

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOMETAXAPPELLATE TRIBUNAL,
RAJKOT BENCH: RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER and
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 491/RJT/2024
(निर्धारण वर्ष/Assessment Year: (2017-18))

Assistant Commissioner of Income-tax, Circle-1(1), Rajkot, Room NO.502, Aayakar Bhavan, Race Course Ring Road, Rajkot-360 001	Vs.	Axwell Granito Pvt. Ltd. AT: Uncimandal, Tal: Morbi- 360 001
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: AAOCA 3262 F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Appellant by : Shri Mehul Ranpura, AR
राजस्व की ओर से/Respondent by : Shri K.L. Solanki, Sr. D.R.

सुनवाई की तारीख/ **Date of Hearing : 23/04/2025**
(Fixed for clarification) originally heard on 26.12.2024

घोषणा की तारीख/**Date of Pronouncement : 21/05/2025**

आदेश / ORDER

Per Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the Revenue, pertaining to assessment year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)- [in short 'Ld.CIT(A)'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 29.05.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Act, dated 31.12.2019.

2. Grounds of appeal raised by the Revenue are as follows:

1. *The learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,32,68,300/- made on account of unexplained cash credits in the form of share*

capital/unsecured loans within the meaning of section 68 of the Act as creditworthiness of the lenders/shareholders not established.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in accepting additional evidences in violation of rule 46A of the Income Tax Rule, 1962 without giving an opportunity to the Assessing Officer.

3. Any other ground that the Revenue may rise before or during the proceedings before the Hon'ble ITAT.

4. It is, therefore, prayed that the order of the CIT(A) be set aside and that of the AO be restored to the above extent.”

3. Succinctly, the factual panorama of the case is that assessee before us is a private limited company. Facts of the case is that return of income for assessment year (AY) 2017-18, declaring total loss of Rs. (-)1,86,94,639/-, was e-filed on 12/10/2017. The return of income so filed, was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') without any modification. Since, the books of accounts of the assessee are liable to get audited u/s. 44AB of the Act, audit report in Form No. 3CB & 3CD dated 08.07.2017, were also e-filed on E-filing portal. Subsequently, the return of income so filed, was selected for scrutiny through CASS under *Complete* criteria to verify the following issue:

1. Squared up loans
2. Sales Turnover / Receipts
3. Custom duty paid
4. Share capital/capital

Accordingly, a notice u/s. 143(2) of the Act intimating the selection of return for scrutiny was issued on 11.08.2018 by assessing officer. Subsequently, notices u/s. 142(1) along with questionnaire was issued on 20.06.2019 and duly served. In response to the notices issued, the assessee has e-filed his written

submission along with documents and evidences before the assessing officer. The assessee was incorporated on 08.12.2015 and engaged in the business of manufacturing of ceramic tiles during the year. During the year under consideration, the assessing officer observed that assessee has raised fresh share capital of Rs.11,40,55,000/- and unsecured loan of Rs.6,98,78,200/-. The assessee e-filed its return of income of Rs. (-) 1,86,94,639/- under section 139(1) of the Act, on 12.10.2017, and the said return has been processed without any modification. During the assessment proceedings, the assessee submitted documentary evidences in respect of all shareholders, such as, return of income, balance sheet, bank statement, PAN number, ledger account, contra ledger account, and proof regarding source of the source in respect of all these shareholders. However, assessing officer did not accept the creditworthiness in respect of Rs.1,32,68,300/-, out of Rs.11,40,55,000/-. Therefore, the assessing officer accepted identity, creditworthiness, and genuineness in respect of the share capital to the tune of Rs.10,07,86,700/- (Rs.11,40,55,000 - Rs. 1,32,68,300). As per assessing officer, the assessee had failed to submit any satisfactory explanation in respect of certain amount of Rs. 1,32,68,300/-, raised out of the total share capital raised of Rs.11,40,55,000/-, in form of share capital from the respective share applicants, therefore, assessing officer termed such sum of Rs.1,32,68,300/-, as unexplained and added back the same in the income of the assessee u/s 68 of the Act.

4. Aggrieved by such partial disallowance, and addition by the assessing officer to the tune of Rs.1,32,68,300/-, the assessee carried the matter in appeal, before the Id. CIT (A), who has confirmed the stand taken by the assessing officer. The Id. CIT(A) observed that no doubt, assessee has satisfied the three conditions, namely, identity, genuineness, and creditworthiness in respect of share capital to the tune of Rs.10,07,86,700/- (Rs.11,40,55,000-

Rs.1,32,68,300), however, the assessee had failed to submit satisfactory explanation in respect of Rs. 1,32,68,300/-.

5. Aggrieved by the order of the Learned CIT(A), the Revenue is in appeal before us.

6. Learned Senior DR for the Revenue submitted that in respect of addition sustained by the Id. CIT(A) to the tune of Rs.1,32,68,300/-, the assessee has miserably failed to explain the identity, creditworthiness, and genuineness of the share capital. It is seen that total annual earnings as per the copy of Income Tax Returns (ITR) of these shareholders are very less and these shareholders have heavy loan in their personal Balance Sheet, therefore, it is impossible to make investment in the assessee- company. Section 68 requires the three ingredients i.e. (i) identity of the lender/subscriber, (ii) Creditworthiness of the lender/subscriber and (iii) genuineness of the transaction. As per the innumerable cases decided on the issue, it is a settled position of law that the initial burden is cast on the assessee, to prove these three ingredients. The assessee company has miserably failed to prove these three ingredients of section 68 of the Act, therefore, order of the assessing officer may be upheld.

7. On the other hand, Learned Counsel for the assessee submitted that the shareholders have furnished the entire data of his financial statements which has not in doubt. The shareholder has also furnished the financial data of his creditors duly supported by their ITR, statement of income, profit and loss account and balance sheet. The evidences were submitted by these shareholders, of the third parties, from whom they took the money, this way, the assessee has explained the source of the source also. Once the assessee company furnished the source of the shareholder in their hands as also the source of the source by furnishing their ITR and financial statement of the third parties in these

circumstances no addition should be made in the hands of assessee. Once the source of the source is explained with supporting evidences, the assessee has discharged onus lies on it as provided in proviso inserted by the Finance Act 2012 to section 68 of the Act. Moreover, the assessing officer got satisfied with the three conditions, namely, identity, genuineness, and creditworthiness in respect of share capital to the tune of Rs. 10,07,86,700/-, out of total amount of Rs.11,40,55,000/-, and the same documents and evidences were submitted by the assessee, in respect of the addition sustained to the tune of Rs.1,32,68,300/-, hence there should not be a separate standard to reject the amount of Rs.1,32,68,300/-. When the 89% of the share capital to the tune of Rs.10,07,86,700/- has been accepted by the assessing officer as a genuine then why not only 11% share capital to the tune of Rs.1,32,68,300/-, should not be treated as a genuine, based on the same documents and evidences. Therefore, Id. Counsel contended that addition of Rs.1,32,68,300/-, has rightly been deleted by Ld.CIT(A).

8. We have given our thoughtful consideration to rival contention. Case file as well as paper book are perused with the able assistance of both the learned Counsels representing the Assessee and the Revenue. We find that one key issues arises for our apt adjudication in the instant *lis*, is that when the 89% of the share capital to the tune of Rs. 10,07,86,700/- has been accepted by the assessing officer, as a genuine, then why not only 11% share capital to the tune of Rs.1,32,68,300/-, should not be treated as a genuine, based on the same facts and circumstances. We find that assessee has filed the details, before assessing officer, such as, identity proofs, acknowledgements of returns of income for the assessment year under consideration and the immediately preceding assessment year, bank statements / passbooks, copies of balance sheet for the previous year relevant to the assessment year under consideration and immediately preceding previous year of the said persons to establish genuineness of transactions,

identity and creditworthiness of shareholders. The assessee also submitted the relevant documents and evidences of the third parties from whom they took the loan. Thus, the ingredients of section 68 of the Act, that is, identity and creditworthiness of the lenders and genuineness of transaction were satisfactorily proved by the assessee. The Id. Counsel for the assessee in support of his arguments submitted detail of share applicants along with relevant case laws which has been duly perused.

9. We find that shareholders have furnished the entire data of his financial statements which are not in doubt and the shareholder have also furnished the financial data of its creditors (third party) duly supported by their ITR, statement of income, profit and loss account, bank statement and balance sheet. The audited cash book of share applicants reflecting cash on hand were also submitted before the assessing officer. Once the source of the source is explained with supporting evidences the assessee has discharged onus lies on it as provided in proviso inserted by the Finance Act, 2012 to section 68 of the Act. We find that assessee has furnished, in respect of each person/ shareholder, following documentary evidences to prove the identity and creditworthiness of the persons/ shareholder from whom the assessee has received share application money:

- Copy of the duly notarised affidavit of the share applicants.
- Copy of Bank statement of shareholder showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital
- Acknowledgement copy of Income Tax Return of share applicants.
- Copy of PAN card to verify the identity
- Copy of computation of income of the above share applicants confirming and complete details of Sources of funds and Investments made.
- Copy of ledger accounts of the share applicants.

- Details of the immediate sources of the funds invested by the share applicants and details of their creditors and loan providers to these shareholders and their financial statements, like balance sheet, profit and loss account, bank statements, Income Tax Returns, to prove the source of the source.

10. The Id CIT(A) noticed that in all cases there has been substantial amount of cash balance available to the source of such share applicants from whom funds has been received. Therefore, AO's contention that the immediate funds were deposited in the bank account of the share applicants is devoid of merit and has hardly any strength. It is pertinent to mention here that all the share applicants filed the response in compliance to notice issued u/s 133(6) of the Act. Further, it is also noted that when a question as to the creditworthiness of the creditors is to be adjudicated and if the creditor is an income tax assessee, it is now well settled by the decision of the Calcutta High Court that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regard, the Hon'ble High Court, Calcutta in the case of COMMISSIONER OF INCOME TAX KOLKATA-III Versus DATAWARE PRIVATE LIMITED ITA No. 263 of 2011 Date: 21st September, 2011, held as follows:

“9.6 "In our opinion in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditors himself is an income tax assessee. After getting the information that the creditor is assessed under the Act, the assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

9.7 So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the

genuineness" of transaction through account payee cheque has been established.

9.8 We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which is required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."

9.9 It is pertinent to mention here that if creditworthiness of the share applicant is disputed by the A.O then all the share application money is to be added back by the AO and not just a partial sum out of total which clearly is a case of arbitrary application of a criterion. Therefore, in light of above discussion, I am of the considered opinion that the creditworthiness of the share applicants should have been accepted by the A.O."

11. We find that in assessee's case under consideration, the assessee has explained, both the nature & source of the share application money received, and source of the source also was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the loan. In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard. We thus decline to interfere with the conclusion so drawn by the CIT(A), and dismiss ground No.1 raised by the revenue.

12. About ground No.2 raised by the revenue, we have heard both the parties and noticed that during the appellate proceedings, the assessee has not submitted any additional evidence. The evidence which is available at the public domain, which is available for all as a supporting evidence to prove the original evidence submitted by assessee during assessment proceedings, cannot be treated additional evidence. It has to be further noted that though powers of the Id. CIT(A) are co-terminus with the AO and the Id. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of Commissioner of Income-tax v. Manish Build Well (P.) Ltd. reported in [2011]

16 taxmann.com 27/245 CTR 397/[2012] 204 Taxman 106 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of examination of evidences and possesses co-terminus power of assessment apart from appellate powers. Based on these facts and circumstances, we dismiss the ground No.2 raised by the revenue.

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 21/05/2025.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(DR. ARJUN LAL SAINI)
लेखा सदस्य/ACCOUNTANT MEMBER

राजकोट /Rajkot

दिनांक/ Date: 21/05/2025

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट