

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 10/Hyd/2018		
Assessment Year: 2013-14		
Dy. Commissioner of Income Tax, Circle-2(2), Hyderabad.	Vs.	HSM Steels Private Limited, Hyderabad. PAN: AACCH 3749 J
(Appellant)		(Respondent)
Assessee by:	Sri A.V. Raghuram	
Revenue by:	Sri Nilanjan Dey, DR	
Date of hearing:	15.11.2018	
Date of pronouncement:	13.02.2019	

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This appeal is filed by the Revenue against the order of the CIT(A)-2, Hyderabad dated 27/10/2017 for the assessment year 2013-14.

2. Brief facts of the case are that the assessee-company, engaged in the business of trading of Domestic and Imported Chemicals, Polymers, Solvents, Metals etc., filed its return of income for the A.Y. 2013-14 on 27/09/2013 declaring total income of Rs. 57,15,660/-. During the course of assessment proceedings u/s 143(3) pursuant to selection of the case for scrutiny under CASS, the Assessing Officer called for

various details. The assessee submitted the required details. From such details, the A.O. observed that the assessee-company credited the following amounts to the Balance Sheet as on 31/03/2013.

Sl No	Name	Nature of amount credited	Amount	Remarks
1	M/s. Duli Trade & Commodities (P) Ltd (hereinafter referred to as 'M/s. Duli Trade & Commodities (P) Ltd')	Share Application	2,00,00,000	Rs. 2,10,00,000 (Share Application money) & 10,00,000 (Unsecured loan)
2	R.G.G. Vyapaar Pvt Ltd (Hereinafter referred to as 'RGG')	Unsecured Loan	65,00,000	Unsecured Loan
3	Gopal M Agarwal	Unsecured Loan	2,00,000	Unsecured Loan

3. Therefore, the Assessing Officer therefore, asked the assessee to furnish confirmation letters, return of income etc., of the respective parties. The assessee could not furnish the details or the evidence till 13/01/2016. From the details furnished by the assessee, the Assessing Officer observed that the company R.G.G. Vyapaar Pvt Ltd's returned income for the A.Y. 2013-14 is only Rs. 1,67,260/- and from its balance sheet, it was observed that the said company has shown huge share premium and unsecured loans. Therefore, he was of the opinion that the creditworthiness of the company is not good. Further, from the bank account of the RGG he observed that there are credit entries for the same amount on the preceding date of giving loan and share application money to the assessee.

4. Similarly, in the case of M/s. Duli Trade & Commodities (P) Ltd also, he observed that there are huge trade payables shown as liability

and there are credits in bank account immediately before giving the money to assessee. Therefore, the assessee was asked to produce the Principal Officers of RGG Vyapaar Pvt Ltd and Duli Trade & Commodities (P) Ltd. The assessee however, expressed its inability to produce the Principal Officers of RGG Vyapaar Pvt Ltd and M/s. Duli Trade & Commodities (P) Ltd as they are located in Kolkata and Mumbai respectively.

5. Thereafter, the A.O. asked to show-cause as to why the unsecured loan and share application money allegedly received from the above persons should not be treated as income of the assessee. Assessee vide letter dated 28/01/2016 submitted that in respect of M/s. Duli Trade & Commodities (P) Ltd Trade & Commodities Pvt Ltd, the assessee has received the amount of Rs. 2,20,00,000/- through account payee cheques on different dates for allotment of 70,000 preference shares of face value of Rs. 100/- each at a premium of Rs. 200/- per share. It was submitted that the assessee-company has allotted shares worth of Rs. 2,10,00,000/- and returned back a sum of Rs. 10,00,000/- in the subsequent year. It was also submitted that the assessee-company has registered with Registrar of Companies, Maharashtra and that the assessee-company has produced a copy of Board resolution for applying for the preference shares of the assessee-company. As regards the RGG Vyapaar Pvt Ltd is concerned, it was submitted that it is a Non-Banking

Financial Company registered with ROC, West Bengal at Kolkata and copy of certificate issued by ROC was enclosed. It was also submitted that its principal business is that of lending and trading in shares of listed companies on recognized stock exchanges and that the assessee had taken loan of Rs. 65 lakhs from NBFC on interest @ 9% per annum. The assessee furnished the copies of signed loan confirmation, acknowledgement of Income Tax Return for the A.Y. 2013-14, audited annual accounts for FY 2012-13 and bank statement with relevant transaction entries. The assessee explained the source of loan from RGG Vyapaar Pvt Ltd of Rs. 50 lakhs on 03/01/2013 was the redemption of its investment in HDFC Mutual Fund units to the tune of Rs. 1.05 Crs on even date and that the second advance of Rs. 10 lakhs on 07/03/2013 was the sum received from Shree Manama Finance (P) Ltd and the final sum of Rs. 5 lakhs on 12/03/2013 which was again funded from redemption of company's investment in units of HDFC liquid fund to the tune of Rs. 30 lakhs. The assessee enclosed a copy of HDFC Mutual Fund redemption statement. Thus, the assessee explained sources for the investment and also for advancing of unsecured loan by the respective parties.

6. The A.O, however, did not accept the contentions of the assessee. He held that as seen from the balance sheet of M/s. Duli Trade & Commodities (P) Ltd, the inventory as on 31/03/2013 is NIL when the

company is having turnover of Rs. 21,91,26,62,758/- and that all the expenses put together works out to Rs. 15,27,520/- which is unrealistic. He also observed that in spite of trading in voluminous items, M/s. Duli Trade & Commodities (P) Ltd has not shown any carriage inward / outward expenses. Therefore, he did not accept the creditworthiness of M/s. Duli Trade & Commodities (P) Ltd for making investment of Rs. 2,20,00,000/- in the assessee's company. Likewise, with regard to the sources of RGG Vyapaar Pvt Ltd, for advancing unsecured loan of Rs. 65 lacs, he observed that it has returned income of only Rs. 1,67,260/- and that it has huge share premium of Rs. 4.22 Crs and unsecured loan of Rs. 2.81 Crs and there is no loan taken from bank. Thus, he disallowed the sum of Rs. 65 lakhs and brought to tax. Further he also observed that there is an unsecured loan of Rs. 2 lakhs from the bank account of Sri Gopal Agarwal HUF, which was preceded by cash deposit. Therefore, he treated it as unexplained unsecured loan and brought it to tax.

7. Aggrieved, assessee preferred an appeal before the CIT(A), who granted relief and against such relief granted by the CIT(A), Revenue is in appeal before us by raising the following grounds of appeal:-

- “1. *The CIT(A) erred both on facts and in law.*
2. *In the facts and circumstances of the case, whether the CIT(A) is correct in law in holding that the assessee had discharged its onus of establishing the bonafide of the transactions even though neither the assessee nor the share applicants could substantiate their claim to the satisfaction of A.O.*

3. *In the facts and circumstances of the case, whether the CIT(A) is correct in law in deleting the addition made u/s 68 towards unexplained share application money and unsecured loans without considering the creditworthiness of the share applicants.*
4. *Any other ground or grounds that may be urged at the time of hearing.”*

8. Learned Departmental Representative submitted that as per the provisions of section 68 and the proviso thereunder, the assessee-company when it receives share application money, share capital or share premium or any such amount by whatever name called, has to explain the sources to the satisfaction of the Assessing Officer and since the assessee failed to do so, the A.O can make disallowance u/s 68 of the Act. He thus relied upon the findings of the A.O for making the disallowance in support of the grounds raised in the appeal.

9. On the other hand, Learned Counsel for the Assessee, supported the order of the CIT(A) and also referred to the documents filed before the A.O. and the CIT(A) which are filed in the form of paper book before us. He has however, admitted that the copy of the paper book was not filed before the Assessing Officer and was filed only before the CIT(A) and has been inadvertently certified as having been filed before the A.O.

10. Having regard to the rival contentions and the material on record, we find that as far as the investment made by the M/s. Duli Trade & Commodities (P) Ltd is concerned, the assessee has filed all the relevant documents before the A.O. and also the share certificates before the

CIT(A). The CIT(A) has considered all the relevant transactions and the details to give a finding that the sources of investment has been explained. We have verified the document at page 15 and 16 of the paper book, which is a copy of the assessee's bank account for PMC Bank, wherein, the assessee has received instruments from Lloyds Steel which are the sources for the investments in the assessee-company. At page 17 is the ledger account of M/s. Duli Trade & Commodities (P) Ltd wherein the sum of Rs. 10 lakhs has been repaid to the company. At page 21 of the paper book is the copy of the resolution passed for making investments in the preferential shares of the assessee-company. At page 23 is the Return of Allotment filed with the Registrar of Companies wherein the preferential shares allotted is shown as 70,000. Page 27 is the certificate showing that M/s. Duli Trade & Commodities (P) Ltd has allotted 70,000 shares worth Rs. 2,10,00,000/-. At page 29 is the Share Certificate issued by the assessee in favour of M/s. Duli Trade & Commodities (P) Ltd. Thus, all these documents were considered by the CIT(A) before granting relief to the assessee and the Learned Departmental Representative has not been able to rebut any of these documents filed by the assessee.

11. Further, with regard to unsecured loan from RGG is concerned, we find that the assessee has clearly explained that the RGG Vyapaar Pvt Ltd is a NBFC and has also explained the sources for advancing of

the loan to the assessee as funds received from redemption of HDFC Mutual Fund units and also M/s. Shree Manama Finance (P) Ltd. The Learned Departmental Representative has not been able to rebut these finding of the CIT(A). Similarly, with regard to the unsecured loan from Sri Gopal Agarwal HUF, the assessee had explained that he had cash balances of Rs. 4,36,098/- as on 31/03/2012 and out of this, cash of Rs. 2 lakhs were deposited in its bank account to lend the money to HSM Steels Private Limited. From page 98 of the paper book, which is cash book summary of Gopal M Agarwal for the A.Y. 2012-13, we find that the opening cash balance as on 11/04/2012 is Rs. 4,36,098/- out of which Rs. 2 lakhs were deposited on 11/04/2012 and the same was advanced to the assessee on 11/04/2012. Since Sri Gopal M Agarwal had sufficient cash balance to deposit the same into his bank account on 11/04/2012, his creditworthiness is treated as explained. Since the CIT(A) has taken into consideration all these evidence to grant relief to the assessee, we see no reason to interfere with the order of the CIT(A).

12. In the result, Revenue's appeal is dismissed.

Pronounced in the open Court on 13th February, 2019.

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated:13th February, 2019

OKK

Copy to:-

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- 2) DCIT, Circle-2(2), R.No.513, 5th Floor, Signature Towers, Kondapur, Hyderabad.
- 3) The CIT(A)-2, Hyderabad
- 4) The Pr. CIT-2, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File