

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2 "SMC": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3361/Del/2018
(Assessment Year: 2014-15)

Himalayan Dairies Pvt. Ltd, Flat No. 10, C-1/2, Model Town, New Delhi PAN: AAACH0252J	Vs.	ITO, Ward-11(3), New Delhi
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Shri Jagdish Singh, Sr. DR
Date of Hearing	24/02/2019
Date of pronouncement	19/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT (A)-4, New Delhi dated 27/02/2018 for the Assessment Year 2014-15.
2. The assessee has raised the following grounds of appeal:-
 - “1. That on the facts and the circumstances of the case the additions made by the AO and non consideration of the facts and legal merits of the case as well as by the learned CIT appeals is bad both in the eyes of law and on facts of the case.
 2. That on the facts and circumstances of the case the learned AO and Cit (A) erred in law and on facts wherein AO arbitrarily made re additions of Rs.10,05,000/- for the income already declared in Profit and Loss account on account of sale of shares of Scholar steel pvt ltd and that too after accepting the opening stock out of which the same shares have been sold out.
 3. That on the facts and circumstances of the case the learned AO and Cit (A) erred in law and on facts wherein AO arbitrarily made re additions of Rs.9,45,000/- for the income already declared in Profit and Loss account on account of sale of shares of Ravel Metals pvt ltd and that too after accepting the opening stock out of which the same shares have been sold out.
 4. That on the fact and circumstances of the case the learned AO and CIT(A) erred in law and on facts wherein without rejecting of books of account he cannot dispute the sale and purchase transaction already booked in profit and loss account.

5. *That on the fact and circumstances of the case the learned AO and CIT (A) erred in law and on facts wherein ought to give adjustment of the items from the income already declared in profit and loss account before repeatedly adding the same u/s 68 which is just double taxation.*
6. *That on the fact and circumstances of the case the learned AO and CIT (A) erred in law and on facts wherein at one hand accepting the closing stock of immediate last year (opening stock of current year) but on other hand doubting the sale of same accepted stock.*
7. *That on the fact and circumstances of the case the learned AO and CIT (A) erred in law and on facts wherein the learned AO never afforded any opportunity to heard after making submission on dated 29.11.2016 and the order has been passed against the principle of natural justice without hearing opportunity to heard.*
8. *That on the fact and circumstances of the case the learned AO and CIT (A) erred in law and 3- facts wherein they did not found any defect in the confirmation filed by the parties with whom the transaction conducted.*
9. *That on the fact and circumstances of the case the learned AO and CIT (A) erred in law and on facts wherein the learned AO and Cit (A) both failed to confront or make enquiries with the counter parties whose confirmation were placed on record to avoid the opportunity to heard hence the order has been passed in haste without affording any opportunity to heard and in complete defiance of natural justice.*
10. *That the learned AO and CIT (A) both erred on law and facts wherein he himself is confused and travelling on conjectures and surmises which is apparent from the AO's assessment order finding "Either you were not having any shares of M/s Scholar steel pvt ltd and M/s Ravel Metals Pvt Ltd or the said shares were not having any value" which shows that the learned AO himself is travelling on doubts and surmises and ifs and buts wherein the law says there must be concrete findings and no adverse view can be taken merely on doubts. If the stand of the AO's that there is no intrinsic value of the shares then the law is very clear and covered by Hon"ble Delhi ITAT order in Income-tax Officer VS. M/s Diplomat Leasing & Finance ITA No. 5929(Del)/2010 no addition can be made.*
11. *That the learned AO and CIT(A) both erred in law wherein the learned AO is just travelling on surmises while false alleging without having proper knowledge of the process of share transfer by saying that when shares were lent out why the blank transfer deed was given. The learned AO ought to consider that any lending cannot be completed unless the goods lent out become useful for the borrower and the same cannot be utilized unless having power to transfer further without any demur from the lender.*
12. *That the learned AO and CIT(A) both erred in law and on facts wherein the learned AO at one hand is holding that the same shares have been already sold out in preceding years then he was duty bound to establish in which year such shares have been sold out before alleging*

that the same shares has not been sold out in current year. Only on the basis of doubts no additions can be sustained .

13. *That the learned AO and CIT (A) erred in law and on fact wherein they both failed to consider that any sum which is not merely a accounting credit but also declared as income 3nnot come into the purview of section 68 , in fact only those sums can be considered as come u/s 68 which has been credited in the books but not offered as income ,and in the present case the sum added by the learned AO in the garb of section 68 is not mere credit but a credit entry which has also been offered for taxation as income. Hence no double taxation is allowed under the law and addition deserves to be deleted.*
 14. *That without prejudice to the above mentioned grounds if the view of the learned AO is taken correct that the shares have been sold in the previous years but failed to prove on record that any sum has been received from so called sale then the present credit utmost be treated as realization of debts arised on account of sale of shares occurred in previous years. It is obligatory on the part of the AO to assess the sum of sale in such previous years and only then he can proceed to challenge the present realization shown in books of accounts.*
 15. *That as per ratio of the decided judgment of the jurisdictional Delhi High court in the case of ITO vs Jatin Investment Pvt Ltd ITA No.4325/del/2009 and in case of Cit vs Vishal Holding (2011)200 Taxman 186(Del) ,it was held that when the assessee purchased the shares in earlier years which were shown as investment in the books of accounts in the balances sheets then the assessee sold certain investment and accounted for the profit or loss the provisions of sections 68 can not applicable.*
 16. *That the learned AO himself admitted the existence of these alleged stock of shares in preceding years stock while completing the assessment u/s 143(3) without doubting the existence of such shares at in such preceding years , how can on contradictory view which he already taken at the time of concluding of assessment under scrutiny of preceding years now can change the already decided opinion.*
 17. *That the learned AO never disputed the existence or purchase of such shares then without substantiating the allegation with evidence to prove in which year such sale income has been booked he has no right to challenge the present income in the garb of section 68 .Section 68 is meant for the cash credit not shown as income and not for the sum which has already been disclosed as income.*
 18. *That CIT appeal grossly erred in law on facts wherein simply accepted whatever the assessee produced without examining the veracity of the averments pleaded before him, which makes the order bad in law for non application of mind. The same view has been held in The Hon'ble Supreme Court in the case of Tin Box Company Vs. CIT 249 ITR 216."*
3. The assessee has raised the following additional grounds of appeal:-
- "1. That the learned AO and the CIT (A) erred on facts and on law wherein invoking the provisions of section 68 in the present set of transactions

wherein no actual amount of money was ever received by the assessee while conducting the transaction during the year under assessment . Hon'ble Supreme Court has categorically held that mere book entry without actual receipt of money cannot be covered under the definition of section 68 of IT Act. Reliance is placed on the Hon'ble Supreme Court finding in the case of H.H. Sri Rama Verma vs CIT 1991 187 ITR 308 SC, 1991 Supp (1) SCC 209 wherein it has been held that " The use of the expression "any sums paid" contemplates payment of an amount of money. One of the dictionary meanings of the expression "sum" means any indefinite amount of money. The context in which the expression "sums paid by the assessee" has been used makes the legislative intent clear that it refers to the amount of money paid by the assessee as donation."

2. That on the facts and circumstances of the case that transaction of credit purchase by the debtor resulting in a payable could not be equated with a credit entry of a financial transaction involving receipt of money so there is no scope of applicability of Section 68 of the IT Act.

Reliance is placed on Decision of the Special Bench of this Tribunal in the case of Manoj Agarwal Vs DCIT reported as 113 ITD 377 wherein the Tribunal had explained the difference between the receipt of any sum for the purpose of Section 68 of the I T Act 1961 versus the liability to pay amount representing outstanding purchase consideration. The AO erred in equating amount due on account of purchase i.e. outstanding purchase price with sum credited i.e. receipt of money so as to invoke Section 68 of the Act The Assessing Officer failed to appreciate the difference between the two. There was no receipt or involvement of any sum or cash in the entire sequence of transaction hence the provisions of Section 68 was not applicable in the given set of facts.

3. That the Learned AO and CIT(A) erred on law and on facts that where the creditor's outstanding related to purchases and trading results were accepted and no corresponding disallowance on account of purchases/sales were made, the addition u/s 68 cannot be made.

Reliance is placed on The Hon'ble Delhi High Court in the case of CIT v. Ritu Anurag Agarwal under similar circumstances has held The operative part of Hon'ble High Court judgment is as per para 3 & 4 of the said order which reads as under:-

"This finding of Assessing Officer remained undisturbed before the CIT(A) as well as has been accepted by the ITAT. Proceeding on this basis, the ITAT observed :hat the sale, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer.

4. That the learned AO and CIT (A) erred in law and on facts that when there was no cash involved in the transaction of sale of shares, provisions of Section 68 of the said Act treating it as unexplained cash credit are not attracted.
5. That the learned AO and CIT(A) erred in law and on facts wherein he ought to point out any discrepancy in the confirmation filed by the party

i.e., Thirst Plantation Pvt ltd being a debtor who purchased the shares which created a mere notional book entry liability towards us but AO ignored to the vital fact alternatively that as per the version of the AO when the shares being sold to them were not in fact delivered to them then such debtor on coming to know the factum of non delivery will be within his legal rights to write off the amount payable to us and in such situation even no book entry credit will remain in existence .No prudent buyer will pay for the goods which are either defective or non received by him. Mere book entry cannot be subjected to section 68 without actual exchange of money in terms of cash in bank account.

6. *The learned AO and CIT (A) erred in law and on facts wherein the word 'any sum' employed in Section 68.cannot be extended to include any book entry, notional adjustment, payment in kind etc. This legal position is upheld by the Hon'ble ITAT in the matter of M/S Abhijeet Enterprise Ltd., ... vs Ito, Ward 2(2), Kolkata in ITA No.308/KOL/2017.*
7. *That the learned AO and CIT(A) erred in law wherein without prejudice to the contention and grounds raised herein above the AO as well as CIT(A) omitted the fact then when he is challenging that the debtor does not got the goods in such situation the debtor will not pay off the dues as shown due towards him and n given situation as per the books of accounts the assessee is entitled to claim the balance of this debtor as a trading loss u/s 28 of the act, because the learned AO nowhere challenged the books of accounts and the balance sheet and the balances reflected therein which is tern be available for set off against the alleged income from other sources u/s 68 of the Act."*
4. Brief facts of the case shows that assessee is a company who filed its return of income on 21/10/2014 declaring loss of ₹ 3582/-. The case of the assessee was selected under the scrutiny and the notice under section 142 (1) and 143 (2) was issued on 18/9/2015. During the course of assessment proceedings the learned assessing officer noted that assessee company has shown revenue from operations of ₹ 1 950000 beside interest income of ₹ 1 3934/-. It was noted that assessee has sold some shares of private limited companies to Thirst Plantation private limited. The assessee has sold 1 lakh shares of scholar steels private limited at the face value of ₹ 10 each at ₹ 10 each on 11/4/2013 amounting to ₹ 1 005000/- and 94500 shares of Raval Metals P Ltd on 11/4/2013 at the rate of ₹ 10 of ₹ 45000/-. Until 31st of March 2014 above, consideration was receivable. Further assessee has purchased 1500 shares of wisdom exports P Ltd for ₹ 753000 on 9/6/2015 and 1,18,000 shares of Canon alloys Ltd for Rs 1197000 on 27 /4/ 2016 against the sum receivable from Thirst Plantations Pvt Ltd , thus the outstanding of thirst Plantation's private limited of ₹ 1 950000/- as on 1/4/2014 got settled in 2015 – 16 and 2016 – 17. The AO investigated the

matter and it was found that assessee company was not holding any shares of scholar steel are private limited at the beginning of the year under consideration. As per the annual return filed by that company with registrar of Companies shareholding of the aforesaid company as on 28/9/2012 was found to be not with the assessee but with others. Therefore, AO found that assessee is not at all a shareholder in the above company. Thus, assessee did not have any assets existing with it in the form of shares of that company. Subsequently also AO noted that there has been no transfer/allotment of any share in the next annual general meeting held on 26/7/2016 of that company. Therefore, AO was clear that Assessee Company was not having any investment in the shares of scholar steals private limited and as such, there was no justification of receipt of sale consideration of shares of that company from Thirst plantations private limited. With respect to the sale of shares in case of Rawal metals private limited, he noted that the above company has been struck off. Therefore, when the company itself is not in existence, it was not clear how assessee was holding the investment in the above company, who bought it and the value of those shares, as they were not commanding any price. He therefore held that there is no justification of receipt of sale consideration of shares of M/s Rawal metals private limited from M/s Thirst plantations private limited. Therefore the AO issued notice under section 142 (1) on 15/11/2016 asking assessee about the justification of those shares sold. The assessee furnished reply on 29/11/2016 stating that 1 lakh shares of scholar steals private limited and Rawal metals private limited were lying in the stock in trade of the company since long ago. However, the above shares have been lent to thirst Plantation private limited in 2006 along with the blank transfer deeds as security deposit to fulfill certain business transaction at that time in 2006. However when said shares were not returned by the first plantations private limited for a long time and they expressed their inability to return those shares, which was not returned and in the circumstances it is not in knowledge of the above company how shares were got transferred. The assessee also submitted that they asked the thirst Plantation private limited to pay off their amount in lieu of 1 share which were given to them, it was further stated that assessee has shown

the above shares as sold by issuing the sale invoice and booked such sale proceeds in the taxable income in the profit and loss account/ Thus it was stated that the above sale proceeds had already been shown in the taxable income of the company. Therefore, it was submitted that as assessee has already shown sale of above shares as income, further addition to the income would be against the principles of accounting. The learned assessing officer rejected the contentions of the assessee. He held that explanation of the assessee has lent shares to thirst Plantation private limited in 2006 along with the blank transfer deed as security deposit business transaction is devoid of any merit. He accepted that there can be a lending of shares but handing it over with the blank transfer deed is not acceptable. He further held that there is no such documentary evidence furnished by the assessee and therefore the expression given by the assessee was merely a cooked up story. Therefore, he held that assessee has miserably failed to justify the sum credited in its books of accounts of ₹ 1 950000 on sale of shares receivable from M/s thirst Plantation private limited against which it has also received shares in the subsequent year. Therefore, he applied the provisions of section 68 of the income tax act and made an addition of ₹ 1 950000/- holding that assessee has failed to prove the identity, creditworthiness and the genuineness of the transaction by showing the sale of the shares. Accordingly total income of the assessee was assessed at ₹ 1 950000 by applying the provisions of section 115BBE of the income tax act by passing an order dated 30/11/2016 under section 143 (3) of the income tax act. The assessee preferred an appeal before the learned CIT – A unsuccessfully. Therefore, assessee is in appeal before us.

5. On the date of hearing, none appeared on behalf of the assessee. This appeal has already been fixed for hearing on six earlier occasions. On all these six occasions assessee requested for adjournment and it was granted. On 16/9/2011, the assessee requested for adjournment while filing an additional ground of appeal, these additional grounds have already been extracted by us earlier. They were nothing more than reiterating what has been raised in the original grounds of appeal. Therefore, neither adjournment application is received nor anybody appeared on behalf of the assessee. There is a paper book already filed by assessee on record. In view

of this, we proceed to decide the issue on merits of the case as per information available on record.

6. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that assessee did not have any shares in its possession. The entries of the sale of those shares to Thirst Plantations Private Limited is a bogus entry. He referred the order of the assessment and submitted that AO has categorically proved that assessee was neither a shareholder of these company nor existing any asset was available with the assessee. With respect to the applicability of the provisions of section 68 of the income tax act, he submitted that the sum is credited in the account of the assessee as sales consideration by debiting in the name of Thirst Plantations Private Limited. Therefore, section 68 is applied on share sale transaction as sum is credited on sale of shares. He further submitted that there is no double addition as claimed by the assessee because there is no profit in the profit and loss account. Even otherwise, the sale is bogus as nature of credit and source is not genuine. Therefore, the order of the assessing officer as well as the order of the learned CIT appeal did not have any infirmity.
7. We have carefully considered the rival contentions and perused the orders of the lower authorities. The learned CIT – A has dealt with the whole issue considering all aspects of that transaction decided giving his reasoned finding that why he confirmed the above addition. He has considered the transaction shown by the assessee of sale of shares of ₹ 1,950,000 – of two different companies to Thirst Plantations Private Limited. He further held that as the company has sold shares of the two companies to Thirst Plantations Private Limited does not show the genuineness and the creditworthiness of the whole transaction as well as the buyer company. He held that as the appellant company has stated that the shares of both the companies are held as stock in trade however, as per the financial of the appellant they were shown as an investment. Even merely showing the assets in the balance sheet in earlier years does not preclude AO in applying section 68 when non existing assets are allegedly sold and credit is generated in the books of assessee. He further held that the appellant company had transferred 1500 shares of Rawal Metals from ‘investment’ to

‘stock in trade’ without any reason whatsoever. He further held that no funds were received on transfer of shares of such company instead, the company in the following years received shares of other companies from the transferee companies. The appellant company is not reflected as shareholder by the companies whose shares are sold. The explanation of the appellant company is baseless and devoid of merits as it has not provided even a single document on record to substantiate the facts of lending of shares. He further held that the creditworthiness of Thirst Plantations Private Limited was never substantiated. He further held that merely because the assets have been shown in the balance sheet of the company, when they were liquidated, no addition can be made u/s 68 of the act is devoid of merit. He held that the assessee was not holding the shares of these companies but these are the fictitious entry in the books of the assessee. He held that onus was on the appellant to prove the genuineness of the transaction. Therefore, he confirmed the addition. Further, on our analysis of the transactions entered into by the assessee it clearly shows that assessee has shown shares of Rs 1005000 of Scholars Steels Private Limited on 11/4/2013 at the cost price. The shareholder list of that company does not show the name of the appellant as a shareholder but it shows the name of the family members of Khanna group as shareholder of that company. Nowhere the Thirst Plantation Limited is shown as shareholder. Therefore if the assessee has handed over the blank transfer forms to Thirst Plantation Pvt Ltd, its name would have entered the shareholder list of that company. That is also not shown. There is no information available on record that how assessee got into touch with the Scholars Steels Private Limited at the time of making the investment. Looking at the story made by the assessee of lending the shares of Scholars Steels Ltd to Thirst Plantations Private Limited is totally unbelievable. The reason for the same is that Scholar Steel Private Limited is a private limited company. Its shares if lent to somebody does not have any value. It is also not shown that even Thirst Plantation Limited is related to the promoters of Scholar Steels P Ltd. This is also so because even the assessee has sold the shares at the face value i.e. at the rate of ₹ 10 each. Further, no documentary evidences were produced. No explanation was also

forthcoming from the assessee that why blank transfer forms were handed over to Thirst plantations private limited. In view of this, the whole of the transaction shown by the assessee of the sale of shares is bogus. Namely in case of Travel Metal Ltd that company has been struck off by the registrar of companies. The assessee did not give any plausible explanation that why anybody would buy the shares of a company, which has already been struck off. This conclusively shows that the whole transaction entered into by the assessee is non-existent. The assessee has credited a sum of Rs 1,950,000/- in the books as sale of shares by debit to the account of Thirst plantations private limited. Therefore the provisions of section 68 of the income tax act are clearly applicable as sales consideration, sum is found credited in the books of accounts of the assessee. The assessee has subsequently received shares from that company of some other companies. In view of this, we do not find any infirmity in the order of the learned assessing officer in making addition under section 68 of the act. The more surprisingly the assessee being a company which does not have any stream of revenue is engaging in buying the shares of private limited company and selling the shares of private limited companies speaks volume about the nature of the activities carried on. Further, the additional arguments raised by the assessee in the additional grounds are also dealt with. In the first argument, assessee has submitted that mere book entry without actual receipt of money cannot be covered under the definition of section 68 of the income tax act. It is apparent that in the books of accounts of the assessee has credited Rs 1,950,000 as sales consideration. Thus sum is found credited in the books of assessee. From Thirst plantations private limited, the assessee has received the shares subsequently, therefore it is apparent that against the money receivable from Thirst plantations private limited, which is sale consideration credit in the books of account, the debit arises in the account of Thirst plantations private limited, which has been subsequently realized by further receipt of shares by the assessee. Therefore, there is actual transaction of receipt of money in the form of shares of other private limited companies. Provisions of section 68 of the income tax act would be applied on the sale consideration credited in the books of accounts and not on the debit arising in the account of Thirst plantations private limited. All judicial

precedents relied up on by the assessee are distinguishable on facts. In view of this we dismiss all the grounds of appeal raised by the assessee and confirmed the action of the learned assessing officer and the learned CIT – A with respect to the addition under section 68 of the income tax act of ₹ 1 950000/–.

8. In the result, appeal filed by the assessee is dismissed.
Order pronounced in the open court on 19/05/2020.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:19/02/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi