO made addition of Rs.5,30,940/- solely based on surmises conjectures without any corroborative evidence to support it is allegation.*
30. *It is further submitted; assessee has duly explained the source and source of investment in the share capital.*

*Hence, the addition made by AO by engaging in surmises and conjectures and confirmed by CIT(A) should be deleted.”*

8. The Ld. Sr. DR for the Revenue on the other hand, supported the first appellate order and the assessment order. She also pointed out that the financial statement of these companies would clearly show that such companies are not engaged in any substantive business and ostensibly appear to be accommodation entries providers without any genuine object of carrying business.

9. We have carefully considered the rival submissions and perused the material referred to and relied upon in the course of hearing. The short controversy placed for adjudication hinges around bonafides of amount credited amounting to INR 2,94,80,000/- received by the assessee on the touchstone of section 68 of the Act and consequent unaccounted commission expenses on such credits alleged to be bogus entries by the AO. The issue is essentially factual in nature.

10. The AO has made an addition of the aforesaid amount by alleging it to be an accommodation entry. It is the case of the assessee however, that the source of credits is fully explained. As contended, the amount were received by way of subscription from group companies namely M/s. Udhyam Mercandise Pvt.Ltd. The amount received by the assessee from M/s. Udhyam Mercandise Pvt.Ltd. was utilized to pay the loans received from M/s. Kamdhenu Enterprises Ltd. earlier. The aforesaid amount were utilized by M/s. Kamdhenu Enterprises Ltd. towards repayment of advance of M/s. Udhyam Mercandise Pvt.Ltd. It is the contention of the assessee that it is a case of inter-transfer of funds from one company to another which are part of the same group and thus no adverse inference can be withdrawn on the source of deposits with the assessee company. The assessee contends that the rotation of funds cannot be seen with suspicion so long as the source of funds are explainable as in the present case.

11. On perusal of the first appellate order and the assessment order, it is observed that the source of funds arising to the group companies to establish

the bonafides of receipts by the assessee has not been examined. The issue is factual in nature. Proper finding of facts from the lower authorities would be necessary to apply the correct position of law. The Ld.CIT(A) has concluded that subscriber M/s. Udhyam Mercandise Pvt.Ltd. is a conduit company. The source of receipt of money by M/s. Udhyam Mercandise Pvt.Ltd. has not been looked into. In the absence of any affirmative finding on the source of funds originating in one company and getting transferred to other company in rotation as claimed, we are incapacitated to return any finding either way. Hence, without expressing any opinion on merits and in order to prevent miscarriage of justice and to set right the alleged impropriety in the action of the Revenue, if any, we consider it expedient to set aside the first appellate order and restore the appeal before the Ld.CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of being hearing to the assessee. All issued are kept open for fresh adjudication in accordance with law. It shall be open to the assessee to adduce relevant evidences to corroborate its claim of bonafides in the impugned receipts.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12<sup>th</sup> December, 2024.

**Sd/-**

**(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**Sd/-**

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI