आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH "A", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री राजपाल यादव, न्यायिक सदस्य
BEFORE: SHRI N.K.SAINI, VP & SHRI RAJPAL YADAV, JM

आयकर अपील सं./ ITA NO. 316/CHD/2019
निर्धारण वर्ष / Assessment Year : 2013-14

M/s.Luxmi Foodgrains P.Ltd. House NO.144,Ward-13 Kurali (Punjab) PAN : AACCL 1053 H	बनाम Vs.	ITO,Ward-6(4) Mohali (Punjab)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by	:	Shri Sudhir Sehgal, Adv.
राजस्व की ओर से/ Revenue by :	:	Shri M.P. Diwedi, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/11/2019
उदघोषणा की तारीख/Date of Pronouncement : 07/11/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-2, Chandigarh passed for the Asstt.Year 2013-14.

2. Grounds of appeal taken by the assessee were not in consonance with Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. However, the assessee has amended these grounds of appeal and filed fresh grounds wherein it has taken four grounds. A perusal of these grounds would reveal that grievance of the assessee revolves around single issue viz. the ld.CIT(A)

has erred in confirming the addition of Rs.58,23,060/-,which was added by the Assessing Officer with aid of section 56(2)(viib) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed its return of income on 25.8.2013 declaring total income at Rs.1,43,790/-. The assessee at the relevant time was engaged in the business of manufacturing steam basmati and non-basmati rice. Its case was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed that the assessee-company has issued 13,115 equity shares having face value of Rs.10/- each. It charged share premium of Rs.590/- per equity share resulting in increase in share capital by Rs.1,13,150/- and in share premium by Rs.77,37,850/-.The Assessing Officer was of the view that fair market value per share has to be calculated under Rule 11UA which comes to Rs.156/- per share, and therefore excessive rate at Rs.444/- per share, total of which comes to Rs.58,23,060/- is required to be treated as income of the assessee from other sources. He confronted the assessee with regard to the above aspect. In response to the query of the Assessing Officer, it was contended by the assessee that though cheques were received, but they were never encashed and it was just a journal entry in the books of accounts. It was only a notional income. Effectively, this amount has not been actually credited in the books of the assessee. It was also brought to the notice that promoters who have subscribed these shares were facing financial problem, and ultimately cheques were not encashed in subsequent year also. The ld.AO has rejected this contentions of the assessee on the ground that since the assessee has

been following mercantile system of accounting, therefore, the moment it has received the cheques for sale of those shares, it is to be construed that right to receive the money has accrued to it, and the alleged amount deserved to be assessed under section 56(2)(viib) of the Act.

4. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the ld.First Appellate Authority. It reiterated its contentions. However, the appeal did not bring any relief to the assessee. The ld.CIT(A) has concurred with the Assessing Officer.

5. Before us, the ld.counsel for the assessee contended that as far as actual encashment of cheques is concerned, that aspect has not been disputed by both the Revenue authorities. According to them, the assessee is following mercantile system of accounting, and therefore, the moment it received cheques, it should have recognized the actual receipt of the consideration. He took us through section 56(2)(vii) of the Act and contended that this section employees expression "receive" which contemplates actual receipts of the consideration, and not notional one. There is no actual cash going to the books of the assessee, and therefore there should not be any addition. For buttressing his contention, he relied upon the order of the ITAT, Kolkatta Bench in the case of ITO vs. Bhagwat Marcom P.Ltd., 109 taxmann.com 330. It has been rendered in ITA No No.2236/Kol/2017. The ld.counsel for the assessee contended that it is a recent decision and directly on the similar facts and circumstances. On the other hand, the ld.DR relied upon the orders of the Revenue authorities.

6. We have duly considered rival submissions and gone through the record carefully. There is no dispute with regard to the fact that cheques for sale of these shares representing premium have not been encashed by the assessee. In other words, the amount has not been actually received by the assessee, and credited in its accounts. Let us take note of section 56(2)(viib) of the Act, which reads as under:

> *"56(2)(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:*

7. A perusal of this section would reveal that the expression "receive" employed in this clause would indicate that the assessee should have actually received the amounts, and not a notional one, because in various authoritative pronouncements it has been construed that the amounts should have been actually received. ITAT, Kolkatta Bench has considered identical aspect, and made following discussion:

> *"6. We have considered the rival submissions and also perused the relevant material available on record. It is observed that its shares were issued by the assessee-company during the year under consideration at premium to certain companies in lieu of the shares held by the said companies and there was thus no inflow of cash involved in these transactions. The said transactions were entered into in the books of account of the assessee-company by way of journal entries and it did not involve any credit to the cash amount. The learned DR at the time of hearing has not brought anything on record to rebut or controvert this position. He however has contended by relying on the decision of Hon'ble Madhya Pradesh High Court in the case of V.I.S.P. (P) Ltd. (supra) as well as the decision of Mumbai Bench of this Tribunal in the case of Panna S. Khatau (supra) that section 68 was still applicable in the present case involving credit to the share capital and share premium*

amount. It is however observed that the facts involved in the case of V.I.S.P. (P.) Ltd. (supra) were different inasmuch as the liability in question in the said case represented trading liability of the assessee accruing as a result of purchases made by the assessee during the relevant year and since the said liability was found to be a bogus liability, addition made by the AO was held to be sustainable by the Hon'ble Madhya Pradesh High Court.

7. In the case of Panna S. Khatau (supra) cited by the learned DR, both sections 68 and 56(2)(vi) were held to be applicable by the Tribunal but no concrete or cogent reasons were given to justify the applicability of section 68 to the credits not involving any receipt or inflow of cash in the relevant year. Moreover, the view taken by the Tribunal in the said case is contrary to the decision of Hon'ble Calcutta High Court in the case of Jatia Investment Co. (supra) relied upon by the ld. CIT(A) to give relief to the assessee on issue under consideration in the present case. In the said case, the three NBFCs had taken loans from proprietary concern belonging to the same group. Since the said loans were required to be liquidated as per the RBI guidelines and there was no cash available with the NBFCs to repay the loans, the shares held by the three NBFCs were transferred to a partnership firm namely Jatia Investment Co., and the amount receivable against the said sale of shares was adjusted by the NBFCs against the loan amount payable to proprietary concern. The partnership firm of M/s. Jatia Investment Co. thus received shares from the three NBFCs and also took over the loans payable by the said NBFCs to the proprietary concern. These transactions were entered into in its books of account by the partnership firm through cash book by debiting the investment in shares and crediting the loan amount of the proprietary concern. This credit appearing in the books of account of the partnership firm, M/s. Jatia Investment Co. was treated by the AO as unexplained cash credit u/s 68 and on confirmation of the same, when the matter reached to the Hon'ble Calcutta High Court, it was held by their lordship that when the cash did not pass at any stage and since the respective parties did not receive cash nor did pay any cash, there was no real credit of cash in the cash book and the question of inclusion of the amount of the entry as unexplained cash credit could not arise. In our opinion, the ratio of this decision of the Hon'ble Jurisdictional High Court in the case of Jatia Investment Co. (supra) is squarely applicable in the facts of the present case and the ld. CIT(A) was fully justified in deleting the addition

made by the AO u/s 68 by holding that the said provision was not applicable."

8. Since assessee has not received actual consideration, it has only received cheques which have not been encashed, therefore, the proposition laid down in the above order of the ITAT, Kolkata Bench is clearly applicable on the facts of the present case. We allow the appeal of the assessee and delete the addition.

9. In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 7th November, 2019.

Sd/-	**Sd/-**
(N.K. SAINI)	**(RAJPAL YADAV)**
VICE-PRESIDENT	**JUDICIAL MEMBER**

Chandigarh; Dated, /11/2019