

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4040/MUM/2023  
Assessment Year: 2008-09**

Asst. Commissioner Of Income-Tax,  
Circle-6(1)(1), Mumbai  
504, 5<sup>th</sup> Floor, Aayakar Bhavan,  
M K Road, Mumbai-400020.

**Appellant**

M/s. Apollo Design Apparel  
Parks Limited  
382, N.M. Joshi Marg,  
Chincpokli, Mumbai-400011  
**PAN NO. AAHCA 0613 R**  
**Respondent**

Assessee by : Ms. Dinkle Hariya  
Revenue by : DR. K. R. Subhash , Sr. DR

Date of Hearing : 11/03/2025  
Date of pronouncement : 25/04/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 30.09.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2008-09, raising following grounds:

1. *“Whether on the facts and circumstance of the case and in law the Ld. CIT(A) erred in directing the Assessing Officer to delete the addition of Rs. 16,25,00,000/- made u/s. 68 of*



*the I.T. Act, 1961, without appreciating the facts that assessee company failed to justify the transaction entered into by it and thereby issues its shares to the parties accepting Share premium along with share application money?*

- 2. The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*
- 3. The Appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary.”*

2. Briefly stated facts of the case are that the assessee company was created as a special purpose vehicle (SPV) by the Union Ministry of Textile for revival of the textile mills under the ownership of National Textile Corporation Limited. Under the said revival scheme, 51% of the shares of the assessee company were held by the National Textile Corporation Limited (NTC) and balanced 49% were subscribed at premium to 3 parties namely M/S Future Retail (I) Ltd. (39%), M/s. SBPL infrastructure Ltd (9%) and Shri. NavDurga Textile Processor Pvt. Ltd. (1%).

3. For the year under consideration the assessee filed its return of income on 30.09.2008 declaring total income at Rs. 1,47,37,930/-. Subsequently, in view of the share premium of Rs. 15.55 Cr received from the share subscribers, the Assessing Officer recorded reasons to believe that nature and source of said share premium was not examined, therefore, income was escaped the assessment, accordingly, he issued notice u/s 148 of the Act on 24.03.2015. In responses, the assessee submitted that the original return of income filed on 30.09.2008 might be treated as return



filed in response to notice u/s 148 of the Act. Thereafter, objections to reopening filed by the assessee were disposed off. During the course of reassessment proceedings, the AO rejected the contention of the assessee regarding justification of nature and source of share premium. It was submitted on behalf of the assessee company that entire process of revival of the textile mills was carried out under the guidance of the group of ministers constituted by the then cabinet as well as the ministry of textiles, therefore, the quantum of share premium was not questionable. It was submitted that the existing shareholders apart from the NTC participated in the company through process of winning bid in auction giving their proposal for revival and rehabilitation of the mills and then final documents were signed before the NTC and other shareholders of the assessee company. It was submitted that the entire process of bidding as well as the amount of share premium charged was devised by the government of India, thus, there was no point in looking on the transaction entered in a suspicious manner. But the Ld. AO rejected the contention of the assessee. The Ld. AO referred to the return of income, balance sheet and profit and loss A/c. filed in respect of the 3 share subscribers and observed that though identity of the share subscribers was established, but the creditworthiness of those share subscribers was not established in view of no confirmation or bank passbook of those parties filed. Further, the AO observed that M/s Pantaloon Retail India Ltd (now known M/S Future Retail (I) Ltd.) has shown investment of Rs.



28.06 Cr in its books of accounts whereas investment in the books of the assessee was appearing at Rs. 12.93 Cr. According to the AO the difference of Rs. 15.13 Crores was not explained by the assessee, which shows failure on the part the assessee in establishing the genuineness of the transaction. Further, the ld AO observed that notice u/s. 133(6) of the Act were issued to the share subscribers but no reply was received from them. In view of the observations, the ld AO held the amount of share capital as well as the share premium received from 3 share subscribers as unexplained cash credit in terms of 68 of the Act. The relevant finding of the assessing officer is reproduced as under:

“2.10 The assessee company in its submission has claimed that M/s Pantaloon Retail India Ltd. has paid for the shares subscribed and the premium thereon by M/s SBPL Infrastructure Ltd. and M/s Sri NavDurga Textile Processors Pvt. Ltd. However, in absence of any confirmation by the said parties in response to notices u/s 133(6), the genuineness of the said transaction could not be verified. As already discussed in the above paras that there is huge difference in the investments made by M/s Pantaloon Retail India Ltd. in the assessee company and as per the books of the assessee company which remained to be reconciled. Thus, the transaction entered into by the assessee company with all the three parties are found to be not genuine since necessary supporting evidences were not filed by the assessee company. Therefore, for want of verification as per the provisions of section 68 of the Act, the entire amount of Rs. 16,25,00,000/- is added back to the total income of the assessee company. Penalty proceedings u/s 271(1)(c) of the Act are initiated for furnishing inaccurate particulars of income.”

5. On further appeal before the Ld. CIT(A), the assessee explained the reasons on the basis of which the ld AO held the share subscription from those parties as unexplained. Regarding the bank statement and confirmation, the assessee filed a certificate from a



chartered accountant of the M/s Pantaloon Retail India Ltd certifying the sources from which said amount was invested. Similar documents were filed in respect of the other companies. The information filed in the tabular format before Ld. CIT(A) is reproduced as under:

Sr . No	Name of the Investor	Identity of the Payer	Genuineness of transaction	Creditworthiness/Capacity of the Subscriber
1	Pantaloon Retail India Limited	ITR acknowledgement for AY 2008-09  Listed on BSE and NSE  Copy of Permanent Account Number Card	Copy of certificate dated 21st March 2016 certified by Hashil Shah & Co. Chartered Accountants certifying payment of Rs. 16,25,00,000/- by Pantaloon Retail India Limited including the amount of Rs. 3,31,63,265/- paid on behalf of SNTP and SBPL. The certificate confirms the reimbursement of 3,31,63,265/- by the two companies to PRIL on 12.2.2008. The certificate is issued after verification of books of PRIL by the Chartered Accountants.  Balance Sheet of Pantaloon Retail	Balance Sheet and Profit & Loss account of the subscriber for the AY 2008-09  Net worth of the company as on 31.03.2008 was Rs. 1660.93 Cr as against the investment of Rs. 12.93 Cr  Copy of ITR acknowledgement of the company for AY 2008-09 showing total income of Rs. 79.48 Cr.



			<p>India Limited for FY 2007-08 showing investment of 22,03,500 shares in the assessee company.</p> <p>Copy of bank account of the assessee with Corporation Bank, Lodhi Road, New Delhi showing credit of Rs. 16,25,00,000/- received from PRIL on 15.01.2008.</p>	
2	SBPL Infrastructure Limited	<p>ITR acknowledgement for AY 2008-09</p> <p>Copy of Permanent Account Number Card</p>	<p>Balance Sheet and Profit &amp; Loss account of the appellant for FY 2007-08</p>	<p>Balance Sheet and Profit &amp; Loss account of the subscriber Net worth as on 31.03.2008 was Rs. 139.80 Cr</p> <p>Copy of ITR Acknowledgement for AY 2008-09 showing total income of Rs. 4.88 Cr.</p>
3	Nav Durga Textile Processors Pvt. Ltd.	Copy of Permanent Account Number	<p>Balance Sheet for FY 2007-08</p> <p>CA certificate certifying the reimbursement of the investment of rs. 33.16 lakh made by PRIL on its behalf</p>	<p>Balance Sheet of the subscriber. Net Worth as on 31.03.2008 was Rs. 2.52</p>

6. The assessee also explained the difference of investment appearing in the books of accounts of M/s Pantaloon Retail India



Ltd and books of the assessee. It was explained that under the revival scheme in addition to the investment of Rs. 12.93 Cr. in the assessee, further amount of Rs. 15,12,24,489/- was paid to National Textile Corporation Limited as relinquishment premium and therefore total investment of Rs.28,05,61,224/- was appearing in the books of account of M/s Pantaloon Retail India Ltd.(PIRL). Regarding no response to notice u/s 133(6) from those share subscriber is concerned, the assessee submitted that once notice u/s 133(6) was duly served upon these parties the onus of the assessee was completed and if the ld AO wanted to ensure their reply he would have exercised the authority provided to him under the provisions of the Act. After considering the submission of the assessee, the Ld. CIT(A) was satisfied regarding the burden of proof discharged by the assessee for establishing identity, creditworthiness and genuineness of the transactions, observing as under.

*“5.3 I have considered the facts and circumstances of the case, submissions of the appellant and material available on record and various case laws referred on the above matter. The fact of the case is that the assessee company has been created as SPV (special purpose vehicle) by shareholder companies i.e. NTC Ltd. (National Textile Corporation Ltd.) which is holding 51% of the shares and the balance share of 49% have been subscribed by M/s Future Retail (1) Ltd. (39%), M/s SBPL Infrastructure Ltd. (9%) and Sri NavDurga Textile Processors Pvt. Ltd (1%). During the year under consideration, the said shares were subscribed by the above-mentioned parties and Rs. 15,55,78,750/- has been paid as premium towards subscription of shares having face value of Rs. 69,21.250/- of the assessee company by the said parties. The appellant contended that the shares of the appellant company were relinquished by NTC and the entire process was devised under the guidance of group of ministers constituted by the then cabinet, as well*



*as the Ministry of Textiles. The existing shareholders apart from the NTC participated in the company through process of winning bid in auction, giving their proposal for revival and rehabilitation of the mills and then the final definitive documents were signed between the NTC and other shareholders of the appellant company. The appellant company through its submission has stressed upon the fact that the appellant is an SPV created to revive the sagging NTC by private participation. As the entire process of bidding as well as the amount of share premium to be charged has been devised by the Government of India, there is no point in looking at the transaction entered in a suspicious manner. Further, in support of its claim the assessee company has submitted the copy of return of income, copy of balance sheet, P & L account of the shareholders (other than NTC) to substantiate the identity, creditworthiness and genuineness of the transactions entered into by the appellant company with its shareholders with regard to charging of share premium by the assessee company.*

*The assessing officer accepted the identity of the parties but not satisfied on the creditworthiness and genuineness of transactions of parties as there was no response of notices issued u/s.133(6) of the Act by these parties. Further, AO pointed out difference of amount in the books of parties. Considering above, he added the share premium amount u/s.68 of the Act. During the appeal proceedings, undersigned has gone through the material available on record, assessment order, written submission and details furnished by the appellant. In this case as the issue of revival of NTC mill, the appellant is created as SPV and being NTC a PSU (public sector undertaking), under the ministry of Textiles, the approval of government be there to form such SPV and the other parties need to bring the amount as shareholding determined by bid or the SPV agreement. Further, the AO has already accepted the identity of the parties who brought in money for SPV in creation of appellant company as per the shareholding. As the amount has been credited in the books of account of appellant company and it has come through banking channel, appellant has given ledger accounts, confirmation and books of parties where the transaction is routed through banking channel and therefore the genuineness of transactions can not be doubted.*

*Further, the appellant during the course of assessment proceedings, furnished relevant documents for the creditworthiness of the parties but AO rejected due to non-response of notices issues u/s.133(6) of the Act by the AO to these parties. The appellant furnished/ produced the copies of PAN cards, balance sheet of the shareholders and copy of*



*bank account to prove the genuineness and creditworthiness of the parties. The appellant submitted that it is not in possession of fact whether service of the notice u/s. 133(6) were properly done to the parties as these parties are having presence in the public and have substantial net worth. In my view, only non-response by the other party cannot be ground of addition under section 68 of the Act. Once, the appellant has been provided balance sheet, copy of the ITR, bank statements etc. documents required by the AO, the AO has to accept or reject the creditworthiness on the basis of these documents or can further ask documents if he desires so. Therefore, considering the material available before me, I am satisfied that AO has failed in appreciating the facts and wrongly added the share premium under section 68 of the Act.”*

7. Before us the Ld. Counsel for the assessee has filed a paper book containing pages 1-246. The Ld.DR relied on the finding of the Assessing Officer and submitted that creditworthiness and genuineness in respect of the share subscribers was not established and therefore, the assessing officer was justified in making addition u/s. 68 of the Act. He accordingly submitted that the order of the Ld. CIT(A) might be set-aside and order of the AO might be restored.

8. On the other hand, ld. counsel for the assessee referred to Memorandum Of Understanding between NTC and PIRL available on pages 28-33 of the paper book and submitted that NTC had agreed to incorporate the assessee company for creating a joint venture vehicle between the NTC and the strategic partners (i.e. the share subscriber) for own, operate and run the said textile mill. Further the Ld. counsel referred to the “share subscriber and share holders agreement” between NTC and 3 share subscribers and the assessee, a copy of which is available on paper book page no. 34 to 64. The Ld. counsel referred to paper book pg No. 37 and submitted



that under the said share subscription agreement the premium amount was determined. The relevant part of share agreement is reproduced for refers:

“H. Accordingly, the Strategic Partner has agreed to subscribe to and NTC has undertaken to ensure that the Company issues to the Strategic Partner 27,68,500 equity shares of face value of Rs. 10/- (Rupees Ten only) each of the Company, at a premium of Rs. 224.78 (Rs. Two Hundred and Twenty Four and Seventy Eight Paise Only) per share, against cash, constituting 49% of the issued, subscribed and paid up equity share capital of the Company (hereinafter referred to as "Strategic Partner Shares"). It is clarified that post such subscription by the Strategic Partner the share capital of the Company shall be held 51:49 inter se between NTC and the Strategic Partner.”

9. The Ld. counsel further referred to the bank statement of the assessee company available on paper book page no. 88 showing the amount received from 3 share subscriber company. He further referred to submission of the assessee before the Ld. CIT(A) justifying the share premium. The Ld. Counsel referred that details of shareholders and breakup of the share premium was defined as per scheme approved by the board of financial reconstruction and as per the document based on which the strategic partner were chosen shareholder for this joint venture company between NTC and the strategic partners. Further, regarding objection of the assessing officer on creditworthiness, the Ld. counsel for the assessee referred to submission made before the Ld. CIT(A), a copy of which is available on paper book pg No. 202-204. The Ld. counsel for the assessee submitted that the assessee had filed all the documents to justify the creditworthiness, genuineness of the transaction before the Ld. CIT(A). Ld. counsel also justified



difference of investment shown in the books of PRIL as on 31.03.2008 and the books of the assessee. Further Ld. counsel for the assessee submitted that identical addition made in another case of the revival of the textile mills has been deleted by the coordinate bench in the case of **ACIT Vs. M/s Goldmohur Design And Apparel Park Ltd. in ITA No. 622/Mum/2016 for A.Y. 2009-10**. Further, the Ld. counsel relied on the decision of Hon'ble Bombay High Court in the case of CIT vs Gagandeep infrastructure Pvt Ltd. [2017] 80 taxmann.com 272 (Bombay), Gaurav Triyugi Singh Vs. Income Tax Officer [2020] 121 taxmann.com 86 (Bombay) and Abhijavala Developers Pvt. Ltd. [2021] 124 taxmann.com 72 (Mumbai-Trib.).

10. We have heard rival submissions of the parties and perused the material on record. The issue in dispute in respect to the share capital and share premium received from three share subscribers by the assessee company, which has been held by the assessing officer as unexplained cash credit in term of section 68 of the Act. It is undisputed that the assessee company has been created as special purpose vehicle for revival of textile mills under scheme of ministry of textile. Under the scheme, the National Textile Corporation limited retained 51% shareholding and balanced 49% shareholding was allotted to 3 share subscribers namely

- I. Future Retain India Limited (earlier known as M/s Pantaloon Retail India Ltd) ( 39%).



- II. M/s SBPL infrastructure limited (9%)
- III. Shri. NavDurga textile processor (1%)

10.1 Above 3 parties paid Rs. 69,21,250/- as share capital and Rs. 15,55,78,750/- as share premium. The assessing officer held the share subscription alongwith the share premium receipt from the 3 share subscriber as unexplained mainly for the reason that, **firstly** confirmation and bank statement of those parties were not filed, **secondly**, difference of investment appearing in the books of the M/s Pantaloon Retail India Ltd and the assessee company, and **thirdly**, no response of notice u/s 133(6) of the Act issued by the assessing officer. We find that Ld. CIT(A) has rebutted all the 3 allegations of the assessing officer in his findings. The Ld. CIT(A) has referred to the bank statement and certificate of source of share subscription money in the hands of the share subscribers. The Ld. CIT(A) has also referred to the submission of the assessee regarding reconciliation of the investment appearing in the books of account of the assessee as well as in the books of account of M/s Pantaloon Retail India Ltd. The Ld. CIT(A) has also justified regarding notice u/s 133(6) of the Act not responded by the share subscription. In view of the allegations rebutted, we don't find any infirmity in the order of the Ld. CIT(A) on issue and dispute. Further we find that in the identical circumstance, the coordinate bench of the Tribunal in the case of ACIT Vs. M/s Goldmohur Design And Apparel Park Ltd.(supra) has held that once the assessee has



discharged, identity and capacity of the investors, no addition could have been made in the hand of the assessee. In view of the aforesaid discussion, we uphold the order of the Ld. CIT(A) on the issue and dispute. Accordingly, the grounds raised by the Revenue are dismissed.

11. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 25/04/2025.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 25/04/2025  
Disha Raut, Stenographer

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**