

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

(Through Virtual Court)

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 169/RPR/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Vision Mines and Minerals Private Limited
Plot No.28, Sector-3, Avanti Vihar Road,
Geetanjali Nagar,
Raipur (C.G.)
PAN : AADCV5199B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-4(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prafulla Pendse, AR
Revenue by : Shri P.K Mishra, DR

सुनवाई की तारीख / Date of Hearing :23.05.2022

घोषणा की तारीख / Date of Pronouncement :27.05.2022

आदेश/ ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-II, Raipur (C.G.) dated 31.03.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-Tax Act, 1961 (for short 'the Act'), dated 31.03.2015 for assessment year 2012-13. Before us the assessee has assailed the impugned order on the following grounds of appeal:

- “1. That the order of the Ld. CIT(A) is bad in law as well as on facts.
2. In the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in sustaining addition of Rs.3,00,00,000/- on account of unexplained share application money u/s.68 of the Income Tax Act, 1961.
3. That any other relief/deduction which the Hon'ble Court may deem fit be granted to your appellant.
4. That the appellant craves leave, to urge, add, amend, alter, enlarge, modify, substantiate, delete any of the ground or grounds and to adduce fresh evidence at the time of the hearing of the appeal.”

2. Succinctly stated, the assessee company, which is engaged in the business of mining had e-filed its return of income for the assessment year 2012-13 on 26.09.2012, declaring a loss of (Rs.23,045/-). The return of income filed by the assessee company was initially processed as such u/s. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. On a perusal of the details before him, it was observed by the A.O that the assessee company had during the year under consideration claimed to have received share application money of Rs. 3 crore from M/s. MSP Mining & Minerals Pvt. Ltd., a group company, towards subscription of its 12,000 shares of a face value of Rs.10/- a/w. share premium of Rs. 2,490/- per share. It was observed by the A.O that shares were thereafter allotted to the aforesaid share subscriber, viz. M/s. MSP Mining & Minerals Pvt. Ltd. In order to verify the genuineness and veracity of its claim of having received the aforesaid amount of share application money the A.O called upon the assessee to place on record supporting documentary evidence. In compliance, the assessee came forth with the requisite details as were called for by the A.O. However, on a commission stated to have been issued by the A.O u/s. 131(1)(d) of the Act, it was gathered by him that the aforesaid share subscriber i.e, a Kolkata based company was not available at the given address. Observing that the assessee company had failed to substantiate the authenticity of its claim of having received the aforesaid amount of share application money in question the A.O held the entire amount of Rs.3 crore (supra) as an unexplained cash credit u/s.68 of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). On a perusal of the details before him, it was observed by the CIT(Appeals) that the appellant company had claimed to have received share application money in question from M/s. MSP Mines & Minerals Pvt. Ltd., i.e. a

group company belonging to MSP Group which was engaged in the business of mining. On being queried as regards the basis for charging a huge premium of Rs.2,490/- per share in the very first year of its business, it was stated by the assessee that the same was received from the group company by way of a strategic investment in order to ensure permanent and captive source of its raw material i.e., manganese ore which was not only very precious but was marked with its low availability in India. It was, however, the claim of the assessee company that as its future expected cash flows from the business of mining were very promising, therefore, the said fact duly justified the premium that was charged from the aforesaid share subscriber. However, the CIT(Appeals) after deliberating at length on the submissions which were filed by the assessee before him to justify the share premium of Rs.2,490/- per share was not persuaded to subscribe to the same. On a perusal of the records before him, it was observed by the CIT(Appeals) that not only the year in question was the year of commencement of the business of the assessee company, but till date no business activities was yet commenced by it. In so far the claim of the assessee company that as it was holding a reconnaissance permit of manganese ore mine at Balaghat (MP) and thus, had a huge potential in terms of development of its mining business, it was observed by the CIT(Appeals) that the said fact had no relevance for charging of exorbitant share premium by the assessee company which had yet not commenced its business. Also, it was observed by the CIT(Appeals) that not

only the share premium charged by the assessee company was not justified considering its track record in the business of mining of manganese ore, but also there was no basis for arriving at a share premium of Rs.2,490/- per share by the assessee company. Observing, that the claim of the assessee that the investor company i.e., the group company had made a strategic investment in its shares was nothing but a hollow claim that was bereft of any supporting material, the CIT(appeals) rejected the same by dubbing it as an uncorroborated claim. Accordingly, the CIT(Appeals) sustained the view taken by the A.O and held the charging of share premium by the assessee as totally unjustified.

5. Apropos the alternative claim of the assessee that as the share application money was received and credited in its books of account in the previous year relevant to the immediately preceding assessment year i.e., AY.2011-12 and not during the previous year pertaining to the year under consideration, the same, thus could not have been held as an unexplained cash credit u/s.68 of the Act for the year under consideration, the same too did not find favor with the CIT(Appeals). Fortifying his aforesaid conviction, it was observed by the CIT(Appeals) that the investor company, viz. M/s. MSP Mining & Minerals Pvt. Ltd. had in its audited accounts clearly shown the investment in the shares of the assessee company during the year under consideration and not prior thereto. Backed by his aforesaid observation the CIT(Appeals) rejected the claim of the

assessee company and held the amount of Rs. 3 crore (supra) as an unexplained cash credit u/s.68 of the Act.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

8. As the Ld. Authorized Representative (for short 'AR') for the assessee had, inter alia, assailed the addition of Rs. 3 crore (supra) made by the A.O u/s.68 of the Act, for the reason that as the amount of share application money in question was credited in the books of account of the assessee company during the previous year relevant to the immediately preceding assessment year i.e. AY 2011-12, therefore, the same could not have been held as an unexplained cash credit u/s.68 of the Act during the year under consideration i.e., A.Y.2012-13, we shall, thus, first deal with the same. On a perusal of the books of account of the assessee company to which our attention was drawn by the Ld. AR, we find that the aforesaid amount of share application money of Rs. 3 crore (supra) was received by the assessee company and credited in its bank account No.016105005758 with ICICI Bank Ltd., Branch: Civil Line in four tranches, as under:

Date	Particulars	Amount
14.02.2011	RTGS/HDFCH11045161128/MSP Mines and M/HDFC	5,000,000/-
02.03.2011	RTGS/HDFCH11061407357/MSP Mines and M/HDFC	5,000,000/-
03.03.2011	RTGS/HDFCH11062411477/MS Mines and M/HDFC	10,000,000
15.03.2011	RTGS/HDFCH11074620936/MS Mines and M/HDFC	10,000,000

Our attention was also drawn by the Ld. AR to the details of payments that were made towards the aforesaid amount of share application money of Rs. 3 crore (supra) as were provided by the aforesaid subscriber company, viz. M/s. MSP Mines and Minerals Pvt. Ltd., Page 62 of APB, which reads as under:

Sl. No.	Date	Bank Name	Cheque No.	Amount
1.	14.02.2011	HDFC Bank, 204, MashurawalaBaug, Dharampeth Extn., Shankar Nagar Road, Nagpur-440010 (Maharashtra)	572860	5000000
2.	02.03.2011	HDFC Bank, 204, MashurawalaBaug, Dharampeth Extn., Shankar Nagar Road, Nagpur-440010 (Maharashtra)	572861	5000000
3.	03.03.2011	HDFC Bank, 204, MashurawalaBaug, Dharampeth Extn., Shankar Nagar Road, Nagpur-440010 (Maharashtra)	572862	10000000
4.	15.03.2011	HDFC Bank, 204, MashurawalaBaug, Dharampeth Extn., Shankar Nagar Road, Nagpur-440010 (Maharashtra)	572868	10000000

Total Payment		30000000
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Also, support was drawn by the Id. AR from the copies of receipts which were issued by the assessee company for the aforementioned amount of Rs. 3 crore (supra) that was received in four tranches from the abovementioned share subscriber, Page 58-59 of APB. On a specific query by the bench that as per the 'balance sheet' of the investor company, viz. M/s. MSP Mines and Minerals Pvt. Ltd., the investment in its shares was shown to have been made during the year ending 31st March, 2012 i.e., during the year under consideration and not in the preceding year, Page 68-75 of APB, it was submitted by the Ld. AR that though the shares of the assessee company were allotted during the year under consideration but the share application money was received in the immediately preceding year i.e., during the previous year relevant to AY 2011-12. In order to fortify his aforesaid contention the Ld. AR had taken us through the bifurcated details of "Other current assets" appearing as "Note No.2.11" at Page 76 of APB. On the basis of his aforesaid contentions it was the claim of the Ld. AR that now when the amount in question had been credited in the books of account of the assessee company in the previous year relevant to the immediately preceding assessment year i.e, AY 2011-12 and not during the year under consideration, therefore, as per the mandate of Section 68 of the Act no adverse inferences could have been drawn in its hands while framing the assessment for the year under consideration.

It was submitted by the Ld. AR that the 'balance sheet' of the assessee company for the year under consideration i.e., the very first year of its business was as per Sec. 2(17) of the Companies Act, 1956 prepared for a period of 15 months i.e, for the period 01.01.2011 to 31.03.2012. It was, however, submitted by the Ld. AR that as the aforesaid amount aggregating to Rs. 3 crore (supra) was deposited in the bank account of the assessee company during the previous year relevant to A.Y.2011-12 and not during the year under consideration, therefore, the provisions of Section 68 which presupposes a credit in the books of an assessee maintained for the specific previous year could not have been triggered for making an addition in its hands while framing the assessment for the year under consideration. It was, thus, the claim of the Ld. AR, that as the assessee company had not credited the amount in question in its books of account for the year under consideration, therefore, the addition made by the A.O u/s. 68 of the Act could not be sustained and was liable to be struck down on the said count itself.

9. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the assessee has failed to prove the 'nature' and 'source' of the amount of Rs.3 crore (supra) credited in its books of accounts, therefore, the A.O had rightly held the same as an unexplained cash credit u/s.68 of the Act.

10. After having given a thoughtful consideration to the aforesaid claim of the assessee i.e., qua the sustainability of the addition of Rs. 3 crore (supra) made by the AO u/s.68 of the Act, which had been, inter alia, assailed by the assessee before us, for the reason that the amount in question was credited in its books of account in the previous year pertaining to the immediately preceding assessment year i.e., AY 2011-12 and not during the year under consideration, we find substantial force in the same. On a perusal of the bank account of the assessee i.e., bank account no.016105005758 with ICICI Bank Ltd., Branch: Civil Lines, Raipur, we find that the aforesaid amount of Rs. 3 crore (supra) was undisputedly credited during the previous year relevant to the immediately preceding year i.e., AY 2011-12. As regards the support drawn by the department from the fact that the investment in the shares of the assessee company had been accounted for by the subscriber company viz., M/s. MSP Mines and Minerals Pvt. Ltd. in its balance sheet for the year under consideration i.e., AY2012-13, we are afraid that the said fact would not assist the case of the department, for the reason that the same only refers to the period of allotment of shares which had occasioned during the previous year under consideration and not the credit of the amount in the books of account of the assessee company during the said period. In fact, we cannot remain oblivious of the fact that the share application money was duly credited in the books of account of the assessee company in the immediately preceding year i.e., AY 2011-12 and not during the year under consideration. In sum and substance,

as it is a matter of fact borne from record that the sum of Rs.3 crore (supra) had found its way as a credit in the books of account of the assessee company for the previous year relevant to AY 2011-12 and not during the year in question i.e, AY 2012-13, therefore, there was no justification for the A.O to have held the same as an unexplained cash credit u/s.68 of the Act in the hands of the assessee company during the year under consideration i.e, AY2012-13. Although the shares have been allotted to the investor company i.e., M/s. MSP Mines and Minerals Pvt. Ltd. during the year under consideration i.e., AY 2012-13, however, we cannot remain oblivious of the fact that the amount of share application money of Rs.3 crore (supra) was received and credited by the assessee company in the immediately preceding previous year relevant to AY 2011-12. Our aforesaid view that an addition u/s.68 of the Act cannot be divorced from the year in which the same is credited in the books of account of the assessee is fortified by the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. Usha Stud Agricultural Farms Ltd. (2008) 301 ITR 384 (Delhi). In its aforesaid order the Hon'ble High Court while approving the order of the Tribunal, had held, that as the credit balance appearing in the accounts of the assessee did not pertain to the year under consideration, therefore, the A.O was not justified in making an addition of the same u/s.68 of the Act. Also, our aforesaid view that where the assessee had received share application money in the earlier year and, only shares were allotted to the applicants during the year under consideration, then, the provisions of

Section 68 of the Act could not be invoked to make an addition in the hands of the assessee during the subsequent year i.e, the year in which shares were allotted is supported by an order of the co-ordinate Bench of the Tribunal i.e, ITAT, Kolkata in the case of DCIT, Circle-1 Vs. Global Mercantiles (P). Ltd. (2016) 67 taxmann.com 166 (Kol-Trib). On the basis of our aforesaid deliberations, we are of the considered view, that as the amount of share application money of Rs. 3 crore (supra) was received and credited in the books of account of the assessee for the immediately preceding year i.e., AY 2011-12 and not in the year under consideration, therefore, there was no justification for the AO to have made an addition of the same as an unexplained cash credit u/s.68 of the Act during the year under consideration i.e., AY 2012-13. We, thus, in terms of our aforesaid observations not finding favor with the view taken by the lower authorities vacate the addition of Rs.3 crore (supra) that was made by the AO and had thereafter been upheld by the CIT(Appeals).

11. As we have in terms of our aforesaid observations vacated the addition of Rs. 3 crore (supra) made by the AO u/s.68 of the Act, therefore, we refrain from adverting to and therein adjudicating the other contentions advanced by the Ld. AR as regards the merits of the case in his attempt to justify that no addition even otherwise could be sustained in the hands of the assessee, which, thus, are left open.

12. In the result, appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 27th day of May, 2022.

Sd/-
RATHOD KAMLESH JAYANTBHAI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 27th May, 2022
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	23.05.2022	Sr.PS/PS
2	Draft placed before author	23.05.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		