

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR "SMC" BENCH :: NAGPUR**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No. 112/NAG/2020
(Assessment Year : 2006-07)**

M/s. Shree Steel Castings Pvt. Ltd., T/38/1, MIDC, Hingna Road, Nagpur. PAN: AACCS 4071 J (Appellant)	Vs.	DCIT, Circle-1, Nagpur (Respondent)
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Present for:

Assessee by : Shri Kapil Hirani &
Shri Racjit Thakar, Ld. Advocates.

Revenue by : Shri Surjit Kumar Saha, Ld. Sr.D.R.

Date of Hearing : 26.06.2025

Date of Pronouncement : 26.06.2025

O R D E R

This appeal has been preferred by the Assessee against the order dated 16/09/2020 impugned herein passed by the Commissioner of Income Tax (Appeals)-1, Nagpur (in short, 'Ld. Commissioner') u/sec. 250 of the Income Tax Act, 1961 (in short, 'Act') for the A.Y. 2006-07.

2. In this case, the case of the Assessee was reopened u/sec. 147 of the Act by issuing notice dated 26/03/2013 u/sec. 148 of the Act mainly on the reason that Assessee had received share application money of Rs. 30 Lac from following three Mumbai based entities:

- (i) Umang Travel & Trade Link Pvt. Ltd.
- (ii) Sikha Finacne & Leasing Pvt. Ltd.
- (iii) Kailash Fincom

Which were posed treated as loss making companies and therefore the AO in order to verify the genuineness, identity and creditworthiness of the said three companies from whom, the Assessee had received share application money, issued notices u/sec. 133(6) of the Act to such companies, which were returned back 'unserved' and, therefore, the AO apprised the Assessee about these facts.

3. The Assessee in response to the notice dated 04/12/2013, replied on dated 12/03/2014 stating that addresses of such companies having been changed and therefore it is providing new addresses.

4. The AO therefore issued notices at the new addresses of such companies but received reply from Umang Travel & Trade Link Pvt. Ltd. only but not from remaining two companies, till passing of the order. The AO therefore, by considering the fact that bank statement submitted by Umang Travel & Trade Link Pvt. Ltd. is also incomplete and that company has provided only bank statement that too without any narration and from the copy of incomplete bank statement, genuineness and creditworthiness, could not be established. Further, the Assessee has also failed to provide the details qua genuineness, identity and creditworthiness of the three

companies, which are basically part of web of Mumbai, Kolkata and Ahmedabad based paper companies, which do not show any income, but go on investing substantial amount in other companies, and therefore, no creditworthiness of these companies and the genuineness of the transaction has been established.

The AO ultimately made the addition of Rs. 30 Lac on this count. Further, the AO also calculated the business income of the Assessee to the tune of Rs. 48,96,000/- (3,01,000 + 90,300 + 45,04,700) and added the same to the income of the Assessee.

The AO also made addition of Rs. 3,58,244/- on account of disallowance of interest by picking revise of the provision of 8D of the Income Tax Rules, 1962 (in short, 'Rules') read with section 14A of the Act.

4. The Assessee, being aggrieved, challenged the said additions/disallowances by filing first appeal before the Ld. Commissioner on legal as well as merit, however of no avail, as the Ld. Commissioner more or less, as on the same footing as observed by AO, affirmed the additions of Rs.30 Lac and Rs. 48,96,000/-, however, restricted the disallowance of Rs. 3,58,244/- to Rs. 82,932/- as disallowance u/sec. 14A of the Act.

5. The Assessee, thus being aggrieved, has preferred the instant appeal mainly challenging the reopening of the proceedings u/sec. 147 of the Act. The Assessee at the outset has claimed that in the reasons recorded dated 08/08/2013, the following issues were mentioned:

- “(i) earning of Rs. 45,82,298/-on the sale of M/s. Shree Virangana Steel Ltd. during the assessment year under consideration.
- (ii) Receiving share application money of Rs. 30 La from three entities as mentioned above.
- (iii) earning dividend income of Rs. 82,930/- and not disclosing any explanation in relation to exempt income as per section 14A of the Act.

6. The Assessee by drawing attention of this Court to notice dated 24/11/2008 u/sec. 142(1) of the Act (page No.69 of paper book) issued in original assessment proceedings, has demonstrated the fact that in the said notice, the AO specifically asked the names and holding of shareholders of M/s. Shree Virangana Steel Ltd., names and complete address of those who have applied for shares and complete details of short term capital gain with supporting documents and the reasons as to why it should not be treated as business income.

The Assessee has also drawn attention of this Court to the reply dated 27/11/2008, filed in response to the aforesaid notice u/sec. 142 of the Act, wherein Assessee specifically replied the question posed with regard to list of shareholders of M/s. Shree Virangana Steel Ltd and the reasons for falling gross profit, capitalization of borrowed capital and term loan, names and addresses of the parties to whom shares were allotted and the details of short term and long term capital gains etc.

7. This Court has given thoughtful consideration to the peculiar facts and circumstances and the rival contention of the parties. Admittedly, the issues qua additions of Rs. 30 Lacs being share application money and Rs. 48,96,000/- on account of long-term capital gain on the sale of shares of M/s. Shree Virangana Steel Ltd.

were duly examined by the AO in the original assessment proceedings. Though, the details of the same have not been mentioned in the original assessment proceedings dated 29/12/2008 u/sec. 143(3) of the Act, however, it is a fact as observed above that both the issues were subject matter before the AO during the original assessment proceedings. Thus, the additions under consideration made on the basis of reasons recorded, which are entirely based on the change of opinion, are not sustainable and thus the same are deleted.

8. Coming to the addition sustained to the tune of Rs. 82,932/- is concerned, this Court observe that in the instant case, the Assessee had substantial borrowings, which were interest bearing and therefore, the Ld. Commissioner by considering various judgments including the judgment of Hon'ble Delhi High Court in the case of *PCIT vs. Caraf Builders and Construction Pvt. Ltd.* [2019] 101 taxmann.com 167, restricted the disallowance to the tune of Rs. 82,932/- u/sec. 14A of the Act, on the dividend income earned during the assessment year under consideration. Thus, this Court is of the considered opinion that the decision of Ld. Commissioner in restricting the addition to Rs. 82,932/- is as per law and requires no interference.

9. In the result, Assessee's appeal is partly allowed.

Order pronounced in the open court on 26.06.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

vr/-

Copy to: The Appellant
The Respondent
The CIT, Concerned, Nagpur
The DR Concerned Bench

//True Copy//

By Order

Senior Private Secretary
ITAT, Nagpur.