

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1771/Ahd/2019
Assessment Year 2007-08**

Pushpak Bullion Pvt. Ltd. B-37, 5 th Floor, Ajanta Commercial Complex, Opp. Gujarat Vidhyapith, Navjivan Post Office, Ahmedabad-380014 PAN: AABCP9537H (Appellant)	Vs	The DCIT, Circle-3(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri Dhinal Shah, A.R.
Revenue Represented: Shri R. N. Dsouza, Sr.D.R.**

Date of hearing : 17-01-2025
Date of pronouncement : 15-04-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 01.11.2019 passed by the Commissioner of Income Tax (Appeals)-9, Ahmedabad arising out of the reassessment order passed under section 147 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2007-08.

2. Brief facts of the case is that the assessee is a Private Limited Company engaged in the business of bullion trade. For the Asst. Year 2007-08, assessee filed its Return of Income showing total income of Rs.13,22,04,630/-. The return was processed u/s. 143(1) accepting the returned income. Thereafter notice u/s. 148 of the Act was issued on 21-03-2014, on the ground that the assessee has taken accommodation entries from M/s. Kunal Gems, M/s. Natasha Enterprises and M/s. Mohit International amounting to Rs.12,61,70,000/-. The assessee requested the A.O. to treat the original return in response to the 148 notice. Then the reopening of assessment was challenged by the assessee before jurisdictional High Court, and the Hon'ble Gujarat High Court dismissed the writ petition filed by the assessee vide judgment dated 27-06-2016 in SCA No. 18512 of 2015, and upheld the validity of the reassessment notice.

2.1. During reassessment proceedings, the Assessing Officer sent notices u/s. 133(6) to the three unsecured creditors, the same were returned unserved by Postal Authorities. The assessee failed to furnish latest address of the above three concerns, therefore the AO treated the transaction as unexplained income and made addition u/s. 68 of the Act of Rs.14,17,30,000/-. The assessee also received share application money from two companies namely Rs.75 lakhs from M/s. Ken Securities Ltd. and Rs. 15 lakhs from M/s. Winter Fresh Food Pvt. Ltd. Since the assessee could not establish identity, genuineness and creditworthiness of the above entities, the same were added as the income of the assessee and demanded tax thereon.

3. Aggrieved against the reassessment order, the assessee filed appeal before Ld. CIT(A) who has confirmed the additions by observing as follows:

“7.1 Keeping in view the guidelines and principles provided in this landmark decision of the Hon'ble Supreme Court specifically in para 11 of the order, the finding of the A.O. to tax the amount of Rs. 14,17,30,000/- u/s 68 of the Act is perfectly fitted with the facts of the appellant's case where the appellant had miserably failed to file the counter-evidences from the purchasing parties to whom the gold has been sold. Therefore, in view of this landmark decision of the Hon'ble Supreme Court, the addition made by the A.O. is confirmed on the strength of this decision alone.

.....

7.3 In all the above-mentioned judicial citations, the issue of taxing the income u/s 68 of the Act in the cases of various assesseees which was brought in the books of accounts under various heads i.e. the loans and advances, share capital or through sale of shares and claiming exemptions etc, it has been clearly held that the addition u/s 68 of the Act where the creditworthiness and genuineness of the money providers under the garb of purchasing the goods or otherwise, has not been proved, even though the transactions were made through banking channels.

7.4 After considering all the factual and legal aspects of the case, the addition of Rs.14,17,30,000/- made u/s 68 of the Act is sustained and the ground no.1.2 of the appeal is dismissed.

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Assessing Officer being unexplained credits on account of share application money. The Assessing Officer has discussed this issue in para 5 of the assessment order The appellant had claimed to have received the share application money from two companies i.e. M/s. Ken Securities Ltd. of Rs.75,00,000/- and M/s. Winter Fresh Foods Pvt. Ltd of Rs 15,00,000/- The appellant had filed the copies of ledger accounts, copies of share application forms etc. to prove that the transactions of share application money were genuine. The A.O. has asked to file the evidences such as copy of ITR filed by these two companies, confirmation of accounts or the

copies of accounts as appearing in their books of accounts with complete addresses. However, the appellant did not file these evidences except the copy of ledger account as appearing in its books of accounts and copies of share application forms. Therefore, the A.O. deputed his Inspector to visit the premises of these two companies and the Inspector reported that these two companies were not available at the given addresses. The reports of the Inspector have also been reproduced in the assessment order. Thus, the identity, creditworthiness and the genuineness of the above two companies remained unexplained by the appellant during the course of assessment proceedings. After considering these facts, the A.O. added the amount of Rs.90,00,000/- as unexplained cash credits in the garb of share application money."

4. The Grounds of Appeal raised by the Assessee reads as under:

Technical:

1. The learned CIT(A) has erred in confirming the reassessment in as much as the assessment is reopened on the basis of third party information and that there is no escapement of income.

1.1 The appellant says and submits that the income escaped assessment is Rs. 12,61,70,000/- as per reasons recorded but income actually added is Rs. 14,17,30,000 plus share application money of Rs. 90,00,000/- as per assessment order.

2. The learned CIT(A) has erred in confirming the reassessment in as much as the AO has not formed independently his belief about the escapement of income but is guided by the information received from the Investigation Wing without making any inquiry.

3. The assessment is reopened on the ground that M/s. Kunal Gems, M/s. Nathsha Enterprise and M/s. Mohit International have given accommodation entry to the extent of in all Rs. 12,61,70,000 in the form of bogus investment/share application money. The addition made is of Rs. 14,17,30,000 in respect of the sales made to the said companies as per ledger accounts furnished by the assessee as against Rs. 12,61,70,000 stated in the reasons recorded on the ground that the assessee has received the accommodation entry in the form of sales in as much as the addition itself is bad in law since the addition cannot be made beyond the reasons recorded in as much as the reasons recorded are for bogus investment/share application money and not for sales.

4. The reasons recorded do not state anything about share application money of Rs. 90,00,000/- and therefore the reassessment proceedings is bad in law.

Merits:

5. The learned CIT(A) has erred in confirming the addition of Rs. 14,17,30,000 as cash credit under Section 68 on the ground that it is bogus accommodation entry as alleged by the AO from the following three companies as under:

M/s. Kunal Gems	Rs. 7,89,60,000
M/s. Nathsha Enterprise	Rs. 1,06,90,000
M/s. Mohit International	<u>Rs. 5,20,80,000</u>
Total:	<u>Rs. 14,17,30,000</u>

in as much as it is not bogus accommodation entry either in the form of investment of share application money but the amount received represents actual sale proceeds made to them out of the imported stocks with the company and that the transactions are genuine.

6. The learned AO has not provided the statement of Shri Pravinkumar Jain and has not provided opportunity for cross examination and therefore the additions made is bad in law.

7. The additions made is only on the basis of third party information and that the AO has not adduced any evidence or any material to prove that sales made is accommodation entry.

4.1. The Additional Grounds of Appeal raised by the Assessee reads as under:

"08. The learned CIT(A) has erred in confirming addition of Rs.90,00,000/- as unexplained share application money under section 68 on the facts of the case."

5. Heard rival submissions and perused the materials available on record including Paper Book filed by the assessee. The technical grounds raised by the assessee on reopening of assessment, reasons recorded are already decided by the Jurisdictional High Court vide its judgment dated 27-06-2016 in SCA No. 18512 of 2015 which was reproduced in the Assessment order as follows:

"Upon perusal of the above quoted portions of the objections of the petitioner and The Assessing Officer disposing them of, it can be seen that

the Assessing Officer had nowhere abandoned reasons which were the foundation for issuance of the notice for re-opening. He had considered the objections of the petitioner and disposed them of on the basis of material on record. The sole ground of the petitioner therefore, must fail.

8. In the present case, notice for re-opening having been issued in the case of assessment which was not framed after scrutiny. The Assessing Officer would have considerable latitude in issuing notice for reopening if it is found that he had tangible material to form a belief that income chargeable to tax had escaped assessment, it would not be appropriate on our part to strike down the notice. For such reasons, the petition is dismissed."

5.1. Ld. Counsel also admitted this judgment passed by Hon'ble High Court has become final and no further appeal filed by the assessee. Thus the technical grounds raised by the assessee does not require any adjudication.

6. Therefore the grounds raised on merits and additional grounds raised by the assessee are dealt with hereunder. The reasons of reopening of assessment in assessee's case is based on the statement recorded during the course of search carried out in the third party premises of Shri Pravinkumar Jain on 01-10-2013. In the reasons recorded, the A.O. had information that the assessee has received accommodation entries from the following parties operated by Shri Pravinkumar Jain as accommodation entry provider:

Sr. No.	Name of Hawala Entry Operator	Amount Rs.	Date	Nate of transaction
1	Kunal Gems	6,34,00,000	20.09.2006	Bogus Investments share Applications
2	Natasha Enterprises	3,13,90,000	21.02.2007	Bogus Investments share Applications
3	Mohit International	3,13,80,000	10.01.2007	Bogus Investments share Applications
Total		12,61,70,000		

6.1. During the reassessment proceedings, the assessee claimed to have genuine business transactions namely gold, bullion to the three parties out of the imported purchase of gold and have received payment by cheques as follows:

Sr. No.	Name of Hawala Entry Operator	Amount Rs.
1	M/s. Kunal Gems	7,89,60,000
2	M/s. Natasha Enterprises	1,06,90,000
3	M/s. Mohit International	5,20,80,000
Total		14,17,30,000

6.2. The assessee also furnished Ledger account, Bank statements and Invoice copies of the three parties before the Assessing Officer. The assessee is having total sales including Mumbai, Ahmedabad and export of Rs.1876 crores. The assessee used to purchase gold, bullion from Union Bank (importing the Gold) and other market dealers engaged in the import of gold. Further the assessee furnished the summary of the sales made to the above parties and the source of the supply of the gold and also submitted the inventory of the purchase and sales of gold. Further the sales are duly reflected in the sales register and the tax invoice also suffered VAT taxes. The invoice figures clearly matched with the payments received through banking channels which the Assessing Officer also reproduced at Page No. 19 to 24 in his assessment order. Since the notices sent to the parties were unserved by postal authorities, the Assessing Officer has not made any further verification investigation and proceeded based on the third party statement of Shri Pravinkumar Jain made addition of Rs.14,17,30,000/- as unexplained addition u/s. 68 of the Act.

Further the A.O. has not disputed the summary of sales and purchases made to the three parties which is reproduced hereunder:

PUSHPAK BULLION PVT. LTD.

Assessment Year: 2007-2008

(A) MOHIT INTERNATIONAL

Sr.No.	SALES				PURCHASE				
	DATE	INVOICE NO.	SALES AMOUNT	QUANTITY (IN Kgs)	DATE	INVOICE NO.	PARTY	PURCHASE AMOUNT	QUANTITY (IN Kgs)
1	22-Dec-06	752	1,74,05,330	19	22-Dec-06	1322A	UNION BANK	2,69,46,606	30
2	26-Dec-06	771	2,00,00,222	22	26-Dec-06	2225A/B	NOVA SCOTIA	9,25,56,581	103
3	4-Jan-07	801	9,13,040	1	4-Jan-07	1325J	UNION BANK	3,13,71,095	35
4	12-Jan-07	869	35,93,984	4	12-Jan-07	G/L 524/525	NOVA SCOTIA (G/P)	5,45,07,820	58
5	16-Jan-07	900	1,00,30,108	11	16-Jan-07	1330 R	UNION BANK	93,22,782	10
6	28-Mar-07	1043	94,455	1	28-Mar-07	1362A	UNION BANK	18721974	20

(B) NATASHA ENTERPRISES

Sr.No.	SALES				PURCHASE				
	DATE	INVOICE NO.	SALES AMOUNT	QUANTITY (IN Kgs)	DATE	INVOICE NO.	PARTY	PURCHASE AMOUNT	QUANTITY (IN Kgs)
1	4-Jan-07	802	1,00,01,222	11	4-Jan-07	1325J	UNION BANK	3,13,71,095	35
2	28-Mar-07	1044	6,61,328	7	28-Mar-07	1362A	UNION BANK	1,87,21,974	20

(C) KUNJAL GEMS

Sr.No.	SALES				PURCHASE				
	DATE	INVOICE NO.	SALES AMOUNT	QUANTITY (IN Kgs)	DATE	INVOICE NO.	PARTY	PURCHASE AMOUNT	QUANTITY (IN Kgs)
1	4-Nov-06	644	2,19,17,808	24	4-Nov-06	1311 F/J	UNION BANK	4,52,26,072	
2	6-Nov-06	645	2,27,95,700	25	6-Nov-06	L-G/303	UNION BANK	2,25,01,102	
3	7-Dec-06	646	1,86,20,300	20	7-Dec-06	1316-U/V	UNION BANK	1,87,21,974	
4	9-Dec-06	647	18,73,452	2	9-Dec-06	1310Z	UNION BANK	1,87,21,974	
5	29-Dec-06	792	1,20,90,104	13	29-Dec-06	2268	NOVA SCOTIA	2,25,01,102	
6	4-Jan-07	922	8,03,350	1	6-Jan-07	1325 Q/P/Q	UNION BANK	1,87,21,974	
7	28-Mar-07	1040	7,56,126	8	28-Mar-07	1362A	UNION BANK	1,87,21,974	

6.3. In our considered view, the assessee has discharged his initial onus cast upon him by providing the Ledger account, Bank

statements, Invoice copies, etc. Based on the same material, though the reassessment was initiated for Rs.12,61,70,000/- as bogus accommodation entries, whereas the Assessing Officer made addition of Rs.14,17,30,000/- in the reassessment order based on the business transaction. Further the ld.AO has not made any enquiry regarding the Maharashtra Value Added Tax return filed by the assessee. Thus Ld. A.O. failed to make any enquiry, rather simply relied upon the third party statement recorded of Shri Pravinkumar Jain and made impugned addition, which in our considered view is liable to be deleted.

6.4. On identical set of facts, Jurisdictional High Court in the case of PCIT vs. Naresh Nemchand Shah reported in [2023] 156 taxmann.com 346 (Guj.) deleted the addition made u/s. 68 by observing as follows:

“Where pursuant to a survey, unsecured loans taken by assessee from GCSL were deemed non-genuine by Assessing Officer on basis of statement of director of GCSL, since apart from said statement, there was no other evidence against assessee and moreover, assessee had filed evidence in form of confirmation from creditor, audited accounts of creditor and copies of banks accounts to prove genuineness and creditworthiness of creditor which was within parameters of section 68, impugned addition made in that respect to be deleted.”

6.5. Jurisdictional High Court in the case of PCIT vs. Tripathi Proteins Pvt. Ltd. in Tax Appeal No. 268 of 2023 vide judgment dated 14-06-2024 held as follows:

“..... [8] So far as question No.1 with regard to deleting addition of Rs.108.97 Crores made by the Assessing Officer under Section 68 of the Act is concerned, the Assessing Officer made addition of the said amount

as the respondent assessee received it on account of transaction of sales made on NSEL. The assessee company accounted the sales of Rs.108.97 Crores in its books of account as income and therefore, the Assessing Officer could not have treated the same as unexplained cash credit under Section 68 of the Act as it would amount to double addition of the same amount which is not permissible.

[9] It is also not in dispute that the amount in question was received by the assessee from NSEL's client through its broker M/s. N. K. Proteins Limited and the same was directly received by cheque in HDFC bank account.

[10] The Tribunal has, therefore, arrived at a finding of fact that the amount in question received by the respondent-assessee against sale through NSEL was utilized for making payment against the purchase which was treated as unexplained cash credit which could not have been unexplained cash credit.

[11] The Tribunal also considered the fact that the similar amount received by the assessee for the relevant Assessment Year 2012-13 was not considered as unexplained cash credit under Section 68 of the Act and completed assessment under Section 143(3) of the Act by the Assessing Officer. The Tribunal has also considered the fact that the similar issue involved in the case of M/s. N. K. Proteins Limited for the Assessment Year 2011-12 and the Tribunal decided the issue in favour of the assessee by deleting the addition made by the Assessing Officer and sustained by the CIT(A).

[12] Considering the above, we are of the opinion that the Tribunal has deleted the addition of Rs.108.97 Crores after taking into consideration the fact that the said amount is already accounted in the books of account of the respondent - assessee and therefore, such addition has rightly been deleted by the Tribunal by arriving at a finding of fact that the respondent assessee has received the said amount in the bank account which was utilized for purchase for making transaction in NSEL. The contention raised on behalf of the appellant, relying upon the observations made by the Assessing Officer in paras 8.2 to 8.6 in the assessment order referring to the statement of Shri Nilesh Patel recorded during the course of certain proceedings under Section 133 of the Act wherein it is stated that the transaction on NSEL's platform were only financial in nature and are not in the nature of actual sales and purchase transaction. It was, therefore,

contended by learned advocate Mr. Sanghani that there was no actual sale and purchase transaction which is ignored by the Tribunal.

[13] It was also pointed out by learned advocate Mr. Sanghani that the Assessing Officer has clearly established that the receipt of Rs.108.97 Crores is credited in the ledger account of IBMA and the same was not in sale receipt of NSEL platform, but it was in the nature of unexplained cash credit and liable to be taxed under Section 68 of the Act. It was submitted that the Assessing Officer has given cogent reason to the effect that the respondent - assessee company is systematically carrying out such activity from Financial Year 2009-10 and it was exposed that NSEL was not able to pay its investors and there was no goods and stock in the warehouse of NSEL.

[14] On the other hand, learned advocate Mr. B. S. Soparkar for the respondent assessee submitted that the Tribunal has rightly deleted the addition of Rs.108.97 Crores considering that the respondent - assessee has added the said amount as income by way of sale on NSEL and if any addition is made under Section 68 of the Act, it would amount to double addition as held by the Tribunal.

[15] Considering the facts of the case, it is not disputed by the appellant Revenue that the amount of Rs.108.97 Crores is credited in sales account offering as income by the respondent assessee and therefore, addition made by the Assessing Officer under Section 68 of the Act was rightly deleted."

7. Regarding the second issue namely additional ground of unexplained share application money of Rs.90 Lakhs made u/s. 68 of the Act. The assessee filed copy of the confirmation, PAN of M/s. Ken Securities Ltd. and M/s. Winter Fresh Food Pvt. Ltd. The share capital was received during the financial year 2007-08 and enquiry made by the Inspector of Income Tax in 2016 and vide his report dated 29-11-2016 submitted that there is no such companies available in the above premises. However during the reassessment proceedings, no show cause notice was issued by the A.O. asking the assessee for the details but based on the Inspector's report on

the non-existence of the companies made the addition u/s.68 of the Act.

7.1. The assessee produced before us copies of the Master Data from the Website of Ministry of Corporate Affairs which clearly shows that M/s. Ken Securities Ltd. was incorporated on 28-10-1994 and filed its latest balance sheet as on 31-03-2015 and last AGM held on 30-09-2015. Similarly in the case of M/s. Winter Fresh Food Pvt. Ltd. which was incorporated on 02-04-1996 filed its balance sheet as on 31-03-2023 and last AGM held on 30-03-2023. The assessee also produced ITR filed by M/s. Winter Fresh Food Pvt. Ltd. relating to the Asst. Year 2007-08 filed on 29-10-2007 as well as latest ITR for the Asst. Year 2023-24 filed on 26-10-2023. The assessee also filed copy of the Audited Reports in the case of M/s. Winter Fresh Food Pvt. Ltd. wherein the investment made in M/s. Pushpak Bullion Pvt. Ltd. is reflecting in the balance sheet. Similarly in the case of M/s. Ken Securities Ltd. wherein the investment made in M/s. Pushpak Bullion Pvt. Ltd. is reflecting in the loans and advance schedule of the balance sheet. Thus the addition made by the Assessing Officer is not sustainable in law.

7.2 Hon'ble Delhi High Court in the case of PCIT vs. Agson Global (P.) Ltd. reported in [2022] 134 taxmann.com 256 deleted the addition made u/s. 68 when the assessee placed sufficient documentary evidence to establish the share capital premium was proved, by observing as follow:

“Section 68, read with section 69C, of the Income-tax Act, 1961- Cash credits (Share capital money) - Assessment years 2012-13 to 2017-18 - Assessee-company received share capital and share

premium money from several investors Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company Whether since assessee placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuineness of investors was proved, there was no justification to make addition under section 68 - Held, yes.”

7.3. Respectfully following the above judgment, the addition made by the A.O. u/s. 68 is liable to be deleted.

8. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 15-04-2025

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 15/04/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद