IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER

ITA NOs. 6699, 6700, 4424 & 4425/MUM/2019
(A.Y: 2010-11, 2015-16, 2014-15 & 2013-14)

Ridhi Petrochem Pvt. Ltd., 30, New Sadguru Industrial Estate Western Express Highway Goregaon (E), Mumbai - 400063 **PAN: AADCR0143B**	*v.*	DCIT – 13(3)(1) Room No. 229 Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Sunil Talati**
Department by	**:**	**Shri T. Sankar**
Date of Hearing	**:**	**30.03.2022**
Date of Pronouncement	**:**	**27.04.2022**

O R D E R

PER S. RIFAUR RAHMAN (AM)

1. All these appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 12.07.2019 for the A.Y. 2010-11 and 2015-16, and order dated 25.03.2019 for the A.Y. 2013-14 and 2014-15.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 6699/MUM/2019 for Assessment Year 2010-10 as lead appeal.

3. Brief facts of the case are, assessee has e-filed the Return of Income on 14.10.2910 declaring total income of ₹.NIL after claiming current year loss of ₹.6,88,70,152/-. The return was processed u/s. 143(1) of the Income-tax Act, 1961 (in short "Act") on 14.04.2011. Subsequently, the assessment was reopened based on the information received from ADIT (Investigation) and assessee has deposited an amount of ₹.6,80,00,520/- in this Financial Year 2009-10. Based on the above said information the Assessing Officer issued notice u/s. 148 of the Act and after recording reasons to believe and getting the proper approval from the sanctioning authorities. Assessee in response to the above notice requested the Assessing Officer to treat the original return of income filed in respect of to the notice u/s. 148 of the Act. Accordingly, notice u/s. 143(2) has been issued and served on the assessee. After verification Assessing Officer observed that assessee has taken unsecured loans during this year and failed to prove the identity, creditworthiness and genuineness of the creditors along with the other details relating to Paras Leasing Ltd., and Vishal Sheth, to the extent of ₹.24,87,91,23/-. In response assessee filed copy of confirmations, Income Tax Returns and audit accounts of both the parties. Assessing Officer observed that the loan creditors had declared less returned income compared to the loans given to the assessee. He made addition relating to only Vishal Sheth to the extent of ₹.59,82,220/-.

4. Further, he observed that assessee has claimed sales and business promotion expenses of ₹.1,06,779/- and travelling and conveyance expenses of ₹.12,99,687/- and total of above said expenditure are ₹.14,06,464/-. On verification of the details submitted by the assessee he observed that some of the expenses are not fully supported by the third party evidences and have been incurred by raising self-made vouchers and also made in cash. Not agreeing with the submissions made by the assessee he proceeded to make disallowance of 20% of the above said expenditure.

5. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) sustained the additions made by the Assessing Officer.

However, with regard to the adhoc disallowance of expenditure he reduced the expenditure by 10%.

6. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

> *"1. The Learned CIT Appeal has erred in confirming the addition of Rs. 59,82,220/- in respect of Unsecured Loan received without appreciating the facts of the case and details filed during the course of appellate proceedings. It is submitted that complete details with regard to identity, genuineness and creditworthiness of lender Mr. Vishal Sheth were filed. On the facts and circumstances of the case, the addition made of Rs 59,82,220/under Section 68 of the Act is incorrect and illegal both on facts and on law and the same be deleted.*
>
> *2. The Learned CIT Appeal has erred in confirming the disallowance of Rs 1,40,646/- out of administrative and selling expenses at lump sum 10%. It is submitted that such disallowance confirmed only on ad hoc basis at 10% is not valid and correct, as the assessee's accounts having audited and complete details having been filed. On the facts and circumstances of the case, the disallowance of administrative and selling expenses confirmed on ad-hoc basis of Rs 1,40,646/be deleted.*
>
> *3. The order passed by the learned Commissioner of Income-tax (Appeals) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*
>
> *4. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing of appeal"*

7. At the time of hearing, Ld. AR brought to our notice finding of the Assessing Officer and he brought to our notice Page Nos. 1 and 2 and 9 and 10 of the Paper Book to submit that assessee has filed all the confirmations and financial details before the Assessing Officer. Further, he submitted that this issue is already covered in assessee's own case for the A.Y. 2012-13 in ITA.No. 82/Mum/2017 dated 20.05.2020 and he brought to our notice the ratio of the order in Para No. 11. He submitted that even in this year assessee has submitted all the documents including balance sheet and provided source of source.

8. With regard to Ground No. 2 he submitted that Assessing Officer has made adhoc disallowance of 20% and Ld.CIT(A) has reduced the adhoc disallowance to 10%, he prayed that all the expenses were incurred for the purpose of business only and he prayed that the expenses may be allowed.

9. Further he submitted that similar issues were involved in other Assessment Years.

10. With regard to A.Y. 2013-14, it is submitted that assessee has taken loan from SE Investment Limited, Valukko Infrastructure Ltd and Akar Laminators limited and these parties are outsiders and assessee has filled loan agreement before the Assessing Officer in this regard. It is submitted that all the details were submitted before the lower authorities and the facts are similar to the A.Y. 2010-11 he prayed that addition may be deleted.

11. On the other hand, Ld.DR relied on the order passed by the lower authorities for the additions made u/s. 68 of the Act.

12. With regard to adhoc disallowance Ld.DR submitted that majority of the expenses claimed by the assessee are not verifiable and not verified and these vouchers are self-made. He prayed that addition may be sustained and Ld.CIT(A) has already given considerable relief to the assessee. With regard to other Assessment Years he submitted that the transaction involved in other assessment years are different. With regard to A.Y. 2014-15 he brought to our notice Page No. 11 of the Paper Book in which there is involvement of the cash deposits in the bank account, he prayed that this may be taken note off.

13. Considered the rival submissions and material placed on record, with regard to Ground No. 1 on receipt of unsecured loans we observed that the issue involved in this case is already covered in favour of the assessee and the Coordinate Bench has considered the submissions of both the parties and came to the conclusion in favour of the assessee.

Particularly with regard to the transaction of Visahl Sheth the relevant finding of the Coordinate Bench is reproduced below:-

> *"11. In this factual back ground, if you examine the case of the assessee, in light of provisions of section 68 of the I.T.Act, 1961, it is abundantly clear that the assesee has discharged its onus cast upon u/s 68 of the I.T.Act, 1961 to prove identity of the subscribers, their capacity and genuineness of transactions. Further, if you go through documents and evidences filed by the assessee, we find that in respect of each and every subscriber to the share capital, the assessee has filed the following documents and said documents has clerely proves the fact that the credits in the form of share capital from all parties has been stand explained. The relevant details and explanation filed by the assessee in respect of each share holder is as follows.*
>
> *(i) Valukko Industries Pvt. Ltd.*
>
> *.....*
>
> *(ii) Vishal Hasmukh Sheth Vishal Sheth is the son of Hasmukh Sheth who is Chairman and Managing Director of the appellant company. The copy of the balance sheet of Vishal Hasmukh Sheth shows the investment with the assessee company and his personal balance sheet is of Rs. 12.77 Cr. (page no.38). He also had paid the share application money from his current account running of Rs. 7 Cr. and has invested into Rs. 8 Lakhs (Page no. 40 and 42).*
>
> *(iii) Kashmiraben Ashwin Sheth*
>
> *.....*
>
> *(iv) Jyotikaben Hasmukh Sheth*
>
> *....*
>
> *(v) Lalit Polyester Pvt. Ltd.*
>
> *....*
>
> *(vi) Cat Cosmatic and Healthcare Pvt. Ltd.*
>
> *.....*

(vii) Valukko Infrastructure Pvt. Ltd.

....

(ix) Vision Agencies Pvt. Ltd.

....

(x) Sujataben R. Sheth

.....

12. From the above, it is abundantly clear that the assessee has explained with necessary evidences, the amount of share capital received from 14 parties, in order to prove the identity, genuineness of transactions and creditworthiness of the parties. We, further noted that the assessee has also, filed necessary details before the Ld. AO to prove the purpose of issue of fresh shares for the year under consideration. We, further noted that the assessee has also filed necessary evidences to prove price charged for issue of shares to the subscribers, and as per the details filed by the assesee, the intrinsic value of shares as on the date of issue of shares is at Rs.7,692/- per share, whereas, the shares has been issued at a premium of Rs.40 per share, which is much below the book value of shares of the company. We, further noted that the assesee has also filed copy of board resolution passed by the board of directors for issue of share capital along with Form-2 filed with registrar of companies, which contains the name and address of subscribers, their PAN number. The audited financial statements of shareholders categorically prove that each one of the shareholders are having sufficient source of income to prove capacity of the creditors. It is not a case of the Ld. AO that the share capital has been received from certain mysterious individuals or concerns. In fact, there is no dispute with regard to the fact that the share capital has been received from relatives of directors of Assesee Company and associated concerns of the assessee. It is also not in dispute that amount has been routed through proper banking channels. In fact, the assessee has filed necessary bank statements of subscribers to the share capital to prove that money has been paid through proper banking channels. Under these facts and circumstances, it is difficult to accept the findings of the Ld. AO that the assesee has failed to prove share capital received from '14' parties by filing necessary evidences to prove identity, genuineness of transactions and creditworthiness of the parties.

13. Coming back to case laws relied upon by the assessee. The ld. AR assessee has relied upon various case laws in support of its arguments. We find that Hon'ble Delhi High Court, in the case of CIT vs Goodview Trading Pvt.Ltd.(supra) had considered an identical issue and held that once, it is noticed that the subscriber to share capital possessed substantial means to investment in assessee company, no addition could be made u/s 68 of the I.T.Act, 1961. The Hon'ble Allahabad High Court in the case of CIT vs Jaydee Securities Finance Ltd.(2013) 350 ITR 220 held that where, the assessee has produced return of income, PAN and confirmation of shareholders, share application money would be treated as genuine. In the case of CIT vs K.C.Pipes (P).Ltd. 386 ITR 532, the Hon'ble Punjab & Haryana High court held that if, shareholders had acquired money illegally, and assessee could not be held liable. The ITAT Ahmedabad, in the case of Namision Powertech (P.) Ltd. vs ACIT(supra) had considered an identical issue and held that where, Ld. AO made additions to assessee company u/s 68 of the I.T.Act, 1961, in respect of share application money received from daughter of one of directors of assessee company, since bank account of share applicant showed sufficient amount to make investments and moreover amount had been received from her bank account, impugned additions was to be set aside. The Hon'ble Supreme Court, in the case of CIT vs Lovely Exports Pvt.Ltd. (216) CTR 195 had held that if, the share application money received by the assesee company from alleged bogus shareholders, whose names are given to the Ld. AO, then the department is free to proceed to reopen their individual assessments in accordance with law, but sums recived by the assessee cannot be regarded as undisclosed income of the assessee company. The Hon'ble Bombay High court, in the case of CIT vs Goa Sponge and Power Ltd, has considered an identical issue and by following the decision of Hon'ble Supreme Court, in the case of CIT vs Lovely Exports Pvt.Ltd. (supra) had held that once, the authorities have got all the details, including the name and address of the shareholders, their PAN number, so also the name of the bank from which the alleged investors received money, as share application money, then it cannot be termed as bogus. Hon'ble Bombay High court, in the case of CIT vs Gagandeep Infrastructure Ltd. 394 ITR 680 held that proviso inserted to section 68 of the I.T.Act, 1961 w.e.f. 01/04/2013 is considered to be perspective in nature and applicable from Asst. Year 2013-14 onwards and consequently, no additions could be made towards share premium u/s 68 of the I.T.Act, 1961, for not proving the identity, genuineness of transactions and creditworthiness of the parties prior to Asst. Year 2013-14. The sum *and substance of ratios laid down by various High courts and the Hon'ble Supreme Court is that once, the initial burden was discharged by the assessee by the filing necessary evidences to prove the identity of the creditors, then the department is free to go behind the creditors and reopen their assessment to deal with the issue in accordance with law, but sum so found credited cannot be treated as undisclosed income of the assessee u/s 68 of the I.T.Act, 1961.*

14. Coming back to the case laws relied upon by the Ld. AO. The Ld.AO has relied upon decision of Hon'ble Bombay High Court, in the case of Major Metals vs Union of India (supra). We find that the Hon'ble High court has given its findings on the basis of findings recorded by the settlement commission in its order that in order to scrutinize, the genuineness of transactions, it had directed the petitioner to produce relevant records such as minutes books, attendance registers of AGMs, dispatch registers, share certificates and authorization of proxy forms amongst other documentary material. The order of the Settlement commission indicates at least fourteen reasons on the basis of which, the commission formed its view in regard to the genuineness of the transactions. The assessee has also failed to justify issue of shares at a huge premium of Rs. 990 per share on a face value of Rs. 10/-, in light of its financial statements. Under those facts, the Hon'ble High court came to the conclusion that alleged share capital/share application money received from certain parties is non genuine transactions. Insofar as, the case laws relied upon by the Ld. DR, in the case of PCIT vs NRA Iron & Steel Pvt.Ltd, we find that the Hon'ble Supreme Court has recorded categorically findings, in light of facts brought out by the Ld. AO that none of the shareholders have sufficient source of income to establish capacity, as required to be proved u/s 68 of the I.T.Act, 1961. Further, in most of the cases, the assesee has not filed bank statement of the subscribers. Further, several investors companies were found to be non- existence, when the field enquiries conducted by the Ld. AO. Under those facts, the Hon'ble Supreme Court came to the conclusion that mere furnishing certain evidences, in response to 133(6) notices is not sufficient enough and what is to be seen is whether, the assesee has discharged its onus cast upon u/s 68 of the I.T.Act, 1961or not. In this case, on perusal of facts , it is abundantly clear that the subscriber to the share capital are closely related to the assesee company and the assessee has filed all possible evidences to prove identity, genuineness of transactions and creditworthiness of the parties. Therefore, we are of the considered *view that the case laws relied upon by the Ld. DR is not applicable to the facts of present case.*

15. In this view of the matter and considering facts and circumstances of this case and also, by following the ratios of case laws discussed hereinabove, we are of the considered view that the assesee has discharged its onus by filing enormous documents, in order to prove the identity, genuineness of transactions and creditworthiness of the parties. Therefore, the Ld. AO, as well as the Ld.CIT(A) were erred in confirmed additions made towards share capital u/s 68 of the I.T.Act, 1961. Hence, we direct the Ld. AO to delete additions made towards share capital u/s 68 of the I.T.Act, 1961."

14. Respectfully following the above said decision and we observe that Mr. Vishal Sheth is related person and assessee has taken unsecured loan. Therefore, the conditions specified u/s. 68 of the Act are already fulfilled. we are inclined to allow the ground raised by the assessee.

15. With regard to Ground No. 2 adhoc disallowance of 10% sustained by the Ld.CIT(A) we observed that the assessee has incurred several expenditures based on the self-made vouchers and cash payments. No doubt these expenditures are incurred for the purpose of business still they could not submit satisfactorily before the Assessing Officer. For the sake of justice, we are inclined to sustained 5% of the expenditure is reasonable to cover the above said discrepancies. Accordingly, ground raised by the assessee is partly allowed.

16. In the result, appeal filed by the assessee is partly allowed.

17. Coming to the appeals relating to A.Ys. 2013-14, 2014-15 and 2015-16, since facts in these cases are mutatis mutandis, therefore the decision taken in A.Y. 2010-11 is applicable to these Assessment Years also. Accordingly, these appeals are partly allowed except for the A.Y. 2014-15 in ITA.No. 4424/Mum/2019 wherein Ld.DR brought to our notice there is a involvement of cash deposits in the bank account filed by the assessee, therefore this assessment year alone is remitted back to the file of the Assessing Officer to verify the bank statements and if there is any cash deposits involved he may consider to make the addition u/s. 68 of the Act. Accordingly, appeal filed by the assessee is partly allowed.

18. In the nutshell, all appeals filed by the assessee are disposed of accordingly.

Order pronounced in the open court on 27.04.2022.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 27.04.2022
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum