

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: E: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.3351/Del/2016
Assessment Year: 2011-12

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| ITO, Ward-2(2), New Delhi | vs. | M/s. Alfa Contech Pvt. Ltd., A-23, Kamla Nagar, Near University of Delhi, New Delhi 110007 PAN AAHCA 9844 J |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Ved Jain, Adv. Shri Aman Garg, CA |
| Revenue For : | Ms. Raja Rajeshwari, Sr. DR |

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| Date of Hearing : | 22.05.2023 |
| Date of Pronouncement : | 28.07.2023 |

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order CIT(A)-I, New Delhi dated 18.03.2016 for A.Y. 2011-12.

2. The ground has been raised by the revenue is as follows:-

1. The Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 3,60,00,000/- made by A.O. u/s. 68 of I.T ACT 1961, being unexplained cash credit.

3. The Id. Senior DR supporting the assessment order submitted that during the year under consideration the assessee had taken unsecured loan of Rs. 3.60 crore from M/s. Fennie Commercial Pvt. Ltd. and the assessee was asked by the Assessing Officer to give documentary & supportive evidence establishing the creditworthiness of creditor/lender and genuineness transaction explaining the source of credits to discharge onus as per requirement of sec 68 of the Act. The Id. Senior DR further submitted that despite several opportunities given by the Assessing Officer the assessee failed to prove creditworthiness of lender and genuineness of transaction till the date of passing assessment order. Therefore the Assessing Officer was quite correct and justified in making addition u/s. 68 of the Act treating the unsecured loan as

unexplained credit. He further submitted that despite above noted factual position against the assessee the Id. CIT(A) has granted relief to the assessee without any justified reason or basis therefore impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer. The Id. Senior DR also placed reliance on the judgment of Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. dated 05.03.2019 and judgment of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Nova Promoters & Finlease (P) Ltd. reported as 342 ITR 169 (Del.).

4. Replying to the above, the Id. counsel of assessee submitted that in response to notice of the Assessing Officer the assessee filed copy of PAN, financial statement and copy of bank statement of assessee vide reply dated 11.02.2014. Thereafter on request of assessee the Assessing Officer issued notice u/s. 133(6)/131 of the Act on 20.02.2014 which was duly served on the creditor M/s. Fennie Commercial Pvt. Ltd. which was not complied. Further on being asked by the Assessing Officer the assessee file reply dated 28.02.2014 filing copy of PAN, details of lender company taken from IT Department and MCA side along with signatory details. He also submitted that along with said reply the assessee also filed copy of audited financial statement of lender company and bank statements of assessee but the Assessing Officer this regarding and keeping a side all vital evidences filed by the assessee made addition in the hands of assessee u/s. 68 of the Act.

5. The Id. counsel further submitted that during first appellate proceedings the assessee file additional evidence under rule 46A of the I.T Rule 1962 in form of copies of acknowledgment of ITR, Audited Financial Statements along with all the annexures, confirmed ledger account, Bank statements reflecting the amount given to the assessee company, confirmation of lender. The Id. CIT(A) admitted the additional evidence and called remand report from the Assessing Officer wherein the Assessing Officer had admitted that the lender company has given the details of unsecured loans advanced to the assessee and also produce ledger account of company in the books of lender company. The Id. counsel submitted that the Assessing Officer himself admitted in the remand report that funds given by the lender company was from its own sources which emanates from the perusal of the balance sheet wherein it was clear that the assessee company was having share premium reserve in the immediately preceding previous year out of which unsecured loan amount was given to the assessee company. The Id. counsel vehemently pointed out that the Id. CIT(A) has granted relief to the assessee after judicious examination of documentary evidences filed by the assessee therefore no interference is called for therein.

6. The Id. counsel submitted that the Id. CIT(A) has rightly considered remand report of Assessing Officer along with other documentary evidences which were vital to the issue and clearly established identity, capacity and creditworthiness of lender company as well as genuineness of transaction and thus his conclusion deleting the base less addition is quite correct and justified which may kindly be upheld. He has also placed reliance on various judgments including judgment of Hon'ble Supreme Court in the case of CIT vs Odeon Builders Pvt. Ltd. in Review Petition (C) Diary No. 22394 of 2019 in Civil Appeal No. 9604-9605 of 2018 and judgment of Hon'ble jurisdictional High Court of Delhi in the case CIT vs Vrindavan Farms (P) Ltd. in ITA No. 71 of 2015 dated 12.08.2015 and in the case of PCIT vs. Goodveiw Trading Company in ITA No. 377/2016 dated 21.11.2016 to submit that the Id. CIT(A) was right in concluding the appeal in favour of the assessee.

7. On careful consideration of above rival submission, first of all, we note that the Assessing Officer made addition u/s. 68 of the Act, by observing that despite several opportunity the assessee failed to prove creditworthiness of lender and genuineness of transaction and thus could not discharge onus as per requirement of sec 68 of the Act. The assessee carried the matter before Id. CIT(A) and filed additional evidence under rule 46A of the Rules on which remand report was called wherein the Assessing Officer did not made any adverse comment on the additional documentary evidence of assessee and also admitted that the lender company received amount of Rs. 7,30,62,000/- as share premium reserve during immediately preceding assessment year and amount of loan of Rs. 3.60 crore advanced to the assessee during present assessment year was from the said reserve amount. The remand report of the Assessing Officer supported the case of assessee which was based on the strength of additional evidence filed by the assessee without raising any doubt or discrepancy therein.

8. We also find and appropriate to reproduce the relevant operative part of first appellate order as follows:-

The appellant company has received Rs.3,60,00,000/- from M/s Fennie Commercial Pvt. Ltd. as unsecured loan / share application money during the year. The same was added by the AO on the ground that appellant has failed to file confirmation as well as other supporting documents of the lender party before AO to prove identity, genuineness and creditworthiness of the party. During the course of appellate proceedings, appellant filed an application under Rule 46A and filed following documents to prove identity, genuineness and creditworthiness of the party:

i. Copy of Acknowledgement of IT. Paper Book page no. 48.

- ii. *Copy of Audited Financial Statements along with all the annexures. Paper Book page no. 49-60.*
- iii. *Copy of Confirmed ledger account. Paper Book page no. 61.*
- iv. *Copy of Bank Statements reflecting the amount given to the assessee company. Paper Book page no. 62-63.*
- v. *Copy of confirmation. Paper Book page no. 64.*

These documents were forwarded to the A for carrying out necessary enquiry with reference to the lender party. The Assessing Officer after conducting enquiries with reference to the lender party has submitted remand report vide his letter dated 2.03.2016 which was forwarded by the Addl. CIT, Range 2 vide his letter dated 08.03.2016. The relevant part of the remand report is submitted as under:

"4. As per directions received, the submissions made by the assessee before your good self as well as additional evidence submitted by it for admission at the appellate stage have been carefully perused. Besides, the additional evidence furnished by the assessee has also been independently verified from this Office by way of issue of letter us 133(6) of the Income Tax Act, 1961, to the third party concerned, i.e., to Ms Fennie Commercial Private Limited, 96-AV9, Neelkanth Apartments, Kishan Ganj, Vasant Kunj, New Delhi - 110070. 5 The said party has furnished its detailed reply to the letter issued us 133(6) vide its letter dated 08.01.2016, which is placed on record. The said party has given the details of the share application money of Rs.3.60 crores advanced by it to the appellant company and also produced the ledger account of the assessee company in its books for the relevant period, apart from the copy of the ITR-V in its case, copy of the Audit Report, Balance sheet, P & L Account and annexures. It is also seen from the annexures to the Audit Report that under the head "Loans & Advances (totaling Rs. 7,41,00,000/-), the name of the appellant company is appearing the List of Share application money given details wherein the sum of Rs.3.60 crores has been shown against the name of the appellant company, amongst other entities to whom share application money had been advanced by this company. As regards the source of investment made by this company, it has been submitted that the same has been made out of its own sources. Further, the perusal of the Balance Sheet of this company shows that it has Share Premium Reserve of Rs.7,30,62,000/-, which is the same as in the immediately preceding previous year, out of which funds have been invested in the appellant company and others. 6. However, it is also seen from the P & L Account filed in this case that this company has no apparent business activity during the relevant period, i.e. during the FY 2010-11, and it has declared a nominal sum of Rs.35,600/- as Consultancy / Commission income. This company has also furnished a copy of the intimation us 143(1) in its case, issued by CPC, Bangalore, in response to the specific query regarding furnishing copy of assessment order passed in its case for AY 2011-12.

7 As regards the present position of the said money advanced by MIs Fennie Commercial Pvt. Ltd. to the appellant company, it has been stated that they have

not received any shares from M/s Alfa Contech Private Limited till date and the said Sum is lying as Loans & Advances in their books. However, this company has not furnished copy of its latest IT filed as well as copy of Audit Report, Balance Sheet and P & L Account despite being specifically called for in the letter issued us 133(6) to it.

8 It is also submitted here that as per the Balance Sheet of the appellant company for the AY 2011-12, it has shown a sum of Rs.3.60 crores as "Loans from Body Corporate", as per Schedule 3 annexed to the Balance Sheet and not as Share Application Money. Also, as per details filed by the appellant vide its letter dated 03.02.2014 during the course of the assessment proceedings in its case for AY 2011-12, it has furnished the name of Ms Fennie Commercial Private Limited, PAN AAACF9549A, from whom it had allegedly received unsecured loan of Rs.3.60 crores whereas the said party is showing this Loan & Advance as "Share Application Money".

It is seen from the remand report that Assessing Officer has carried out enquiry with the lender party us 133(6) of the I. T. Act. The said party furnished the detailed reply vide its letter dated 08.01.2016. It has been reported by the AO that Ms Fennie Commercial Pvt. Ltd. has confirmed that it has given share application money of Rs.3.60 crore which has been accounted for by the appellant as unsecured loan in its balance sheet. The AO has also examined the ledger account of the appellant company from the lender party's books of accounts. The lender party has also filed copy of its return of income, audit report, balance sheet, profit & loss account and annexures. It has been observed by the AO from the annexures of the audit report that lender has shown loans and advances totaling Rs.7,41,00,000/- in its balance sheet. The appellant's name is also appearing in the loan and advances and has been shown as share application money of Rs.3.60 crore in the name of appellant. AO has also verified the balance sheet of the lender company and it is seen that said company has shown share premium reserve in its balance sheet in A.Y. 2010-11 out of which the amount has been given to the appellant. All these facts establish the identity, creditworthiness and genuineness of the transactions. It is seen that the said party has confirmed the transactions with the appellant and source of the money is also explained. M/s Fennie Commercial Pvt. Ltd. is assessed to tax with Ward 9(1). New Delhi and filing its return of income.

The appellant company has filed copies of their bank statement, balance sheets and profit & loss a/c of the lender company before me to prove the identity, creditworthiness and genuineness of the transaction. These facts have been verified by the A in the remand proceedings and has submitted report in this regard. It is seen that name of the appellant company is appearing in the balance sheet of the lender company. In view of the documents filed by the above named lender company before me as well as AO, it is established that the identity, source, creditworthiness of the lender company and genuineness of the transactions has been established.

I find that the AO has not been able to bring on record any evidence to negate the genuineness of the transaction done by the appellant. Therefore, the addition cannot be sustained only on suspicion and surmises. Considering the fact that the identity, genuineness and creditworthiness of the lender company duly established, the addition made by the A cannot be upheld and hence the AO is directed to delete the

addition of Rs.3,60,00,000/- made on account of unexplained income us 68 of the I.T. Act. In support of my above decision, reliance is placed on following judicial pronouncements:

a. CIT Vs. Fair finvest Ltd. [2014] 44 taxmann.com 356 (Delhi) HIGH COURT OF DELHI

"Section 68 of the Income-tax Act, 1961 - Cash credit - Assessment year 2002-03 - Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application and affidavits of directors, Assessing Officer could not make addition on account of share application money solely on basis of investigation report [In favour of assessee.

Where assessee adduces evidence in support of share application monies, it is open to Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on report of investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between assessee and alleged hawala operators. Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application, affidavits of directors, Form 2 filed with Registrar of Companies by such applicants, confirmations by applicants for company's shares, certificates by auditors, etc., Assessing Officer was not justified in making addition under section 68 on account of share application money merely on general inference to be drawn from the reading of the investigation report. The least that Assessing Officer ought to have done was to enquire into matter by, if necessary, invoking his powers under section 131 summoning the share applicants or directors.

b. Commissioner of Income-tax v. Mark Hospitals (P.) Ltd. [2015] 58 taxmann.com 226 (Madras) HIGH COURT OF MADRAS

"Section 68 of the Income-tax Act, 1961 - Cash credit (Burden of proof - Assessment year 2006-07 - Assessee had obtained unsecured loans from agriculturists and submitted their names and addresses, but did not provide their PAN cards - Assessing Officer made addition under section 68 - It was found that loans were given to assessee through cheques and all creditors had confirmed that they had advanced loans mentioned against their names to assessee and, thus, identity of creditors could not be disputed - Further, all creditors were agriculturists and therefore, they did not have PAN card - Whether, on facts, no addition could be made - Held, yes [Para 6] [In favour of assessee]"

c. ITO Vs. Neelkanth Finbuild Ltd., [2015] 61 taxmann.com 132 (Delhi - Trib.), held that

"6. Keeping in view the findings given so the Assessing Officer as well as the learned first appellate authority and the documentary finding by the assessee before us, we are of the considered view that the learned first appellate authority has deleted the addition in dispute on the basis of various documentary evidence filed by the assessee before the Assessing Officer as well as before him. The hon'ble Supreme Court of India (sic.) in the case of CIT v. Lovely Exports (P.) Ltd. [2008] 299 ITR 268 (Delhi) which has confirmed the order of the hon'ble Delhi High Court has held that once the identity of the shareholder have been established, even if there is a case of bogus share capital, it

cannot be added in the hands of the company unless any adverse evidence is not on record. The learned first appellate authority has examined the documentary evidence filed by the assessee before the Assessing Officer as well as before him and held that the assessee has provided confirmations from all the parties as well as various evidences to establish the genuineness of the transaction, the assessee has also relied upon the judgment of Nemi Chand Kothari v. CIT [2003] 264 IT 254/[2004] 136 Taxman 213 (Gau.) wherein it has been held that it is a certain law that the assessee is to prove the genuineness of transaction as well as the creditworthiness of the creditor must remain confined to the transactions which have taken place between the assessee and the creditor. It is not the business of the assessee to find out the source of money of creditors. Similar observation has also been given in the case of S. Hastimal v. CIT [1963] 49 ITR 273 (Mad.) and CIT v. Daulat Ram Rawatmull [1973] 87 IT 349 (SC). The learned first appellate authority has cited various decisions rendered by the hon'ble Supreme Court of India as well as the hon'ble jurisdictional High Court in the impugned order and finally has held that the assessee has substantiated the transaction regarding share application money received by it was genuine transaction and the same were not accommodation entries. He did not find any evidence collected by the Assessing Officer which could prove otherwise and deleted the additions in dispute. As regard the addition of Rs. 12,500 made on account of commission which was presumed to have been allowed by the assessee for obtaining the hawala entry in dispute, the learned Commissioner of Income-tax (Appeals) observed that the Assessing Officer was not able to bring anything on record that it was the assessee's own money which was routed in the form of share application money and has rightly deleted the same.

7. Keeping in view all the facts and circumstances, we are of the considered view that the learned first appellate authority has passed the impugned order under the law and according to the facts of the present case and has rightly deleted the addition in dispute. We find no infirmity in the impugned order and uphold the impugned order by dismissing the appeal filed by the Revenue."

d. Honorable Supreme Court of India in the case of CIT v. Kamdhenu Steel & Alloys Ltd., SLP (CC) no. 15640 of 2012, dated 17-09-2012 (Supreme Court),

wherein 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. in which it has been held by Hon'ble Court that once adequate evidence/material given by the assessee, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter, in case such evidence is to be discarded or it is proved that the assessee has "created" evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under Section 68 and 69 of the Act."

e. COMMISSIONER OF INCOME TAX-9 ERSTWHILE CIT-VI versus VRINDAVAN FARMS (P) LTD, ITA 71/2015, ITA 72/2015, ITA 84/2015, the High Court of Delhi held as under :

"3. The ITAT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the A by the

Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It was observed by the LAT that the AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the share holders.

4. The Court is of the view that the Assessee by produced sufficient documentation discharged its initial onus of showing the genuineness and creditworthiness of the share applicants. It was incumbent to the AO to have undertaken some inquiry and investigation before coming to a conclusion on the issue of creditworthiness. In para 39 of the decision in Nova Promoters (supra), the Court has taken note of a situation where the complete particulars of the share applicants are furnished to the AO and the AO fails to conduct an inquiry. The Court has observed that in that event no addition can be made in the hands of the Assessee under Section 68 of the Act and it will be open to the Revenue to move against the share applicants in accordance with law.

5. In the facts and circumstances of the present appeals, the Court is satisfied that no substantial question of law arises. The appeals are dismissed."

The facts of the above cited judicial pronouncements are identical with the facts of the appellant case, therefore, the ratio of the above cited judicial pronouncements is squarely applicable to the facts of the appellant case, hence, unsecured loan received by the appellant from M/s Fennie Commercial Pvt. Ltd. cannot be termed as unexplained income of the appellant and cannot be added u/s 68 of the I.T. Act. Therefore, the unsecured loan received from the above mentioned party is treated as genuine transaction and cannot be added us 68 of the I.T. Act. Therefore, the addition of Rs.3,60,00,000/- is deleted.

9. At the very outset, we deem it appropriate and necessary to reproduce the relevant para 5 of Revenue Report, which have been relied by the Ld. CIT(A), while granting relief to the assessee, which is as follows:-

The said party has furnished its detailed reply to the letter issued u/s 133(6) vide its letter dated 08.01.2016, which is placed on record. The said party has given the details of the share application money of Rs.3.60 crores advanced by it to the appellant company and also produced the ledger account of the assessee company in its books for the relevant period, apart from the copy of the ITR-V in its case, copy of the Audit Report, Balance sheet, P & L Account and annexures. It is also seen from the annexures to the Audit Report that under the head "Loans & Advances (totaling Rs.7,41,00,000/-), the name of the appellant company is appearing the List of Share application money given details wherein the sum of Rs.3.60 crores has been shown against the name of the appellant company, amongst other entities to whom share application money had been advanced by this company. As regards the source of investment made by this company, it has been submitted that the same has been made out of its own sources. Further, the perusal of the Balance Sheet of this company shows that it has Share Premium Reserve of Rs.7,30,62,000/-, which is the same as in the immediately

preceding previous year, out of which funds have been invested in the appellant company and others.

10. At this juncture, we also find it appropriate to respectfully consider the propositions relied by the Id. Senior DR in the case of Nova Promoter (supra) and NR Portfolio P. Ltd. (supra). Copies of said judgments has been placed by the Id. Senior DR and Id. counsel of assessee has also filed a comparative chart showing distinction between the facts and circumstances of said two cases and present appeal of the revenue. On perusal of said judgments as well as comparative chart relied by the Id. counsel of the assessee showing distinction between facts of present case with the said two cases we note that in the case Nova Promoters (supra) there was issue of credits received from entry operator and failure of assessee to appear before the authorities below but in the present case no such factual matrix is found. In the case of NR Portfolio Pvt. Ltd. the investor company did not submit the details and cash was deposited by the lender company prior to transmitting amount to the said assessee but no such situation of factual matrix has been found in the present case. On being asked by the bench the Id. Senior DR could not show us any specific point or factual position which could lead us to apply the said propositions to the present case in favour of the revenue as the facts and circumstances of present are quite distinguishable from said two cases.

11. In view of foregoing discussion we are inclined to agree with the conclusion drawn by the Id. CIT(A) that the assessee has successfully discharge onus lay on him as per requirement of section 68 of the Act and hence proved identity, capacity and creditworthiness of lender company and genuineness of transaction and no addition u/s. 68 of the Act was required to be made thus he was right in deleting the addition. our conclusion also gets strong support from the judgments Hon'ble Supreme Court in the case of CIT vs Odeon Builders Pvt. Ltd. (supra) and judgment of Hon'ble jurisdictional High Court of Delhi in the case CIT vs Vrindavan Farms (P) Ltd. (supra) and in the case of PCIT vs. Goodveiw Trading Company (supra). Accordingly, grounds of revenue are dismissed.

12. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 28.07.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 28th July, 2023

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi