

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No. 102/Ahd/2014
(Assessment Year: 2010-11)

The Deputy Commissioner
of Income tax, Circle-4, Ahmedabad

Appellant

Vs.

Gyscoal Alloys Ltd.,
2nd Floor, Murdual Tower,
B/h. Times of India, Ashram
Road, Ahmedabad

Respondent

PAN: AA ECS6731M

राजस्व की ओर से/By Revenue	: Smt. Vasundhra Upmanyu, CIT. D.R.
आवेदक की ओर से/By Assessee	: Shri Sunil Talati, A.R.
सुनवाई की तारीख/Date of Hearing	: 22.01.2018
घोषणा की तारीख/Date of Pronouncement	: 06.04.2018

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This Revenue's appeal for assessment year 2010-11 arises against the CIT(A) - VIII, Ahmedabad's order dated 24.10.2013, in case no. CIT(A)-VIII/DCIT/Cir.4/19/13-14, reversing Assessing Officer's action making Section 68 addition of Rs.9,99,99,900/- in the nature of share capital/share premium received from M/s. General Capital and Holding Company Pvt. Ltd., in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case records perused.

2. We notice at the outset that the CIT(A) has deleted the abovestated addition of share application/premium after taking into consideration assessee's submissions made during the course of lower appellate proceedings as follows:

"2.2 Appellant's submission :-

The relevant extracts from the submission of the appellant are reproduced here under:-

"The one and only ground of appeal effectively is with regard to the addition of Rs.9,99,99,900/- u/s. 68 of the Income Tax Act. The Assessing Officer on Page-3 of the Assessment Order has reproduced the facts wherein the assessee submitted complete details as called for by the Assessing Officer. In Para-3.3 the learned Assessing Officer wanted to verify the Share capital contributed/invested by one General Capital and Holding Company Pvt. Ltd. to the tune of Rs.9,99,99,900/-. The Assessing Officer therefore, issued a summons u/s. 131 and in response to the same Shri Viral Shah appeared before the Assessing Officer and produced original bank statement of General Capital and Holding Company Pvt. Ltd. from which he has issued the cheques for subscribing to the capital of the Company. In spite of the fact that there are no cash deposit stated in the said bank statement, bank account or for that matter whatsoever in the books of accounts of the said Company, the Assessing Officer absolutely incorrectly mentioned that he has noticed regularity, a pattern, in the methodology of infusing cash into the accounts and within a short while afterwards withdrawing sums to pay for the shares. The said Principal Officer Shri Viral Shah filed authenticated photocopy of the original PAN card of all shareholders and also that of the Company but the Assessing Officer surprisingly mentions on Page-4 that they prima facie are not found correct. . He has also filed the Confirmation of Account, Audited Accounts, Income Tax Returns and Copy of PAN Card of all the shareholders of General Capital and Holding Company Pvt Ltd. He, therefore concluded that the investment is an accommodation entry, it is a sham transaction and thereafter from Page 5 to 8 reproducing various decisions concluded that the entire share application money received by the appellant company from the said General Capital and Holding Company Pvt. Ltd. is unexplained inasmuch as the party was not in de-factor existence and thus he added the same u/s. 68 of the Income Tax Act.

The appellant being dissatisfied and aggrieved by the same, submits the following:

- (1) The assessee is a public limited company registered under the Companies Act and the copy of Certificate of Incorporation and commencement of business are enclosed as per **Page 1**. The appellant issued an IPO and admitted to dealing on the national Stock exchange and Bombay Stock Exchange on 27.10.2010 raising a capital of Rs 54.67 crores from public issue. Copy of the listing notification/ circular of National Stock Exchange and Bombay Stock • Exchange is enclosed at **Page 2 to 7** and copy of Annual accounts for the year ending 31st March, 2010 is enclosed from **Page 8 to 45**.*
- (2) The assessee had been assessed to Income Tax continuously and till Asst. Year 2009-10 there has been no addition whatsoever like this. For this Asst. Year 2010-11 the Assessing Officer after issuing notice u/s. 143(2) and 142(1) issued*

*show cause notice and thereafter summons for inquiries in the investing company. Copies of which are enclosed as per **Page 46 to 69.***

- (3) *As stated above, the Principal Officer of said investing company General Capital and Holding Company Pvt. Ltd. appeared and filed copy of accounts in his books of accounts and copy of bank statement of the said company. Copy as filed before the Assessing Officer are enclosed herewith from **Page 70 to 79.** The investing Company General Capital and Holding Company Pvt Ltd has also submitted the Confirmation of Account , Audited Accounts , Income Tax Returns and copy of PAN card of all the shareholders of investing Company vide letter dated 18.03.2013 submitted on 20.03.2013. Copy of the said letter is enclosed as per **page 80.***
- (4) *The assessee also encloses copy of account of the said company in the books of the appellant company and also the copy of the bank statement of the appellant company wherein the share investment of Rs.9,99,99,900/- received from the said company clearly proving that they were received by account payee cheques as per **Page 81 to 88.** Copy of bank statements, Confirmation of Account and Pan card of the shareholders of the said investing company General Capital and Holding company Pvt ltd is enclosed as per **page 89 to 119.***
- (5) *The appellant has to submit that the investing company is still holding the shares of Assessee Company. We are attaching herewith the copy of the Demat Holding Statement dated 04.09.2013. of the investing company i.e General capital and Holding Pvt Ltd as per **page no 120 to 122.***
- (6) *Thus the appellant has to submit that the said party investing in the shares of the appellant company is also a Private Limited Company, assessed to Income Tax in Circle 4 with PAN No AADCG1059M The said company confirmed before the Assessing Officer that it has invested in the appellant company by issuing Account payee cheque. The bank statement of this company clearly proves that there is no cash deposit whatsoever. The bank statement of the appellant company clearly proves that the entire amount has been received by account payee cheque.*
- (7) *The Assessing Officer has made the additions relying on various decisions as stated in Para-3.8 of the Order, which are not at all relevant and applicable to the facts of the case. The appellant is enclosing herewith full decision of all the cases cited by the Assessing Officer and submits how they are just not applicable.*
 - (i) *High Court of Delhi in the case of **CIT vs. Nova Promoters & Finlease (P) Ltd. 342 /TR 769 (Delhi)**
In this case the assessee received information from Investigation Wing that the assessee had obtained accommodation entries in garb of share application monies. On inquiry by issuing summons two persons, namely, M and R did not appear. M and R had given accommodation entries and later on by Affidavits refracted the statements. The Assessing Officer did not accept the affidavits and made the additions. Both Mr. M and R had appeared before A.D.I, and admitted that they were acting as accommodation entry providers and had given list of 22*

companies. In view of this the addition sustained was confirmed by Hon'ble High Court.

Whereas in appellant's case the Director of the Investing Company, General Capital and Holding Company Pvt. Ltd., appeared in person and confirmed the investment given by cheque and explained the source by showing bank statement.

(ii) High Court of Delhi in the case of CIT vs. N.R. Portfolio (P) Ltd. 29 Taxmann.com 291 (Delhi)

In this case the assessee company was a share broker and claimed that during the year it received certain amount from seven share applicants. On investigation it was found that the share applications were received on 18-2-2004 but shares were sent to parties only on 15-6-2004. Despite issue of summons u/s. 131 parties did not attend. The assessee had not shown any transactions in stock and assessee's bank account showed large amount of cash deposits and withdrawals. On facts the addition is sustained by the High Court.

As against this in appellant's case the Investing company immediately appeared without Summons and showed all the deposits and credits in bank account. Not a single cash deposit or cash withdrawal. The Assessing Officer is totally wrong in mentioning that there are cash withdrawals. In fact the source of fund, identify, genuineness and creditworthiness were proved by the Investing Company.

(iii) High Court of Calcutta in the case of CIT vs. Ruby Traders & Exporters Ltd. 263 ITR 300 (Cal)

Here the Assessing Officer disbelieved the genuineness of the subscription received by the assessee. In course of inquiry, nothing was disclosed about identity of the subscribers. Addition made u/s. 68, which Tribunal deleted on the ground that amounts were received by Account Payee cheques. High Court confirmed the addition on the ground that identify of the subscriber and genuineness did not get proved.

In appellant's case identity, genuineness and creditworthiness are proved beyond doubt.

(iv) ITAT Delhi Bench "C" in the case of ACIT vs. Rajeev Tandon- 108 ITD 560 (Delhi).

In this case the amount was received by the assessee as gift. The Assessing Officer wanted genuineness and creditworthiness of the donor to make such big gift. Bank statement and corroborative evidence of donor to prove creditworthiness was not proved. In absence of any financial credibility of the gift, the same was treated as income of the assessee.

In appellant's case the appellant is a listed Public Company and had received more than Rs.54.67 crores as Public issue. The Investing company, who had given Rs.9,99,99,900/- had shown all evidences of

genuineness and creditworthiness which could not be disproved by the Assessing Officer.

- (v) ***ITAT Delhi Bench "B" in the case of Magnet Trading & Chit Fund (P) Ltd. vs. ACIT - 11 SOT 520 (Delhi)***

Here the assessee company received Rs. 11,75,000/- which the Assessing Officer added as unexplained cash credit u/s. 68. The Company failed to prove and established identity of the subscriber, genuineness and creditworthiness. The assessee failed to provide any information regarding the real owner of the same. Addition made by the Assessing Officer held justified.

In appellant's case the appellant is a listed Public Company and had received more than Rs.54.67 crores as Public Issue. The Investing company, who had given Rs.9,99,99,900/- had shown all evidences of genuineness and creditworthiness which could not be disproved by the Assessing Officer.

- (vi) ***ITAT Delhi Bench "A" in the case of DCIT vs. Shri Shyam Pulp & Board Mills Ltd. -17 SOT 13 (Delhi)***

The assessee-company which had raised fresh unsecured loans, was asked to give names and addresses of creditors. The assessee did not give. Before C.I.T. (Appeals) assessee filed copies of ration cards, affidavits and papers of alleged creditors . In remand report the Assessing Officer stated that these documents were not sufficient to prove genuineness and creditworthiness. However, CIT (Appeals) deleted the addition. Held the deletion of addition by CIT(Appeals) is not justified as identify of loan creditors and capacity to advance were never proved.

In appellant's case the appellant is a listed Public Company and had received more than Rs.54.67 crores as Public Issue. The Investing company, who had given Rs.9,99,99,900/- had shown all evidences of genuineness and creditworthiness which could not be disproved by the Assessing Officer.

- (vii) ***High Court of Calcutta in the case of CIT vs. Precision Finance (P) Ltd. 208 ITR 465 (Cal)***

Huge cash creditors were found in accounts of assessee being a loan-financing company. Assessee gave only Income Tax PA No. and File No. of creditors. Tribunal deleted the addition on the ground that identify of creditors were proved. High Court held that Tribunal has failed to take into account all the three ingredients, namely; identify, genuineness and creditworthiness.

In appellant's case, as stated above a/I the three ingredients are proved and the Assessing Officer has disregarded the same and wrongly interpreted that there is a pattern and methodology of infusing cash in to the account and within a short while afterward withdrawing them to pay for the shares to the appellant's company. These are absolutely incorrect and untrue statements of the Assessing Officer as can be seen

from the bank statement of General Capital and Holding Pvt. Ltd., copies of which are filed.

*Copies of decisions are enclosed as per **Page 123 to 145.***

SUBMISSION:

It is therefore submitted that the Assessing Officer has made an addition, which is totally incorrect, absolutely unjustified, on wrong facts, on incorrect observation and felling untrue things on paper. The assessee has proved identify, genuineness and creditworthiness, particularly so because Mr. Viral Shah, who appeared on behalf of General Capital & Holding Pvt. Ltd. is Managing Director of the Assessee company. General Capital & Holding Pvt. Ltd. has filed its Income Tax Returns and balance sheets with Income Tax authorities and Company Law authorities and the same are fully approved and accepted. The appellant finally relies on the very well established and accepted principle that if the assessee discharges its onus and proves (in our case beyond doubt) the identity, genuineness and creditworthiness, then addition just cannot be made u/s. 68 of the Income Tax Act.

- (1) *High Court of Gujarat in the case of **C/T vs. Indrajit Singh Suri reported in 33 Taxman 281 (Gujarat)***
- (2) *High Court of Madhya Pradesh in the case of **CIT vs. Peoples General Hospital Ltd. 35 Taxmann 444 (MP)***
- (3) *High Court of Delhi in the case of **CIT vs. Gangeshwari Metal (P) Ltd. reported in 30 Taxmann 328 (Delhi)***
- (4) *ITAT Lucknow Bench in the case of **Vishnu Jaiswal vs. CIT reported in 23 Taxmann 374 (Luck)(TM)***
- (5) *ITAT Mumbai Bench in the case of **/TO vs. Anant Sheltees (P) Ltd. reported in 20 Taxmann 153 Mum)** "*

2.3 Decision:

I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The appellant has received an amount of Rs.9,99,99,900/- on account of share capital and share premium from M/s General Capital and Holding Co. Pvt. Ltd, Ahmedabad during the year. The AO held that the creditworthiness and the genuineness of the transaction were not proved by the appellant and accordingly made the addition under section 68 of the Act for the above amount. The appellant has submitted that- all the three ingredients such as, credit worthiness, genuineness and the identity of the share applicant have been proved and therefore, the addition should not have been made by the AO.

During the course of appellate proceedings, the assessment records were also obtained from AO and the same have also been examined by me to ascertain the facts correctly. The share applicant company, M/s General Capital has been duly confirmed the fact of making investment in the appellant company. The amounts have been received through banking channel. The same are duly reflected in the annual accounts of that company. The extracts of the bank statement which have been filed before me during the course of appellate proceedings as well as before the AO clearly show that there are no cash deposits as mentioned by the AO in the assessment order. The observation of the AO that the cash has been deposited and subsequently cheque were issued is factually incorrect. The director of the company also attended before AO and

confirmed the fact. It is also noted that both the companies, that is the appellant company as well as the share applicant are managed by the same group of persons.

Honourable High Court of Gujarat has consistently held that if the assessee has given sufficient proof in respect of the share application no addition can be made in the hands of the assessee. If the AO has any doubt about the source of the share applicant further investigation can be made in the hands of the share applicant but not in the case of the appellant. The following recent decisions on the issue are worth mentioning: -

"1. CIT vs. Shree Rama Multi Tech Ltd. [2013] 34 taxmann.com 177 (Gujarat)

Section 68 of the Income-tax Act, 1961 - Cash credit [Share application money]- Assessment year 2005-06 - Whether where assessee company had furnished complete details of receipt of share application money along with share application forms, names, addresses, PAN and other relevant details of share applicants, share application money could not be added as cash credit under section 68 - Held, yes [Para 7][In favour of assessee]

2. CIT vs. Himatsu Bimet Ltd. [2011] 12 taxmann.com 87 (GUJ)

Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1997-98 - Assessee was a company, engaged in manufacturing of beam/ess strips and bearings at its factory - In assessment proceedings, assessee was asked to give details of unexplained share application money - Since assessee was avoiding giving details without reasonable cause, Assessing Officer made addition to assessee's income by way of unexplained share application money - On appeal, Commissioner (Appeals) upheld order of Assessing Officer - On second appeal, Tribunal noticed that assessee had filed confirmations from all share applicants with details of share capital paid which contained details such as full addresses, permanent account numbers and tax jurisdiction of depositors - Tribunal further noted that all payments were received by cheques and were credited in bank account of assessee: share application forms contained all details of depositors; their confirmations were clear with all addresses; and that they were on departmental records as taxpayers - In aforesaid factual background, Tribunal was of view that assessee had sufficiently discharged its burden of explaining source of the share application money; accordingly, it deleted impugned addition - Whether, on facts, impugned order of Tribunal did not suffer from any legal infirmity so as to warrant interference - Held, yes, In favour of assessee

3. CIT vs. Ambuja Ginning Pressing and Oil Co. (P.) Ltd. [2011] 332 ITR 434 (GUJ)

Section 68 of the Income-tax Act, 1961 - Cash Credits - Assessment year 1998-99 - Whether where assessee received share capital and deposits from its shareholders and had established identity and creditworthiness of shareholder and depositors by furnishing complete particulars of payments like cheque numbers and date, extract of bank passbooks, explanation of credits appearing in bank passbook, it could be said that assessee had proved genuineness of transaction warranting no addition under section 68 - Held, yes [In favour of assessee]"

In view of the above factual circumstances and the above mentioned judgements of honourable Gujarat High Court, it is held that the appellant Company has clearly explained the source of share application money received by it during the

year. No addition on account of the fact that the share applicant money had no employees and was being managed from the residential premises can be made as it has sufficiently shown that it has made investment. If the AO had any doubts about the source of income of the share applicant company he could have made further enquiries in respect of that company, in case the same was assessed with him, or by passing the information to the AO, in case it was not assessed with him. It appears that the share applicant company is not assessed to tax with the present A.O. therefore, he is directed to pass this information to the AO of the share applicant company for further examination.

The AO has placed reliance on the judgements of honourable Delhi High Court in various cases. However, it is noted that the facts of the present case are different from the cases mentioned by him. In the case of NR Portfolio Pvt. Ltd, supra, the share applicant did not respond to Summons but in the present case the director of the applicant company attended and gave the details. In the case of Rajeev Tandon, supra, the addition was upheld on the ground that no other corroborative evidence was given. In the present case the appellant has given copies of bank account as well as the audited balance sheet of the share applicant company wherein the share application investment has been duly reflected. Similarly the other cases are also different to the present case and are accordingly respectfully distinguished.

In view of the above mentioned discussion the addition, made by the A.O in respect of share application money and share premium amounting to Rs. 9,99,99,900/- is directed to be deleted.”

3. Learned CIT(DR) vehemently submits during the course of hearing that the Assessing Officer had rightly made the addition in question for the reason that the same is in the nature of a sham transaction being an accommodation entry. She seeks to highlight the fact that the group investor is a paper company being run from a house only without any employee. She then quotes assessment findings that the share allotments in question is in the nature of a private placement wherein the assessee has failed to prove genuineness and creditworthiness so as to get out of rigor of Section 68 of the Act. Case law ACIT vs. Nakoda Fashion Pvt. Ltd. ITA No. 1716/Ahd/2012 decided on 18.08.2016 restoring an alleged identical addition in case of shell companies as well as hon’ble apex court’s judgments in Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC) and CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) is also referred to in support of the Revenue’s sole substantive ground seeking to revive the impugned addition.

4. Learned Authorized Representative on the other hand places strong reliance upon the CIT(A)’s above extracted findings deleting the impugned

addition. His case is that the assessee has duly proved all three components of identity, genuineness and creditworthiness of the share application/premium in question to have come from the group entity hereinabove alongwith all of its necessary details. He then seeks to affirm the lower appellate findings deleting the impugned addition.

5. We have given our thoughtful consideration to rival submissions. There is no dispute that the sole issue between the parties is about correctness of the impugned Section 68 addition of Rs.9,99,99,900/- as made in the course of assessment and deleted in the lower appellate proceedings. The Revenue's case is that the Assessing Officer had rightly disputed the genuineness / creditworthiness element in the said sum which is contested at the assessee's behest. We proceed in this backdrop of facts to notice first of all that the identity of the investor entity M/s. General Capital and Holding Company Pvt. Ltd. (supra) is not in dispute. And also that both the assessee and the said investor entity are group concerns having common Directors. The first component of identity therefore vis-à-vis Section 68 of the Act duly stands satisfied. It is evident thereafter that the assessee's relevant paper books forming part of record before us contain all necessary details of its copy of certificate of incorporation alongwith listing notification/circular of National Stock Exchange and Bombay Stock Exchange, its return and computation for the impugned assessment year with tax audit report, Auditor's report, audited accounts, its replies to the Assessing Officer during the course of assessment proceedings, copy of ledger account of the investor entity in its books alongwith bank statement indicating the money in question to have come through banking channel, reply to Assessing Officer's notice issued u/s.133(6) of the Act dated 09.01.2013 alongwith necessary consequential correspondence dated 18.01.2013 at pages 94 & 95, its ledger maintained in investor entity's books page 96, bank statement page 97, summons issued u/s.131(1A) to investor entity as well as its details of PAN card, audited accounts, income tax returns, confirmation, share holders' details, Demat statements of the investor entity, Inspector's inquiry report, Mr. Viral Shah's statement (supra) recorded during scrutiny in support of the

impugned investment; respectively, sufficiently indicate that the assessee has been able to support its case of having received the investment in question from the group entity only. The Revenue's case is that all the said details failed to prove genuineness and creditworthiness element. We see no reason to concur with this argument. More particularly in view of the fact that it is the assessee's group company having common Director(s) who has made the impugned investment. Learned CIT(DR) at this stage sought to reiterate Assessing Officer's conclusion that this investor company has adopted cash deposit route to reinvest the same in assessee's stake holding. We do not see any material on record to agree to the instant plea. We afforded sufficient opportunity to the Revenue to file on record any such cogent material indicating M/s. General Capital and Holding Company Pvt. Ltd. to have first deposited cash sums followed by its reinvestment in assessee's share holding. The Revenue has failed to indicate any such material.

6. Ms. Vasundhra Upmanyu at this stage reiterates the above case law in Revenue's favour (supra). We find that the above co-ordinate bench's decision in Nakoda Fashion Pvt. Ltd. (supra) deals with case wherein the investor company(ies) had turned out to be shell entity without any genuineness/creditworthiness. Latter two case laws in Sumati Dayal and Durga Prasad More (supra) settle the law regarding genuineness of an explanation in light of human probability and appreciation of relevant details on record. The Revenue fails to indicate any misappreciation of evidence at the CIT(A)'s behest during the course of lower appellate proceedings. We rather find that the CIT(A)'s directions to the Assessing Officer to pass the relevant information to assessee's group concerns Assessing Officer sufficiently protect Revenue's interest so far as the impugned addition is concerned. Learned CIT.D.R's. further reliance on all the case laws discussed in assessment order is also without any significance since there is no instance therein dealing with a group entity having invested in concerned assessee's stake holding. The said case law is therefore held to be not relevant to the issue in hand. We conclude in light of all these facts and circumstances that the assessee has been able to prove all three components of identity, genuineness and creditworthiness of impugned share

application/premium amount of Rs.9,99,99,900/- to have come from its group company M/s. General Capital and Holding Company Pvt. Ltd. Coupled with this, we must also observe that it has successfully produced its common Director Mr. Shah (supra) before the Assessing Officer alongwith all necessary details and confirmation despite the fact that such a personal appearance is required as per Section 68 (First proviso) inserted by the Finance Act, 2012 applicable w.e.f. 01.04.2013 only whereas we are dealing with assessment year 2010-11. We thus affirm the CIT(A)'s findings under challenge. The Revenue's sole substantive grievance is accordingly declined.

7. This Revenue's appeal is dismissed.

[Pronounced in the open Court on this the 06th day of April, 2018.]

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 06/04/2018

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।