

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 2820/Ahd/2017  
Assessment Year 2013-14**

The Assistant Commissioner of Income Tax, Circle-2(1)(2), Ahmedabad  (Appellant)	Vs	Lesha Industries Ltd. 7 <sup>th</sup> Floor, Ashoka Chambers, Nr. Lions Hall, Mithakhali Six Roads, Ahmedabad-6  PAN: AABCA6470A (Respondent)
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**Assessee Represented: Shri Manish J. Shah, A.R.  
Revenue Represented: Ms. Leena Lal, Sr.D.R.**

Date of hearing : 19-01-2023  
Date of pronouncement : 18-04-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the Appellate order dated 25.09.2017 passed by the Commissioner of Income Tax (Appeals)-2, Ahmedabad, arising out of the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The brief facts of the case is that the assessee is Limited Company engaged in the business of trading of Steel Product Toys and Share & Securities. For the Assessment Year 2013-14, the assessee filed its Return of Income on 02/10/2013 declaring a loss of Rs. 3,47,195/-. The return was processed u/s. 143(1) of the Act then taken up for scrutiny assessment.

2.1. The Assessing Officer noticed that during the financial year, the assessee has received share application money from the following four parties:

1.	Shri Chintan Narendra Shah	Rs. 3,30,00,000
2.	M/s. Akhil Retail Pvt. Ltd.	Rs. 1,25,00,000
3.	M/s. Shivansh Estates Pvt. Ltd.	Rs. 1,25,00,000
4.	Lasha Agro Foods Pvt. Ltd.	Rs. 1,87,50,000
	Total	Rs. 7,67,50,000

2.2. Therefore to verify the genuineness of the share application money, summons were issued to the above parties. In response Shri Shri Chintan N. Shah explained before the A.O. that the investment made by him being a listed company and also informed about the source of investment. By filing confirmation bank statement copy of the Income Tax Return, share application form and Allotment Advice by the assessee company. One Mr. Harshal K. Shah is one of the Director of M/s. Akhil Retail India Pvt. Ltd. and M/s. Shivansh Estates Pvt. Ltd. who have invested Rs. 1.25 crores each and clarified that the source of investment is loan taken from M/s. India Infra Space and M/s. Ghantakarna Rolling Mills Pvt. Ltd. Mr. Harshal K. Shah also produced copy of the confirmation, bank statements copy of the Income Tax Return, Annual Return of the companies, Share application form board resolution and

Allotment Advice from the assessee company both were M/s. Akhil Retail India Pvt. Ltd. and M/s. Shivansh Estates Pvt. Ltd. However the Assessing officer has not satisfied with the explanation offered by the assessee but only in the case of M/s. Leshia Agro Foods Pvt. Ltd. which is a group company of Promoter of this assessee company who had invested 187.50 lacs in the share capital of the assessee company by borrowing from Directors Relatives and Inter-corporate loans aggregating to Rs. 188.10 lacs. The Assessing Officer accepted the above investments made by M/s. Leshia Agro Foods Pvt. Ltd. and added the remaining three investors namely 5.8 crores unexplained cash credit u/s. 68 of the Act.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) after going through the facts of the case was a very detained order deleting the addition made by the Assessing Officer as follows:

*5.4. The appellant on the other hand has contended that it is a listed company with Bombay Stock Exchange, therefore, proviso to section 68 is not applicable and accordingly onus of proof u/s. 68 in the case of listed company is different compared to the onus that is required to be discharged in the case of private non listed company. Appellant has contended that it has proved identity, genuineness and credit worthiness of all the three share holders by submitting confirmation, bank account, return of income and explained even source of the source.*

*5.5. For the sake of clarity, section 68 is reproduced as under:-*

*"Section 68 provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature of source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.*

*Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital,*

*share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless-*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of assessing officer aforesaid has been found to be satisfactory."*

*5.6. Appellant is a listed company with Bombay Stock Exchange. The company has allotted preferential equity share to all the three persons as under:-*

	<i>Shri Chintan N. Shah</i>	<i>M/s. Akhil Retail Pvt. Ltd.</i>	<i>M/s. Shivansh Estate Pvt. Ltd.</i>
<i>Share applied</i>	<i>1,65,000/-</i>	<i>50,000/-</i>	<i>50,000/-</i>
<i>Share allotted</i>	<i>1,65,000/-</i>	<i>50,000/-</i>	<i>50,000/-</i>
<i>Amount paid</i>	<i>3,30,00,000/-</i>	<i>1,25,000/-</i>	<i>1,25,000/-</i>
<i>Date of allotment</i>	<i>12/04/12</i>	<i>25/10/2012</i>	<i>25/10/2012</i>
<i>Dmat No.</i>	<i>1 2033300 - 00569730</i>	<i>1 2023000- 01003301</i>	<i>IN301983- 10698252</i>

*5.7. The appellant has submitted confirmation, bank statement, return of income of Shri Chintan N. Shah. Shri Chintan N. Shah has applied for preferential allotment of share and payment was made through his bank account No. 20191011000245 on 11/04/2012. In response to summon issued by the Assessing Officer, Shri Chintan N. Shah has appeared and has stated that source of his money to invest in the share capital of the appellant company was from the commission received from his brother in law Shri D. N. Shah in Dubai, Shri Shah has stated in his statement that he was in Dubai from 2008 to 2011 and has worked with his brother in law Shri D. N. Shah who was operating M/s. Pushpam Jewellers in Dubai. He has also given the name of the parties introduced by him to justify the commission.*

*5.8. As regard to M/s. Akhil Retail Pvt. Ltd. and M/s. Shivansh Estate Pvt. Ltd., the appellant company has submitted copy of confirmation, bank account, profit and loss account and balance sheet. Shri Harshul K. Shah the director of two companies was summoned by the Assessing Officer who in turn confirmed the share application money. M/s. Akhil Retail Pvt. Ltd. has made payment of share application money through its ICICI Bank Account No.0189005500240. M/s. Shivansh Estate Pvt. Ltd. has made payment through its bank account No.018905500401. The source of fund*

*for these companies have been stated to be loan from M/s. India Infraspace and M/s. Shree Ghantakarna Rolling Mills Pvt. Ltd. The balance sheet of the two share applicant company reflects the investment in the appellant company and borrowing from M/s. India Infraspace and M/s. Shree Ghantakarna Rolling Mills Pvt. Ltd. as liability. As regard to Assessing Officer's observation on the source of the source of M/s. Shree Ghantakarna Rolling Mills Pvt. Ltd., it is evident from the balance sheet of appellant company, that M/s. Shree Ghantakarna Rolling Mills Pvt. Ltd. has been allotted 30,000 shares in the appellant company by conversion of unsecured loan in the relevant previous years. Assessing Officer has accepted allotment of share in appellant company to M/s. Shree Ghantakarna Rolling Mills Pvt. Ltd.*

*5.9. In view of the fact that appellant company is a listed company in which public are substantially interested, share has been allotted and source of investment has been adequately explained, the appellant has discharged complete onus cast upon it u/s. 68 of the I. T. Act, 1961. Therefore, Assessing Officer was not justified to make addition u/s. 68 of the I. T. Act, 1961. Reliance is placed on the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Ambuja Ginning and Pressing and Oil Co. P. Ltd. [332 ITR 434] and Supreme Court decision in the case of CIT Vs. Lovely Exports [216 CTR 195].*

*The ground of appeal is accordingly allowed.*

4. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

*1. The Ld. CIT(A) has erred in law and on facts in deleting the addition made u/s 68 of the IT Act*

*1.1 The Ld. CIT(A) has erred in law and on facts in deleting the impugned additions without taking into consideration the statements recorded u/s 131 of IT Act.*

*1.2 The Ld. CIT(A) has grossly erred in law and on facts in by giving relief to the assessee on the ground that it was a listed company, ignoring the law that provisions of Section 68 of the Act applied to one and all.*

*1.3 The Ld. CIT(A) has erred in law and on facts by not appreciating that the creditworthiness of the persons who had allegedly contributed to the share capital, which was not established is an essential ingredient of Section 68 of IT Act. Reference is made to the decision of the Hon'ble Kolkata High Court in the case of CIT vs Precision Finance Pvt. Ltd (208 ITR 465).*

*1.4 The Ld. CIT(A) has erred in law and on facts by not appreciating that mere allotment of shares did not prove the genuineness of the transaction, which is an essential ingredient of Section 68 of IT Act.*

*1.5 The Ld. CIT(A) has erred in law and on facts by mechanically relying on the decision of the Hon'ble Gujarat High Court and that of the Hon'ble Apex Court without going into the facts brought on record by the AO to demonstrate that the burden placed on the assessee in terms of Section 68 of IT Act had not been discharged.*

*1.6 The Ld. CIT(A) has erred in law and on facts by not appreciating the decision of the Hon'ble Delhi High Court in the case of CIT vs Youth Construction Pvt. Ltd (2013) (317 ITR 197); Onassis Axles Pvt. Ltd vs CIT (44 Taxmann.com 408)(Delhi) and also that of Hon'ble Madras High Court in the Pvt. Ltd Hon'ble High case of B.R.Petrochem (181 Taxmann.com 424) wherein the Court have explained the import of the decision of Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd [2008](216 CTR 196).*

*1.7 The Ld. CIT(A) has erred in law and on facts by not appreciating that Income tax assessment proceedings are based on principle of preponderance of probability and not on the basis of proof beyond doubt that the decision of the Hon'ble Supreme Court in the case of Durgaprasad More (82 ITR 540 SC) and Sumati Dayal (1995 AIR 2109) were clearly applicable to the facts of the case.*

*2. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

5. The Ld. D.R. appearing for the Revenue supported the order passed by the Assessing Officer and pleaded to uphold the same.

6. Per contra, Ld. A.R. Mr. Manish J. Shah appearing for the assessee filed before us a Paper Book containing various details namely:

- 1. Written submission before C.I.T.(Appeals).*
- 2. Statement of Harshad K Shah and Chintan N Shah*
- 3. Notice of EGM held on 17.12.2011*
- 4. Notice of EGM held on 26.03.2012*
- 5. Certificate of CA certifying Pricing of Shares of appellant as per SEBI Guideline*
- 6. Notice of EGM dated.05.10.2012*
- 7. Certificate of dated.13.09.2012 Statutory Auditor*
- 8. Annual Report of Shivansh Estates Pvt. Ltd.*

9. *Annual Report of Akhil Retail Pvt. Ltd.*
10. *Acknowledgment of ITR for AY 2013-14 of Chintan Shah*
11. *Acknowledgment of ITR for AY 2013-14 Akhil Retail Pvt. Ltd*
12. *Acknowledgment of ITR for AY 2013-14 of Shivansh Estates Pvt. Ltd.*
13. *Share application form*
14. *Confirmation of share applicant along with bank statement*
15. *Resolution passed in Board meeting of share applicant company*
16. *Allotment Advices*

6.1. The Ld. A.R. also filed before us following case Laws in support of its arguments:

- (i) ACIT vs. Kraft Laminate
- (ii) Darshan Enterprise vs. Addl/Joint/Deputy/ACIT/ITO
- (iii) CIT vs. Ranchhod Jivabhai Nakhava

6.2. The Ld. A.R. also further clarified sale of the above shares by the three parties as follows:

1. *It is stated that the Share holding held by Shri Chintan Shah was sold by him during the period 08.07.2016 to 14.07.2016.*
2. *It is stated that the Share holding held by Akhil Retail Pvt. Ltd. was sold by the said company during the period 17.10.2014 to 05.08.2015.*
3. *It is stated that the Share holding held by Shivaansh Estates Pvt. Ltd. was sold by the said company during the period 15.07.2015 to 14.08.2015.*

6.3. Thus reiterating the submissions made before the Lower Authorities. Ld. Counsel pleaded that there is no merits in the grounds raised by the Revenue and therefore the same is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. First of all, the grounds raised by the Revenue are general and argumentative in nature without specific about the deletion made by the Ld. CIT(A). In fact ground no. 1.2

the Revenue raised that “the Ld. CIT(A) grossly erred in giving relief to the assessee on the ground that it was a listed company, ignoring the law that provisions of Section 68 of the Act applied to one and all”. The Revenue failed to consider the first proviso to Section 68 of the Act which was introduced by the Finance Act, 2012 with effect from 01.04.2013 which specifically says “where the assessee is a company, not being a company in which public or substantially interested”. It is for this reason, the Ld. CIT(A) at Para 5.9 of his order clearly held that the assessee company is a listed company in which public are substantially interested and invocation of section 68 not applicable. Further the assessee submitted the confirmation, bank statement, Return of Income and Allotment Advice, etc. before the A.O.

7.1. We also see from record that Shri Chintan N. Shah has appeared before the A.O. in response to the summons issued and also explained his source of investment in the share capital of the assessee company which was from the commission received from his brother in law Shri D.N. Shah in Dubai. Further Shri D.N. Shah has stated in his statement submitted that he was in Dubai from 2008 to 2011 and was operating M/s. Pushpam Jewellers in Dubai. He also given name of the parties introduced by him to justify the commission. Similarly, Shri Harshal K. Shah who is the director in M/s. Akhil Retail Pvt. Ltd. and M/s. Shvansh Estate Pvt. Ltd. submitted the copy of the confirmation bank account and Profit and Loss account and balance sheet, in response to the summons issued by the A.O. Shri Harshal K. Shah submitted the share application money details through bank transactions and the loan



taken from M/s. India Infraspaces and M/s. Shree Ghantakarna Rolling Mills Pvt. Ltd. which is reflecting in the balance sheet. Thus primary onus that lay on the assessee to establish the identity, genuineness and creditworthiness of the assessee is being proved beyond doubt by the assessee. Further the assessee also proved source of source of the investment made by the three parties. The Ld. A.O. could not disprove the same with necessary evidences, therefore the question of invoking Section 68 does not arise.

7.2. This view of ours is supported by the Co-ordinate Bench of this Tribunal in ACIT vs. Kraft Laminate in ITA No. 1841/Ahd/2018 where it is held as follows:

*“The learned DR has also contended that a very small amount of income was declared by all the loan creditors in their returns of income and going by this pattern, the genuineness of the loans become doubtful as rightly held by the Assessing Officer. However, this aspect of the matter alone, in our opinion, cannot disprove the unsecured loans in question received by the assessee; the genuineness of which was duly established by the assessee by filing the confirmation letters, PANs, Income-Tax Returns, bank statements etc. of the concerned loan creditors as rightly held by the learned CIT(A) by relying on the decision of Hon'ble jurisdictional High Court in the case of Ranchhod Jivabhai Nakhava (supra) and Rohini Builders (supra). The primary onus that lay on the assessee to establish the identity and capacity of the concerned loan creditors as well as the genuineness of the relevant loan transactions was duly discharged by the assessee and in the absence of any evidence brought on record by the Assessing Officer to prove to the contrary, the unsecured loans cannot be treated as unexplained cash credits under Section 68 of the Act and the addition made by the Assessing Officer on this issue was unsustainable. In our opinion, the Assessing Officer was not justified to require the assessee to establish the source of source while examining the relevant cash credits representing the unsecured loans and the addition made by the Assessing Officer under Section 68 of the Act by treating the unsecured loan of Rs.32,00,000/- as unexplained cash credits was rightly deleted by the learned CIT(A). In that view of the matter, we uphold the impugned order of learned CIT(A) giving relief to the assessee on this issue and dismiss Ground No.1 of the Revenue's appeal.”*

7.3. Further the Jurisdictional High Court in the Darashan Enterprise vs. Addl/Joint/Deputy/ACIT/ITO [2022] 134 taxmann.com 188 held as follows:

*“16. Section 68 of the Act of 1961 says that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. Therefore, according to Section 68, the first burden is on the assessee to satisfactorily explain the credit entry in the books of account of the previous year. If the explanation given by the assessee is satisfactory, then that entry will not be charged with the income of the previous year of the assessee. In case the explanation offered by the assessee is not satisfactory or the source offered by the assessee firm is not satisfactory, then in that case, the amount should be taken to be the income of the assessee.”*

*17. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment where the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount. So far as the responsibility of the assessee-firm is concerned, it is satisfactorily discharged. Whether that individual person is an income tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income tax. It is open to the Assessing Officer to take appropriate action under Section 69 of the Act against the person who has not been able to explain the investment.”*

7.4. The Jurisdictional High Court in the case of CIT vs. Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 159 held as follows:

*“15. In our view, once the assessee has established that he has taken money by way of accounts payee cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial burden under Section 68 of the Act was discharged. It further appears that the assessee had also produced confirmation letters given by those lenders.*

16. Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, in our opinion, the Assessing Officer did not follow the principle laid down under Section 68 of the Income Tax Act.

17. If on verification, it was found that those lenders did not disclose in their income tax return the transaction or that they had not disclosed the aforesaid amount, the Assessing Officer could call for further explanation from the assessee to prove the genuineness of the transaction or creditworthiness of the same. However, without verifying such fact from the income tax return of the creditors, the action taken by the Assessing Officer in examining the lenders of the assessee was a wrong approach. Moreover, we find that those lenders have made inconsistent statement as pointed out by the Commissioner of Income Tax (Appeals) and in such circumstances, we find that both the Commissioner of Income Tax (Appeals) and the Tribunal were justified in setting aside the deletion as the Assessing Officer, without taking step for verification of the Income Tax Return of the creditors, took unnecessary step of further examining those creditors. If the Assessing Officers of those Creditors are satisfied with the explanation given by the creditors as regards those transactions, the Assessing Officer in question has no justification to disbelieve the transactions reflected in the account of the creditors. In other words, the Assessing Officer had no authority to dispute the correctness of assessments of the creditors of the assessee when a co-ordinate Assessing Officer is satisfied with the transaction.

18. We, thus, find that in the case before us the Tribunal below rightly set aside the deletion made by the Assessing Officer, based on erroneous approach by wrongly shifting the burden again upon the assessee without verifying the Income Tax return of the creditors. The position, however, would have been different if those creditors were not income tax assesseees or if they had not disclosed those transactions in their income tax returns or if such returns were not accepted by their Assessing Officers."

7.5. Respectfully following the above judicial precedents, we have no hesitation in confirming the order passed by the Ld. CIT(A) deleting the addition made u/s. 68 of the Act.

8. Thus the grounds raised by the Revenue are devoid of merits and the same is hereby rejected.

9. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 18-04-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 18/04/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद