

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SH. NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

ITA No.5482/Del/2014  
Assessment Year: 2010-11

Rajat Export Import (I) Private Ltd., A-134, Basement, Arjun Nagar, Kotla Mubarakpur, New Delhi – 1100 03	<b>Vs.</b>	ITO, Ward-15(2), New Delhi
<b>PAN :AAACR0366B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri PC Yadav, Adv.
Respondent by	Shri Atiq Ahmed, SR DR

Date of hearing	28.03.2022
Date of pronouncement	21.06.2022

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

This is an appeal by the assessee against order dated 15.07.2014 of learned Commissioner of Income-Tax(Appeals)-XVII, New Delhi for the assessment year 2010-11.

2. The dispute in the present appeal is confined to addition of Rs.49,00,000 as unexplained share application money and Rs.49,000 as commission thereon.

3. Briefly, the facts are, assessee is a resident company. For the assessment year under dispute, assessee filed its return of income on 09.07.2010, declaring income of Rs.7,77,959. As stated by the Assessing Officer, assessee is engaged in the business of finance and investments.

4. In course of assessment proceedings, Assessing Officer, while examining the financial statement of assessee, noticed that assessee has shown increase in issued capital to the extent of Rs.9,80,000 and share premium to the extent of Rs.39,20,000. Whereas, the increase in number of shares issued during the year is 98,000. Further, he found that shares having the face value of Rs.10 were sold with premium thereon of Rs.40. Noticing these facts, Assessing Officer issued a questionnaire to the assessee to furnish confirmation in respect of increase in share capital/share application money and share premium with PAN, address, copy of ITR, balance sheet and bank statement of all share applicants. Alleging that assessee could only furnish part details, assessing officer issued a show-cause-notice to assessee as to why the share application money should not be treated as unexplained cash credit under Section 68 of the Income-Tax Act, 1961. Though, assessee objected to the proposed addition, however, Assessing Officer remained unconvinced. He observed, as per the inquiry conducted by the

Investigation Wing, New Delhi in case of some of the entry operators, it was found that one Shri Aseem Gupta and his associate Shri Manoj Kumar were providing bogus accommodation entries through various entities controlled by them. Relying upon the statements recorded from these two persons, Assessing Officer observed that Shri Aseem Gupta is the director of two company viz. Moderate Credit Corporation Ltd. and Sam Portfolio (P) Ltd. who have advanced the share application money of Rs.49,000 to assessee. Further, on examining the bank accounts of the aforesaid two share applicants, Assessing Officer observed that there are inter-company transfer of funds and these companies are group companies of Shri Shri Aseem Gupta. Thus, relying upon the statement of Shri Aseem Gupta, wherein, he allegedly admitted of providing bogus accommodation entries, Assessing Officer treated the amount of Rs.49,00,000 representing share application money as unexplained cash credit and added back to the income of assessee. Further, Assessing Officer added an amount of Rs.49,000, being the expenditure allegedly incurred by the assessee towards commission for availing accommodation entries.

5. Being aggrieved with the aforesaid additions, assessee preferred an appeal before learned Commissioner (Appeals). However, he sustained the additions made by the Assessing Officer.

6. Learned counsel appearing for the assessee submitted, Assessing Officer on mere presumption and assumption based on wrong facts has treated the share

application money received by assessee as unexplained cash credit. He submitted, neither the statement recorded from Shri Aseem Gupta and Shri Manoj Kumar nor any other material brought on record, established that Shri Aseem Gupta is the director of M/s. Moderate Credit Corporation Ltd. and Sam Portfolio (P) Ltd. who have advanced share application money to the assessee. He submitted, the dates on which cash deposits are made, as depicted in the assessment order to establish the money trail, do not relate to the impugned assessment year. Thus, he submitted, based on such entries no addition under Section 68 of the Act could be made in the impugned assessment year. He submitted, in course of proceedings before the first appellate authority, assessee furnished additional evidences including affidavit of both share applicants, wherein, they have categorically stated of having invested in the shares of assessee through banking channel. He submitted, in the remand report dated 11.04.2014, though, assessing officer has admitted that Shri Aseem Gupta is not a director of the entities who advanced share application money to the assessee, however, he has introduced another person Shri Virender Ram, allegedly one of the employees of Shri Aseem Gupta to be proprietor of the entity. However, he submitted, the name of the entities who had advanced share application money to assessee are not appearing in the remand report. Thus, he submitted, relevant facts have been completely ignored by the assessing officer while making the additions. He submitted, simply relying upon the investigation conducted by the

Investigation Wing, Assessing Officer has made the additions without making any independent inquiry. He submitted, the fact that Shri Aseem Gupta had subsequently retracted his statement was not considered by the departmental authorities and the additions were made simply based on the statement of Shri Aseem Gupta. He submitted, before the departmental authorities the assessee has furnished every supporting evidence to prove the genuineness of share application money. He submitted, without properly considering the evidences, additions have been made. He further submitted, identical addition made in case of many other assessee solely relying upon the statement of Shri Aseem Gupta has been deleted by the Tribunal and decisions in some of these cases have been upheld by the Hon'ble Jurisdictional High Court. In this regard, he referred to the following decisions:

1. Tarun Goyal vs. ACIT & Others., ITA No.4636/Del/2012 & Others dated 08.10.2013.;
  2. Sungrow Impex Pvt. Ltd. vs. ITO, ITA No. 4183/Del/2019 dated 19.03.2021; &
  3. SJM International Ltd. Vs. DCIT, ITA No.3762/Del/2018 dated 09.08.2021.
7. Learned Departmental Representative strongly relied upon the observations of the assessing officer and learned Commissioner (Appeals).
8. We have considered rival submissions in the light of decisions relied upon and perused the material available on record.

9. Undisputedly, in the year under consideration, assessee had received share application money aggregating to Rs.49,00,000 as under:

i)	Moderate Credit Corpn. Ltd.	Rs.20,10,000
ii)	Sam Portfolio Pvt. Ltd.	<u>Rs.28,90,000</u>
		<u>Rs.49,00,000</u>

10. Based on a report of the Investigation Wing of the Department, Assessing Officer has held the share application money to be in the nature of accommodation entries, hence, unexplained cash credit under Section 68 of the Act. The primary reason for coming to such conclusion is the statement recorded from Shri Aseem Gupta, who according to the assessing officer, is the director of the aforesaid two entities who have invested in the shares of the assessee. On a perusal of the statement recorded from Aseem Gupta on 23.11.2011, which has been reproduced in the assessment order, it is to be seen that Shri Aseem Gupta is a Chartered Accountant. In reply to question No.3, Shri Aseem Gupta had categorically stated the name of the entities audited by him. A careful reading of the statement recorded from Shri Aseem Gupta nowhere suggests that he is the director of either Moderate Credit Corpn. Ltd. or Sam Portfolio Pvt. Ltd., who had advanced share application money to the assessee. It is relevant to observe, in course of proceedings before the first appellate authority, assessee had furnished additional evidences including affidavit of Moderate Credit Corpn. Ltd. and Sam Portfolio Pvt. Ltd. Additional evidences furnished by assessee were forwarded to the assessing officer seeking his comments. In the

first remand report dated 20.02.2014, a copy of which is placed at page 20 of the paper book. Assessing Officer, though, has acknowledged the fact that assessee has filed confirmation from M/s. Moderate Credit Corpn. Ltd. and Sam Portfolio Pvt. Ltd. as well as affidavit of their directors, however, he has not offered any comments by simply stating that the claim of assessee needs to be examined by carrying out deep investigation, hence, assessee should not be allowed to furnish additional evidences. It is a fact on record that learned Commissioner (Appeals) has admitted the additional evidences furnished by assessee.

11. Be that as it may, in the second remand report dated 11.04.2014, a copy of which is placed at page 5 of the paper book, Assessing Officer has stated that one of the employees of Shri Aseem Gupta viz. Shri Virender Ram is one of the dummy proprietors in some proprietary concerns which are providing accommodation entries. However, in the aforesaid remand report, the name of Moderate Credit Corpn, Ltd. and Sam Portfolio Pvt. Ltd. do not appear. Therefore, there is no material before assessing officer to establish on record that Shri Aseem Gupta had control over Moderate Credit Corpn. Ltd. and Sam Portfolio Pvt. Ltd. and through these entities has provided accommodation entries to the assessee. From the affidavits furnished by the directors of M/s. Moderate Credit Corpn. Ltd. and Sam Portfolio Pvt. Ltd., it is noticed that share application money was advanced through proper banking channel and equity shares having face value of Rs.10 each with a premium of Rs.40 were allotted to

the share applicants on 31.3.2010. No adverse material has been brought on record by the departmental authorities to demonstrate that the unexplained cash of assessee was ploughed back by way of share application money. In fact, the cash transactions noted by the assessing officer in the assessment order are much prior to the impugned assessment year, hence, could not have formed the basis for addition under Section 68 of the Act. A reading of the assessment order as well as the order of the first appellate authority would make it clear that no independent inquiry was conducted by them to ascertain the real nature of the transaction. Merely relying upon the statement of Shri Aseem Gupta, the additions have been made. It is relevant to observe, the statement recorded from Shri Aseem Gupta on 23.11.2011 was subsequently retracted by him on 25<sup>th</sup> December 2011. Thus, that being the factual position, simply relying upon the statement of Shri Aseem Gupta, additions should not have been made. The departmental authorities have failed to bring on record any other corroborative material to demonstrate that the share application money received by assessee are in the nature of accommodation entries.

12. We have also noted, in an identical nature of dispute arising in case of M/s. Sungrow Impex Pvt. Ltd. vs. ITO (supra), wherein, relying upon the statement of Shri Aseem Gupta, assessing officer had added back the share application money received from Moderate Credit Corpn. Ltd., the Tribunal deleted the addition. The other decisions cited by the learned counsel for the

assessee are in similar lines. Thus, after considering the overall facts and circumstances of the case and keeping in view the judicial precedents cited before us by the learned counsel for the assessee, we hold that the addition made of Rs.49,00,000 as unexplained cash credit under Section 68 of the Act is unsustainable. Accordingly, we delete the addition. For the same reason, addition of Rs.49,000 towards alleged commission paid for availing accommodation entries is also deleted.

13. In the result, the appeal is allowed.

***Order pronounced in the open court on 21<sup>st</sup> June, 2022.***

**Sd/-  
(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 21<sup>st</sup> June, 2022.  
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (Order drafted through Dragon software):	09.06.2022
2.	Date on which the draft of order is placed before the Dictating Member:	13.06.2022
3.	Date on which the draft of order is placed before the other Member:	- .06.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	16.06.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	17.06.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	21.06.2022
7.	Date on which the final order is uploaded on the website of ITAT:	21 .06.2022
8.	Date on which the file goes to the Bench Clerk	21.06.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	