

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.893/Ind/2016

Assessment Year 2007-08

M/s. Moira Steel Ltd, 103, Laxmi Tower, 576, M.G. Road, Indore (Appellant)	Vs.	DCIT-1(1), Indore (Respondent)
PAN AABCM2051K		

Revenue by	Shri K.G. Goel, Sr.DR
Assessee by	Shri V.P. Rawka, CA
Date of Hearing	10 04 2019
Date of Pronouncement	14 05.2019

ORDER

PER MANISH BORAD, AM.

The above captioned appeal is filed at the instance of assessee pertaining to Assessment Year 2007-08 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Indore dated 25.05.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 09.12.2009 framed by DCIT, Circle-1(1), Indore.

2. Assessee has raised following grounds of appeal;

Assessment Year 2000-01

1. *That the learned CIT(A) erred in law and facts of the case and confirmed the addition made by Assessing Officer on account of unexplained share application money. The addition made and confirmed by CIT is wrong and illegal on the facts of the cases.*
2. *The appellant craves leave to add, alter and/or amend any of the ground at or before hearing.*

3. Brief facts of the case as culled out from the records are that the assessee is a limited company engaged in trading and manufacturing of steel Ingots. E-return was filed on 31.10.2007 declaring NIL income after claiming set of carried forward losses. Case selected for scrutiny assessment followed by serving of notices u/s 143(2) and 142(1)(ii) of the Act. Ld. A.O noticed that during the year assessee received share application money of Rs.50,00,000/- from two companies namely Rolled Gold Industries Ltd (Rs. 20,00,000/-) and BPO Finance & Investments Pvt. Ltd (Rs.30,00,000/-). Assessee was asked to furnish necessary documents to prove the identity, genuineness and creditworthiness of the cash creditors. Submissions were made by the assessee along with the details but it could not find favour from the Ld. AO as he was of the view

that the genuineness and creditworthiness of both the share applicants are not proved as they have meager fixed assets, no regular business and transactions in the bank statement reflects that maximum inflow and outflow are of amounts which have no nexus with the turnover of the companies. In view of these observations addition u/s 68 of the Act was made at Rs.50,00,000/- and disallowance was also made u/s 14A of the Act at Rs.1,66,845/-. Income assessed at Rs. NIL after allowing set off of brought forward business loss to the extent of Rs.1,35, 22,601/-. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded as the disallowance u/s 14A was deleted whereas addition made u/s 68 of the Act for unexplained share application money at Rs.50,00,000/- confirmed.

4. Now the assessee is in appeal before the Tribunal raising sole issue of addition of Rs.50,00,000/- made u/s 68 of the Act for unexplained share application money received from two companies.

5. Ld. Counsel for the assessee submitted that necessary details in the form of balance sheet, share application form, Board resolution, bank statement, PAN number have been filed in the case of Rolled Gold Industries Ltd. In the case of BPO Finance & Investment Pvt. Ltd, income

tax returns, share application forms, board resolution, registration certificate as NBFC, bank statement and balance sheet have been filed. These documents are sufficient enough to prove the identity, genuineness and creditworthiness of the cash creditors and therefore no addition was called for u/s 68 of the Act. Ld. Counsel for the assessee further referred to the following written submissions;

“The assessee company had received share application money at Rs. 30 Lacs and Rs. 20 Lacs respectively was received from Rolled Gold Industries Ltd & BPO Finance & Investments Pvt. Ltd. In order to satisfy the identity, genuineness and creditworthiness of these share applicants various details and documents were submitted as mentioned above. The said documents were overlooked by the AO and he passed the assessment order without even commenting on the documents submitted by assessee. And further Ld. CIT(A) also erred in facts of the case by not properly looking into the details given by assessee and commenting on the same.

It may kindly be appreciated that the assessee very well proved the identity of the assessee by submitting their PAN and Income Tax Returns. Their genuineness and creditworthiness were also been established through the Bank Accounts, Board Resolutions, Share Application Forms, Audited Balance Sheets, etc.

In case of Rolled Gold Industries Ltd., Ld. AO observed that the directors of the companies did not appeared personally on issue of summons. In this regards, it is submitted that though they have not appeared personally but all the documents required by them were duly furnished from time to time with the AO. They have duly filed their replies along with ITRs and final accounts which itself proves their own identity and the identity of the company as well of which they are the

directors.

Also the identity of share applicants and its directors was nowhere questioned by the Ld. AO and Ld. CIT(A). This means that both of them relied on the documents given by assessee in this regards, but none of them commented on the same in their findings.

Another issue considered by the AO was non serving of notice u/s 133(6) to the company BPO Finance & Investments Pvt. Ltd. The issue here was related to the change in address of the said company. New address of the company was duly conveyed to the AO by assessee through a letter dated 26.10.2009 copy of which is enclosed herewith.

Your honor may appreciate that despite of updating assessing officer with the new address of BPO Finance & Investments Pvt. Ltd., he did not considered the same and not panicked to reissue the notices at new address and enquire then. The Ld. CIT(A) also erred in the facts of the case by not looking into this matter and not observing the lack in the procedures followed by Ld. AO.

The assessee therefore made available all the details and documents to the satisfaction of AO and Ld. CIT(A) regarding the identity, genuineness and creditworthiness of the share applicants. The Ld. AO almost at every stage failed to point out whether assessee lacked in reproducing him with any explanation or document. From the documents related to the identity of the companies and their share holders; and genuineness and creditworthiness of the same, all details were made available to the Ld. AO. But the factual aspect has been totally ignored by the Ld. AO and Ld. CIT(A) as neither of them commented on these documents or pointed out whether there was any failure on the part of assessee to reproduce anything.

Thus the onus has been duly discharged by the assessee by proving with the basic criteria of identity, genuineness and creditworthiness. In this regard,

reference is invited to case of Commissioner of Income Tax vs STL Extrusion (P) Ltd. (2011)333 ITR 0269 (High Court of Madhya Pradesh : Indore Bench) extracts of which are reproduced herein below:-

Reference is further invited to Hon'ble Madhya Pradesh High Court decision in the of Commissioner of Income Tax Vs Peoples General Hospital Ltd., (2013) 356ITR 0065

Reliance is being placed on various judgments:-

1. CIT vs Antarctica Investment (P) Ltd. (High Court of Delhi) (2003) 262) ITR 0493
2. CIT vs Samir Bio-Tech (P) Ltd. (High Court of Delhi) (2010) 325 ITR 0294
3. CIT vs Gangour Investment Ltd. (High Court of Delhi) (2011) 335 ITR 0359
4. Barkha Synthetics Ltd. Vs ACIT (High Court of Rajasthan) (2006) 283 ITR 0377
5. CIT vs Dolphin Can pack Ltd. (High Court of Delhi) (2006) 283 ITR 0190”

6. Per contra Ld Departmental Representative submitted that the financial statements of both the cash creditors shows that they are not into any regular business but are accommodation providers and the genuineness of the alleged transactions and creditworthiness of the alleged cash creditors are not proved. Detailed investigation have been made by the Ld. A.O. The issue raised in this appeal is squarely covered against the assessee by the latest judgment of Hon'ble Supreme Court of India Civil Appeal No. SLP 29855 of 2018 dated 05.03.2019 in the case of

Principal Commissioner of Income Tax (Central)-1 V/s NRA Iron & Steel Pvt. Ltd.

7. We have heard rival contentions and perused the records placed before us. The assessee's sole grievance is against the order of Ld. Rs.(A) confirming the addition for unexplained share application money made u/s 68 of the Act at Rs.50,00,000/- received from following two companies;

- | | | |
|------|------------------------------------|--------------|
| (i) | Rolled Gold Industries Ltd | Rs. 20 lakhs |
| (ii) | BPO Finance & Investments Pvt. Ltd | Rs.30 lakhs |

8. Ld. Counsel for the assessee has referred to various documents including audited balance sheet, PAN Number, I.T. returns, financial and bank statements in order to prove the identity, genuineness and creditworthiness of the transaction with the alleged cash creditors. Ld. A.O however was not satisfied with these documents being in sufficient to prove the genuineness and creditworthiness of the transaction of alleged share application money on account of following observations of facts;

"In the assessment order the AO has given following facts about the share application money received from these two concerns.

The assessee's balance sheet reflects receipt of share application money amounting to Rs. 50,00,000/- from two persons viz. Rolled gold Industries Limited, Indore and BPO Finance and Investment Pvt. Ltd., Kolkata. It was asked to explain the genuineness of the subscription as also the identity and creditworthiness of the subscribers. In response, the copies of balance sheet, Board resolution, application form and bank statements were filed. On perusal of the above documents, following observations are made:

Rolled Gold Industries. Indore

- (i) It has fixed assets worth Rs. 55,000/- only.
- (ii) Entire capital is invested in shares and advances against capital assets.
- (iii) No profit and Loss account has been produced. It appears that the profit and Loss account has not been prepared.
- (iv) Copy of account opening form was requisitioned from the bank in which this company maintains account. It reflects that names of the directors as Shri Sunil Choudhary and Shri Mahendra Jaiswal. Summons u/s 13i were issued to the above persons. Shri .Sunil Choudhary has requested for exemption from personal appearance for the reason that he was not a Director. He has filed a copy of his return "of income only. Shri Mahendra Jaiswal has not responded to the summons.
- (v) The company has no premises of its own or lease hold which is apparent from the fact that neither rent has been debited to the profit and loss account nor any asset of this nature figures in the balance sheet.
- (vi) The bank statement reflects that maximum credits in the said accounts are by way of transfers from few account numbers from which nature of transaction can

not be ascertained.

(vii) The names reflected in the reply as directors of the company are shown as Shri Sudip Negi & Shri Nitin Joshi. Summonses were issued to the above persons. Shri Nitin Joshi sent a reply alongwith his final accounts in respect of his business Mis Parshwanath . Garments. Surprisingly, the final accounts do not indicate any investment or any earning from the company. He avoided appearing in person despite second notice to him.

(viii) Shri Sudip Negi also filed a reply with final accounts. These final accounts also do not show any earning from the company or investment therein. He also requested for exemption from personal appearance .

(ix) The assessee was asked to produce Principal officers of the subscribing company but it also failed to do so. Above picture clearly shows that the company has provided accommodation entry to the assessee company. in fact, it is a paper company only, its directors are not in the financial position to invest substantial money rather to say even minimum subscription in the company. No remuneration has been received by them, Obviously, they are name lenders only.

In view of the above, the subscription. amounting to Rs.30,00,000/- is not acceptable as genuine. The assessee has, in/act, introduced this amount from out of its income from undisclosed sources through the conduit of M/s Rolled Gold industries Ltd. Accordingly it is assessed u/s 68 of the income tax Act.

M/s B.P.O. Finance investment P. Ltd. Kolkatta,

i) Notice u/s 133(6) issued to this company has been received back un served with the postal remark "not Known".

ii) Copy of return of income was filed by the assessee in which address of M/s B.P.O. Finance & Investment P. Ltd. has been given as "Chamber 304 Naiwala Having PIN 110005 which appears to be some locality of Ne,1/ Delhi,

iii) *The Bank Account of Company reflects transfer in & transfer out of funds with the result that only on few occasions the balance crossed the figure of Rs 1,00,000/-.*

iv) *The company has no fixed assets.*

v) *It neither has leased accommodation nor free hold. The Profit & Loss account of the company shows net loss of Rs. 75,4801- which happens to be on account of administrative expenses. No working profit or loss is indicated. The capital of the company is Rs1,99,96,601- and it has share premium reserve (Rs,125,38,56,600/-*

vi) *The above reserve and capital has been utilized to the maximum extent in the subscription of shares various companies whose names have 170t been given.*

vii) *Above picture clearly shows that it is only name lending company. It has not earned even a single penny in shape of dividend. No prudent businessman would invest more than Rs 27 Crore in the companies from which no return is expected.*

In view of forgoing paras, it is clear that the assessee has introduced a sum of Rs 20 Lakhs in the name of above company as share application money, from out of its income from undisclosed Sources. Hence, the same is added to the total income of the assessee u/s 68. "

9. When the issue came up before Ld. CIT(A) he after examining the records confirmed the action of the Ld. A.O placing reliance on the judgment of Hon'ble Delhi High Court in the case of *CIT Vs. Navodaya Castles Pvt. Ltd* ITA No.320/2012 giving a finding that the

creditworthiness of the share applicants was not proved by the appellant. The share applications were private placement, hence the applicants had full knowledge about the share applicants and was definitely in a position to produce the principle officers of the companies which he failed to do so. By not doing so the applicant failed to discharge its onus u/s 68 of the Act.

10. Ld. Counsel for the assessee has referred and relied on various judgments but they will not find favour to the assessee as recently the Hon'ble Apex Court in the case of Principal Commissioner of Income Tax (Central)-1 V/s NRA Iron & Steel Pvt. Ltd adjudicating the similar issue deciding in favour of the revenue observing as follows;

“11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or

these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.

12. In the present case, the A.O. had conducted detailed enquiry which revealed that:

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee.

For example:

The companies Hema Trading Co. Pvt. Ltd. and Eternity Multi Trade Pvt. Ltd. at Mumbai, were found to be non-existent at the address given, and the premises was owned by some other person.

a. The companies at Kolkatta did not appear before the A.a., nor did they produce their bank statements to substantiate the source of the funds from which the alleged investments were made.

b. The two companies at Guwahati viz. Ispat Sheet Ltd. and Novelty Traders Ltd., were found to be nonexistent at the address provided.

The genuineness of the transaction was found to be completely doubtful.

ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90,00,000 to Rs. 95,00,000 in the Assessment Year 2009-10, for purchase of shares at such a high premium,

For example:

Neha Cassetes Pvt. Ltd. - Kolkatta had disclosed a taxable income of Rs. 9,744/- for A.Y. 2009-10, but had purchased Shares worth Rs, 90,00,000 in the Assessee Company.

Similarly Warner Multimedia Ltd. - Kolkatta filed a NIL return, but had purchased Shares worth Rs. 95,00,000 in the Assessee Company - Respondent.

Another example is of Ganga Builders Ltd. - Kolkatta which had filed a return for Rs. 5,850 but invested in shares to the tune of Rs. 90,00,000 in the Assessee Company - Respondent, etc.

iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10/- per share.

- iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.*
- v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under Section 68 of the Act.*

13. The lower appellate authorities appear to have ignored the investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company - Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.

The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.

14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be

placed on the Assessee Since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.

15. On the facts of the present case, clearly the Assessee Company - Respondent failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income.

16. The Appeal filed by the Appellant - Revenue is allowed. In the aforesaid facts and circumstances, and the law laid down above, the judgment of the High Court, the I TAT , and the' CIT are hereby set-aside. The Order passed by the AO is restored.

Pending applications if any are disposed of.

Ordered accordingly ”

11. Now examining the facts of the instant appeal in the light of the judgment of Hon'ble Apex Court in the case of Principal Commissioner of Income Tax (Central)-1 V/s NRA Iron & Steel Pvt. Ltd , we find that the facts are almost similar so much so that the share application was received from two companies based at Indore and Kolkata. Apart from furnishing the financial statement, bank statements and income tax returns assessee could not produce any of the Principal Officer of the company. Detailed investigation was carried out by Ld. Assessing Officer

giving no positive results favouring assessee. A perusal of the financial statement shows that in the case of BPO Finance & Investments Pvt. Ltd there is no turnover during the year. Petty expenses of Rs.57,531/- were incurred against NIL revenue and net loss of Rs.57,531/- was carry forwarded. As against this picture of Profit & Loss Account having NIL turnover and loss of Rs.57,531/- there stands reserve and surplus of Rs. 125.38 crores on the liability side. Investment in other companies is at Rs.127.31 crores on the asset side. Bank transactions in BPO Finance & Investment Pvt. Ltd placed at page 10 & 11 shows that huge inflow and outflow of the huge amounts appearing round of the year but having no nexus with the regular business of the company for which it is incorporated.

12. Similar in the case of Rolled Gold Industries Ltd there is no Profit & Loss Account prepared for the year as there is no income and revenue but there stands share capital of Rs.99,00,000/- and share premium of Rs.2,96,79,000/- . In this case also in the bank statement regular transactions of huge amounts in which similar amount of debit and credit entries appearing in short span and it goes round the year but again there is no nexus with the business activity of the company. The above

referred facts which are similar to those observed by the Hon'ble Apex Court in the case of PCIT V/s NRA Iron & Steel Pvt. Ltd (*supra*) clearly shows that genuineness of the transactions of the share application money of Rs.50,00,000/- has not proved and also the creditworthiness of both the share applicants namely Rolled Gold Industries and BPO Finance Investment Pvt. Ltd has not proved as they have no regular means to invest in the share capital of the assessee company. We therefore respectfully following the judgement of Hon'ble Apex Court and in the given facts and circumstances of the case are inclined to hold that Ld. A.O has justified in invoking the provisions of Section 68 of the Act making the addition for unexplained share application money of Rs.50,00,000/- as the assessee has miserably failed to prove the genuineness of the transaction of receiving share application money and to prove the creditworthiness of alleged two share applicants. We therefore find no reason to interfere in the findings of Ld. CIT(A). Accordingly Ground No.1 raised by the assessee is dismissed.

13. Ground No.2 raised by the assessee is general in nature which needs no adjudication.

14. In the result appeal of the assessee is dismissed.

The order pronounced in the open Court on 14.05.2019.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

दिनांक /Dated May, 2019
/Dev

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore