

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 5805/MUM/2024
(A.Y. 2008-09)
ITA No. 5806/MUM/2024
(A.Y. 2008-09)**

M/s. Douceur Sportswear Mfg. Co. Pvt. Ltd. C-96, TTC Industrial Estate, Area MIDC Turbhe, Navi Mumbai-400705	v/s. बनाम	ACIT-15(1)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACD1753G		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Swapnil Newaskar
Revenue by :	Shri R. R. Makwana

Date of Hearing	10.02.2025
Date of Pronouncement	14.02.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

Both the appeals are for the same assessment year against two different orders of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 30.09.2024 and 28.10.2024 respectively. Since the sole substantive issue in both the appeals relates to the addition of Rs. 8,59,15,183/- u/s 68 of the Income-tax Act, 1961 [hereinafter referred to as “Act”], both the appeals are being disposed of vide a common order.

2. The assessee has raised the following grounds in both appeals:

“1. There is no reason for reopening. The Ld. Assessing Officer has failed to appreciate that re-opening is not valid because the assessing officer has failed to establish nexus between Hawala Operator Sri. Pravin Kumar Jain and assessee.

2. The Ld. CIT Appeal has erred in fact and in law that even after specifically asking in form 35 to CIT Appeals, Opportunity of cross examination U/s 133(6) of Income Tax Act is not granted to appellant.

3. The Ld. CIT Appeal has erred in law and in facts that it is recorded in assessment order that Shri Uday Soman, CA attended and submitted details. The assessee vide letter dated 09.12.2015 made submissions wherein it was contended that with respect to share premium of Rs.2400/- per share, it had reserves and surplus of Rs.9,17,86,682/- (comprising of share premium of Rs. 4,91,74,733/- and profit and loss account of Rs.4,26,11,950/- against the paid up equity share capital of Rs.1,47,00,300/- as on 31.03.2007. Further, the figures of turnover and net profit for the year ended 31.03.2007 were also justifying the share premium. Further, the increase in expenditure in relation to increase of share capital and its accountability in the books, it is submitted that there is no increase in authorised share capital and issued, paid up capital increased from 1,47,003 shares of Rs.100/- each to 1,61,707 shares.

4. The LD. CIT Appeal has erred in law and in facts that Name, Address, PAN number, CIN Number and other Identification details are provided to the Assessing officer and hence burden of proof is discharged by the Assessee. Viz:-

1. Anita Khanna/ Rakesh Khanna 161, B Twin Towers, Prabhadevi, Mumbai -400025 AADPK9 772C/AADPK9 771B, Director holding, 3 Shares, Rs. 2400/-

2. Bimal Jayant Parikh and Sneha Parikh Address at: 6, Ajanta, L/D. Ruparel marg, Mumbai-400006
Bimal Jayant Parikh PAN: AFBPP1938G DIN is 0006088 and Sneha Parikh PAN: AHFPP6087L DIN: 07002555 Holding 373 Shares Rs. 14,62,700/-

3. Chandan Khanna/ Rakesh Khanna 161, B Twin Towers, Prabhadevi, Mumbai -400025 Rakesh Khanna: AADPK9771B, Chandan Khanna PAN AFBPK3322B Director/holding 1 Shares Rs. 2400/-

4. Chetan R Parikh & Sonal Parikh Address: 56-A, Ridge Road, Mumbai-400006 PAN: AAAPP9510A and AAAPP5573H Holding 1120 shares Rs. 43,88,000/-

5. Hemal P Parikh 1101, Pleasant Palace, Narayan Dabholkar Road, Mumbai-400006 Passport No: Z7951721 Holding 466 Shares Rs.1828400/-



6. Hiten Ramanlal Mahimthura HUF C/o Mahimtura Consultants Private Limited At 3RD FLOOR, UNIQUE HOUSE, 25 S A BRELVI ROAD, FORT, MUMBAI DIN: 00402951 PAN: AABHH7930R Holding 467 Shares Rs. 18,28,300/-
7. Jagdip Sharma 11, Casa Blanca, Cuffe Parade, Mumbai -400005 AFPPS72 04C Director/Holding 8900 shares Rs.1,77,69,216/-
8. Klaus B Alexe ndra Friedenstr, 4A, DE/97816, Lohr A, Germany Non Resident Passport No: LGKVPHW6F and LGKKW3V7F Holding 3000 Shares Rs. 8,98,850/-
9. Rosy Blue Securities Private Limited 154-C, MITTAL COURT NARIMAN POINT, MUMBAI, Maharashtra, India - 400021. (CIN) U65990MH1994PTC080450 PAN: AAACR4082Q Holding 1867 Shares Rs.73,13,300/-
10. Mr. Mukesh M Shah and Nirupa Shah 2104/5, Chandranbala Ridge Road, R R Thakkar Road, Mumbai-400006 PAN: ASEPS7016A Holding 1867 Shares Rs.73,13,300/-
11. Parag P Parik HUF 1101, Pleasant Palace, Narayan Dabholkar Road, Mumbai-400006 Passport No: Z6697766 Indian Holding 467 shares Rs. 182830/-
12. Rahul Sharma Nayudu's Bunglow, Katol Road, Nagpur 440013 Family member of Director Jagdip Sharma Sharma Family hold 6675 shares Rs.5,90,400/-
13. Rakesh Khanna 161, B, Twin Towers, Prabhadevi, Mumbai – 400025 AADPK9 771B Director/ holding, 1 shares Rs.7200/-
14. Shanti Sharma Nayudu's Bunglow, Katol Road, Nagpur 440013 Family member of Director Jagdip Sharma Sharma Family hold 6675 mshares Rs.590,400/-
15. Shrenik Zaveri 64, Geetanjali, 73-75, Walkeshwar Road, Mumbai 400006 AAAPZ1721B Zaveri Family hold 15715 shares Rs.22327216/-
16. Sailesh Mahimtura Ramanlal C/o Mahimtura Consultants Private Limited At 3RD FLOOR, UNIQUE HOUSE, 25 SA BRELVI ROAD, FORT, MUMBAI DIN 00084016 PAN: AAJHS6358E Holding 467 shares Rs.1828300/-
17. Sanjeev Shekhar and Arti shekhar 18th Floor, Victoria building Ganpat Rao Kadam marg, Worli naka, Mumbai-400013 PAN: AACPS1797C & AXLP0774P Holding 373 shares Rs. 1462700/-
18. Vikram R Parikh & Swati Parikh 56-A, Ridge Road, Mumbai 400 006



AAAPP9509M & AAEP1081G Holding 1232 shares Rs. 4876800/-

19. Tehmurasp Anclesaria 19, Right Flank Lines, Near Command Hospital, Pune City, Wanoware, PAN: AAQPA9233K DIN is 00514953 Pune-411040 Holding 4000share Rs.96,00,000/-

5. The LD. CIT Appeal has erred in law and in facts Assessing officer has declared directors of the Assessee company as fictitious entity and added amount received from directors which is non application of mind

6. The LD. CIT Appeal has erred in law and in facts that the Assessing officer has not taken any objection the amount of Share application money but taken objection only on share premium money allegedly received from fictitious entity as reflected in books of accounts. The Ld Assessing officer has not scrutinized account statements submitted before it.

7. The LD. CIT Appeal has erred in law and in facts that Ld. Assessing officer has not given any supporting to the claim of Rs.8,59,15,182/-. It is Assessing officer to show from where the said amount of Rs. 8,59,15,182/- in alleged Hawala Operator Sri. Pravin Kumar Jain and assessee and assessing officer is failed to put any evidence.

8. The LD. CIT Appeal has erred in law and in facts that the assessing officer has not taken any steps for verification of Identity of person some of them are directors even after providing PAN card number, DIN and Identification detail of each and every person as mentioned in Impugned Assessment Order.

09 The LD. CIT Appeal has erred in law and in facts even as per MCS Records and subsequent Balance sheets there is actual share allotment by the Assessee to all persons named in Impugned order.

10 The LD. CIT Appeal has erred in law and in facts Revenue has not discharge its burden by way of Evidence

11 That Notice may please be issued U/s. 131 of the Income Tax Act 1961 to all the share applicants for the verification of identity, genuineness

12 The Proviso to section 68, which provides that explanation furnished by assessee about nature and source of share application money, etc. shall be not satisfactory unless person in whose name such credit is recorded offers an satisfactory explanation about nature and source of sum so credited, is applicable only from assessment year 2013-14 and is not retrospective in nature as held in [2022] 134 taxmann.com 95 (Mumbai Trib.)/[2021] 91 ITR(T) 582 (Mumbai - Trib.)/[2022] 192 ITD 695 (Mumbai Trib.) [01-10-2021].

13 The transaction is since inception of company and not related to Assessment year in question



14 The assessee has seek adjournment for submission of more documents and same is rejected. The Assessee now seeking permission for production of additional documents in evidence i.e. Audit Report of AY 2008-09, Annual Report of AY 2009-10, Capital Account of AY 2008-09 with AY 2009-10, Shareholding Pattern with Share Premium Amount, Confirmation letters from all entities mentioned in Order, MCA data of company showing directorship of alleged Fictitious entity.”

3. It is seen that the assessee filed two different appeals by filing Form No. 35 dated 24.06.2016 & 11.05.2019. It has been explained by the Ld. AR that the two appeals were filed inadvertently by two different CAs on account of lack of coordination between them and the assessee Accordingly, two separate orders by Ld. CIT(A) were passed on 30.09.2024 and 28.10.2024 vide which the appeals were dismissed

4. As a result, the assessee has filed two appeals before the Tribunal also. Since the issues involved in both these appeals are identical, we hereby dismiss the subsequent appeal, ITA No. 5806/Mum/2024, against Ld. CIT(A)'s order dated 28.10.2024 as infructuous. Only the appeal filed vide ITA No. 5805/Mum/2024 against the CIT(A)'s order dated 30.09.2024 is being taken up for adjudication.

5. At the outset, Ld. AR pointed out that the Ld. CIT(A) has dismissed the appeal without giving the assessee an opportunity to present its case after rejecting its request for adjournment. We, therefore, deem it appropriate to restore the matter to the file of Ld. CIT(A) for fresh adjudication on merits. Ld. CIT(A) is directed to provide adequate opportunity to the assessee to present its



case and before deciding the issue on merits. The assessee is also directed to make requisite compliance before Ld. CIT(A).

6. In the result, ITA No. 5805/Mum/2024 is allowed for statistical purposes and ITA No. 5806/Mum/2024 is dismissed.

Order pronounced in the open court on .2025.

Sd/-

RAHUL CHAUDHARY

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 14.02.2025

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.



ITA No. 5805 & 5806/Mum/2024

A.Y. 2008-09

M/s. Douceur Sportwear MFG. Co Pvt. Ltd.

