

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1387/Del/2018**

**निर्धारणवर्ष/Assessment Year: 2008-09**

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| ACIT,<br>CENTRAL CIRCLE-15,<br>ROOM NO.353, ARA CENTRE,<br>JHANDEWALAN,<br>NEW DELHI. | <u>बनाम</u><br>Vs. | ADHIST GARMENT EXPORT PVT. LTD.<br>48, TODARMAL ROAD,<br>BENGALI MARKET, NEW DELHI. |
|   |                    | PAN No. AAFCA1526P  |
| अपीलार्थी <b>Appellant</b>  |                    | प्रत्यर्थी/ <b>Respondent</b>   |

|             |                               |
|-------------|-------------------------------|
| Assessee by | Shri Gautam Swaroop, Adv.     |
| Revenue by  | Shri Ajay Kumar Arora, Sr. DR |

|                                   |            |
|-----------------------------------|------------|
| सुनवाईकीतारीख/ Date of hearing:   | 28.05.2025 |
| उद्घोषणाकीतारीख /Pronouncement on | 25.06.2025 |

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Revenue against the order of the Ld. CIT(Appeals) in deleting the addition made in respect of share capital and share premium u/s 68 of the Act.

2. Brief facts are that the assessee filed its return of income on 18.09.2008 declaring nil income. The assessment was reopened u/s 147 and the reassessment was completed on 30.03.2016

determining total income at Rs.4,80,00,000/-. In the course of reassessment proceedings the assessee was required to justify the receipt of share application money/share premium from various parties as mentioned in page 2 & 3 of the assessment order. The AO based on the statement recorded from one Mr. Sanjeev Aggarwal concluded that the share applicants/companies have lessor declared income as compared to share application money inducted in the assessee company and therefore credit worthiness has not been established in respect of above investor companies and accordingly held that the share application money received by the assessee is unexplained credit u/s 68 of the Act.

3. On appeal the Ld. CIT(Appeals) deleted the addition.
4. Ld. DR strongly supported the orders of the AO and the Ld. Counsel for the assessee strongly supported the orders of the Ld. CIT(Appeals). The Ld. Counsel for the assessee further made submissions as under: -

*“Requirements of Section 68 of the Act not satisfied, as the genuineness, source, authenticity of transactions have been established by the Respondent-Assessee*

*7. In the present case, the entirety of details pertaining to the transaction were sought by the Appellant by way of notices under Section 133 (6) of the Act issued to the Respondent-Assessee and each of its investor companies, namely - M/s Abhashree Merchants Pvt. Ltd., Ankia Tieup Pvt. Ltd., Dhantaras Tracom Pvt.*

*Ltd., Dhanuka Commercial Pvt. Ltd., D S Consulting and Holdings Pvt. Ltd., Fastner Mercantile Pvt. Ltd., Majestic Vincom Pvt., Wofin Leasing and Finance Pvt. Ltd., Ramshila Enterprises Pvt. Ltd., Plus Jet Finvest Pvt. Ltd., AKS International Ltd., Kay Kay Exim Pvt. Ltd., Rudwal Capital Trust Ltd., Rinkpi Finance and Consultants Pvt. Ltd. and Mahesh Finsec Pvt. Ltd. Each of the said investor companies had responded positively to the notices issued to them under Section 133(6) of the Act, providing all the details requested by the Appellant. More specifically the Appellant had requested the following details:*

- a Relevant extracts of statement of bank account of the investors showing payments made towards share application money;*
- b Copies of allotment letters;*
- c Share application form duly filled by the investor companies;*
- d Confirmation in respect of allotment of equity shares to the investors;*
- e Copy of PAN card of the investor companies;*
- f Memorandum and Articles of Association of the investor companies clearly depicting their corporate identity numbers;*
- g Copies of share certificate issued by the assessee company;*
- h A chart showing details of director of the investor company;*
- i A chart showing details of shareholders of the investor companies; and*
- j Copies of the acknowledgement of the income tax return filed for A.Y. 2008 - 09 by the investor companies along with their audited financials for the year ended on 31.03.2008*

*8. Each of the said investor companies had duly furnished the above mentioned documents to the*

*Appellant which has been confirmed by the Appellant as well (See Para. 4/Assessment Order); the aforementioned has also been taken note of and recorded by the CIT(A), while reproducing all information received, in the Impugned Order (See Para. 3/Impugned Order). Absolutely no infirmity, default, or failure in relation to the said information has been identified or pointed out by the Appellant in the Assessment Order (as confirmed by the Impugned Order). In this regard the reliance is placed on the judgements of the Hon'ble High Court of Delhi in Commissioner of Income Tax v. Kamdhenu Steel tfe Alloys Ltd., 2011 SCC OnLine Del 5581. Commissioner of Income Tax v. Winstral Petrochemicals Pvt Ltd, 2010 SCC OnLine Del 1950, CIT v. Gangeshwari Metal Pvt. Ltd., 201.3 SCC OnLine Del 270, Income Tax v. Oasis Hospitalities (Pvt.) Ltd.. 2011 SCC OnLine Del 506 and CIT vs. Pratham Projects & Finlease Ltd. < ITA 638 of 2010.*

*9. The only basis on which the Appellant has proceeded to make the additions, is on the flawed and illegal reasoning that income of the relevant investor companies for the previous financial year was less than the amount of investment made in the Respondent-Assessee. However, as is the proper accounting position and also commonly the business practice, investments can be made also from the capital reserve, surplus funds, and/or borrowed amounts. Notwithstanding that investment into the Respondent-Assessee in the present case entirely genuine and the information requisition by the Appellant has been only complied with. Had the Appellant sought any further information, the same too would have been fulfilled satisfactorily.*

*10. The Appellant undertook no efforts to challenge or authenticate the genuineness, creditworthiness and the authenticity of the source of the source of investments into the Respondent-Assessee. The said exercise not having been done, it was not open to the Appellant to make additions to the income of the Respondent-Assessee.*

*11. In the above circumstances, the settled position of law prevailing and as applicable to the Respondent-Assessee for the relevant assessment year i.e. A.Y. 2008-*

09, the factum of having produced, or caused to be produced, details of the relevant transactions of subscription of shares of a company, are deemed to be discharged. Consequently, any charge to tax in terms of Section 68 of the Act would fail, and no additions would survive. The Assessee in the present case is not required to prove the credit worthiness of or established the "source of the source". In this regard the reliance is placed on the judgement of the Hon'ble High Court of Bombay in CIT v. Gasan deep Infrastructure Pvt. Ltd. T20171 394 ITR 380 (Bombay) and PCIT - 1 v. Ami Industries (India) (P.) Ltd.: [2020] 424 ITR 219 (Bombay), the decision of this Hon'ble Tribunal in A CIT, New Delhi v. Prem Anand. IT A No. 3514 (Delhi) of 2014, the decision of Hon'ble Income Tax Appellant Tribunal, Nagpur Bench, in Deputy Commissioner of Income-tax vs. Mahavir Coal Resources (P.) Ltd. [2025] 170 taxmann.com 671 (Nagpur - Trib.).

II. Income is not an indicator of creditworthiness

12. It is respectfully submitted that creditworthiness refers to the ability of a person to repay and discharge financial obligations and is to be assessed primarily on the basis of the financial capacity reflected through bank statements and other financial documents. Mere disclosure of low or modest income in income tax returns cannot be a conclusive ground to discredit the financial capacity of an investor or lender.

13. In the present case, the creditworthiness of the concerned parties has been adequately demonstrated through the production of bank account statements evidencing the availability of funds and the actual transfer of monies through proper banking channels. Hence, income alone cannot be the determinative factor in rejecting the explanation furnished by the Respondent-Assessee.

14. In this regard the reliance is placed on decision of the Hon'ble High Court of Delhi in CIT-II v. Kamdhenu Steel & Alloys Ltd., 2011 SCC OnLine Del 5581 and the Hon'ble Income Tax Appellant Tribunal, Agra in Avnish Kumar Sinsh v. ITO. [2010] 126 ITD 145 (Agra)(TM).

III. The statement of Mr. Sanjeev Agarwal recorded under Section 132(4) of the Act was never supplied to the Respondent-Assessee prior to the proceedings before this Hon'ble Tribunal

15. On receipt of the notice dated 14.05.2015 qua requisition of information for the purpose of assessment proceedings under Section 143(3) of the Act. the Respondent-Assessee vide its reply dated 15.12.2015 (See Pg. 25/Taper Book filed by the Respondent-Assessee) requested the information/documents, including but not limited to the statement recorded under Section 132(4) of the Act of Mr. Sanjeev Aggarwal, to file its objections against the said proceedings. However, the said statement was supplied to the Respondent-Assessee only when the Appellant filed its Additional Documents before this Hon'ble Tribunal and served the same on the Respondent-Assessee.

16. In view of the foregoing, it is evident that the Respondent-Assessee was denied a fair opportunity to rebut or clarify the contents of the purported statement recorded under Section 132(4) of the Act, which forms the very basis of the assessment proceedings. Therefore, no adverse inference could have been validly drawn against the Respondent-Assessee on the basis of a statement that was not disclosed.

IV. Mr. Sanjeev Agarwal has no nexus/business relationship with the Respondent-Assessee and his statement recorded under Section 132(4) is not incriminating as not supported with corroborating material

17. It is also relevant to highlight that Mr. Sanjeev Agarwal, whose statement was recorded under Section 132(4) of the Act in connection with the alleged infusion of bogus capital in the Respondent-Assessee, has no nexus, either direct or indirect, with the Respondent-Assessee. Also, no such incriminating material was recovered during the course of the search to substantiate or corroborate alleged contents of the said statement

18. *It is a settled position of law that uncorroborated statement recorded during search proceedings cannot be relied upon to make additions under the Act. In support of this position, reliance is placed on the judgment of the Hon'ble Delhi High Court in CIT vs. Pavitra Recilcon (P) Ltd. (2024) 340 CTR (Del) 225, and Principal Commissioner of Income Tax, Delhi-2 v. Best Infrastructure (India) Pvt. Ltd. [2017] 84 taxmann.com 287 (Delhi), [affirmed by the Hon'ble Supreme Court in [2018] 94 taxmann.com 115 (SC)]*

V. *The statement of Mr. Sanjeev Agarwal under Section 132(4) of the Act cannot be considered voluntary statement as it was recorded at odd hours and subsequently retracted*

19. *Without prejudice to the submissions already made by the Respondent- Assessee regarding the non-supply of the statement and the lack of any corroborating evidence and nexus between Mr. Agarwal and the Respondent-Assessee. it is submitted that the said statement recorded under Section 132(4) of the Act cannot be considered reliable. The search operation commenced on 29.03.2015 and concluded at 2:40 AM on 30.03.2015. The statement of Mr. Agarwal was recorded just prior to the conclusion of the search i.e. during the early hours of 30.03,2015.*

20. *Furthermore, Mr. Aggarwal subsequently retracted the said statement by way of a letter dated 18.05.2015 (though not part of the assessment record, it was duly placed before the Ld. CIT(A), See Pg. 56/Paper Book filed by the Respondent-Assessee). This retraction casts serious doubt on the voluntariness and reliability of the original statement.*

21. *It is a settled principle that statements recorded under dubious circumstances or at odd hours do not carry any value, especially when retracted. In this regard, reliance is placed on the decision of the Hon'ble Delhi High Court in CIT v. Pavitra Realcon (P) Ltd. (2024) 340 CTR (Del) 225 and the decision of the Hoif ble Gujarat High Court in Kailashben Manharlal Chokshi v. CIT (2008) 328 ITR 411 (Guj.).”*

5. Heard rival submissions, perused the orders of the authorities below. On careful perusal of the Ld. CIT(Appeals) order, we find that the assessee has produced all the evidences to prove the identity, credit worthiness and genuineness of the transactions with respect to the share capital/share premium received by the assessee from various investor companies. The Ld. CIT(Appeals) after analyzing the evidences furnished by the assessee in his detailed order concluded that no specific corroborative evidence has been brought on record by the AO to prove that the equity subscription received by the assessee is an accommodation entry. The Ld. CIT(A) also held that the assessee has discharged its onus and submitted all the documentary evidences in respect of the investment. It was also held that the details submitted in this regard by the assessee have also been made part of order of the AO and the addition made is unsustainable on various legal grounds and also on facts. None of the detailed findings of the Ld. CIT(Appeals) have been rebutted with evidences by the Revenue. Therefore, we see no good reason to interfere with the findings of the Ld. CIT(Appeals) and accordingly we sustain the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.

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

Order pronounced in the open court on 25/06/2025

**Sd/-  
(S RIFAUH RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 25.06.2025

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**