

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘B’, CHANDIGARH

BEFORE: SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI R.L. NEGI, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.917/Chd/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Namdhari Industrial Traders Pvt. Ltd., 515/5, Industrial Area-B, Ludhiana.	बनाम	The A. C.I.T., Circle V Ludjhiana.
स्थायी लेखा सं./PAN NO: AACCN2429B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri S.K. Mukhi, Adv.

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 18.03.2021

उदघोषणा की तारीख/Date of Pronouncement: 14.06.2021

**(Virtual Court)**

**आदेश/Order**

**Per R.L. Negi, Judicial Member:**

The captioned appeal has been preferred by the assessee against the order dated 17.06.2016 passed by the Learned Commissioner of Income Tax (Appeals)-2 [for short the CIT(A)], Ludhiana u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) for the assessment year 2012-13, whereby the Ld. CIT(A) has dismissed the appeal

filed by the assessee against the assessment order passed under section 143(3) of the Act.

2. Brief facts of the case emanating from the record and pleadings of the parties are that the assessee company engaged in the business of manufacturing of pre-structured engineering goods, filed its return of income for the assessment year under consideration declaring total income of Rs. 31,50,165/- Since the case was selected for scrutiny, AO issued notices u/s 143(2) and 1442(1) of the Act. In response thereof, the authorized representative of the assessee appeared before the AO from time to time and submitted the details along with the written submissions. Since it was noticed that the assessee company had received a substantial amount towards application money during the previous year, the AO asked the assessee to furnish complete details of subscribers/introducers including their Bank account statements, ITRs, share certificates and contract notes. In compliance thereof, the assessee submitted the details of the companies from whom the assessee company had received application money during the previous year. Since the AO was not satisfied with the details and explanation furnished by the assessee in respect of three companies namely, M/s. Simplex Trading Ltd., Zinnia Sales Private Limited and Daisy Suppliers Private

Ltd., from whom the assessee company had received Rs. 15,00,000/- each as share application money, AO made further enquiries and issues notice u/s 133(6) to M/s Simplex Trading and Agencies and sent letter u/s 131(1)(d) of the Act to the Kolkata Office to obtain information about the said companies to ascertain identity, genuineness and creditworthiness of the said companies. On the basis of the reports received in response to the said letter and further verification conducted in the light of the details furnished by the assessee, AO rejected the contention of the assessee and held the transactions sham and made addition of Rs. 45,00,000/- to the income of the assessee u/s 68 of the Act.

3. The assessee challenged the assessment order before the Ld. CIT(A) *inter alia* alleging that the action of the AO is arbitrary and bad in law. However, the Ld. CIT(A) after hearing the assessee dismissed the appeal and confirmed the addition made by the AO. The assessee is in appeal against the said findings of the Ld. CIT(A)

4. The assessee has challenged the impugned order passed by the Ld. CIT(A) on the following effective grounds: -

- “1. *That the impugned order of Ld. Commissioner of Income Tax (Appeals) is illegal, unjustified, erroneous, perverse and against the facts of the present case and judicial pronouncements.*

2. *That the Ld. CIT (A) is not justified in concurring with the finding of Id AO and thereby confirming the addition of Rs 15,00,000/- u/s 68 of the Income Tax Act, 1961 in respect of Share Application money received from M/S Simplex Trading and Agencies Ltd., which is illegal, unjustified, erroneous, perverse and against the facts of the present case and judicial pronouncements.*
3. *That the Ld. CIT (A) is not justified in concurring with the finding of Id AO and thereby confirming the addition of Rs 15,00,000/- u/s 68 of the Income Tax Act, 1961 in respect of Share Application money received from M/S Zinnia Sales P Ltd., which is illegal, unjustified, erroneous, perverse and against the facts of the present case and judicial pronouncements.*
4. *That the Ld. CIT (A) is not justified in concurring with the finding of Id AO and thereby confirming the addition of Rs 15,00,000/- u/s 68 of the Income Tax Act, 1961 in respect of Share Application money received from M/S Daisy Supplies P Ltd., which is illegal, unjustified, erroneous, perverse and against the facts of the present case and judicial pronouncements.*
5. *Without prejudice to above the confirmation of impugned addition by the CIT(A) is highly excessive and thus uncalled for.”*

5. Before us the Ld. Counsel for the assessee submitted that the Ld. CIT(A) has affirmed the action of the AO without considering the evidence adduced by the assessee to establish the identity and creditworthiness of the aforesaid three companies from whom the assessee had receive application money of Rs. 15,00,000/- each and evidence adduced to establish the genuineness of the transactions in question.

6. The Ld. Counsel submitted that M/s Simplex Trading & Agencies Ltd. is a listed company on Bombay Stock Exchange, Script Code of which is 504382. During the year relevant to the assessment year under consideration, the assessee company received a sum of Rs. 15,00,000/- from the said company towards share application money through RTGS. However, shares were not allotted during the assessment year. The assessee has furnished copy of certificate of incorporation, copy of memorandum of association articles of association, copy of 32<sup>nd</sup> Annual report 2012-13 of the said company, corporate information, copy of PAN card, ITR, Bank Statement and confirmation etc. in order to establish the identity of the said company. The Ld. Counsel invited our attention to the copy of ledger account of M/s Simplex Trading & Agencies Ltd., for the period from 01/04/2011 to 31/03/2012 wherein the said transactions have been reflected. Further the Ld. Counsel invited our attention to the copy of the statement of account of M/s Simplex Trading & Agencies Ltd. wherein the entries regarding investment of 15,00,000/- has been reflected.

7. Ld. Counsel further invited our attention to the P&L statement of the said company for the period ended on 31/03/2013 wherein the said company has shown its revenue from operations and other income amounting to Rs. 4,67,83,754/-. The turnover of the said company during the assessment year was Rs. 467 Lacs and Net worth 5726 Lacs.

8. Similarly, in respect of the amount received from Zinnia Sales Pvt. Ltd. The Ld. Counsel submitted that the assessee company received Rs

15,00,000/- on 06/04/2012 from the said company as share application money through three cheques. In this case also the shares were not allotted during the assessment year. The Assessee has furnished the copy of PAN, copy of Balance sheet, confirmation and source of funds, Income Tax jurisdiction, ROC status, Status as per Income Tax department, Name addresses and other details of directors, copy of statement of bank account, copy of ITR return for the assessment year 2011-12 and copy of share certificate to prove the identity and creditworthiness and the genuineness of the transaction.

9. Ld. Counsel further pointed out that the revenue from the operation of the said company during the assessment year 2012-13 was 206.08 Lacs and the net worth of the company was Rs. 1379.70 which comes to only 1.03% of the current assets of the company. The Ld. Counsel further submitted that the assessee has filed the confirmation issued by Zinnia Sales Pvt. Ltd. and also submitted the financial status of the said company along with balance sheet and return filed by the assessee. The Ld. Counsel accordingly contended that since the assessee has established identity and creditworthiness of the said company and genuineness of the transaction by submitting the aforesaid details and explanations, the Ld. CIT(A) has wrongly confirmed the action of the A.O. and confirmed the addition u/s 68 of the Act.

10. As regards the amount of Rs. 15,00,000/- received from M/s Daisy Suppliers Pvt. Ltd. the Ld. Counsel submitted that the said

amount was received on 10/04/2012 through three cheques towards share application money. In this case also shares were not allotted during the assessment year under consideration. The Assessee has furnished copy of PAN Card, ITR, bank statement and jurisdiction details of the said company. The Ld. Counsel further submitted that the net worth of the company during the assessment year under consideration was Rs. 1744.05 Lacs and the revenue from operation of the said company was Rs. 248.86 Lacs. The investment of the said company constitutes only 0.85% of the total current assets. The Ld. Counsel further submitted that since the assessee had furnished the documentary evidences to establish the identity and creditworthiness of the said companies and the genuineness of the transactions with the said company, the Ld. CIT(A) ought to have set aside the additions made by the AO.

11. The Ld. Counsel further placing reliance on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports (P) Ltd. (2008) 216 CTR(SC) 195 and CIT Vs. Steller Investment Ltd. (2001) 251 ITR 263(SC), judgment of Hon'ble Delhi High Court in the case of CIT Vs. Multiplex Trading & Industrial Co. Ltd. (2015) 128 DTR (Del) 217, submitted that the findings of the Ld. CIT(A) are contrary to the ratio of law laid down by the Hon'ble Supreme Court in the said cases. The Ld. Counsel further relied upon the decision of the Chandigarh Bench of the Tribunal in the case of ITO Malerkota and another vs. Ashok Kumar and another ITA No.999/Chd/2010, decision of third member Bench Agra in

the case of Umesh Electricals Vs. Assistant CIT (2011) 60 DTR (Agra)(TM)(Trib) 385 and other cases to substantiate his contention.

12. On the other hand, the Ld. DR vehemently supporting the order passed by the ld. CIT(A) and submitted that since the assessee has failed to furnish the requisite details as asked by the Assessing Officer and further failed to discharge the onus of proving the identity and credit worthiness of companies and genuineness of the transactions, the Ld. CIT(A) has rightly confirmed the action of the A.O. The assessee has also failed to produce the Directors of the said company.

13. The Ld. DR further submitted that since the Ld. CIT(A) has passed the said order by following the ratio laid down by Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC) and Sumati Dayal Vs. CIT 214 ITR 801 (SC) there is no infirmity in the order passed by the Ld. CIT(A). The Ld. DR further submitted that the Hon'ble P&H in the case of Smt. Shanta Devi Vs. CIT [1998] 171 ITR 532 (P&H) and the Hon'ble Delhi High Court in the case of CIT Vs. Oasis Hospitalities Pvt. Ltd. (2011) 333 ITR 119, have held that the initial onus is upon the assessee to establish the entity of the investor, their creditworthiness and genuineness of the transactions. Since the assessee has failed to discharge the primary onus in this case the Ld. CIT(A) has rightly confirmed the action of the A.O. Further the Ld. DR submitted that in the case of CIT Vs. N.P. Portfolio Ltd. in ITA No. 134/2012, the Hon'ble Delhi High Court has held that if on verification the

A.O. fails to contact the share applicant or the information becomes unverifiable the onus shifts back to the assessee and consequences may be an action under section 68 of the Act. On the basis of the aforesaid submissions and the case laws relied upon by the Ld. CIT(A), the Ld. CDR submitted that there is no infirmity in the impugned order to interfere with. Therefore, the appeal of the assessee may be dismissed.

14. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the authorities below and the cases relied upon by the parties during the course of arguments. The only grievance of the appellant/assessee is that the Ld. CIT(A) has affirmed the action of the AO without appreciating the documentary evidence on record. As pointed out by the Ld. Counsel, the assessee has furnished the details and explanations called for by the AO during assessment proceedings. The assessee has placed on record the copies of Annual return, Corporate Information/BSE, Intimation regarding shifting of office, PAN Card, Income Tax Jurisdiction details of the assessee, ROC status as per Income Tax Department, Name designation and addresses of the directors, Statement of bank account, Income Tax Return for the assessment year 2011-12, share certificate in respect of the three companies from whom the assessee company received share application money amounting to Rs. 15,00,000/-each. These documents are available in the paper book submitted by the assessee. The contention of the Ld. counsel is that since the assessee has furnished each and every detail of all the three companies, to prove

the identity credit worthiness of the companies and the genuineness of the transactions in question, the Ld. CIT(A) ought to have deleted the addition of Rs. 15,00,000/- made by the A.O. under section 68 of the Act.

15. Perusal of the copy of reply dated 12.05.2016 (available at pages marked as A to P of the Paper Book) filed by the assessee before the Ld. CIT(A) during the appellate proceedings, reveals that the assessee has furnished each and every detail in respect of all the three companies from whom the assessee company had received share application money amounting to Rs. 45,00,000/-, to prove the identity of the said companies and genuineness of the transactions. It further reveals that the assessee has also furnished the net worth, current assets, short term investments, revenue and the percentage of investment in assessee company of the total current assets of each of the companies. As per the detail furnished by the assessee, the investment made by Simplex Trading Agencies Ltd. comes 0.51% of its total current assets, investment of Daisy Suppliers Pvt. Ltd amounts to 0.85% and investment of Zinnia Sales constitutes 1.03% of the total current assets. The authorities below have not pointed out any cogent and convincing evidence to reject the facts and figures mentioned in the detail based on the financials of the said companies.

16. Under section 68 of the Act AO has jurisdiction to make addition where any sum is found credited in the bank account of the assessee

and the assessee offers no explanation about nature and source thereof or explanation offered by him is not in the opinion of the A.O. satisfactory.

17. In the present case, the assessee has furnished the Annual return, Corporate Information/BSE, Intimation regarding shifting of office, PAN Card, Income Tax Jurisdiction details of the assessee, ROC status as per Income Tax Department, Name designation and addresses of the directors, Statement of bank account, Income Tax Return for the assessment year 2015-16, share certificate etc. The details pertaining to M/s Simplex Trading and agencies are available at pages 1 to 40 of the First paper book submitted by the assessee. Similarly, the details pertaining to M/s Zinnia Sales Pvt Ltd. are available at pages 45 to 61 of the paper Book and the documents and details relating to M/s Daisy Suppliers Pvt Ltd. are available at Pages 62 to 77 of the paper book. The copy of order passed by AO u/s 143(3) for the AY 2015 in the case of M/s Simplex Trading and Agencies Limited, intimation /order u/s 143(1) of the Act for the AY 2017-18 in the case of M/S. Daisy Suppliers P. Ltd. and intimation /order u/s 143(1) of the Act for the AY 2017-18 in the case of M/s Zinnia Sales P Ltd. are available at pages at pages 1 to 5, 6 to 14 and 15 to 25 respectively in the paper book No. III submitted by the assessee. These documents not only establish the existence of these companies but also reveal businesses of the companies. The copy of confirmation of share application money by M/s Simplex Trading and Agencies is available at page 78 of paper book. No. 2 submitted by the

assessee. Copies of form of application for allotment of equity shares and Board resolution/minutes of board meeting of M/s Zenia Sales Pvt. Ltd. and M/s Dazy Suppliers Pvt. Ltd. are available at pages are available at pages 79 to 80 and 81-82 of the said paper book. The assessee company has also filed copy of assessment order passed u/s 143(3) of the Act for the assessment year 2013-14 wherein the shareholding of the said three investor companies in the subsequent years stand along with shareholding details as on 31.03.2016, which are available at pages 107 to 118 of the said paper book.

18. In the case of CIT vs. Lovely Exports Pvt Ltd. 2008 216 CTR 195 (SC), the Hon'ble Supreme Court has held that where the share application is received by the assessee company from alleged bogus shareholders whose name are given to the AO along with their PAN No etc., then the department is free to proceed to reopen assessment of the shareholders in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company.

19. In the case of CIT vs. Expo Global India Ltd. 2014 361 ITR 147 (Del) the commissioner of Income Tax Appeals held that the share application money or the source of the share application money has been satisfactorily explained on the basis of material including income tax returns balance sheets registrar of company's particulars and Bank account statement etc., furnished by the assessee, The Tribunal upheld

the findings of the Ld. CIT(A). In the further appeal, the Hon'ble Delhi High Court declined to interfere with the findings of the Tribunal.

20. In the case of Pr. CIT vs. Softline Creators(P) Ltd. 2017 81 Taxmann.com 269 (Delhi) 387 ITR 636 (Delhi) the Hon'ble Delhi High Court has held that where the assessee had provided permanent account Nos. Bank details and affidavits of directors of share applicant companies, addition u/s 68 of the Act is not justified merely because of failure of directors to physically present themselves before the AO.

21. The Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd. 2017 80 taxmann.com 272 (Bom.) has held that where the assessee company has established identity genuineness and capacity of the subscribers, the action of AO cannot make addition of the share application money to the income of the assessee. However, the AO can reopen the assessment of such shareholders and proceed in accordance with the law. It was further held that proviso to section 68 introduced by Finance Act 2012 w.e.f. 01.04.2013 would not have retrospective effect.

22. In the present case, the assessee has furnished each and every detail of the share applicant companies in response to the queries raised by the AO during the assessment proceedings and even during the appellate proceedings. In our considered view the assessee has *prima facie* discharged the onus of establishing identity and creditworthiness of the aforesaid three companies and further in establishing the

genuineness of the transaction. Since, the assessee has discharged the primary onus, we find merit in the contention of the Ld. Counsel that the Ld. CIT(A) has wrongly affirmed the action of the AO and conformed the addition made u/s 68 of the Act. Therefore, we are of the considered view that the impugned order is not in accordance with the ratio laid down by the Hon'ble Supreme Court and the Hon'ble High Courts discussed in the foregoing paras. So far as the cases relied upon by the department are concerned, the same are distinguishable on facts and the evidence on record. We therefore, set aside the impugned order passed by the Ld. CIT(A) and allow the appeal of the assessee. Accordingly, we direct the AO to delete the addition of Rs. 45,00,000/- made u/s 68 of the Act.

In the result, the appeal of the assessee is allowed.

Order pronounced on 14/06/2021.

**Sd/-**  
**(ANNAPURNA GUPTA)**  
लेखा सदस्य/ Accountant Member

**Sd/-**  
**(R.L. NEGI)**  
न्यायिक सदस्य/ Judicial  
Member

**Dated: 14/06/2021**

\*रती\*

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File