

**IN THE INCOME TAX APPELLATE TRIBUNAL
(CUTTACK BENCH, CUTTACK)**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA NO.328/CTK/2014
(ASSESSMENT YEAR : 2009-10)**

M/s. Chaitanya Industries Pvt. Ltd., vs. ACIT, Circle 1 (1),
Chorda, Jajpur Road, Cuttack.
Distt. Jajpur – 755 019.

(PAN : AACCC7061L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri G. Nayak, AR
REVENUE BY : Shri A. Tigga, DR

Date of Hearing : 26.04.2017
Date of Pronouncement : 29 .05.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, M/s. Chaitanya Industries Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the aforesaid appeal sought to set aside the order dated 13.06.2014 passed by the Commissioner of Income-tax (Appeals), Cuttack qua the assessment year 2009-10 on the grounds inter alia that :-

“1. In the facts and circumstances of the case, the Ld. CIT(A) is not justified in sustaining the addition of Rs.60,00,000/- made by the A.O. as income u/s. 68 of the I.T. Act,1961.

2. The Ld. CIT(A) was not justified to ignore the nature of share application money and the relationship of shareholder with the company.

3. The assessee Company received share application money from the following two Companies:

Name	PAN	Amount
Gugnani LHP Pvt. Ltd.	AAACG5972C	30,00,000
Gopalka Motor Investo Pvt Ltd	AAACG9534C	30,00,000
	TOTAL:	<u>60,00,000</u>

The share application money was received through cheque supported by application form duly filled & signed, Board resolution, PAN card, etc. Subsequently, assessee Company also allotted shares to the applicants and their names are shown in the shareholders list in the annual return filed with the ROC. During the course of hearing, the relevant documents were submitted to prove the genuineness of the transactions and the identity of the parties.

But the A.O. without relying on the documentary evidences and without verifying the fact and without examining the documents, has disbelieved the real transaction and added the share application money received to the total income of the assessee, basing on the imagination, assumptions & presumptions and without relying and verifying the documents.

4. That during the course of hearing the assessee had submitted every details as desired regarding the share application money received. The following details and documents were submitted during the course of hearing before CIT(A) :

- (i) Present postal address which is as per the MCA site
- (ii) Audited Accounts, relevant bank statement, copy of Income Tax acknowledgement, Share application and Certificate of Incorporation of Gugnani Leasing & Hire

Purchase Pvt Ltd and Gopalka Motor Investo Pvt Ltd for the financial year 2008-09.

(iii) Copy of share allotment along with Board Resolution of the assessee Company Chaitanya Industries Pvt Ltd.

(iv) The above facts/documents proves that the amount received from the above two Companies is in the nature of share application. Hence, the contention of A.O. that the share application to be treated as unexplained cash credit u/s 68 of the Income Tax Act is not tenable. Moreover, it is no"! Justified to treat the equity share capital as income.

The reference may be made to the following case decisions:

- CIT vs. Value Capital Services Pvt. Ltd. [2008] 307 ITR 334 (Del)
- CIT vs. K.C.Fibres Ltd. [2011] 33211TR 481 (Del)
- CIT vs. OASIS Hospitalities Pvt. Ltd. [2011]333 ITR 119 (Del)

Hence, it is confirmed that where the identity of the investor, genuineness of the transaction and credit worthiness of the investor is established, share application money received cannot be treated as the income of the assessee as unexplained income u/s 68 of the IT Act.

5. The assessee company has already allotted shares in favour of share applicants and their names are shown in the register of members.

6. The order of the assessment as well as the appellant order is against law, weight of evidences and probabilities of the case.

7. That the learned CIT(A) has erred in law and facts in confirming the additions made by the A.O. amounting to Rs.60,00,000/- representing share application money received by the assessee.

8. For these other reasons to be argued at the time of the hearing the order of assessment shall be squashed to meet the end of the Justice.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : during the scrutiny proceedings, AO noticed from the balance sheet as on 31.03.2009 that during the year under assessment, the assessee received share application money amounting to Rs.1,10,01,492/-. From the perusal of the relevant details furnished by the assessee, it is found by the AO that apart from the two directors-cum-shareholders, namely, B.B. Deo and P.S. Deo, share application money was received from two private limited companies, namely, M/s. Gugnani LHP Pvt. Ltd. and Gopalka Motor Investo Pvt. Ltd. to the extent of Rs.30,00,000/- each. Assessee was called upon to prove the identity and creditworthiness of the parties and genuineness of transactions. The AO, from the perusal of documents furnished by the assessee, noticed that addresses mentioned by the assessee company are not the same as has been existing in PAN data base. Assessee despite requisition has failed to furnish balance sheet and P&L account of the aforesaid companies qua relevant years. On failure of the assessee to prove the existence, creditworthiness and genuineness of the transaction with the aforesaid companies considered the amount of Rs.60,00,000/- received from aforesaid two companies (Rs.30,00,000/- each) as unexplained cash credit

u/s 68 of the Income-tax Act, 1961 (for short 'the Act') and made addition thereof to the total income of the assessee.

3. Assessee carried the matter by way of filing an appeal before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. From the facts and circumstances of the case, grounds of appeal raised by the assessee and order passed by the Revenue's appeal, the sole question arises for determination in this case is :-

“as to whether assessee company has proved the identity, creditworthiness and genuineness of the transaction of Rs.60,00,000/- received as share application money from M/s. Gugnani LHP Pvt. Ltd. and Gopalka Motor Investo Pvt. Ltd. (Rs.30,00,000/- each) and Id. CIT (A) has erred in sustaining the addition of Rs.60,00,000/- made by the AO as income u/s 68 of the Act as contended by the assessee.”

5. Undisputedly, the assessee company had received share application money to the tune of Rs.1,10,01,492/- out of which Rs.30,00,000/- each were received from two private limited companies, namely, M/s. Gugnani LHP Pvt. Ltd. and Gopalka Motor Investo Pvt. Ltd.. During the assessment proceedings, assessee furnished copy of share application, PAN copy, RBI registration certificate, Board Resolution of the company for investment and details that share application money have been received from the parties through cheques. However, during assessment proceedings, the AO came to know that the address of both the aforesaid private limited companies furnished by the assessee is different from the address noted in the PAN. Assessee has also failed to prove creditworthiness of the aforesaid two companies by furnishing copy of balance sheet and P&L account for the year under consideration.

6. Even during the appellate proceedings, the AO was asked to submit a report u/s 250 (4) of the Act after making enquiry and tracing the origin of the aforesaid funds of Rs.60,00,000/- by making enquiry as to the creditworthiness of the companies and genuineness of the transaction by affording reasonable opportunity to the assessee along with cross-examination to explain its case. During the remand proceedings, assessee furnished written

submissions. Then, AO called information u/s 133(6) of the Act from both the aforesaid companies in question to prove identity, genuineness and creditworthiness of the transaction of the said money but both the letters were returned unserved with postal remark "Refused and insufficient address". Assessee filed rejoinder to the remand report by furnishing the postal address of the aforesaid two companies and submitted the copies of the audited accounts etc. of both the companies and copy of share allotment along with Board Resolution of the assessee company.

7. During the appellate proceedings, it is noticed by Id. CIT (A) that within a period of one year, the assessee provided four set of addresses of the share investors but the letter sent to them received back unserved leading to the conclusion that the identity of the company has not been established. Even otherwise, companies investing Rs.30,00,000/- each in the assessee company which is situated in an interior area of the country were required to respond to the letters issued by AO had they been in existence during that period.

8. The Id. AR for the assessee by relying upon the judgment rendered by Hon'ble Apex Court in case cited as *CIT vs. Lovely Exports (P) Ltd. – (2009) 319 ITR 5 (SC)* contended that the Id. CIT (A) has erred in confirming the addition particularly when the

assessee has furnished the PAN, account statement addresses etc. of the companies in question. However, we are of the considered view that the case of *CIT vs. Lovely Exports (P) Ltd.* (supra) is not applicable to the facts and circumstances of the case because *CIT vs. Lovely Exports (P) Ltd.* (supra) was a public limited company and has issued share capital of the public at large. In such cases, the company cannot be expected to note each and every detail pertaining to the identity and financial worth of the subscriber.

9. But, in the instant case, the assessee is a private limited company and share applicants are supposed to be known to the assessee company. In this case, assessee has received share application money from the companies who have come all the way from Kolkata and Chennai to invest the huge amount in the assessee company. When this fact is examined in the light of the fact that the letter sent to both the aforesaid companies in question received back undelivered with the remarks “refused and insufficient address”, It has become apparently clear that the investor companies have no existence rather are shell companies as has been rightly held by AO/CIT (A).

10. Since the assessee has failed to bring on record sufficient material to prove that the transactions are genuine and share applicants were having creditworthiness and were actually existed

during the relevant period, the ld. CIT (A) has rightly confirmed the addition made by the AO to the tune of Rs.60,00,000/- as unexplained cash credit u/s 68 of the Act by relying upon the case of *CIT vs. Nova Promoters and Fin Lease (P) Ltd. – ITA No.342 of 2011*. Even otherwise, it is highly improbable that the aforesaid investors / companies purportedly situated at Kolkata / Chennai have invested huge amount of Rs.30,00,000/- each particularly when their physical existence is not proved and their address given by the assessee is not matched with their PAN, have invested in the assessee's private limited company situated in the interior of the country.

11. In view of what has been discussed above, the question framed is determined against the assessee and consequently, finding no illegality or perversity in the impugned order, the present appeal filed by the assessee is hereby dismissed.

Order pronounced in open court on this 29th day of May, 2017.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of May, 2017
TS**

Copy of the order forwarded to:

- 1.Appellant - M/s. Chaitanya Industries Pvt. Ltd., Chorda, Jajpur Road, Distt. Jajpur – 755 019.
 - 2.Respondent - ACIT, Circle 1 (1), Cuttack..
 - 3.CIT
 - 4.CIT (A), Cuttack.
 - 5.DR(ITAT), Cuttack.
 - 6.Guard File
- //True Copy//

BY ORDER

**SR. PRIVATE SECRETARY,
ITAT, CUTTACK**