

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2127/Ahd/2016
(Assessment Year: 2012-13)

ITO Ward-3(1)(2), Ahmedabad	Vs.	M/s. Parsoli Motor Works Pvt. Ltd., B-7, 4 th Floor, Shalimar Complex, Mahalixmi Cross Road, Pladi, Ahmedabad-380007
[PAN No. AA ECP3634Q]		
(Appellant)	..	(Respondent)

Revenue by	:	Shri Mohd. Usman, CIT DR
Assessee by	:	Shri M. K. Patel, Advocate

Date of Hearing	23.11.2021
Date of Pronouncement	30.11.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 13.06.2016 passed by the Commissioner of Income Tax (Appeals)-9, Ahmedabad arising out of the order dated 27.03.2015 passed by the DCIT, Circle- 3(1)(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) whereby and wehreunder the addition to the tune of Rs. 4,10,00,000/- made by the Ld. AO under Section 68 of the Act for A.Y. 2012-13 has been deleted.

2. The assessee having different kind of business filed its return of income on 29.09.2012 declaring total income at Rs. 2,17,85,760/- and Book Profit at Rs. 2,01,34,241/- which was subsequently revised on 12.10.2012 declaring

total income at Rs. 1,95,80,210/- and Book Profit at Rs. 2,01,34,241/- which was proceeded under Section 143 of the Act followed by issuance of other procedural notices.

3. During the course of assessment proceeding upon verification of the details submitted by the assessee it was noticed that during the year under consideration the assessee has received Share Application Money amounting to Rs. 4,10,00,000/-. Such Share Application Money was received from one Shri Jayantilal M. Patel and Shri Jimmy J. Patel. The identity, creditworthiness of the creditors and the genuineness of the transactions were not found to have been established by the assessee and the said amount of Share Application Money of Rs. 4,10,00,000/- was added to the total income of the assessee by the Ld. AO which was, in turn, deleted by the First Appellate Authority. Hence, the instant appeal by the Revenue before us.

4. We have heard the respective parties, we have also perused the relevant materials available on record.

5. In fact, the appellant has received Share Application Money amounting to Rs. 2,15,00,000/- each from Shri Jayantilal M. Patel and Shri Jimmy J. Patel. During the course of assessment proceeding upon request made by the Ld. AO to furnish copies of Income Tax Return, bank statement of the parties for the period from 01.04.2011 to 31.03.2012 the assessee submitted several submissions dated 04.02.2015, 09.02.2015, 20.02.2015 & 24.02.2015.

6. It was the case of the assessee before the Ld. AO as it appears from the written submissions filed on 04.02.2015 before the Ld. AO by the assessee that out of the said amount of Rs. 4.10. crore Share Application Money received

from the previous year cheques for Rs. 40 lakhs in the account of Mr. Jimmy Patel and Rs. 1.55 crores in the account of Shri Jayantial Patel were received on 26.03.2012 and the same were held on hand till 31.03.2012 but ultimately were cancelled on 26.06.2012. So far as the creditworthiness of the above two persons are concerned it was submitted by the assessee that Mr. Jimmy Patel Group is in real estate business and the said family has one suitable plot of land near Makarba. Twin negotiations with M/s Patel family were going to construct on their land a proposed Showroom, office and workshop for the assessee as per the designed to be approved by BMW and secondly the said Patel family were potential joint venture partner in BMW business. The said family had, therefore, brought Share Application Money for proposed joint venture. However, since certain legal queries in regard to the clear title of the property cropped up the same was not found acceptable to the BMW Group and the negotiations between the parties failed.

7. The assessee provided the details of the name, address and PAN of both the family members having Share Application. It was also submitted by the assessee before the Ld. AO that since the negotiations for potential joint venture partnership and showroom etc. premises have been closed long back, the assessee does not get requisite co-operation from the said Patel Group and the ITR, relevant bank statement for A.Y. 2012-13 or the Share Application Money, confirmation, if required, may be directed to be furnished by the said parties directly. Such submission found to be not acceptable by the Ld. AO and addition was made. Before the First Appellate Authority as it appears from the order that the assessee claimed to have been filed the necessary details of proof of genuineness of the transaction, identity and creditworthiness of the creditors being the ledger of Share application money received from the

two persons, full name, complete address, PAN, A.O. of those two creditors, bank statement of Shri Jayantilal M. Patel and Shri Jimmy J Patel, reflecting Share Application Money to the extent of 2.15 crores, valuer's of report in respect of valuation of the property fo Shri Jayantiala M. Patel and Shri Jimmy J. Patel and the members of the family as on January, 2012, family profile of the creditors, contra confirmations duly signed by two creditors, ITRs of both the creditors, affidavit by one of the directors of the appellant company.

8. According to the Ld. CIT(A) the appellant thus given adequate information in order to proof the genuineness of the transaction as well as identity of the creditors. As far as, creditworthiness of the creditors is concerned appellant by submitting the bank statement as well as ITR of the creditors has discharged its onus sufficiently to proof the creditworthiness. The First Appellate Authority was of the view that the Ld. AO has not taken into consideration the various submissions made by the assessee and, thus, the impugned addition made by the Ld. AO under Section 68 of the Act is highly unjustified and, therefore, deleted.

However, we fail to appreciate as to how the Ld. CIT(A) could observe that the assessee has discharged its onus in regard to the genuineness of the transaction and the identity and creditworthiness of the creditors particularly when the Ld. AO pointed out the shortcomings in this regard while financing the assessment order. We find that the Ld. AO while making addition observed as follows:-

“3.2 All the submissions of the assessee is perused carefully. On perusal of the submission it is seen that the assessee has received Share Application Money amounting to Rs.2,05,00,000/- from Shri Jayantibhai M. Patel and Rs.2,05,00,000/- from Shri Jimmy Patel totaling to Rs.4,10,00,000/-. However, the contentions of the assessee are found not tenable for the following reasons:

i) *The basic requirement to discharge the onus of explaining the cash credit is to establish the identity and creditworthiness of the creditors and genuineness of the transactions.*

ii) *The onus to explain any cash credit in the books of accounts rests on the assessee. The onus can be discharged only if the identity and creditworthiness of the creditors as well as the genuineness of the transactions are established.*

ii) *To establish the identity of the applicants for the shares of the company the assessee failed to furnish copy of return of income of the for the AY 2012-13. Assessee miserably failed to provide any documentary evidences which establish the identities of the creditors.*

iii) *To establish the creditworthiness, the assessee failed to produce copies of Balance Sheet and Profit and loss accounts of the creditors for the AY 2012-13 (FY 2011-12). The argument of the assessee that it is not getting co-operation from the Patel Group is baseless and merely an afterthought. To justify the creditworthiness, the assessee vide submission dated 24.02.2015 furnished Certificate of Valuation from Shri Bakul N. Desai, Registered Valuer in respect of Immovable Properties held by Shri Jimmy Patel wherein the value of all the properties held is shown at Rs.247,15,59,000/-. The valuer has in the certificate categorically mentioned that :*

*"This certificate of valuation is issued for the specific purpose of assessing networth of Mr. Jimmy Patel as on today **depending the information provided by Mr. Jimmy Patel.**"*

The plain reading of the above line leads that the valuer has not actually valued the properties but has issued the certificate on the basis of information furnished by Mr. Jimmy Patel. Thus the certificate cannot be considered for justifying the creditworthiness of Mr. Jimmy Patel.

iv) *In respect of the argument of the assessee that there were certain legal hitches in clear title of the plot (few permissions were not forthcoming), and was not acceptable to BMW Group consequence to which the negotiations of joint venture failed is baseless as the assessee could not furnish any documentary evidences in support of its claim or any correspondences with BMW or as well as Jimmy Patel.*

v) *The assessee has relied upon decision of various courts in the difference cases. On perusal of the decisions, the facts of the cases are found quite different from the present case hence cannot be considered.*

vi) *Since, the first onus which rests on the assessee to explain the cash credit by establishing identity, creditworthiness and genuineness of the transaction was not discharged, the argument of the assessee is not tenable as no confirmation from Jimmy Patel as well as Jayantibhai B Patel have been filed. The assessee merely filed the copies of ledger accounts in its own books, signed by someone as no name of the signatory or stamp were mentioned thereon. Further, no PAN or Addresses of the creditors were also mentioned on this ledger accounts. It is quite strange that if a*

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person who signs the ledger account in the books of the assessee he should not have any hesitation to confirm the transactions regarding Share Application Money before the Income tax Authority, Further the assessee failed to produce the copies of share applications forms from the applicants.

vii) *In reply to query that why the proportionate interest u/s.36(l)(iii) should not be disallowed in respect of loan of Rs.68,61,507/- given to Shri Jimmy Patel, the assessee claims that the advance has been adjusted against the sale of BMW cars to him. However, on perusal of the ledger account of Shri Jimmy Patel in the books of the assessee it is noticed that the sum of Rs.68,61,507/- has come from the following parties:*

1.	<i>Janki Jaushil Patel</i>	<i>Rs.34,48,970/-</i>
2.	<i>Hirenbhai Dilipbhai Trivedi</i>	<i>Rs.14,12,537/-</i>
3.	<i>Zarak Yunus Sheikh</i>	<i><u>Rs.20,00,000 /-</u></i>
	<i>Total</i>	<i>Rs.68,61,507/-</i>

However, the assessee failed to explain that on what account these parties have given “Hawala” to Shri Jimmy Patel. The assessee also failed to produce the copies of bills for sale of BMW cars against which said advance has been claimed as adjusted.

From the above discussion, it is established that the argument of the assessee is not satisfactory as the transactions of receiving share application and afterward adjusting in the so called sale is nothing but a colorful device to hide capital receipt in the form of share application money by the assessee.

3.3 *In view of the above, the share Application Money of Rs.4,10,00,000/- stands unexplained cash credit in the books of the assessee and therefore added to the total income of the assessee as per provisions of section 68 of the Act. Penal proceedings under section 271(l)(c) of the Act are being initiated separately as the assessee inaccurate particulars of its income to the extent of Rs.4,10,00,000/-.*

(Addition of Rs.4,10,00,000/-)”

From the above it appears that in Paragraph (ii), (v) & (vi) the Ld. AO has clarified such shortcomings which ought to have been taken into consideration by the Ld. CIT(A). No rebuttal is being forthcoming on this aspect from the Ld. CIT(A). In the event the Ld. CIT(A) found that the assessee has discharged his onus in regard to the genuineness of the transaction and identity and creditworthiness of the creditors in spite of having negative narration by the Ld. AO, he ought to have asked for a remand report which has also not been carried out.

9. Further that, we find that reliance has been placed by the Ld. AR on the following judgments by the assessee in support of his case:

DCIT vs. Rohini Builders 256 ITR 360 (Guj.)

CIT vs. Gujarat Heavy Chemicals Ltd. 256ITR 795 (SC)

CIT vs. Lovely Exports Pvt. Ltd. 216 CTR 195 (SC)

CIT vs. Metachem Industries 160 ITR 245 (MP)

We have carefully considered the above judgments and we find that the ratio laid down in those matters are not applicable in view of the peculiar facts and circumstances of the case before us.

10. It further appears that the CIT(A) in his order specifically recorded that it was his considered belief that the appellant had given adequate information in order to prove the genuineness of the transaction as well identity of the creditors whereas the condition of the provision of Section 68 is this that when any sum is found credited in the books of the 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 AO satisfactory, the same so credited to be charged to Income Tax as the income of the assessee. Further that where the assessee is a company where the public are not substantially interested and the sum so credited consists of Share Application Money, share capital, share premium or any such amount by whatever name called, the explanation offered by such assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded in the books of the company also offers and explanation about the nature and source of such sum so credited which has been found to be satisfactory the addition under Section 68 is maintainable. Thus, the provision of 68 does not speak about mere belief of the Revenue in regard to the proof of

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the genuineness of the transaction as well as identity and creditworthiness of the creditors but must have a clear finding on this aspect. We find the main ingredients of the provision of Section 68 has not been satisfied and taking into consideration this particular aspect of the matter we find that the Ld. AO rightly added the impugned amount of Rs. 4.10 crores in the hands of the assessee. We, thus, find merit in the appeal preferred by Revenue and, thus, we quash the order passed by the Ld. CIT(A).

11. In the result, the appeal preferred by the Revenue is allowed.

This Order pronounced in Open Court on	30/11/2021
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 30 /11/2021
TANMAY, Sr. PS **TRUE COPY**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad