

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 494/DEL/2016		
	A.Y. : 2010-11		
M/S VAM-HI-FASHION GARMENTS PVT. LTD., E-45/14, OKHLA INDL. AREA, NEW DELHI - 20 (PAN: AACCV0852G)	VS.	ACIT, RANGE-17, NEW DELHI	
(APPELLANT)		(RESPONDENT)	

Assessee by : Sh. R.S. Singhvi, CA
Department by : Sh. T. Vasanthan, Sr. DR

Date of Hearing : 09-03-2016

Date of Order : 21-03-2016

ORDER

PER H.S. SIDHU : JM

Assessee has filed this Appeal against the impugned Order dated 21.12.2015 passed by the Ld. CIT(A)-IX, New Delhi relevant to assessment year 2010-11 on the following grounds:-

- "1(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs. 3,10,00,000/- on the alleged ground of unexplained share capital investment by Sh. Suveer Arora.

- (ii) That Ld. CIT(A) has totally disregarded various documentary evidences in support of investment of share capital including assessment order in the case of Sh. Suveer Arora for the very same year passed u/s. 143(3) and confirmed addition on the presumption and surmise and hypothetical grounds.
- (iii) That share holder being a regular income tax assessee and the fact of share capital is corroborated from the balance sheet, it is not open to consider the source of source in the case of the appellant.
- (iv) That there being no dispute about the identity, genuineness and creditworthiness, there is no ground or basis for confirming addition of Rs. 3,10,00,000/-.
- (v) That orders of the lower authorities are not based on proper appreciation of facts and are in total disregard to establish legal principles.

- 2(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs. 23,280/- as unexplained credit balance relating to M/s Orient Fashion Export (India) Pvt. Ltd.
- (ii) That addition is without proper appreciation of facts and merely based on presumption and surmises.
- 3. That orders of the lower authorities are not justified on facts and the same are bad in law.”

2. The brief facts of the case are that during the year, the assessee was engaged in the business of manufacturing and exporting of readymade garments. The assessee has filed the return of income on 7.10.2010 for the

assessment year 2010-11 declaring an income of Rs. 34,80,096/-. The case was processed u/s. 143(1) of the I.T. Act, 1961. Subsequently, the case was taken up in scrutiny and notice u/s. 143(2) was issued on 25.8.2011 and served upon the assessee. Thereafter, notices u/s. 142(1) alongwith questionnaire was issued and duly served upon the assessee wherein certain specific details were called for. Thereafter, the AO completed the assessment at an income of Rs. 3,61,23,345/- by passing the order dated 30.3.2013 u/s. 143(3) of the I.T. Act, 1961 and made various additions.

3. Against the order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 21.12.2015 has partly allowed the appeal of the assessee.

4. Aggrieved with the order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

5. Ld. Counsel of the Assessee stated that assessee has filed all necessary documentary evidence before the AO as well as before the Ld. CIT(A) for substantiating its claim in spite of the same the Revenue authority has wrongly made the addition in dispute. He draw our attention towards the Paper Book filed by him containing pages 1 to 79 in which he has attached various documentary evidences filed by the assessee before the lower authorities. He further draw our attention towards page no. 54 to 78 establishing that he assessee has filed confirmation from Suveer Arora, copy of PAN Card of Sh. Suveer Arora, Copy of Bank Statement regarding investment in share; copy of income tax return and assessment order passed u/s. 143(3) of the I.T. Act, 1961 for the AY 2010-11; copy of letter dated 14.2.2013 written to the Assistant Director of Income Tax (Int. Taxation), New Delhi in the case of Suveer Arora regarding the regular assessment u/s. 143(3) of the I.T. Act and the Affidavit

dated 5.4.2013 of Suveer Arora which is at Page 64 of the PB confirming the investment of the amount in dispute by account payee cheque with Jammu & Kashmir Bank, Vasant Lok, Vasant Vihar, New Delhi alongwith other particulars and copy of Passport establishing that he is resident of Netherland having Dutch Nationality being a person Indian origin for the last 30 years and the copy of the Form No. 2 regarding allotment of shares which is Page 75-78. Ld. Counsel for the assessee further submitted that in spite of the aforesaid documentary evidence filed by the assessee before the revenue authority for establishing the creditworthiness, identity and genuineness of the transactions. The Revenue Authority only emphasize upon the personal appearance of the creditor i.e. Sh. Suveer Arora who is an NRI which is contrary to the law and facts on record. He also draw our attention towards the order passed by the AO as well as Ld. CIT(A) on the issue in dispute and stated that there is no dispute that Sh. Suveer Arora is a regular Income Tax assessee in Delhi and the facts of share capital is supported from his assessment record. The share capital is through account payee cheque and copy of the Bank's statement has also been placed on record and the share capital is corroborated from his Bank statement. The assessment of Mr. Suveer Arora has already been completed u/s. 143(3) of the I.T. Act and the issue of share capital which was duly considered and verified, which has been corroborated from letter dated 14.2.2013 furnished during the course of assessment proceedings in the case of Sh. Suveer Arora. He stated that inspite of these facts the addition in dispute has been made by the Revenue Authorities which deserve to be deleted. In support of his contention he relied upon the following case laws and stated that the issue in dispute is squarely covered by these decisions and requested to delete the addition in dispute.

- CIT vs. Rhombus International Pvt. Ltd. (ITA No. 223/13)

- CIT vs. Gangeshwari Metal (P) Ltd. (2014) 361 ITR 10 (Delhi) (HC)
- CIT vs. Kamdhenu Steel & Alloys Ltd. SLP (CC) No. 15640 of 2012 dated 17.9.2012.
- CIT vs. Harishbhai Raojibhai Patel HUF (2013) 219 Taxman 125 (mag.) (Guj.)
- CIT vs. Jay Dee Securities and Finance Ltd. (2013) 350 ITR 220
- Abhik Jain vs. ITO (2012) 18 ITR 497 (Delhi Trib.)
- CIT vs. Hemant Hasmukhlal Shah (2013) 217 Taxman 25 (Mag.) (Guj.) (HC)
- CIT vs. Kamna Medical Centre (P) Ltd. (2013) 217 Taxman 16 (Mag.) (All.)(HC).
- CIT vs. Bhaval Syntehtics (2013) 35 taxmann.com 83 (Raj.) (HC)
- CIT vs. Diamond Products Ltd. 177 Taxman 331 (Del)
- CIT vs. Value Capital Services Pvt. Ltd. 307 ITR 0334 (Delhi)
- Pr. CIT vs. Rakam Money Matters P Ltd. (Delhi HC)
- CIT vs. Vrindavan Farms P Ltd. (Delhi HC)
- ITO vs. Hare Krishna International ltd. (Delhi ITAT)
- MOD Creations P Ltd. vs. ITO (2013) 354 ITR 282 (Del.)
- CIT vs. Lovely Exports Pvt. Ltd. (2009) 319 ITR 5 (SC).

6. Ld. DR relied upon the orders of the authorities below. He stated that the primary onus is on the assessee to prove that it did not take an accommodation

entry, which the assessee has not done. Therefore, he stated that the lower authorities were right in making the additions in dispute. In support of his contention, Ld. DR filed a copy of the order dated 27.1.2014 of the Hon'ble Delhi High Court in the case of CIT vs. Empire Builtech Pvt. Ltd. and stated that the issue is fully covered by the said decision and may be followed accordingly.

7. We have heard both the parties and perused the records available with us especially the case laws cited by both the parties. With regard to deletion of addition of Rs. 3,10,00,000/- made u/s. 68 is concerned, we find that the share capital was received from Sh. Suveer Arora an NRI who is resident of Netherland. He is also a regular income tax assessee in Delhi under permanent account no. AGYP A2276N and the assessment for the year under reference itself has been completed u/s. 143(3). He has having vast experience in the field of garment trade and is associated with M/s Mexx Group BV, Holand as Director (Production) Vice President for last 25 Years. He has invested in the share capital of the company through his NRE account No. 0369040200000017 with J&K Bank, Vasant Vihar, New Delhi. (Mentioned at page no. 54 of the Paper Book vide Confirmation dated 12th March, 2013). In support of share capital, the following documents were filed before the lower authorities.

- a. Confirmation from Mr. Suveer Arora
- b. Copy of PAN Card of Mr. Suveer Arora
- c. Copy of Bank Statement showing the investment made and source thereof.
- d. Copy of Form No.2 regarding allotment of shares
- e. Copy of Passport of Mr. Suveer Arora
- f. Copy of Income Tax Return and assessment order passed u/s. 143(3) for A.Y. 2010-11.

g. Copy of letter dated 14.02.2013 during the assessment proceedings in the case of Sh. Suveer Arora in respect to issue of share capital to assessee.

h. Affidavit of Sh. Suveer Arora.

7.1 We find from the assessment order that the Assessing Officer has not disputed the correctness of all these documents or made any adverse comments in respect of the same. Further, there is no adverse information from Investigation Wing or from any other agency. As per these documents, it is evident that assessee has established identity, source and genuineness of share capital. We find that there is no dispute that Sh. Suveer Arora is a regular income tax assessee in Delhi and the fact of share capital is supported from his assessment record. Further, the share capital is through account payee cheques and copy of the bank statement has also been placed on record and the share capital is corroborated from his bank statement. As already clarified the assessment of share holder Sh. Suveer Arora for this very assessment year was completed u/s 143(3) and the issue of share capital was duly considered and verified. The factual position to this effect is corroborated from letter dated 14.02.2013 furnished during the course of assessment proceedings in the case of Sh. Suveer Arora. There is thus no ground or basis to dispute the correctness of the share capital as the same is fully supported from facts and settled legal principles as laid down in the following cases:-

A. CIT Vs. Rhombus International Pvt. Ltd. (ITA No. 223/13. The relevant observation of the Hon'ble Delhi Court are extracted hereunder:

“14. It is not the case of the revenue that these persons are entry providers and there was any other material or doubt that these were bogus entries routed through fictitious or name lenders.

Assessing Officer did not conduct any investigation by sending Inspector to the address and nothing has been brought on record to show steps or attempt by the assessing officer to go deeper and find out/check veracity of the assertion. The share application money addition is not in isolation but has to be examined with other additions on similar grounds. Absence of verification, different additions made and reasoning given for deleting the additions are plausible. The order of the tribunal is not perverse and does not require interference. No substantial question of law arise.

B. CIT .v. Gangeshwari Metal (P.) Ltd. (2014) 361 ITR 10 (Delhi) (HC)

S.68 Cash credits-Share application money-Evidence furnished by assessee-Addition was not justified. The assessee received certain amount as share application money. In order to prove genuineness of transaction, the assessee brought on record various documents such as names and addresses of share applicants, confirmatory letters of share applicants, copies of their bank statements etc. The Assessing Officer found the assessee's explanation to be unacceptable and, consequently, added the amount of share application money to assessee's taxable income which was deleted by the Commissioner(Appeals). The Tribunal upheld the order of the Commissioner (Appeals).On appeal High Court held that, there was a clear lack of inquiry on the part of the Assessing Officer once the assessee had furnished all the relevant material. In such an eventuality no addition can be made under S. 68. (A Y. 2004-05).

C. CIT v. KAMDHENU STEEL & ALLOYS LTD., SLP (CC) no. 15640 of 2012, dated 17-09-2012 (Supreme Court)

Issue Involved: "Whether once the assessee has discharged the initial burden by filing adequate evidence/material, Revenue is supposed to dislodge the initial burden discharged by the assessee and to throw the ball again in the assessee's court demanding the assessee to give some more proofs, as the documents produced earlier by the assessee either become suspect or are rendered insufficient in view of the material produced by the Department rebutting the assessee's documentary evidence?"

Decided in Favour of : Assessee

Held: The Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Revenue against the decision of Hon'ble Delhi High Court in the case CIT v. Kamdhenu Steel & Alloys Ltd. [2014] 361 ITR 220 in which it has been held: Cash credits--Unexplained investments--Burden of proof--Share application money--Assessee explaining source' of money--Identities of applicants and their creditworthiness established--Burden of proof discharged by assessee--Onus shifted to Department--No evidence to show transactions were not genuine--Sections 68 and 69 not applicable--Income-tax Act, 1961, ss. 68, 69:

D. CIT v. Harishbhai Raojibhai Patel HUF [2013] 219 Taxman 125 (Mag.)(Guj.) When it was established that deposit in question was paid by NRI to assessee from his NRE account, no addition could be made under section 68 on that account.

7.2 In the light of the fact that share capital was through NRE account no. 0369040200000017 with J&K Bank, Vasant Vihar, New Delhi. (Mentioned at page no. 54 of the Paper Book vide Confirmation dated 12th March, 2013) which is part of his assessment record, the issue of source and remittance to NRE account is fully supported and verifiable as the assessment for year under reference was completed u/s. 143(3). In any case, this issue is relevant in his personal assessment and there could be no presumption or adverse inference in the case of the company as company has already placed all the relevant documents on record. In the light of documentary evidence on record, the burden was on the Assessing Officer to establish that share capital is represented by undisclosed income of the company. As already clarified, Sh. Suveer Arora has been regularly visiting Delhi and which has never been disputed. A copy of the passport was also filed which contains the particulars of his visit to India. Further, verification of remittances in his 'NRE accounts under FEMA are relevant in his personal assessment as NRE account is part of record and as such these technical observations have no relevance or bearing to the issue of share capital. In fact, the Assessing Officer has made only general observation and not disputed or commented on the document including the assessment order and bank statement placed on record. Further, if any query is required in respect to his NRE account, the issue is relevant in his personal assessment as his identity and assessment particulars are not in dispute. From the above, the assessee has already established the identity, source and genuineness of share capital in the light of documents produced and settled legal principles clarified above. Even the Assessing Officer has also not disputed the identity, source and genuineness of share capital. We are also of the view that it is unnecessary burden upon the assessee by pressuring it to bring the creditor from the foreign country which

is contrary to the facts of the case as well as evidence produced by the assessee.

7.3 Besides, above case laws, the Hon'ble Apex Court also in the case of CIT Vs. Lovely Exports 216 CTR 195 has held that that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee.

7.4 We also find that Ld. DR relied upon the judgment of the Hon'ble High Court of Delhi in the case of CIT vs. Empire BUILTECH Pvt. Ltd. reported in 366 ITR 110 (Delhi) which is distinguishable to the facts of the present case, because in para 8 of the said judgment it is mentioned that these investors did not submit any confirmation and had concededly reported far less income than the amounts invested. However, in the present case the following documents were filed before the lower authorities:

- a. Confirmation from Mr. Suveer Arora
- b. Copy of PAN Card of Mr. Suveer Arora
- c. Copy of Bank Statement showing the investment made and source thereof.
- d. Copy of Form No.2 regarding allotment of shares
- e. Copy of Passport of Mr. Suveer Arora
- f. Copy of Income Tax Return and assessment order passed u/s. 143(3) for A.Y. 2010-11.
- g. Copy of letter dated 14.02.2013 during the assessment proceedings in the case of Sh. Suveer Arora in respect to issue of share capital to assessee.
- h. Affidavit of Sh. Suveer Arora.

7.5 In the background of the aforesaid discussions and respectfully following the precedents of the Hon'ble Supreme Court and High Courts, we are of the view that the assessee has fully proved its burden and discharged the onus

upon the Department, however, no contrary evidence was shown by the AO which will prove that the transactions were not genuine, therefore, the addition made by the AO and confirmed by the Ld. CIT(A) is totally unwarranted and the same needs to be deleted. Accordingly, we delete the addition in dispute and allow this ground of appeal of the assessee.

8. With regard to deletion of addition of Rs. 23,280 as unexplained credit balance relating to M/s Orient Fashion Export (India) Pvt. Ltd. is concerned, we find that AO has made addition on account of difference between confirmations received from the party and balance appearing in the books of the assessee. The reconciliation statement was filed during the assessment proceeding vide letter dated 05.02.2013 in which the difference was duly explained and as such the observation of Assessing Officer seems to be factually incorrect and addition made by the AO and confirmed by the Ld. CIT(A) needs to be deleted. Accordingly, we delete the addition of Rs. 23,280/- and allow this ground of appeal raised by the assessee.

9. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the Open Court on 21/3/2016.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 21/03/2016

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

Assistant Registrar, ITAT, Delhi Benches