

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 863/H/2019 Assessment Year: 2012-13		
Avatar Metals Pvt. Ltd., Hyderabad.  PAN - AAJCA 7530 R  (Appellant)	Vs.	Income-tax Officer, Ward - 1(2), Hyderabad.   (Respondent)
Assessee by:		Shri Mohd. Afzal
Revenue by:		Shri Rohit Mujumdar
Date of hearing:		11/08/2021
Date of pronouncement:		30/08/2021

**ORDER**

**PER L.P. SAHU, A.M.:**

This appeal filed by the assessee is directed against CIT(A) - 1, Hyderabad's order dated 25/03/2019 for AY 2012-13 involving proceedings u/s 143(3) rws 147 of the Income Tax Act, 1961 ; in short "the Act", on the following grounds of appeal:

*"1. The order of ld. CIT(A) is against the law, weight of evidence and probabilities of case.*

2. *The Id. CIT(A) erred in confirming an addition of Rs. 7,30,00,000/- made u/s 68 of the IT Act.*

3. *The Id. CIT(A) ought to have appreciated that the assessee allotted the shares to the said companies and also filed Form No. 2 with the Registrar of Companies.*

4. *The Id. CIT(A) ought to have appreciated that the assessee provided all the details of allotment of shares on receipt of money and the transactions have taken place through banking channels and therefore erred in confirming the addition of Rs. 7,30,00,000/-.*

5. *The Id. CIT(A) ought to have appreciated that the AO failed to provide the information received from DCIT, Central Circle - 3(2), Mumbai, therefore violated principles of natural justice and therefore, the addition of Rs. 7,30,00,000/- is not justified*

6. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary."*

2. Briefly the facts of the case are that the assessee filed his return of income for the AY 2012-13 on 29/09/2012 declaring NIL income. As per information received from DCIT, Mumbai, the assessee received accommodation entries to the tune of Rs. 7,30,00,000/-. The assessee claimed exempt income u/s 10(38) of the Act of Rs. 1,39,78,696/- which included Rs. 1,08,51,042/- towards long term capital gains on the sale of shares. To verify genuineness of the transaction, the AO reopened the case u/s 147 by issuing notice u/s 148 on 31/03/2017. Based on the information available, the AO completed the assessment

u/s 143(3) rws 147 on 31/12/2017 by making addition of Rs. 7,30,00,000/- towards unexplained cash credit u/s 68 and assessed the total income at Rs. 7,30,00,000/-.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the order of the AO. He relied on the judgement of the Hon'ble Supreme Court in the case of Pr. CIT Vs. NRA Iron and Steel Pvt. Ltd. vide judgment dated 05/03/2019.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

5. The ld. AR reiterated the submissions as made before the lower authorities and vehemently argued that authorities below were not justified in making addition u/s 68 of the Act. He submitted that the conditions laid down u/s 68 were fulfilled by the assessee that identity, genuineness of the transaction, and creditworthiness of the shareholders were proved, in spite of that, lower authorities made the addition. He further submitted that Form No. 2 was filed before the ROC and money was received through banking channels.

6. Ld. DR, on the other hand, relied on the orders of revenue authorities and submitted that assessee could not prove the conditions laid down u/s 68 of the Act and

received the sum from the bogus or non-existing companies and not assessed to tax. He relied on the judgment of the Hon'ble Supreme Court in the case of Pr. CIT Vs. NRA Iron and Steel Pvt. Ltd. vide judgment, [2019] 103 Taxmann.com 48 (SC) and submitted that the facts of the present case are squarely covered in the said case. He, therefore, concluded that the authorities are justified in making the addition. He has filed paper book containing pages 1 to 75, which is placed on record.

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. In the case of NRA Iron and Steel (P) Ltd. (supra), the Hon'ble Supreme Court has held as under:

*“8. We have heard the Ld. Counsel for the Revenue, and examined the material on record.*

*8.1. The issue which arises for determination is whether the Respondent / Assessee had discharged the primary onus to establish the genuineness of the transaction required under [Section 68](#) of the said Act.*

*[Section 68](#) of the I.T. Act (prior to the [Finance Act, 2012](#)) read as follows:*

*“68. Cash credits- Where any sum is found credited in the book 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 Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the Assessee of that previous year” (emphasis supplied) The use of the words “any sum found credited in the books” in Section 68 of the Act indicates that the section is widely worded, and includes investments made by the introduction of share capital or share premium.*

8.2. As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under [Section 68](#) of the Act.

The assessee is expected to establish to the satisfaction of the Assessing Officer<sup>2</sup> :

- Proof of Identity of the creditors; [CIT v. Precision Finance Pvt. Ltd.](#) (1994) 208 ITR 465 (Cal)
- Capacity of creditors to advance money; and
- Genuineness of transaction This Court in the land mark case of [Kale Khan Mohammad Hanif v. CIT<sup>3</sup>](#) and, [Roshan Di Hatti v. CIT<sup>4</sup>](#) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking [Section 68](#). If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.

8.3. With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge.

[1963] 50 ITR 1 (SC) [1977] 107 ITR (SC) The Delhi High Court in [CIT v. Oasis Hospitalities Pvt. Ltd.](#), held that :

“The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise.” It has been held that merely proving the identity of the investors does not discharge the onus of the assessee, if the capacity or credit-worthiness has not been established.

[In Shankar Ghosh v. ITO<sup>6</sup>](#), the assessee failed to prove the financial capacity of the person from whom he had allegedly taken the loan. The loan amount was rightly held to be the assessee's own undisclosed income. 8.4. Reliance was also placed on the decision of [CIT v. Kamdhenu Steel & Alloys Limited and Other<sup>7</sup>](#) wherein the Court that :333 ITR 119 (Delhi)(2011) [1985] 23 TTJ (Cal.) (2012) 206 Taxaman 254 (Delhi)

*“38. Even in that instant case, it is projected by the Revenue that the Directorate of Income Tax (Investigation) had purportedly found such a racket of floating bogus companies with sole purpose of lending entries. But, it is unfortunate that all this exercise if going in vain as few more steps which should have been taken by the Revenue in order to find out causal connection between the case deposited in the bank accounts of the applicant banks and the assessee were not taken. It is necessary to link the assessee with the source when that link is missing, it is difficult to fasten the assessee with such a liability.”*

*9. The Judgments cited hold that the Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.*

*In the present case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the share-holders were either non-existent, or lacked credit-worthiness.*

*10. On the issue of unexplained credit entries /share capital, we have examined the following judgments : i. [In Sumati Dayal v. CIT](#) this Court held that :*

*“if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory, there is prima facie evidence against the assessee, vis., the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably” ii. [In CIT v. P. Mohankala](#) this Court held that:*

*“A bare reading of section 68 of the Income-tax Act, 1961, suggests that (i) there has to be credit of amounts in the books maintained by the assessee ; (ii) such credit has to be a sum of money during the previous year ; and*

*(iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books or (b) the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. It is only then that the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The expression “the assessee offers no explanation” means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee.*

*[1995] 214 ITR 801 (SC) 291 ITR 278 The burden is on the assessee to take the plea that, even if the explanation is not acceptable, the material*

and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature.” (emphasis supplied) iii. The Delhi High Court in a recent judgment delivered in [PR.CIT -6, New Delhi v. NDR Promoters Pvt. Ltd.](#)<sup>10</sup> upheld the additions made by the Assessing Officer on account of introducing bogus share capital into the assessee company on the facts of the case. iv. 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 the transactions. The initial onus of proof lies on the assessee. This Court in [Roshan Di Hatti v. CIT](#)<sup>11</sup>, held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.

410 ITR 379 (1992) 2 SCC 378 v. The Guwahati High Court in *Nemi Chand Kothari v. CIT*<sup>12</sup> held that merely because a transaction takes place by cheque is not sufficient to discharge the burden. The assessee has to prove the identity of the creditors and genuineness of the transaction. : “It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has proved the identity of his creditors, the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors vis-a-vis the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself” (emphasis supplied) vi. In a recent judgment the Delhi High Court<sup>13</sup> held that the credit-worthiness or genuineness of a transaction regarding share application money depends on whether the two parties are related or known to each other, or mode by which parties approached each other, whether the transaction is entered into through [2003] 264 ITR 254 (Gau.) [CIT v. N.R. Portfolio \(P.\) Ltd.](#)[2014] 42 taxmann.com 339/222 Taxman 157 (Mag.) (Delhi) written documentation to protect investment, whether the investor was an angel investor, the quantum of money invested, credit-worthiness of the recipient, object and purpose 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. vii. Other cases where the issue of share application money received by an assessee was examined in the context of [Section 68](#) are [CIT v. Divine Leasing & Financing Ltd.](#)<sup>14</sup>, and [CIT v. Value Capital Service \(P.\) Ltd.](#)<sup>15</sup>

11. The principles which emerge where sums of money are credited as Share Capital/Premium are :

*i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness 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.*

*(2007) 158 Taxman 440 [2008]307 ITR 334 ii. The Assessing Officer is duty bound to investigate the credit-worthiness 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.*

*iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, 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.*

*12. In the present case, the A.O. had conducted detailed enquiry which revealed that :*

*i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee. For example:*

*a. The companies Hema Trading Co. Pvt. Ltd. and Eternity Multi Trade Pvt. Ltd. at Mumbai, were found to be non-existent at the address given, and the premises was owned by some other person. b. The companies at Kolkatta did not appear before the A.O., nor did they produce their bank statements to substantiate the source of the funds from which the alleged investments were made.*

*c. The two companies at Guwahati viz. Ispat Sheet Ltd. and Novelty Traders Ltd., were found to be non-existent at the address provided. The genuineness of the transaction was found to be completely doubtful.*

*ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90,00,000 to Rs. 95,00,000 in the Assessment Year 2009-10, for purchase of shares at such a high premium.*

*For example: Neha Cassetes Pvt. Ltd. - Kolkatta had disclosed a taxable income of Rs. 9,744/- for A.Y. 2009-10, but had purchased Shares worth Rs, 90,00,000 in the Assessee Company.*



*Similarly Warner Multimedia Ltd. – Kolkatta filed a NIL return, but had purchased Shares worth Rs. 95,00,000 in the Assessee Company – Respondent. Another example is of Ganga Builders Ltd. – Kolkatta which had filed a return for Rs. 5,850 but invested in shares to the tune of Rs. 90,00,000 in the Assessee Company – Respondent, etc. iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10/- per share.*

*iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.*

*v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under [Section 68](#) of the Act.*

*13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company – Assessee had filed all the primary evidence, the onus on the Assessee stood discharged. The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility. The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.*

*14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.*

*15. On the facts of the present case, clearly the Assessee Company*

*- Respondent failed to discharge the onus required under [Section 68](#) of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income.*

*16. The Appeal filed by the Appellant – Revenue is allowed. In the aforesaid facts and circumstances, and the law laid down above, the judgment of the High Court, the ITAT, and the CIT are hereby set-aside. The Order passed by the AO is restored. Pending applications, if any are disposed of. Ordered accordingly.”*

7.1 The above case of Hon’ble Supreme Court aptly applies to the case of the assessee in hand. Even before us also, the assessee failed to fulfill the conditions laid down u/s 68 of the Act by way of documentary evidence and we do not find any merit in the submissions made before us. Therefore, we do not find any infirmity in the order of the CIT(A), who followed the judgment of the Hon’ble Supreme Court quoted supra to confirm the order of the AO and accordingly, upholding the order of the CIT(A), we dismiss the grounds raised by the assessee on this issue.

8. In the result, appeal of the assessee is dismissed.

Pronounced in the open court on 30<sup>th</sup> August, 2021.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 30<sup>th</sup> August, 2021.

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*Copy to :*

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<i>4</i>	<i>Pr. CIT - 1, Hyderabad</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>