

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. MAHAVIR SINGH, VICE PRESIDENT**

**AND**

**SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.7798/Del/2019  
Assessment Year: 2012-13

<b>M/s. Alpha Stock &amp; Finservices Pvt Ltd. 24/1A, Mohan Co-operative, Industrial Estate, Mathura Road, New Delhi-110044 PAN No.AAACA8427G</b>	<b>Vs</b>	<b>DCIT Circle – 2 (1) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	<b>Sh. Mayank Patawari, CA</b>
Respondent by	<b>Sh. Rajesh Mahajan, Sr. DR</b>

Date of hearing:	16/12/2024
Date of Pronouncement:	16/12/2024

**ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the assessee is arising out of the order of CIT(A)-1, New Delhi in Appeal No.149/15-16 vide order dated 12.07.2019. The assessment was framed by DCIT, Circle-2(1),

New Delhi for the A.Y.2012-13 u/s. 143(3) of IT Act, 1961 (herein after referred as “the Act”) vide his order dated 26.03.2015.

2. At the outset, the Ld. Counsel for the assessee stated that there are two issues in assessee’s appeal. He stated that the first issue is as regards to the disallowance of business loss of sale of shares of Rathi Iron Steel Industries Ltd. amounting to Rs.3,65,62,500/-. He pointed out that this issue he is withdrawing under the instruction of the assessee. The Ld. Sr. DR has not objected to the withdrawal of this issue. Hence, the same is dismissed as withdrawn.

4. The next issue in this appeal of assessee is as regards to the order of the CIT(A) confirming the action of the Assessing Officer in making an addition of Rs.1.05 crores being share application money by treating the same as unexplained, in view of the provisions of section 68 of the Act.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. The brief facts of the case are that the assessee is engaged in the business of non banking finance i.e. NBFC. During the year under consideration, the Assessing Officer noted from the details furnished that there is increase of

share application money received of Rs.1.05 crores. The Assessing Officer required the assessee to file the details of the same and the assessee filed the details as under :-

Date	Name of the company	Application money	Address
04/11/2011	Laxman Sawarkar Marketing Pvt. Ltd.	30,00,000	22 T/F Off No.302 KH No.429, Veer Savarkar Block, Shakarpur, Near V3S Mall, Delhi-10092
18/04/2011	Frontier Portfolio Management Private Limited	40,00,000	A-246, 1 <sup>st</sup> Floor, Ambedkar Nagar, Part-II, M.B. Road, J.J. Colony, Khanpur, Delhi-110062, India
16/03/2011	Sai Power Tech Systems Private Limited	25,00,000	
	Total	95,00,000	

6. The Assessing Officer required the assessee to file the confirmation copy of accounts of the above parties from whom assessee has received share application money of Rs.95 lacs. The Assessing Officer also noted that the remaining receipt of Rs.10 lacs, the assessee could not explain anything like identity, genuineness and creditworthiness of the parties from whom he has received this sum. The assessee has not filed confirmations or

furnished party confirmation from these parties. The Assessing Officer issued notices u/s.133 (6) of the Act to these parties but the same received back as un-served, therefore, the Assessing Officer treated these as unexplained share capital and added u/s. 68 of the Act.

7. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the Assessing Officer by observing in para 7.2.4 as under :-

*“7.2.4 The decision of Hon'ble Supreme Court in the case of PCIT v NRA Iron & Steel (P) Ltd is squarely applicable to the facts of the case in the case of the present case, the appellant has filed an application under Rule 46A but none of the contentions raised in the application fall in the category of circumstances given in Rule 46A of the IT Rules. Moreover, the remand report dated 05/04/2017 in the instant case was prepared by the AO without proper enquiry and application of mind The present AO has reported vide his report dated 18.01.2019 that the remand report dated 05/04/2017 does not relate to AY 2012-13. Accordingly, no cognizance of the remand report dated*

05/04/2017 is taken. In the present case the appellant has not furnished any details of the Directors or other related details in respect of Mis Laxman Sawarkar Marketing Pvt. Ltd, thereby implying that it does not have any such details with it and does not know about the present day address or even the existence of this alleged investor. Despite repeated opportunities, the appellant failed to furnish the confirmed copy of accounts as on date of the persons from whom share application money was received during the year with copy of Bank account, Balance Sheet, P & L Account, ITR-V and present addresses. The appellant could not furnish the confirmations of the parties concerned in original. The copies of confirmations furnished by it in the two cases are without date. The appellant has not furnished the copy of confirmation in respect of the third party, i.e. M/s Laxman Sawarkar Marketing Pvt Ltd. The appellant has neither produced the bank account statements of all these parties from whom it has allegedly received share application money during the year nor furnished the copies of ITRs filed by these alleged investors or any evidence or proof to

*establish the fact that these alleged investors had the capacity to make such an investment The AO had issued letters under section 133(6) of the Income Tax Act. 1961 to Mis Frontier Portfolio Management Pvt. Ltd & M/s SAI Powertech System Pvt. Ltd. The said letters were neither received back un-served nor any reply or any communication whatsoever was received from these two parties till the date of passing of the assessment order In the present case the appellant was given ample opportunity by the AO to discharge the onus cast upon it to prove the genuineness of the transaction as also to establish the identity and creditworthiness of the persons who had advanced the alleged share application money to it during the year Apart from submitting photo copies of the confirmations that too in two cases only the appellant has not furnished any other material or evidence like ITRs or Bank account statements of the investing persons. The appellant has failed to submit the details regarding their current addresses. The three conditions VIZ Identity, Genuineness and Creditworthiness need to be simultaneously satisfied in order to discharge the onus of*

*the appellant u/s 68. In the present case, the appellant has failed to discharge its onus u/s 68. Since the onus has not been discharged, the AO has added an amount of Rs. 1,05,00,000/- to the income of the appellant u/s 68. Considering the facts of the case, I am of the considered view that the provisions of section 68 are attracted in the instant case. Accordingly, the addition of Rs. 1,05,00,000/- made by the AO with regard to the share application money is upheld.*

Aggrieved, assessee preferred appeal before Tribunal.

9. After hearing both the parties and going through the facts of the case, we noted that the onus lies on the assessee to prove the creditworthiness of the share application money introduced by assessee of Rs.1.05 crores. The assessee has tried to give identity of these parties by giving the address of these parties i.e. three parties from whom it has received a sum of Rs.95 lacs. For balance Rs.10 lacs the assessee has not given any detail. Hence, for the part of Rs. 10 lacs we confirmed the addition. For balance of Rs.95 lacs we remit this issue back to the file of the CIT(A) for fresh adjudication. The CIT(A) will give reasonable opportunity of being

heard to the assessee for filing of details. Needless to say that onus totally lies on assessee to fulfill the ingredients of section 68 of the Act i.e. identity, creditworthiness and genuineness of the transaction.

10. In terms of the above, this appeal of the assessee is partly restored back to the file of the Assessing Officer.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order dictated in the open court on conclusion of hearing on 16.12.2024.

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

\*NEHA, Sr. PS\*  
Date:-16.12.2024  
Copy forwarded to:  
1.Appellant  
2.Respondent  
3.CIT  
4.CIT(Appeals)  
5.DR: ITAT

**Sd/-**  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

ASSISTANT REGISTRAR  
ITAT NEW DELHI