



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No .77/RJT/2021
(निर्धारणवर्ष / Assessment Year: (2016-17)
(Hybrid Hearing)

Fiorenza Granito Pvt. Ltd. Survey No. 139/P1/P1, 139/P2 and 139/P3, At: Ratavirada, Tal: Wankaner, Morbi-363621	Vs.	The Pr. Commissioner of Income Tax-1, Rajkot Room No, 101, 1th Floor, Aayakar bhawan, Race Course Ring Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCF5893M		
(Appellant)		(Respondent)

Appellant by : Shri Vimal Desai, Ld. AR
Respondent by : Shri Sanjay Punglia, Ld. CIT(DR)
Date of Hearing : 06/03/2025
Date of Pronouncement : /06/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax[(in short “Ld. Pr.CIT”)] u/s. 263 of the Act, vide order dated 21.03.2021.

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

1. *The order u/s. 263 of the Act is bad in law.*
2. *The learned Pr. CIT has erred in law as well as on facts in not considering the submissions of the appellant on the strength of which the assessment order was neither erroneous nor prejudicial to the interest of revenue and therefore, the provisions of Section 263 of the Act were not applicable to the case of the appellant.*
3. *The learned Pr. CIT has erred in law as well as on facts in setting aside the assessment order passed by the ld. A.O. u/s. 143(3) of the Act and directing de-*



novo assessment regarding verification of equity share capital and fresh unsecured loans.

3. Brief facts of the case that company incorporated on 09.06.2015 engaged in the business of manufacturing of ceramic tiles. The year under consideration was first year of incorporation of the appellant company and the commercial production and income generating activities were not yet commenced. The return of income of the appellant company for AY 2016-17 was e-filed on 15.10.2016 declaring the total income at Rs. NIL. The case of the appellant was selected for the complete scrutiny. Notice issued by AO the assessee replied to the notice and the assessment was completed with undermentioned observation.

i. In response to the notice issued, the assessee has filed its submission/details online electronically in 'E-proceeding' facility through its account in e-filing website of Income tax Department viz-a-viz: copy of Return of income with computation & copy of Audited Accounts; details with documentary evidences in respect of share capital introduced & unsecured loans taken/accepted & squared up during the year; details with documentary evidences in respect of sundry creditors & debtors; details of bank accounts; copy of bills/invoices in respect of the capital assets/goods purchased during the year (both import & local); copy of Form No. 15CA & 15CB and proof of custom clearance in respect of import assets etc. The submission/details filed by the assessee have been verified. The assessee is a closely held company engaged in the business of manufacturing of Ceramic & Cement products. However, during the year under consideration, the assessee company has not commenced the commercial activities



ii. On perusal of record, it was seen that the case was selected for complete scrutiny under CASS and one of the reasons for selection was to verify as to whether the share capital is genuine and from disclosed sources. Therefore, it was incumbent upon the AO to verify all the aspects of the share capital minutely. It was seen that the assessee company had issued 16,00,000 Equity Share of Rs. 10 each to 46 persons and has received fresh share capital of Rs. 16,00,00,000/- during the year under consideration. Besides, the assessee company had also availed fresh unsecured loans to the tune of Rs. 4.74 Crores from 24 persons, out of which 22 persons happens to be subscribers to share capital also. On verification of the submissions made by the assessee, it was noticed that details like Copies of ITR, Bank Statement and Signed copy of Ledger of the Share-holder in its books of accounts had been submitted during the assessment proceeding before the AO in respect of 24 persons reported as loan providers (of which 22 were also featuring in the list of share-holders) but no details whatsoever regarding remaining 22 share holder were found on record and that even in respect of those where details had been filed, it was noted that no Balance sheets of the Share investors were available on record. Thus, prima facie it appeared that no verification of the nature and source of the sums in the hands of these share-holders had been made. On further verification of the submissions, it was revealed that barring a few most of the share-holders claimed to have invested amounts of about 10-15 times their returned income and no explanation was found to be available on records for source of such investments by these share-holders. Looking to the income declared by these share-holders, it can be seen that these subscribers are not men of sufficient means who can afford making investments irrespective of the chances of return on investments. It is not a secret that share investment in an un-listed company does not give easy exit route and are normally required for a considerable time with few/limited exit options. Further looking to the income declared by the assessee company, it



can be stated that no reasonable return on such investment by way of dividend is visible in these cases. In such scenario, no prudent investor would like to stake such huge amount of money, that to borrowed, in shares of the assessee company where no return on investment appeared in near future. As such, in presence of these glaring discrepancies and particularly when one of the main reasons for selection was verification of the genuineness of the share capital, the AO should have made independent and in depth inquiries in respect of such share capital. However, the AO accepted the same as genuine in contravention to the provisions of section 68 of the Act even though there were no confirmations/ITRs / Bank Statement / Balance Sheets in support of 32 persons subscribing total share capital of Rs. 4,09,49,000/- in aggregate Even in respect of the other shareholder. The AO has not examined the source of the shareholders despite glaring discrepancies described above. As such, the AO, who was duty bound to verify and enquire/ investigate the identity and credit-worthiness of the creditor (loans)/ shareholder and ascertain whether the transaction was genuine and whether these subscribers were creditworthy enough to make such huge investments, had failed to conduct verifications / enquiries that should have been done and accepted the share capital as well as the unsecured loans as genuine on the face of the submissions made by the assessee. As such, the order passed by the AO u/s. 143(3) of the Act dated 03.12.2018 prima facie appeared to be erroneous in so far as it was prejudicial to the interests of the revenue.

4. Therefore, Ld. PCIT issued a show cause notice to the assessee during the revision proceedings, which is on the paper book. In response to the show cause notice the assessee has not submitted reply before the Ld. PCIT, therefore, the Ld. PCIT hold that total 44 persons have subscribed to the share capital and 24 persons entitled had contributed unsecured loans.



However, no details regarding remain 22 shareholders are found on record.

Therefore in this connection, the Ld. PCIT observation as follows:

“On verification of the assessment records, it is seen that 16000000 equity shares have been issued at Rs. 10 each raising equity share capital by Rs 16,00,00,000/- It is noted that 44 persons/ entities have subscribed to the Share Capital and 24 persons / entities have contributed unsecured loans 22 names are common in both the lists (ie. Share holder as well as loan providers) and 2 are only loan providers. In this regard details like Copies of ITR, Bank Statement and Signed copy of Ledger of the Share holder in its books of accounts have been submitted during the assessment proceeding before the AO in respect of 24 persons reported as loan providers (of which 22 were also featuring in the list of share holders) However, no details regarding remaining 22 share holder are found on record Further, ever in respect of those where details have been filed, it is noted that no Balance sheets of the Share investors are available on record. Thus, no verification of the nature and source of the sums in the hands of the share holder has been made.

3 Based on the details submitted during the assessment proceeding, a chart summarizing party wise documents is prepared, during the review process, which is enclosed as annexure. Perusal of the said Chart reveals that some share holders claimed to have ipvested amounts of about 10-15 times their returned income. For instance, Sh. Jitendra C. Patel invested Rs. 1.50 cr as share capital and Rs. 1.4 lacs as loan while returned income of AY 2016-17 is NIL and exempt agriculture income is Rs. 10 Lacs, is one such glaring example. Even in such glaring instances, the AO didn't examine the nature and source of the shareholder

First provision to sec. 68 of the Act clearly provision that in respect of share capital, Explanation offered by the assessee-company shall be deemed to be not satisfactory unless the share holder offers explanation about the nature and source of such investment and the AO is satisfied about such explanation. First proviso to section 68 of the Act is as under -

"Provided that where the assessee is a company (non being a company in which the been public are substantially interest), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory. unless-

a). The person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited: and

b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory."

5. That the Ld. PCIT after considering the reply of the assessee has observed as under:



“The submission of the assessee have been considered at length and is not found to be acceptable for the reasons discussed hereunder. The basic contention of the assessee is that they had submitted various details before the AO at the time of assessment proceedings and that the source of investments in the case of Sh. Jitendra Patel was explained in view of various observations made in the preceding paras, it can be seen that the assessee did not file any documents in respect of 32 persons subscribing total share capital of Rs. 4,09,49,000/- in aggregate, Therefore, the contentions of the assessee that they had furnished all the requisite documents before the AO is far from truth and without any substance Further, though the assessee has now explained the sources of investments made by SH. Jitendra Patel, neither such explanation was ever called for by the AO nor the assessee explained such sources to the AO ever. Further, even if the assessee now submits such explanation/documents in respect of sources of investments in the hands of the share-holders/depositors, the fact remains that no such verification or independent inquiry was carried out by the AO during the course of assessment proceedings and despite glaring discrepancies described above, the AO accepted the share capital/loans as genuine on the face of the submissions made by the

8 As per the amended provisions of section 68 of the Act, it was incumbent upon the AO to verify the sources of such investments in the hands of the persons making investments with the assessee company either in the form of share capital or as loan/deposits. However, as demonstrated above, the AO has not taken any pains to verify all the three limbs of a genuine cash credit, namely, genuineness of the transaction, creditworthiness of the subscriber/depositor and identity of the subscriber/depositor and has also not made any independent inquiry whatsoever and treated such share capital and loans as genuine in the hands of the assessee on the strength of the submissions made by the assessee overlooking such glaring discrepancies described earlier. Further, as held by the Hon'ble Supreme Court in the case of Pr. CIT vs. NRA Iron & Steel (P) Ltd [2019] 103 taxmann com 48 (SC), the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/ subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders and if the credit-worthiness of the depositors/subscriber is lacking, then the genuineness of the transaction would not be established.

9 From the facts narrated above, it can be seen that despite glaring lacunae described above, the AO accepted the contentions of the assessee on the face of assessee's submission and had not carried out any independent verification to verify the creditworthiness of the depositors/subscribers which he was required to do in view of the provisions of section 68 of the Act. As such, it is a case of complete lack of inquiry and not a case of inadequate inquiry.

10. This indicates that the AO failed to make the relevant vital inquiries as to whether the depositors/subscribers are genuine and verifiable, whether the depositors/subscribers are credit worthy, whether the source of the source is explained in view of the amended provisions of section 68 of the Act, etc. From the perusal of the case records of the assessee for the relevant assessment year, there is nothing on record to show that the AO has ever confronted the assessee on these issues and had the Assessing Officer examined all the above issues, he should have made some noting either in the order sheet or any kind of reference



would have been made in the submissions made by the assessee. Therefore, it is not a case of inadequate inquiry but a clear cut case of lack of inquiry. The lack of inquiry or verification at the relevant time by the AO would constitute prejudice to the interest of revenue and would involve error of fact and law which are vital to the issue on which the case was selected for scrutiny

11. The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word 'erroneous' includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits. In this case the AO has not conducted the critical enquiry and nothing is on record to show that any verification of details to establish the genuineness of the claim as made by the assessee has been carried out by the Assessing Officer. The order of the Assessing Officer is silent and the claims have been allowed without any inquiry, examination or independent verification from outside agencies.

12. As mentioned above in the assessee's case, the AO while completing the assessment did not conduct such enquiry as was essential on the facts and circumstances of the case and therefore the order passed by the AO was erroneous in as much as it was prejudicial to the interest of revenue. Therefore, this is a case of absolute lack of inquiries by the AO and not a case of inadequate inquiries. Reliance is placed on the following case laws wherein it has been held that proceedings u/s. 263 can be justified where there is lack of inquiries on the part of the AO."

6. That Ld. PCIT directed to make fresh assessment after verifying the genuineness, creditworthiness and identity of the depositors/subscribers and after providing proper opportunity of being heard to the assessee, therefore, the assessee has in appeal before us.

7. During the course of argument, the Ld. AR of the assessee submitted that this first year of incorporation of the appellant company and the commercial production and income generating activities were not commenced. The company issue of share capital and unsecured loan, all details were framed before the Ld. AO and the same were accepted.



8. On the other hand, the Ld. DR for the revenue submitted that the issue of the share capitals is governed by the section 68 of the Act, that section 68 especially meant for the cash credit and apart from this a proviso was inserted in section 68 w.e.f. 01.04.2013 wherein it was stated that in case of share capital the assessee needs to explain the source of the source.

9. We noted that both the parties and perused the material available on record. We note that Ld. PCIT in order 'para 2' observed that assessee has not filed any details regarding 22 shareholder, therefore, even the assessee has not proved the source of the first decree of evidence and source of the source, the assessee also need to explain the second decree of documents, which is not in record before the Ld. PCIT. Therefore, we are of the view that correct direction has been given by the Ld. PCIT, that this matter should be remitted back to the assessing officer with the direction to the assessee to submit the details regarding 22 shareholders, therefore, the first degree of source and second degree of documents prove the source of the source, we approve the order of the Ld. PCIT that the case deserved to remit the matter back to the file of the Ld. AO. We also confirm the direction given by the Ld. PCIT to the assessee to submit the first degree evidence in support to 22 shareholders and also submitted the second degree documents which is known source of the source before the Ld. AO. We uphold the order of the Ld. PCIT.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 03-06-2025



Sd/-
(A. L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 03/06/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot