

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.871/PUN/2023

निर्धारण वर्ष / Assessment Year : 2011-12

ACIT, Central Circle-1(3), Pune	Vs.	Prasanna Purple Mobility Solutions Private Limited, 396, Near Ahilyadevi High School, Shaniwar Peth, Pune – 411 030 Maharashtra PAN : AAACO9763H
Appellant		Respondent

Cross Objection No.03/PUN/2024
(Arising out of ITA No.871/PUN/2023)

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Appellant		Respondent

Assessee by : Shri Ankit Gattani &
Shri K. Venkatachalam
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 11.07.2024
Date of pronouncement : 05.08.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of the CIT(A), Pune-11 dated 29.05.2023 for the assessment year 2011-12. The assessee filed Cross objection against in Revenue's appeal.

2. Brief the facts of the case are as under :

2.1 The assessee is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of Transport operations. The Return of Income for the A.Y. 2011-12 was filed on 30.09.2011 disclosing loss of Rs.10,84,40,312/- and the same was revised on 22.03.2012 at a loss of Rs.10,99,52,953/-. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 28.03.2014 passed u/s.143(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act') at a loss of Rs.10,79,29,069/- after making addition of Rs.20,23,884/-.

2.2 Subsequently, the AO formed an opinion that income escaped assessment to tax based on the information that the assessee company issued shares of Face Value of Rs.10/- at a high premium of Rs.1584/- per share and received share capital/share premium of Rs.30,00,00,364/-, accordingly issued notice u/s.148 of the Act on 09.11.2017. In response to notice u/s.148, the assessee company vide letter dated 04.12.2017 submitted that the return of income filed originally be treated as return in response to notice u/s.148. Against the said return of income, the assessment was completed by the AO vide order dated 30.12.2018 passed u/s.143(3) r.w.s.147 of the Act at a total income of Rs.19,20,71,300/-. While doing so, the AO made addition of share capital/share premium as unexplained money of assessee company.

3. The factual background of the case is as under :

3.1 During the previous year relevant to the assessment year under consideration, the assessee company had issued 151480 shares of Face Value of Rs.10/- each at a premium of Rs.1584/- to Rainbow Ventures Limited. The total amount claimed to have been received from

Rainbow Ventures Limited of Rs.24,14,59,120/-, Ambit Pragma Fund Scheme of Rs.5,85,41,244/-.

3.2 The AO observed that the said company Rainbow Ventures Limited was incorporated in Mauritius on 06.08.2009. There was introduction of capital to the tune of USD 70,35,957 in the said company with the total capital reserves of USD 85,65,084. The business of the company is stated to be a investment company and there is no other activity. The AO called upon the assessee to prove the identity, genuineness and credit worthiness of the parties who have contributed the share capital. However, the assessee company could only produce the financial statements of Rainbow Ventures Limited.

3.3 In the circumstances, the AO drew an inference that it is nothing but unaccounted money of the assessee company and was brought to tax the share capital/share premium received from Rainbow Ventures Limited, Mauritius of Rs.24,14,59,120/- and Ambit Patwardhan at Rs. 5,85,41,244/- as unexplained money of the assessee company u/s.68 of the Act, placing reliance on the decision of Hon'ble Bombay High Court in the case of Major Metals Ltd. Vs. Union of India 207 taxmann.com 185.

4. Being aggrieved, an appeal was filed before the CIT(A) contesting the very validity of initiation of reassessment proceedings as well as on merits of the additions of share capital. The ld. CIT(A) upheld the validity of reassessment proceedings placing reliance on the decision of Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500, Central Provinces Manganese Ore Co. Ltd. Vs. ITO (1991) 191 ITR 662. The ld.CIT(A) further held that no opinion was formed by the AO during the course of original assessment proceedings and also no enquiry was made

accordingly, placing reliance on the decision of Hon'ble Supreme Court in the case of ITO Vs. M/s. Tech Span India Pvt. Ltd. 255 Taxman 152 (SC).

5. On merits of the addition, the Id. CIT(A) deleted the addition by taking into consideration the information gathered by the AO about the source funds with the Rainbow Ventures Limited during the course of assessment proceedings for the A.Y. 2012-13 etc. The Id. CIT(A) further proceeded to hold that merely because the investor company, i.e. Rainbow Ventures Limited is incurring losses cannot be a reason to disbelieve the investment made by it. The Id. CIT(A) also held that the decision of Hon'ble Bombay High Court in the case of Major Metal Ltd. Vs. Union of India 207 taxmann.com 185 was in the context of proceedings before the Hon'ble Settlement Commission, hence no application to the facts of the case. Thus, the CIT(A) concluded that the essential ingredients, viz., Identity, creditworthiness and genuineness of the transaction with Rainbow Ventures Limited stood satisfied, accordingly directed the AO to delete the addition.

6. Similarly, with regard to the share capital received from Ambit Pragma Fund Scheme amounting to Rs.5,85,41,244/-, the learned CIT(A) taking cognizance of the fact that it is Venture Capital Fund registered with SEBI on 10.07.2008 proceeded to hold that essential ingredients of Identity, Creditworthiness and Genuineness of the transaction with this company u/s.68 of the Act stand satisfied.

7. Being aggrieved by the decision of CIT(A) upholding the validity of reassessment proceedings, the assessee company is in Cross Objection. The Revenue is in appeal before the Tribunal being aggrieved by the decision of CIT(A) deleting the addition on account of receipt of share capital/share premium of Rs.30,00,00,364/-.

Cross Objection No.03/PUN/2024

8. At the first instance, we shall take up the assessee's cross objection challenging the validity of reassessment proceedings, as it goes to the root of the matter.

9. We heard the rival submissions and perused the material on record. In the present case, the original assessment proceedings was completed u/s.143(3) vide order dated 28.03.2014. From the perusal of the assessment order, it would suggest that the issue of receipt of share capital/share premium was never examined by the AO. Therefore, it cannot be said that the AO formed an opinion as to the genuineness or otherwise of the transaction of receipt of share capital/share premium. Therefore, it cannot be said that it is a mere change of opinion. In this regard, reference can be made to the decision of Hon'ble Supreme Court in the case of ITO Vs. Tech Span India Pvt. Ltd.(2018) 92 taxmann.com 361 (SC) wherein the Hon'ble Supreme Court held as under :

“12. Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings.”

10. Since in the present case during the course of original assessment proceedings, the AO had not formed any opinion in respect of receipt of share capital/share premium, it cannot be said that the reassessment

proceedings are prompted by mere change of opinion. Therefore, we uphold the validity of the reassessment proceedings in view of law laid down by Hon'ble Apex Court in the case of Tech Span India Pvt. Ltd. (supra).

11. In the result, the cross objection filed by the assessee company is dismissed.

Revenue's Appeal No.871/PUN/2023

12. Now we shall take up the Revenue's appeal challenging the correctness of the finding of the CIT(A) deleting the addition on account of receipt of share capital/share premium of Rs.30,00,00,364/- from the following three parties :

Sl.No.	Name	Amount
1	Rainbow Ventures Limited, Mauritius	Rs.24,14,59,120/-
2	Ambit Pragma Fund Scheme-1	Rs.5,85,41,244/-

13. During the course of assessment proceedings, the assessee company received the share capital/share premium from the above parties to the tune of Rs.30,00,00,364/-. The AO called upon the assessee company to prove Identity, creditworthiness of investors and genuineness of the transaction. A perusal of the assessment order would show that the assessee company had failed to discharge the onus cast upon it to prove the Identity, creditworthiness and genuineness of the transaction with the above parties. It is settled legal position that the assessee is under obligation to prove the Identity, creditworthiness as well as the genuineness of the transaction to the satisfaction of the AO. The AO also is duty bound to verify the Identity, investigate the Creditworthiness of the investors and ascertain whether the transaction is genuine, whether these are bogus entries of lenders. When the

assessee fails to discharge the onus of proving the Identity, creditworthiness and genuineness of the transaction by producing the cogent and credible evidences with plausible explanation to the satisfaction of the AO, the AO would be justified in making the addition to the total income of the assessee.

14. A perusal of the assessment order would show that, in the present case, the assessee company had failed to discharge the onus cast upon it in terms of provisions of section 68 of the Act. During the course of proceedings before the CIT(A), the assessee company had filed the financial statement of Rainbow Ventures Limited. Based on the financial statements and the Registration certificate of Ambit Pragma Fund Scheme, the CIT(A) called for a remand report from the AO, who in turn admitted that reference was made during the course of assessment proceedings for the A.Y. 2012-13 to the Foreign Tax and Tax Research (FT & TR) Authority seeking information under Exchange of information Article from the Mauritius Tax Authority under Double Taxation Avoidance Agreement (DTAA) and also confirmed that after analysing the information received from the AO accepting the credits standing in the name of Rainbow Ventures Limited for the A.Y. 2012-13. Based on this information, the CIT(A) concluded that the transaction of receipt of share capital/share premium from Rainbow Ventures Limited is genuine, accordingly directed the AO to delete the addition.

Similarly, in respect of Ambit Pragma Fund Scheme, the CIT(A) merely taking into the consideration of the fact that it is a Venture Capital Fund registered with SEBI deleted the addition.

15. We find that the finding of the CIT(A) are bald. The CIT(A) had failed to discuss as to what the enquiries revealed and how the results

of enquiry satisfy the ingredients of Identity, creditworthiness of investors and genuineness of the transaction. In this regard, we make reference to a decision of Hon'ble Calcutta High Court in the case of PCIT Vs. BST Infratech Ltd. (2024) 161 taxmann.com 668 (Calcutta) wherein the Hon'ble High Court after quoting the decision of Hon'ble Supreme Court in the case of CIT Vs. N.R. Portfolio (P) Ltd. (2014) 42 taxmann.com 339 and Pr.CIT Vs. Swati Bajaj 446 ITR 56 (Cal) held as follows :

“20. With regard to the identity, creditworthiness and genuineness of the transaction and the onus of prove the Hon'ble Court held as follows:-

30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them.

31. Identity, creditworthiness or genuineness of the transaction is not established by merely showing that the transaction was through banking channels or by account payee instrument. It may, as in the present case required entail a deeper scrutiny. It would be incorrect to state that the onus to prove the genuineness of the transaction and creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Whether or not onus is discharged depends upon facts of each case. It depends on whether the two parties are related or known to each; the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment, whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are basically and primarily in knowledge of the assessee and it is difficult for revenue to prove and establish the negative. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The facts of the present case noticed above speak and are

obvious. What is unmistakably visible and apparent, cannot be spurred by formal but unreliable pale evidence ignoring the patent and what is plain and writ large.

21. In *Rajmandir Estates (P.) Ltd. v. Pr. CIT* 2016 SCC Online Cal 1237/[2016] 70 taxmann.com 124/240 Taxman 306/386 ITR 162 (Cal.) one of the substantial questions of law which fell for consideration was whether the finding of the CIT(A) that unaccounted money was or could have been laundered as clean share capital by creating facade of paper work, routing the money through several bank accounts and getting the seal of statutory approval by getting the case re-opened under section 147 suo motu and whether the same is perverse. The facts of the said case was noted wherein 19 out of the 13 applicants secured funds for the purpose of contributing to the share capital of the assessee therein, on account of share application money. In other words, those 19 applicants collected funds on account of share application money in their respective companies and that money was contributed to the share capital of the assessee. 15 out of the 39 applicants procured the requisite funds by selling the shares and the rest of the applicants of shares, in the share capital of the assessee company, did not disclose the nature of receipt at their end though the source of funds were identified. Further the shares were offered to and subscribed by closely held companies owned by the promoter/director or their close relatives and friends. After noting the facts, the Hon'ble Court held that the identity of the alleged shareholders is known but the transaction was not a genuine transaction. The transaction was nominal rather than real; creditworthiness of the alleged shareholders is also not established because they did not have money of their own, each one of them received from somebody and that somebody received from a third person and therefore prima facie, shareholders are near namelenders.

22. In *Pr. CIT v. NRA Iron and Steel (P.) Ltd.* (2019) 15 SCC 529/[2019] 103 taxmann.com 48/262 Taxman 74/412 ITR 161 (SC) the issue which fell for consideration is when share capital/premium is credited in the Books of Account of the assessee company, the onus of prove is on the assessee to establish by cogent and reliable evidence of the identity of the investor company, the creditworthiness of the investor and genuineness of the transaction, to the satisfaction of the assessing officer. The Hon'ble Supreme Court observed that the courts have held that in the case of cash credit entries, it is necessary for the assessee to prove not only the identity of the creditors but also the capacity of the creditors to advance money, and establish the genuineness of those transaction. The initial onus of proof lies on the assessee. The decision in *Roshan Di Hatti v. CIT* (1977) 2 SCC 378/[1977] 107 ITR 938 (SC) was referred to wherein it was held that if the assessee fails to discharge the onus by producing cogent evidence and explanation the assessing officer would be justified in making the addition back into the income of the assessee.

23. The decision in *N.R. Portfolio (P.) Ltd.* (*supra*) was quoted with approval wherein it has been held that creditworthiness or genuineness of a transaction regarding share application money depends on whether two parties are related or known to each other, or mode by which parties approached each other, whether a transaction is entered into through written

documentation to protect investment or whether the investor was a angel investor, the quantum of money invested, the creditworthiness of the receipt, object and purposes for which payment/investment was made etc. The incorporation of a company and payment by banking channel etc. cannot in all cases tantamount to satisfactory discharge of onus. The principles which emerge were sums of money are credited as share capital/premium was summarised as follows:-

13.1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

13.2. The assessing officer is duty-bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

13.3. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack creditworthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by section 68 of the Act.

24. In *Pr. CIT v. Swati Bajaj* 2022 SCC Online Cal 1572/[2022] 139 taxmann.com 352/288 Taxman 403/446 ITR 56 (Cal.) this court considered as to in what manner the allegation against the assessee has to be proved. It was held that to prove the allegation against the assessee, it can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegation/charges made and levelled and when direct evidence is not available it is the duty of the court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that are reasonable/prudent man would apply to arrive at a conclusion. It was further held that the proximity of time and prior meeting of minds is also very important factor especially when the income tax department has pointed out the unnatural rise in prices of the scripts of very little known companies.

25. While on this issue it would be beneficial to take note of the decision in *Yadu Hari Dalmia v. CIT* [1980] 4 Taxman 525/126 ITR 48 (Delhi) wherein it was held that the whole catena of sections starting from section 68 have been introduced in the taxing enactment step by step in order to pluck loopholes and in order to plug certain situation beyond doubts even though there were judicial decisions covering some of the aspects. It was pointed out that even prior to the introduction of section 68 in the statute book, the courts have held that where any amounts were found credited in the books of the assessee in the previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered, in the opinion of the ITO, not satisfactory, the sum so credited would be charged to income tax as income of the assessee during

the relevant previous year. That section 68 was inserted in the Act only to provide statutory recognition to a principle which had been clearly adumbrated in judicial decisions. Section 68 thus only codified the law as it existed before 01.04.1962 and did not introduce any new principle or rule.”

Subsequently, the above decision was quoted with approval again by the Hon’ble Calcutta High Court in the case of *Balgopal Merchants Pvt. Ltd. Vs. Pr. CIT (2024) 162 taxmann.com 465 (Calcutta)*.

16. The principles that can be deduced from the above decisions are that mere production of incorporation details, PAN Numbers, etc. receipt of money through banking channel prove the Identity and creditworthiness of investors but not the genuineness of the transaction is not established by merely contending that transaction was done through banking channel or account payee instrument. The assessee company has to discharge the onus cast upon it by demonstrating as to how the two parties are known to each other, the manner and mode by which the parties approached each other, whether transaction was entered through written agreement to protect the investment, creditworthiness, objects and purpose for which the investment was made. In the present case, these facts and information are within the exclusive knowledge of the assessee company. The fact that the assessee company received huge share capital/share premium when the Rainbow Ventures Limited is a loss making company triggered the doubts in the mind of the AO as to the genuineness of the very transaction. Further, the AO gave a finding that it is nothing but unaccounted money of the assessee company. This allegation had not been proved to be wrong by the assessee company. In the circumstances, the order of the CIT(A) is bereft of factual discussion on the above aspects. Nor the assessee company filed any evidence or material in an attempt to discharge the onus cast upon it in terms of provisions of section 68 of the Act. Therefore, the finding of the

CIT(A) to the extent of deleting the addition on account of share capital/share premium from the above parties is reversed. In the absence of any material on record discharging the onus cast upon the assessee company in terms of provisions of section 68 of the Act, we are not inclined to remand the matter to the lower authorities. Accordingly, the assessment order is restored and the appeal filed by the Revenue stands allowed.

17. In the result, the appeal filed by the Revenue is allowed.

18. To sum up, the appeal filed by the Revenue is allowed and the cross objection filed by the assessee company is dismissed.

Order pronounced on this 05th day of August , 2024.

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 05th August, 2024.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.