



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

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

आयकरअपीलसं./I.T.A. No.416/Rjt/2023
(निर्धारणवर्ष / Assessment Year :2014-15)

Tilara Polyplast Pvt.Ltd. Sur. No. 26, Plot No.1, 2, 7, 10, Nr. Galaxy Technoforge Pvt. Ltd, Shapar Road,Village Shapar, Dist. Rajkot-360 024	बनाम/ Vs.	Income Tax Officer Ward-1(1)(1), Rajkot, Aaykar Bhavan, Race Course Ring Road, Rajkot – 360 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAECT 6343G		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Rajendra Singhal, Ld.AR
Revenue by : Shri Abhimanyu Singh Yadav, Ld.Sr.DR
Date of Hearing : 07/04/2025
Date of Pronouncement : 09/06/2025

आदेश / ORDER

PER, DR.ARJUNLAL SAINI, AM:

Captioned appeal filed by the Assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax(Appeals), [(in short “Ld.CIT(A)”],under section 250of the Income Tax Act, 1961 (in short, “the Act”),dated18/10/2023, which in turn arises out of an assessment order passed by the Assessing Officer (in short, “AO”) u/s. 143(3) of the Act, vide order dated 30.12.2016.



2. The grounds of appeal raised by the assessee are as follows:

1. *The order passed by the Id. Commissioner of Income-tax, National Faceless Appeal Center (NFAC) Rajkot-1, is bad in law, invalid.*
2. *The Id. CIT(A) erred on facts as also in law in upholding the addition made u/s. 68 of the Act to the extent of Rs.58,40,000/-out of share application money received.*
3. *The Id. CIT(A) erred on facts as also in law in upholding aforesaid addition, without considering the evidences submitted in assessment proceedings as well as resubmitted during appellant proceedings.*
4. *The Appellant prays that the addition of Rs. 58,40,000/-, made u/s. 68 of the Act, out of share application money received may kindly be deleted.*
5. *The grounds of are without prejudice to one another.*
6. *Your Honour's appellant craves leave to add, to amend, alter, vary and/or withdraw any one or more grounds of appeal on/or before hearing of appeal.”*

3. Succinctly, the factual panorama of the case is that assessee before us is a private Limited company. The assessee has e-filed its return of income on 16/09/2014, declaring total income at Rs. 28,530/-. The return of income, was processed u/s 143(1) of the Act. Subsequently, the assessee's case was selected for scrutiny assessment and statutory notice u/s 143(2) of the Income-tax Act, 1961, was issued on 28/08/2015, which was duly served upon the assessee. Further, a notice u/s 142(1) of the Act, 1961, dated 01.04.2016, was issued to the assessee calling therein basic details viz. copy of audit report, copy of ITR-V etc. In response to these notices, the assessee, has furnished various details as called for, which were verified. During the assessment year under consideration, the assessee company is engaged in manufacturing of Plastic Sheets. During the course of assessment proceedings, on perusal of the submissions, it was noticed by the assessing officer that the assessee has received premium of Rs.1,35,00,000/-, on issue of equity shares of Rs.15,00,000/-.



Hence, the assessee- company was requested to furnish the requisite details viz confirmations of the persons from whom these credits in respect of Share application money along with the premium amount were received along with documentary evidences viz. copy of acknowledgment of return of income, copy of bank passbook of such creditor highlighting the transaction of share application money, copy of share application form, copy of share allotment certificate etc.

4. In response to the notice of the assessing officer, the assessee furnished the requisite details, before the assessing officer, vide various submission furnished by the assessee on 10/12/2016, 16/12/2016 & 17/12/2016. On perusal of the furnished details, in this regard, it was found by the assessing officer that in many cases substantial amount of cash/cheques were deposited in the bank accounts of such lenders shortly prior to issuance of cheques by them to the assessee- company. Hence, vide assessing officer`s letter dated 21/12/2016, the assessee was requested to show- cause, as to why the amounts received from such persons where cash credits found in the bank passbook of the lenders immediately prior to issuing cheque in favour of assessee- company should not be treated as unexplained cash credits u/s 68 of the Income Tax Act and be added to the income of the assessee. In response, during the course of assessment proceedings, the assessee submitted a detailed reply before the assessing officer, which is reproduced by the assessing officer in the assessment order. In its reply, the assessee submitted the explanation regarding the cash and cheques deposited in the bank account of the share applicants and the source of such amount by furnishing the third-party evidence, from whom the assessee has received cheques and cash and own sources of cash by way of agricultural



activities. For each share applicant, the assessee submitted, full address, PAN number, balance sheet, profit and loss account, bank statement showing the source of the money, confirmations, third-party books of accounts and evidences showing source of the source.

5. However, the assessing officer rejected the contention of the assessee and observed that assessee had failed to establish the genuineness and creditworthiness of the transactions appearing in its books of accounts, for the sum of Rs.71,10,000/-claimed to have been received from the Share applicants, out of total share capital to the tune of Rs.1,50,00,000/- .That is, out of the total share capital including share premium of Rs.1,50,00,000/- received by the appellants, the assessing officer after going through various supporting evidences added Rs.71,10,000/-, under section 68 of the Act, in respect of 20 shareholders to the extent of the amount being sourced from cash deposits from their bank accounts.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld.CIT(A), who has partly deleted the addition made by the assessing officer. The ld CIT(A) noticed that out of total share capital/share premium to the tune of Rs.1,50,00,000/-, the assessing officer made addition to the tune of Rs. 71,10,000/-, under section 68 of the Act, and for balance amount of Rs. 78,90,000/- (Rs.1,50,00,000-Rs. 71,10,000), the assessing officer held that assessee has explained the identity, genuineness, creditworthiness, of share applicants, therefore assessing officer did not make the addition to that extent. The ld CIT(A) noticed that out of Rs. 71,10,000/- added by the assessing officer, the source of money for the creditors cash deposits in



view of the creditworthiness of the creditor is available in the case of the following share applicants:

SAROJBEN P. LUNAGARIYA -	Rs. 4,90,000/-
RAJNIKANT D. TILARA -	Rs. 2,90,000/-
FENIL S. TILARA	Rs. 2,90,000/-
BHARATBHAI B. SANGANI -	Rs. 1,90,000/-
Total:	Rs.12,60,000/-

Therefore, the ld. CIT(A) further deleted the addition to the extent of Rs.12,60,000/- and therefore, now the assessee is in appeal before us for the remaining amount Rs. 58,40,000/-(Rs. 71,10,000-Rs.12,60,000).

7. Shri Rajendra Singhal, Learned Counsel for the assessee, submitted that there should not be two standards for the same share applicants who have filed the same documents and evidences before the lower authorities and the lower authorities did not make the addition. For the remaining amount Rs. 58,40,000/-(Rs. 71,10,000- Rs.12,60,000), same set of documents and evidences were furnished before the lower authorities. However, they did not consider them in a right perspective and did not delete the addition of Rs. 58,40,000/-. The Ld. Counsel for the assessee submitted before us that for each shareholder, confirmations were filed, cash-books were also filed, the PANs, names and addresses, bank statement and audited balance-sheet including Profit & Loss account were also filed before the assessing officer. Therefore, by submitting the PANs, names and addresses, Profit & Loss account and balance-sheet of the shareholders and bank statement of the shareholders, moreover, third-party financial statements and bank details from whom the share applicants took the money, therefore, by submitting these documents and evidences, the assessee has proved source of the source also. Thus,



assessee has not only proved the source of the share capital but source of the source was also explained and proved. The Ld.Counsel also submitted that in respect of balance shareholders, the assessing officer, in the subsequent assessment year, (vide paper-book at page No.376 for AY 2015-16,) the assessing officer has considered the cash credit in the hands of the assessee-company, as if ,it is explained, with same set of evidences. The assessing officer also in AY 2017-18, (vide paper-book at Page No.405,) did not make addition on account of cash credit. The assessee has explained the cash credit and assessee submitted necessary documents and evidences, on identical and similar set of facts, the assessing officer did not make any addition in the hands of the assessee-company. Therefore, the Ld. Counsel submitted that in subsequent year, the assessing officer accepted cash credit, as explained, having same facts and circumstances. Therefore, balance addition confirmed by the Id. CIT(A) may be deleted.

8. On the other hand, the Ld.DR for the revenue, submitted that before the assessing officer, the assessee submitted bank statement, however, there is no proof or evidence that the bank statement so submitted by the assessee, before the assessing officer is a correct bank statement. In addition to this, the assessee has submitted Affidavits before the Ld.CIT(A), who has not been sent back ,by the Id. CIT (A), to the file of the assessing officer for verification. Therefore, the entire issue may be remanded back to the file of the assessing officer.

9. The Ld. DR for the revenue also submitted that the private documents produced by the assessee, such as cash books and balance sheets indicating specific cash balances on particular dates, are self-serving in



nature and hold minimal evidentiary value. These documents cannot be solely relied upon to substantiate the claims made by the assessee, especially when they lack corroboration from independent and credible sources. Therefore, addition sustained by Id. CIT (A) may be upheld.

10. In rejoinder, the Ld.Counsel for the assessee submitted before us that whatever documents submitted before the assessing officer, such as, bank statement, names and addresses, PANs, balance-sheet, P&L account and third-party financial statements, to prove the source of the source, were submitted before the Ld.CIT(A), during the course of appellate proceedings and the same were submitted before the Tribunal also. The Ld.Counsel submitted that Affidavit is merely one kind of a written submission of the assessee, so the facts already narrated before the assessing officer have been submitted by way of Affidavit before the Ld.CIT(A), therefore, material contained in the Affidavit, is nothing but written submission of the assessee, by narrating the same facts which were before the assessing officer. Therefore, without considering the Affidavit, the adjudication can be made by the Bench and these Affidavits do not contain any additional evidences. In these Affidavits, only written submissions were made by the assessee to explain the evidences already submitted before the assessing officer. Therefore, only the written submission may be considered which were before the assessing officer, hence, it is not a new document or additional evidence before the Ld.CIT(A) and, therefore, the matter should not be remanded back to the file of the assessing officer.

11. We have heard both the sides and perused the material available on record as well as the orders of the authorities below. The Ld.Counsel



submitted that assessee- company has been established by the Tilara family, which is also running successful manufacturing companies, since long, namely M/s. Metflow Cast Pvt. Ltd and Galaxy Technoforge Pvt. Ltd. Besides, the family has businesses under partnership firms namely Soham Dhana Industries and Jeet Developers. The company has been incorporated on 23.05.2013 and till receipt of investment there was neither any commercial activity nor receipt of any kind of revenue. Since the family is running successful ventures, it enjoys immense goodwill and reputation to run a business enterprise. When the family decided to commence a new business and for that purpose, this assessee -company has been formed. Out of the 23 investors, 10 persons are promoters of the company and others are close relatives and friends of the promoters. Close relatives and friends of the promoters were interested in investing in this new company, as they had faith in promoter's capacity of establishing an enterprises and wealth creation. Majority of the investors are earning taxable incomes and are regular tax payers and files their returns of income, while others are farmers, holding ancestral agriculture land and earning tax free agriculture income. All the investments were received through banking channel only.

12. We find that assessing officer had made the addition under consideration, merely on presumption and surmises, without making any independent inquiry. The assessee has furnished all the information, which has been called for during the assessment proceedings for satisfaction of the assessing officer in respect of the cash credits. The assessee has furnished confirmation letters, ITR, bank accounts and cash book of the persons selectively. Majority of the share applicants are regular income tax assessee's and they are filing their return of income



regularly. Their identity cards, confirmation letters and acknowledgement of return of income were produced. Those investors, who were not liable to file the returns of income as they are earning exempt agriculture income and their taxable income are below maximum income chargeable to tax, their identity cards, confirmation letters and evidence for their income and agriculture land holding were produced. The share application forms, allotment letters and relevant share certificates, were produced by either the company or the investors. The share application money was paid through the account payee cheques, the details of relevant bank accounts belonging to the share applicants and their bank statements were produced. All the applicants are having substantial creditworthiness which is represented by their independent source of income and funds available with them. The third party financial statements and cash books were produced in cases of those applicants, who were maintaining books of accounts, to prove the source of the source. Accordingly, all the three ingredients to explain a cash credit as required u/s. 68 of the Act, that is, the identity, creditworthiness and genuineness of the transaction was satisfied. Further the investors have explained nature and source of their investment, by producing evidences regarding their own income, fund for investments and amount borrowed from other persons and their identity and creditworthiness. Moreover, in scrutiny assessments for subsequent assessment years, 2015-16 and 2017-18, credits from some of the same investors have been accepted by the assessing officer, as explained.

13. We note that assessee under consideration has received amount from shareholders during the year under consideration of Rs.1,50,00,000/-. The assessee submitted the complete addresses and PAN number of each



shareholder so that the Assessing Officer of the shareholders, can conduct enquiry in their individual assessment. During assessment proceedings, Assessing Officer issued notices to the assessee to explain the identity, creditworthiness and genuineness of the share capital/ share premium received by the assessee. In response to that assessee has submitted in respect of all shareholders, the copy of income-tax return, copy of bank pass-books of the shareholders, copy of bank statements of the shareholders, copy of share application forms, copy of share allotment certificate, PAN of the shareholders, addresses of the shareholders, documents relating to third-party from whom the shareholders got the money to explain the source of the source. We find that out of Rs.1,50,00,000/-, the Assessing Officer made addition to the tune of Rs.71,10,000/- stating that the shareholders pertaining to the addition of Rs.71,10,000/- have not proved their creditworthiness. Therefore, out of Rs.1,50,00,000/-, the amount to the tune of Rs.71,10,000/- have not been treated genuine. However, ld. Counsel contended that based on the same facts and evidences, the Assessing Officer ought not to have confirmed the addition of Rs.71,10,000/- Aggrieved, the assessee carried the matter in appeal before Ld.CIT(A) against the action of Assessing Officer in making addition of Rs.71,10,000/-, the Ld.CIT(A) has further deleted the addition of Rs.12,70,000/-, and reduced the addition to the extent of Rs.58,40,000/- (Rs.71,10,000-Rs.12,70,000), based on the same facts and circumstances.

14. We note that in respect of addition sustained by the Ld.CIT(A) to the tune of Rs.58,40,000/-, the assessee has submitted the same documents and evidences before the Assessing Officer. Moreover, same documents and evidence were furnished before the Ld.CIT(A), however, Ld.CIT(A)



has reduced addition from Rs.71,10,000/- to Rs.58,40,000/-.Therefore, there should not be pick and choose to make addition in the hands of the assessee. That is, there should not be discrimination for the balance amount of Rs.58,40,000/-, as all the documents and evidences of the third party evidences to prove the source of the sources have also been furnished in respect of the addition sustained by Ld.CIT(A) to the tune of Rs.58,40,000/-. The Assessing Officer should not make an addition in the hands of assessee based on the same facts and evidence, on the basis of which the assessing officer deleted the addition in respect of other shareholders. The assessing officer, should act consistently in tax matters, especially when the facts and evidence are identical.Once the identity and genuineness of a transaction in respect of share capital is accepted in the hands of some shareholders, therefore, based on the same facts and evidences, no addition should be made in case of other shareholders, having same facts and evidences, without new adverse evidences. Department cannot blow hot and cold. If the AO accepts transaction, as genuine in case of majority of the shareholders, he cannot treat it as bogus in the hands of other shareholders, having same facts and circumstances, without bringing new material on record.Therefore, we are of the view that balance addition,of Rs.58,40,000/-, based on the same facts, evidences and documents should also be deleted. Hence, the addition sustained by Ld.CIT(A) is hereby deleted.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 09/06/2025 at Rajkot.

Sd/-
(DINESH MOHAN SINHA)
न्यायिकसदस्य/JUDICIAL MEMBER

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



राजकोट /Rajkot

(True Copy)

दिनांक/ Date: 09/06/2025

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजकोट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण,राजकोट / ITAT, Rajkot