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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>INCOME TAX APPEAL 27/2019</u>**

Date of decision: 16th January, 2019

ALFA BHOJ LIMITED ..... Appellant

Through: Mr. K. R. Manjani, Advocate.

versus

DY. COMMISSIONER OF INCOME TAX CENTRAL CIRLE -13 ..... Respondent

Through: Mr. Ashok K. Manchanda, SSC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

<u>SANJIV KHANNA, J.</u> (ORAL):

We have heard counsel for the appellant-assessee in this appeal under Section 260A of the Income Tax Act, 1961 ('Act' for short) which pertains to the Assessment Year 2002-03 and arises from the order of the Income Tax Appellate Tribunal (' Tribunal' for short) dated 31st August, 2018.

2. The appellant-assessee has challenged factual findings recorded by the Tribunal in affirming addition of Rs.5.27 crores on account of bogus share capital under Section 68 of the Income Tax Act, thereby affirming the order passed by the Assessing Officer and reversing the findings recorded by the Commissioner of Income Tax (Appeals).

3. The appellant-assessee was subjected to search and seizure operations under Section 132 of the Act on 10th November, 2004 and thereafter notice under Section 153A of the Act was issued. During the pendency of the said proceedings, the appellant-assessee also approached the Settlement Commission on disclosing the undisclosed income of Rs.17 lacs.

4. However, as the tax on the undisclosed income was not paid, settlement application was dismissed as not maintainable vide order dated 17th September, 2007.

5. The appellant-assessee does not dispute the issue on bogus share capital as per the details noticed by the assessing officer who held:-

> "8. While scrutinizing the seized documents and register of share applications, the Assessing Officer noticed that the following persons applied for shares of the company on different dates:

Name and address of the Applicants	No. of shares applied for	Total amount paid	Date of application	Date of allotment	Date of payment
K.R. Fincap Pvt. Ltd. 63 Shankar Market, New Delhi	30,000	3,00,000	28.02.2002	28.02.2002	28.02.2002
Bampal Securities Pvt. Ltd. 100, Cycle Market, Jhandewalan Exn. N. Delhi	70,000	7,00,000	28.02.2002	28.02.2002	28.02.2002

Punjab state Industrial, Udyog Bhawan, Chandigarh	2,50,000	25,00,000	28.02.2002	28.02.2002	28.02.2002
Royal Credit Pvt. Ltd. D-35A, First Floor, Rajouri Garden New Delhi	50,000	5,00,000	28.02.2002	28.02.2002	28.02.2002
Dinanath Luhaliwala Spinning Milss, A-261, Shastri Nagar, Delhi-110052	50,000	5,00,000	28.02.2002	28.02.2002	28.02.2002
Shatarchi Finance & Leasing. 196/1, Pck. D-12, Sector-7, Rohini, Delhi	2,00,000	20,00,000	28.02.2002	28.02.2002	28.02.2002
Shatarchi Finance & Leasing 196/1, 2,00,000Pck. D-12, Sectior-7, Rohini, Delhi	50,000	5,00,000	30.03.2002	30.03.2002	30.03.2002
Rabik Exports Ltd. RZ-41A, Mohan Nagar, Panka Road, New Delhi	1,00,000	10,00,000	28.02.2002	28.02.2002	28.02.2002
Changla Steels Pvt. Ltd. 10-3596, Regarpur Karol Bhag, New Delhi	2,00,000	20,00,000	28.02.2002	28.02.2002	28.02.2002
Bic Consultants	50,000	5,00,000	28.02.2002	28.02.2002	28.02.2002

Pvt. Ltd. 204,Delhi Chamber, Delhi Gate, New Delhi					
Sehgal Fluid Equipment RZ-41A, Mohan Nagar Pankha Road, New Delhi	1,00,000	10,00,000	30.03.2002	30.03.2002	30.03.2002
FNS Consultancy Pvt. Ltd. A-66, Tagore Garden, New Delhi	1,50,000	15,00,000	30.03.2002	30.03.2002	30.03.2002
Rajesh Kumar Gupta 127, Mohalla Kanjimal Dasna Gate (Ghaziabad)	30,000	3,00,000	30.03.2002	30.03.2002	30.03.2002
Maestro Marketing Adversiting Pvt. Ltd, A-4/181, Sec-17, Rohini Delhi-85	1,50,000	15,00,000	30.03.2002	30.03.2002	30.03.2002
Harish Bhashin T-1, Rajori Garden, New Delhi	1,50,000	15,00,000	10.12.2001	10.12.2001	10.12.2001
Harish Bhashin T-1, Rajori Garden, New Delhi	1,00,000	10,00,00	22.03.2002	22.03.2002	22.03.2002
Jyoti Bhasin T-1, Rajori Garden, New Delhi	1,00,000	10,00,00	10.12.2001	10.12.2001	10.12.2001

Jyoti Bhasin T-1, Rajori Garden, New Delhi	1,00,000	10,00,00	22.03.2002	22.03.2002	22.03.2002
Jyoti Bhasin T-1, Rajori Garden, New Delhi	20,000	2,00,000	30.03.2002	30.03.2002	30.03.2002
Connoiseur Management Services Pvt. Ltd. 34, Engineers Enclave, Pitampura, New Delhi	1,00,000	10,00,00	22.03.2002	22.03.2002	22.03.2002
Connoiseur Management Services Pvt. Ltd. 34, Engineers Enclave, Pitampura, New Delhi	1,00,000	10,00,00	28.02.2002	28.02.2002	28.02.2002
Tanita Leasing Finance Ltd. A-2/3, Lusa Tower 3rd floor, Azadpur New Delhi	70,000	7,00,000	10.12.2001	10.12.2001	10.12.2001
Tanita Leasing Finance Ltd. A-2/3, Lusa Tower 3rd floor, Azadpur New Delhi	1,30,000	13,00,000	28.02.2002	28.02.2002	28.02.2002
Ethnic Creatio Pvt. Ltd. A-32, Tagore Garden Ex., New Delhi	1,00,000	10,00,000	10.12.2001	10.12.2001	10.12.2001
Ethnic Creatio Pvt. Ltd. A-32,	50,000	5,00,000	28.02.2002	28.02.2002	28.02.2002

Tagore Garden Ex., New Delhi					
SGC Publishing Pvt. Ltd. 50/15, Ashok Nagar, New Delhi-18	1,50,000	15,00,00	10.12.2001	10.12.2001	10.12.2001
SGC Publishing Pvt. Ltd. 50/15, Ashok Nagar, New Delhi-18	50,000	5,00,000	30.03.2002	30.03.2002	30.03.2002
Polo Leasing & Finance Ltd. A-4/181, Rohini Sector-17, New Delhi	1.25.000	12,50,000	13.12.2001	13.12.2001	13.12.2001
Polo Leasing & Finance Ltd. A-4/181, Rohini Sector-17, New Delhi	1,00,000	10,00,000	28.02.2002	28.02.2002	28.02.2002
M.v. Marketing Pvt. Ltd. A-32, Tagore Garden(Ext) New Delhi	1,00,000	10,00,000	10.12.2001	10.12.2001	10.12.2001
M.v. Marketing Pvt. Ltd. A-32, Tagore Garden(Ext) New Delhi	20,000	2,00,000	28.02.2002	28.02.2002	28.02.2002
Shree Niwas Leasing & Finance Ltd. A-10,204 Sai Bhawan, Ranjeet Nagar, New	60,000	6,00,000	10.12.2001	10.12.2001	10.12.2001

Delhi					
Shree Niwas Leasing & Finance Ltd. A-10,204 Sai Bhawan, Ranjeet Nagar, New Delhi	50,000	5,00,000	28.02.2002	28.02.2002	28.02.2002
Laxman Indus Resources Ltd. 101, 3rd Floor, A Commercial Chambers	30,000	3,00,000	10.12.2001	10.12.2001	10.12.2001
Satwant Singh Sodhi & Sons Pvt. Ltd. A-66 Tagore Garden New Delhi	30,000	3,00,000	10.12.2001	10.12.2001	10.12.2001
Satwant Singh Sodhi & Sons Pvt. Ltd. A-66 Tagore Garden New Delhi	1,65,000	16,50,000	28.02.2002	28.02.2002	28.02.2002
Geeface Finance Ltd. 3rd Floor, 13/34, WEA Karol Bagh, New Delhi	1,00,000	10,00,000	10.12.2001	10.12.2001	10.12.2001
Geeface Finance Ltd. 3rd Floor, 13/34, WEA Karol BAgh, New Delhi	1,30,000	13,00,000	28.02.2002	28.02.2002	28.02.2002
Rahul Finlease Pvt. Ltd. A-2/23, Shakti Nagar	55,000	5,50,000	28.02.2002	28.02.2002	28.02.2002

Extn., New Delhi					
Suma Finance & Investment 1366/21,Nalwala, Karol Bagh, New Delhi	20,000	2,00,000	28.02.2002	28.02.2002	28.02.2002
Performance Trading and Investment Pvt. Ltd. A-261, Sashhtri Nagar, New Delhi	1,65,000	16,50,000	28.02.2002	28.02.2002	28.02.2002
Technocom Associates Pvt. Ltd. 205, Delhi Chambers, Delhi Gate New Delhi	1,65,000	16,50,000	28.02.2002	28.02.2002	28.02.2002
Transpan Financial Services Ltd. E-36, Jawahar Park, Laxmi Nagar, Delhi-92	1,00,000	10,00,000	28.02.2002	28.02.2002	28.02.2002
Jasdeep Financers Pvt. Ltd. 203, Mukund House Commercial Comples, Azadpur, New Delhi	1,50,000	15,00,000	28.02.2002	28.02.2002	28.02.2002
S.N. Electrical Pvt. Ltd. S-172, Co Cir. 29(4), New Delhi	50,000	15,00,000	28.02.2002	28.02.2002	28.02.2002
Titan Securities	2,00,000	20,00,000	28.02.2002	28.02.2002	28.02.2002

Ltd. A-2/3, Lusa Tower, Azadpur, New Delhi					
Tanuja Industries Credit A-2/3, Lusa Tower, 3rd Floor, Azadpur, Delhi	75,000	7,50,000	28.02.2002	28.02.2002	28.02.2002
Arun Finvest Pvt. Ltd. CA/16-D, Hari Nagar, New Delhi	2,00,000	20,00,000	28.02.2002	28.02.2002	28.02.2002
Fair N Saquare A-66, Tagore Garden Ex, New Delhi	2,00,000	20,00,000	28.02.2002	28.02.2002	28.02.2002
Surya Udyog 4832/24, Ansari Road, Daryaganj, New Delhi	2,00,000	20,00,000	28.02.2002	28.02.2002	28.02.2002
Zed Leasing & Finance 4A, Pusa Road, New Delhi	60,000	6,00,000	28.02.2002	28.02.2002	28.02.2002
Zed Leasing & Finance 4A, Pusa Road, New Delhi	1,00,000	10,00,000	30.03.2002	30.03.2002	30.03.2002

9. The Managing Director/partners of all such companies/firms were examined on oath and all of them accepted that they were name lenders on commission basis. The statements of all such directors/partners were confronted to the assessee company. However, the assessee company chose not to reply. Accordingly, share application money to the tune of Rs. 1.55 cores was treated

as bogus. In respect of remaining share applicants, the assessee could not furnish any detail within the parameters of the provisions of section 68 of the Act.

10. The assessee, in one of its replies, explained that the share application money was received by it in tranches, which was rotated again and again and, therefore, only peak of such credits should be added as undisclosed income of the assessee. The assessee explained the modus operandi by admitting that, to avail the loan from IDBI Bank, it inflated cost of land/building. It also inflated cost of plant and machinery. The explanation of the assessee did not find favour with the Assessing Officers who was of the firm belief that the entire share capital is bogus and benefit of peak credit cannot be allowed on the peculiar facts of the case. The Assessing Officer, accordingly, made addition of Rs. 5.72 crores on account of bogus share capital u/s 68 of the Act.

6. The contention of the appellant-assessee is that the amount received was rotated. It was submitted that addition of bogus share capital should be restricted to Rs.1.55 cores.

7. We do not find any reasons and ground to accept the said submission as it is accepted that the bogus share capital received on different days amounted to Rs. 5.72crores. The amount paid was not returned and refunded. This being the position, we are not inclined to accept the contention of the appellant-assessee that there was rotation of money and only bogus share capital of Rs.1.55 crore should have been added as undisclosed credit under Section 68 of the Act.

8. At this stage, learned counsel for the appellant-assessee states that Rs.62 lacs was added as undisclosed cash credit for Assessment Years 1999-2000 to 2002-03. It is stated that the appellant-assessee has filed an application under Section 254(2) of the Act before the Tribunal on the said aspect.

9. We would on the said aspect give liberty to the appellant-assessee to file an appeal after disposal and decision of the application under Section 254(2) of the Act. This would not bar the appellant from filing an appeal against the decision of the aforesaid miscellaneous applications.

10. Recording the aforesaid, we dismiss the present appeal on the first aspect. On the second aspect, the issue is left open to be decided if required and necessary. The appeal is dismissed without any order as to costs.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 16, 2019
MR