

**आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**“C” BENCH, AHMEDABAD**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**  
**AND**  
**MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.290/AHD/2018**  
**Assessment Year:2012-13**

M/s. Sekani Industries Pvt. Ltd. (Formerly known as Mangal Cotton Mills Pvt. Ltd.), 62, New Cloth Market, Ahmedabad- 380001. <b>PAN : AABCM0470G</b>	Vs	The DCIT, Circle-2(1)(2), Ahmedabad.
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<b>(Appellant)</b>		<b>(Responent)</b>
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Assessee by :	Shri S. R. Shah, CA
Revenue by :	Shri V. K. Singh, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **21/04/2022**  
घोषणाकीतारीख/**Date of Pronouncement**: **29/06/2022**

**आदेश/O R D E R**

**PER BENCH**

Captioned appeal filed by the Assessee, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-2, Ahmedabad [in short “the Id.CIT(A)”]in Appeal No. CIT(A)-2/79/DC.Cir2(1)(2)/2015-16dated 04.12.2017 which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 23.03.2015.

2. The grounds of appeal filed by the assessee are as follows:

*1.0 The learned CIT(A) erred in confirming the addition of Rs.55,00,000/- made by the learned assessing officer in respect of the amount received from M/s Lilly Enclase Pvt. Ltd. toward Share Capital by the appellant. It is submitted that it be so held now and the addition made be deleted.*

*2.0 The learned CIT(A) erred in law and on facts in relying upon the Hon'ble ITAT, Ahmedabad decision in the case of Pavankumar M. Sanghvi v/s ITO reported at 81 Taxmann.com 308, wherein facts were entirely different and were distinguishable. Your appellant respectfully submits that it has complied with all the requirements as requires u/s. 68 of the Act like identity of the payer, genuineness of transactions and creditworthiness of the payer as well as even the source of the payer for making investment in the share capital of the appellant and hence the additions made u/s. 68 is legally unjustified. It is submitted that it be so held now and the addition of Rs.55,00,000/- made u/s. 68 be deleted.*

*Your appellant prays for leave to add, alter and /or amend all or any of the grounds before the final hearing of appeal.”*

3.The facts of the case which can be stated quite shortly are as follows: The assessee before us, is a Private Limited Company and engaged in the business of manufacturing and trading of cloth. The original return of income for assessment year 2012-13 was filed by the assessee company on 28.09.2012 declaring its total loss of Rs.88,28,262/-. The return of income was duly processed under section 143(1) of the Income Tax Act, 1961. During the assessment proceedings it was observed by the assessing officer that assessee company has issued shares and introduced share capital amounting to Rs.55 lakhs from M/s Lily enclave Pvt. Ltd. The assessing officer noted that assessee has allotted 27,500/- shares to M/s Lily enclave Pvt. Ltd, during the year under consideration. The shares were issued at face value of 100/- per share and Rs.100/- as premium per share. The assessee was asked to submit the identity and creditworthiness of M/s Lily enclave Pvt. Ltd. and prove genuineness of the transaction. The assessee has submitted income tax return filed by M/s Lily enclave Pvt. Ltd for A.Y. 2012-13 and further stated that M/s Lily enclave Pvt. Ltd. has received the above said amount from M/s Texworld Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd. during the year under consideration and the same amount has been introduced as share capital by M/s Lily enclave Pvt. Ltd. as share capital in the assessee company. Further details were called for regarding the transactions of loans taken by M/s Tex world Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd from M/s Lily enclave Pvt. Ltd. A perusal of the details shows that M/s Tex world Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd. have shown receipt of unsecured loans from M/s Lily enclave Pvt. Ltd during

A.Y.2009-10. It is important to mention here that during the assessment proceedings for A.Y. 2009-10 in the case of M/s Tex world Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd, the unsecured loans of Rs.47,00,000 /- and Rs.6,00,000/- received from M/s Lily enclave Pvt. Ltd has been treated as cash credit u/s 68 of the Income Tax Act and added to the income of both the companies. Further the Ld CTT(A) has also confirmed the action of the A.O. and confirmed the addition made by the A.O, in both the cases.

4. Therefore, based on these facts, the assessing officer after considering the reply of the assessee observed that M/s Lily enclave Pvt. Ltd is a paper company and the credit-worthiness of the company is not established and the amount introduced as share capital is that of received from M/s Texworld Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd and these two companies had no liability to repay the said unsecured loan. As far as the genuineness of the transaction is concerned when M/s Lily enclave Pvt. Ltd has introduced Rs.55 lakhs as share capital in the books of assessee-company from the amount it was not due to receive, the transaction cannot be termed as genuine. Accordingly, Rs.55 lakhs of share capital introduced in the books of the assessee company was treated as cash credit u/s 68 and added to the income of the assessee.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer. Aggrieved, the assessee is in appeal before us.

6. The Learned Counsel for the assessee submitted that transactions were through banking channels and assessee submitted PAN Number, financial statements of share applicants, therefore assessee has proved the source of the money. The Id Counsel also submitted that assessee need not to prove source of the source, hence, Id Counsel prays that addition made by the Assessing Officer may be deleted.

7. On the other hand, the Ld. DR for the Revenue has submitted that M/s Lily Enclave Pvt. Ltd. is a shell company whose name has been struck off by the Ministry of Corporate Affairs. Therefore, during the appellate proceedings, the assessee company's name was struck off by the Ministry of Corporate Affairs. However, Id Counsel submitted before the Bench that assessee company is still active, therefore, the said issue may be remitted back to the file of the assessing officer to examine whether assessee company's status is active or not.

8. On merits, Id DR stated that M/s Texworld Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd. have shown receipt of unsecured loans from M/s Lily Enclave Pvt. Ltd during A.Y.2009-10. During the assessment proceedings for A.Y. 2009-10 in the case of M/s Texworld Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd, the unsecured loans of Rs.47,00,000 /- and Rs.6,00,000/- received from M/s Lily Enclave Pvt. Ltd has been treated as cash credit u/s 68 of the Income Tax Act and added to the income of both the companies. Further the Ld CTT(A) has also confirmed the action of the A.O. and confirmed the addition made by the A.O, in both the cases. He further stated that M/s Lily Enclave Pvt. Ltd is a paper company and the credit-worthiness of the company is not established and the amount introduced as share capital is that of received from M/s Texworld Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd and these two companies had no liability to repay the said unsecured loan. As far as the genuineness of the transaction is concerned when M/s Lily Enclave Pvt. Ltd has introduced Rs.55 lakhs as share capital in the books of assessee-company from the amount it was not due to receive, the transaction cannot be termed as genuine. This way, Id DR has reiterated the findings of Assessing Officer. The Assessing Officer can examine source of the source and it is the duty of the assessee to explain the same, however, assessee has failed to do so, therefore addition made by the Assessing Officer may be confirmed.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case

laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that Id CIT(A) has confirmed the addition, observing as follows:

*"2.3. I have carefully considered the facts of the case, assessment order and submission of the appellant. The assessing officer has made the addition of Rs.55,00,000/- u/s. 68 in respect of share capital received from M/s. Lily Enclave Pvt. Ltd. The assessing officer has held that M/s. Lily Enclave Pvt. Ltd. is a paper company and the credit worthiness is not established. The appellant has contended that it has proved identity, creditworthiness and genuineness of the transaction, therefore, no addition can be made u/s. 68 of the I. T. Act, 1961. Appellant has submitted that source of money of M/s. Lily Enclave Pvt. Ltd. was unsecured loan from M/s. Texworld Fashion Pvt. Ltd. and M/s. Sita Fabric Mills Pvt. Ltd.*

*2.4. It has been found that M/s. Lily Enclave Pvt. Ltd. is a shell company whose name has been struck off recently by the Ministry of CorporateAffair. The allegation of assessing officer that appellant company is a paper company is correct. The **Honourable ITAT, Ahmedabad** in the case of **Pavankumar M. Sanghvi Vs. ITO, Wd. 3(1)(2), Baroda [2017] 81 Taxmann.com 308** has observed on such type of transaction as under:-*

*"8. As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-a-vis the ground realities. The facts of the case cannot be considered in isolation with the ground realities. It will, therefore, be useful to understand as to how the shell entries, which the loan creditors are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions to give it colour of a normal business entity used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity but it is their act of abatement, of, and being part of, financial maneuvering to legitimize illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business - its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial maneuvering for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities."*

*2.5. In view of the above, the addition made by the assessing officer is found to be correct and justified and hence, the same is **confirmed**.*

10. We note that during the appellate proceedings, as per the findings of Id CIT(A), the assessee company`s name was struck off by the Ministry of Corporate Affairs. However, now Id Counsel submitted before us that status of the company is active. Hence, it is a new evidence before us. The fact that assessee company`s status is active nor not, has neither been examined by the Id CIT(A) nor by assessing officer, therefore, we are of the view that an opportunity should be given to the assessing officer to examine the status of the assessee company (when the original assessment was going on) in ROC records, hence we have to remit this issue back to the file of the assessing officer to examine the status of assessee- company.

11. On merits, we note that Id DR for the Revenue stated that credit-worthiness of the company is not established and the amount introduced as share capital is that of received from M/s Texworld Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd and these two companies had no liability to repay the said unsecured loan. As far as the genuineness of the transaction is concerned when M/s Lily enclave Pvt. Ltd has introduced Rs.55 lakhs as share capital in the books of assessee-company from the amount it was not due to receive, the transaction cannot be termed as genuine.

12. We note that Assessing Officer can examine the source of the source, and when assessing officer put query before the assessee, then it was the duty of the assessee to reply it. However, the assessee need not to prove source of the source from his side for assessment year 2012-13 under consideration, as held by the Hon`ble Bombay High Court in the case of **Gagandeep Infrastructure (P.) Ltd [2017] 80 taxmann.com 272 (Bombay)**. The Hon`ble Court held that proviso to section 68 has been introduced by the Finance Act, 2012 with effect from 1-4-2013. Thus, it would be effective only from the assessment year 2013-14 onwards and not for the subject assessment year 2012-13.

13. We note that Hon`ble Supreme Court in the case of Sreelekha Banerjee v. Commissioner of Income-tax [1989] 49 ITR (SC) 114, 120: [1964] 2 SCR 552 (SC), observed:

*"The very words 'an undisclosed source' show that the disclosure must come from the assessee and not from the department."*

Thus, when assessing officer has examined the source of the source and asked the assessee to explain, then onus shifts on the assessee to explain the same. Thus, at the cost of repetition we state that credit-worthiness of the company is not established and the amount introduced as share capital is that of received from M/s Texworld Fashions Pvt. Ltd. and M/s Sita Fabric Mills Pvt. Ltd and these two companies had no liability to repay the said unsecured loan. As far as the genuineness of the transaction is concerned when M/s Lily enclave Pvt. Ltd has introduced Rs.55 lakhs as share capital in the books of assessee-company from the amount it was not due to receive, the transaction cannot be termed as genuine. Therefore, we are of the view that when assessing officer asked the assessee to explain these inter-connected transactions, it was the duty of the assessee to explain the same. In this regard, a useful reference may be made to the decision of the Hon`ble Apex Court in the case of Biju Patnaik, 160 ITR 674 (SC) wherein it was held that in appropriate cases even the source of source has to be proved by the assessee under section 68 of the Act.

14. Although, the issue before us pertains to assessment year 2012-13 where amended provisions of section 68 do not apply, however, considering the facts of the case, the assessee has to explain the source of the source, as the assessing officer has pointed out the trail of money, and in that circumstances onus shifts on the assessee to provide suitable explanation to Assessing Officer. Hence, as per the facts narrated in assessment order, it is the appropriate case to prove source of the source. At the cost of repetition, we state that when Assessing Officer observed that M/s Tax World Fashions Pvt. Limited and M/s Sita Fabric Pvt. Limited had no liability to repay loan, so it was the assessee`s money which came back to the

assessee by way of share capital. In that situation, the assessee ought to have proved with evidence that it was not assessee`s money, however, assessee has failed to do so. Therefore, considering the complex nature of transactions, we are of the view that one more opportunity should be given to the assessee to explain the transaction before the assessing officer. Therefore, we set aside the order of CIT(A) and remand the issue raised by the assessee in the grounds of appeal before CIT(A), for fresh consideration by the assessing officer with a liberty to the assessee to prove his case by producing sufficient evidence/material to the satisfaction of the assessing officer. For statistical purposes the appeal of the assessee is allowed.

15.In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 29<sup>th</sup> June, 2022**

Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Sd/-  
**(Dr. A. L. SAINI)**  
**ACCOUNTNAT MEMBER**

**TRUE COPY**

Ahmedabad, dated 29/06/2022

**SAMANTA/TANMAY**

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
- s2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad