

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'सी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMARJIT SINGH, JM

आयकर अपील सं./ITA No.1470/Mum/2011

(निर्धारण वर्ष / Assessment Year :2007-2008)

DCIT, 8(2), Mumbai-400020	Vs.	M/s Overseas Infrastructure Alliance (I) Pvt. Ltd., 402, Shubham Centre-1, Cardinal Gracious Road, Chakala, Andheri(East), Mumbai-99
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACI 3042 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri M. Dayasagar
निर्धारिती की ओर से /Assessee by : Shri P.C.Yadav & Vinod Rawal
सुनवाई की तारीख / Date of Hearing : **08/02/2016**
घोषणा की तारीख/Date of Pronouncement **30/03/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the revenue against the order of CIT(A), Mumbai, for the assessment year 2007-08, in the matter of order passed u/s.143(3) of the I.T.Act.

- In this appeal, the revenue is aggrieved for deleting the addition made on account of redeemable preference share capital of Rs.14 crores. The revenue is also aggrieved for deleting of addition of Rs.1,01,39,592/- made on account of loan taken from M/s Akhil Marketing Pvt. Ltd..
- Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the business of execution of projects in the infrastructure sector. During the course of assessment, the

AO observed that during the year there was increase in share capital by Rs.14 crores and the amount had been received from following three parties :-

- | | | |
|------|---|------------------|
| i) | All-in-one Finance & investments Pvt. Ltd.- | Rs.2,00,00,000/- |
| ii) | Yamuna Estate Pvt. Ltd. | Rs.6,00,00,000/- |
| iii) | Akash Organics Pvt. Ltd. | Rs.6,00,00,000/- |

The AO found that in the case of All-in-One finance & Investments Pvt. Ltd. in I.T. return, the returned income was of Rs.1886/-. P&L a/c. gross receipts were Rs.36.750/- and expenditure shown was Rs.34.564/-. At no point of time during the year bank balance was exceeding RS.50.0001-. In the case of Yamuna Estate Pvt Ltd. In I.T. Return. returned income was Rs.18,431/-. P&L a/c. gross receipts were Rs.3.60.000/- and expenditure was Rs.3,41.569/- balance in the bank a/c. had not remained even Rs.1.00.000/- for five consecutive days. Out of total transaction of Rs.6 crores transaction of Rs.30 lakhs only has been carried out through cheque and balance amount of Rs.570/- lacs has been received through Journal Entries only. In the case of Akash Organics Pvt. Ltd. as per I.T. Return. returned income was of Rs.2.052/- for the A.Y.2007-08. P&L a/c. receipts were Rs.22.000/- and expenditure shown was Rs.1 9.940/-. In the bank a/c balance remained not more than Rs.50.000/- for three consecutive days. Out of Rs.6 crores, only Rs.30 lacs had been received through cheque and balance Rs.570 lacs was transacted through J.V. In view of these facts, it was concluded that (i) All the three parties from whom such share capital has been received were merely name lenders the transaction were not genuine and these parties have no credit

worthiness. (ii) All three parties had submitted confirmation on computer generated letter head having similar wordings and same font. (iii) Though in the balance sheet. all the parties had shown worth however. in effect nothing was there as duly evidenced from the bank statements where balance was not even Rs.1.00,000/- (iv) All the above three companies appeared simply or, paper. These companies do not have any business whatsoever. (v) All the three parties have shown huge increase in share capital and share premium. however, no party had paid ROC fees and majority amount was received as share premium. (vi) Out of total share capital & share premium taken of Rs.14 crores. Rs.60 lacs only has been received by cheque and balance amount was received through Book entries. Therefore, balance amount of Rs.1340 lacs was credited merely by book entries without any corresponding fund transfer. Therefore entire share capital and share premium received of Rs.14 crores was treated as Unexplained Cash credit.

4. By the impugned order, the CIT(A) deleted the addition after having the following observations :-

“8 The submission has been considered. It is stated that these three companies subscribed to .redeemable preference shares of the appellant company and simultaneously appellant has also subscribed to preference share capital of these companies. Consequently, the amount payable and receivable was squared off. It is stated that this procedure was in accordance with the provisions of Companies Act. The documents filed along with audited accounts, bank statements, I.T. returns and assessment orders shows that these companies have been assessed for several years. The identity and genuineness of the transaction is to be accepted. The addition of 14 crores is hence, deleted.”

5. Ld. DR relied on the order of AO. On the other hand, Id. AR placed on record order of the Tribunal on similar facts in case of Sinhal Products

(P) Ltd., ITA No.3852 to 3854/Del/2009, order dated 7-3-2012, wherein similar addition was deleted by the Tribunal after having the following observation :-

“14. It may be mentioned here that it is not a case where department has received any information that the share applicant was a bogus entity or it is in the shape of accommodation entry. The share applicant is associate concern of the assessee and is also being assessed to income-tax. Copies of income-tax returns have also been filed. The evidence which has been relied by the learned CIT (A) for deleting the addition is copy of confirmation letter, copy of bank ITA Nos.3852, 3853 & 3854/D/2009 statement, return acknowledgement of SOPL, the balance sheet of SOPL and the allotment of share to SOPL in subsequent years. The Assessing Officer has not pointed out any discrepancy in the said evidence and has just applied Section 68. Learned CIT (A) has rightly held that the assessee has discharged its initial onus to prove the identity, credit worthiness and genuineness of the transaction and his such findings are based on the material made available by the assessee to the Assessing Officer. The relevant evidence was also referred before us and we find that there was no discrepancy and the learned DR also could not point out any discrepancy in those evidences. In this view of the situation, we are of the opinion that the said amount could not be treated to be an unexplained cash credit under the provisions of Section 68 as the assessee had adduced evidence to show the identity, credit worthiness and genuineness of the creditor (share applicant). Therefore, finding no infirmity in the order of the CIT (A) , we hold that the addition has rightly been deleted and for deletion of the addition learned CIT (A) has not considered any additional evidence. The departmental appeals being devoid of merits are dismissed.”

6. With regard to the addition of Rs.1,01,39,592/-, the A.O. observed that the assessee has shown an amount of Rs.1,01,39,592/- payable to M/s. Akhil Marketing Pvt. Ltd., grouped under the head 'other liabilities'. It was seen from the P&L account of Akhill Marketing Pvt. Ltd. that the total receipts in P&L a/c. was Rs4,19,800/- and profit before tax was Rs.7,908/- The company had filed its return declaring a loss of Rs.83,078/- and paid tax of Rs.887/- on Book Profit. All the entries in the books of M/s. Akhill Marketing Pvt. Ltd has been carried out by chques and hence the

transaction in question was held to be unsecured loan. On perusal of bank statement of M/s. Akhill Marketing Pvt. Ltd. for the period 01.04.2006 to 31.03.2007, it was observed that effectively balance of not more than Rs.1 lakh had been maintained for five consecutive days. Number of cash deposits and cash withdrawals were reflected and looking to the number of cheques issued and deposited in the bank account it was concluded that company exists only on paper and effectively no business whatsoever has been carried out. The entire amount due to M/s. Akhil Marketing Pvt. Ltd. of Rs.1,01,39,592/- was treated as unexplained cash credit and accordingly taxed u/s.68.

7. By the impugned order the CIT(A) deleted the addition after having the following observations :-

“4.4 The submission has been considered. The A.O. had held that-as the entries are by cheques the transaction relates to unsecured loans. Further as bank balance being minimal and business not being carried on it was concluded that creditworthiness and genuineness was not proved. The documents filed by the appellant show that the transactions are reflected in the audited accounts of M/s. Akhil Marketing (P) Ltd. who is assessed to tax. As on 31.03.2007, the party has shown advances of Rs.6.29 crores including to the appellant. It is stated that Rs.12,55,592/- was payable as lease. In the circumstances, it cannot be held that identity, genuineness and creditworthiness of the party were not proved. The addition is hence deleted.”

8. Ld. AR also relied on the proposition of law laid down by the Hon'ble Delhi High Court in the case of Kinetic Capital Finance Ltd., 202 TAXMAN 548, decision of Honble M.P.High Court in the case of Peoples General Hospital Ltd., 35 taxmann.com 444.

9. We have considered rival contentions, carefully gone through the orders of authorities below and also deliberated on the judicial pronouncements cited at bar by Id. AR and Id. DR and also discussed by

the lower authorities in their respective orders. From the record we found that the CIT(A) dealt with issue all the objections raised by the AO and after considering the documents placed on record, recorded a categorical finding to the effect that amount payable and receivable by the assessee was squared off which was in accordance with the provisions of Companies Act. Further finding was recorded to the effect that these companies were assessed with I.T. Department for several years. The identity and genuineness of the transaction was duly accepted. The detailed finding recorded by CIT(A) are as per material on record. Moreover the issue is also covered by the decision of the coordinate bench in the case of Sinhal Products (P) Ltd., ITA No.3852/Del/2009, dated 7-3-2012, wherein under similar facts and circumstances, the Tribunal has held that the assessee has discharged its initial onus to prove the identity, creditworthiness and genuineness of the transaction. We also found that it is not a case where department has received any information with regard to the fact that the share application were bogus entry or it is in the shape of accommodation entry. The share application is by the associate concern of the assessee which is also assessed with IT Department. Respectfully following the decision of coordinate bench vis-à-vis finding recorded by CIT(A), we do not find any reason to interfere in the order of CIT(A) resulting into deletion of addition of Rs.14 crores.

10. With regard to addition of Rs.1,01,39,592/- made on account of loan taken from M/s Akhil Marketing Pvt. Ltd., we found that transactions are duly recorded in the audited account of M/s Akhil Marketing Pvt. Ltd.,

which is also assessed to tax. We found that as on 31-3-2007 the party has shown advance of Rs.6.29 crores including to the assessee also. Rs.12.55 lakhs was payable as lease. The CIT(A) has recorded a categorical finding on the basis of material placed on record to the effect that all the three conditions regarding identity, creditworthiness and genuineness of the loan creditors were duly established. Since the findings are as per material on record, we do not find any reason to interfere in the findings so recorded by CIT(A).

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

Order pronounced in the open court on this 30/03/2016.

**Sd/-
(AMARJIT SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 30/03/2016

प्र.कु.मि/pkm, नि.स/ PS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY
ORDER,

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