

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 3899/Mum/2017

(निर्धारण वर्ष / Assessment Year 2007-08)

Ambee Investment & Finance Pvt. Ltd. Room No. 2003, Shreepati Arcade nana Chowk, A.K. Marg Mumbai-400 007	Vs.	Income Tax Officer, 5(1)(1) Aayakar Bhavan, 4 th Floor, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAFCA7156D		

आयकर अपील सं./ ITA No. 3948/Mum/2017

(निर्धारण वर्ष / Assessment Year 2007-08)

Income Tax Officer, 5(1)(1) Aayakar Bhavan, Room No. 570, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	Ambee Investment & Finance Pvt. Ltd. Room No. 2003, Shreepati Arcade nana Chowk, A.K. Marg Mumbai-400 007
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Prakash Jotwani, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Padma Ram Mirdha, DR

सुनवाई की तारीख / Date of hearing:	11-12-2018
घोषणा की तारीख / Date of pronouncement :	08-02-2019

आदेश / ORDER

PER MAHAVIR SINGH, JM:

These cross appeals of assessee and Revenue are arising out of the order of Commissioner of Income Tax (Appeals)-10, Mumbai [in short



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CIT(A)], in Appeal No. CIT(A)-10/ITO-5(1)(1)/90/2015-16 vide order dated 20.02.2017. The Assessment was framed by the Income Tax Officer, ward-5(1)(1), Mumbai (in short 'ITO'/ AO) for the A.Y. 2007-08 vide order dated 27.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO of share capital receipt of ₹ 2.04 crores added by the AO as unexplained under section 68 of the Act. For this Revenue has raised the following five grounds: -

"1. On the facts & circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs 204 lacs u/s 68 of the Income-tax Act on account of non genuine share capital.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the assessee failed to produce any subscriber for examination by the AO

3. On the facts & circumstances of the case and in law. the Ld. CIT(A) failed to appreciate the fact that Shri Pravin Kumar Jain was indulged in issuing bogus accommodation entries in different forms including share capital.

4. On the facts & circumstance of the case and in law, the Ld. CIT(A) has erred in deleting the addition u/s 68 on account of non-genuine share capital received through the entities engaged in providing accommodation entries Oil



commission basis on the basis of documentary evidences such as PAN. IT return. Confirmations, bank statement, etc. without considering the facts that subscriber was a paper company and not a genuine investor.

5. On the facts and circumstances of the case and iii law, the Ld. CIT(A) has erred in deleting the addition u/s 68 on account of non-genuine share capital received though the entities engaged in providing accommodation on the basis of documentary evidences such as PAN, IT return, Confirmations, Bank Statement etc. without considering the ration of the decision of Supreme Court in the case of Sumati Dayal and Mcdowell relied upon by the AO in his assessment order.

3. Briefly stated facts are that the AO noted in the assessment order that it has received information from DIT(I&CI), Mumbai that the assessee company is one of the beneficiaries of accommodation entries from 8 concerns under the grab of share application money of ₹ 2.04 crores. These companies were run, controlled and operated by one Pravin Kumar Jain, entry operators. The details of the following 8 parties are as under: -

Sr. No.	Name of the party	Amount
1.	Yash V. Jewels Ltd.	20,00,000
2.	Vanduaad Jewels Ltd.	27,50,000
3.	Olive Overseas Pvt. Ltd (Real Gold Trading Pvt. Ltd.)	25,00,000
4.	Nakshatra Business Pvt. Ltd. (Hema Trading Co. Pvt. Ltd)	20,00,000
5.	Alka Diamond Industries Ltd.	25,00,000
6.	Javada India Impex Ltd.	20,00,000
7.	Lexus Infotech Ltd.	34,50,000



8.	Kush Entertainment Ltd.	Hindustan	32,00,000
	Total		2,04,00,000

4. The AO noted that during the course of search and seizure operation conducted by the DIT (Investigation), Mumbai on the Pravin Kumar Jain group of cases, it was noted that Pravin Kumar Jain was providing accommodation entries in exchange of certain commission. The AO noted that such statement was given by the Pravin Kumar Jain under oath under section 132(4) of the Act. In view of the above information, the AO asked the assessee to submit the details on share receipt along with confirmation and proof in support the identity, creditworthiness and genuineness of transaction. The assessee submitted the entire details before the AO but AO did not accept the assessee's explanation. He noted that the identity of the share applicant could not be established as the assessee could not produce these parties for examination. Therefore, the AO added the entire share capital introduced during the year amounting to ₹ 2.04 crore from the above stated 8 parties as unexplained cash credit under section 68 of the Act. Aggrieved, assessee preferred the appeal before CIT(A).

5. The CIT(A) deleted the addition by observing in Para 5.2 as under:

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"5.2 I have carefully considered the facts of the case and submissions of the Id. AR. I have also gone through the decisions relied on by the AO and the Ld. A.R. The appellant has received investments in shares only at face value of ₹ 10/- even though the AO talks of premium despite the submissions of the appellant before the AO to that extent. However, onus is on the assessee to prove the genuineness any amount



credited in the books as per provisions of sec. 68. The provisions of sec.68 are reproduced as under: -

Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the assessee is a company (not being a company in which the public are substantially interested), 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:



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Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

5.2.1 In view of the above provisions let us examined the case of the appellant with regard to proving of identity and creditworthiness of the investors and genuineness of the transaction.

5.2.2 During the course of assessment proceedings the appellant has filed several details required to prove the identity and creditworthiness of the persons, and the genuineness of the transaction in the form of PAN cards, IT return copies, bank statements, confirmations, affidavits, audited accounts etc. and claimed that it has discharged its onus. The Id.AR has further argued that the transaction has taken place through banking channels, therefore the genuineness of loan need not be doubted. He claims that the excessive reliance on the statements given by a third party i.e. key persons of Praveen Jain group, is not proper even without giving the appellant a chance to cross-examine them who have given such adverse statements, especially when he has not mentioned the name of the appellant company. He further argued that the addition was made without providing the appellant the corroborative



evidence in the possession of the AO to prove that the appellant has paid cash, against the receipt of cheque. On the other hand the AO has believed that these documents submitted before him were engineered to explain bogus loans since those who involve in bogus transactions in an organized way are meticulous in arranging these make-believe documents. He further believed that the office bearers/key persons of Praveen Jain group have given categorical and unequivocal statements stating that they were involved only in bogus transactions like giving bogus bills for goods and bogus entries for loan and investment in shares for exchange of cash through the companies/firms floated by them for certain commission. There is some force in the arguments of both the parties.

5.2.6 In the instant case, however, as seen from the details filed before the AO, a set of which were also filed before me, the AO has relied much on the statements given by Praveen Jain without proving his stand independently. I do not find any inconsistency or incoherence in the receipt of share application money from the parties for the following reasons.

Firstly, the appellant has filed all the documentary evidences to establish identity, creditworthiness of the creditors and genuineness of the transaction as required u/s



68 of the Act. which the AG has not doubted the details filed and not stated how the details like PAN, the IT returns, confirmation letters, bank statements of the creditors, audited balance sheet of the creditor are unbelievable and cannot be taken note of.

Secondly, the transactions were made through banking channels and it is seen from the bank statements filed before me, the source cannot be doubted as sufficient balance was available in the account of the parties before giving loan to the appellant and they were running accounts. Therefore, creditworthiness and genuines of the transaction need not be doubted.

Thirdly, even though, the transaction is from a tainted group, the AO has not gathered any additional/independent evidence to show that the transaction with the appellant company is sham, fictitious or artificial believing the statements given by the entry operators. He does not seem to have conducted independent enquiry by issue notice u/s 133(6) or 131 as there is no mentioning in the assessment order to that effect.

Fourthly, above all the amounts taken were only with a face value of Rs. 10/- each. There was no premium charged by the appellant even though the AO has mistakenly talk of premium. Number of shares allotted was



22,50,000 @ ₹ 10/-. The total share application money shown in the balance sheet is ₹2,25,00,000/- which includes the disputed share application money of ₹ 2,04,00,000/- which includes the disputed share application money of ₹ 2,04,00,000/-/ When these shares were sold on par without charging any premium there is a little scope for doubting the genuineness of the transaction.

5.2.5 In view of the above discussion, I hold that the appellant has proved identity and creditworthiness of the creditors and genuineness of the transaction as required under section 68 of the Act. Therefore, the share capital taken by the appellant from the above 8 parties at face value cannot be treated as unexplained I accordingly, direct the AO to withdraw the addition made under section 68 of the Act. The ground is allowed.”

Aggrieved, now Revenue is in appeal before Tribunal.

6. Before us, the learned Sr. Departmental Representative argued that the identity of the share applicant could not be established before the AO as the assessee could not produce these parties for examination. He also argued that the share capital introduced during the year amounting to ₹ 2.04 crores is bogus, in view of the fact that Shri Pravin Kumar Jain during the course of search under section 132 of the Act admitted providing accommodation entries and all these 8 concerns are run, controlled and operated by him. He argued that the accommodation entries were provided by Shri Pravin Kumar Jain to various entities in

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exchange of certain amount of commission and circuit entries were made. In view of these, the learned Sr. Departmental Representative stated that the order of CIT(A) is to be reversed.

7. On the other hand, the learned Counsel for the assessee supported the order of CIT(A) and stated that the assessee has furnished all the details like confirmation, PAN details, IT returns (copy), balance sheet and P&L Account, Bank statements of these parties as sought by the AO and the assessee has discharged the primary onus casted on him, thereby prove the identity, creditworthiness of the parties and genuineness of transactions. It was contended that the learned Counsel that all the payments were made through banking channel and payments by cheques and shares were actually allotted to these shareholders. It was stated that the shareholders were required to prove the creditworthiness and not the assessee. He, further argued that the AO has excessively relied on the statement given by Shri Pravin Kumar Jain, during the course of search and he has not made any independent enquiry qua these parties. The learned Counsel for the assessee relied on the Tribunal's decision in the case of ITO vs. IDM Agro Bio Tech Ltd. in ITA No. 5805/Mum/2017 for AY 2008-09 vide order dated 04.12.2017, wherein parties under consideration namely Kush Hindustan Entertainment Ltd. and Olive Overseas Pvt. Ltd were also considered by the Tribunal and deleted the addition. Similarly, the Tribunal in ITA No. 6492/Mum/2016 for AY 2007-08 vide order dated 21.04.2017 has considered the parties namely Alka Diamond Industries Ltd. and Yash V. Jewels Ltd. and deleted the addition. The learned Counsel for the assessee also relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Orchid Industries Pvt. Ltd. (2017) 397 ITR 136 (Bom.), wherein Hon'ble High Court has considered similar issues and confirmed the order of tribunal by observing in Para 5 to 6 as under:-



“5. The Assessing Officer added Rs. 95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

6. The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case.”

8. We have gone through the assessment order and the order of CIT(A) and noted that the AO noticed from the Bank Account submitted



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by the assessee that these are non-genuine transactions. The entire basis of the AO was on the investigation done by the office of DGIT Investigation, Mumbai. From the above assessment order, it is clear that the AO has not made any enquiry or investigation and no evidence to controvert the factual details submitted by the assessee was brought on record by the Assessing Officer. The statement of Shri Pravin Kumar was supplied and no cross-examination was provided. There nothing on record about the result of investigation having done by the DGIT(Investigation), Mumbai. The papers filed by the assessee clearly demonstrate that the identity, creditworthiness and genuineness of the transaction is proved. The assessee has prima facie discharged its onus and AO has not carried out any inquiry. In view of the above, we confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed.

9. As the appeal of Revenue is dismissed on merits, the assessee's counsel has not pressed the appeal filed by the assessee.

10. **In the result, both, the appeals are dismissed.**

Order pronounced in the open court on 08-02-2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 08-02-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

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