

\$~4

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

% *Decision delivered on: 23.12.2022*

+ **ITA 558/2022 & CM No.56299/2022**

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Zoheb Hossain, Sr. Standing  
Counsel with Mr Vipul Agrawal &  
Mr Parth Semwal, Advs.

versus

M/S. ENRICH AGRO FOOD PRODUCTS PVT. LTD... Respondent

Through: Mr Gaurav Jain, Ms Akshita Goyal &  
Mr Shubham Gupta, Advs.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MS JUSTICE TARA VITASTA GANJU**

[Physical Hearing/Hybrid Hearing (as per request)]

**RAJIV SHAKDHER, J. (ORAL):**

**CM No.56299/2022** *[Application filed on behalf of the appellant seeking  
condonation of delay of 44 days in re-filing the appeal]*

1. This is an application moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 44 days.

2. Mr Gaurav Jain, who appears on behalf of the respondent/assessee, says that he does not oppose the prayer made in the application.

3. The delay in re-filing the appeal is, accordingly, condoned.

4. The application is disposed of, in the aforesaid terms.

**ITA 558/2022**

5. This appeal is directed against order dated 29.04.2022 passed by the Income Tax Appellate Tribunal [in short, "the Tribunal"] concerning Assessment Year (AY) 2015-16.

6. In short, the issue which arises for consideration, even according to Mr Zoheb Hossain, senior standing counsel, who appears on behalf of the petitioner, is whether or not the Assessing Officer (AO) was right in making addition under Section 68 of the Income Tax Act, 1961 [in short, “the Act”], with regard to unexplained credits in the books of account. The unexplained credits in the books of account concerned infusion of share capital money and money by way of share premium in the respondent/assessee company.

7. The record shows that, both, the First Appellate Authority, i.e., Commissioner of Income Tax (Appeals) [in short, “CIT(A)”], as well as the Tribunal, have returned concurrent findings of fact, in the backdrop of the triple test forged by the courts with regard to such like additions i.e., creditworthiness, identity and genuineness of the investment made. According to these authorities the triple test stands satisfied in the instant case.

8. In this context, we may note the following findings of fact returned by the Tribunal, after a detailed hearing:

*“28. We have heard the rival arguments made by both sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has issued 263783 equity shares of Rs. 10/- each at a premium of Rs. 175/- per share to Mr. Taranpal Singh Kandhari totaling to Rs Rs 4,87,99,855/- including share premium of Rs 4,61,62,025/-. We find the A.O. invoking the provisions of Section 68 of the I.T. Act, 1961 made the addition of Rs 4,87,99,855/- on the ground that the assessee could not substantiate with evidence to his satisfaction regarding the creditworthiness of the investor. The premises for making this addition is the report of the Director of Income Tax (Investigation) according to which*

*the assessee has received unexplained credit in its books of account. We find the Ld. CIT (A) deleted the addition, the reasons of which was already been reproduced in the preceding paragraphs.*

*29. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. First of all the assessee in the instant case has received the share capital and share premium from one Mr. Taranpal Singh Kandhari, one of the shareholder and not a number of companies. We find the assessee during the course of assessment proceedings had filed the following documents to substantiate the identity and creditworthiness of the investor and genuineness of the transaction.*

- a) Form P AS-3 filed before ROC.*
- b) Confirmation from the investor.*
- c) Statements of bank account of the investor showing payments towards share application money.*
- d) Share Application form duly filled by the investor.*
- e) Copy of PAN card of the investor.*
- f) A copy of the acknowledgement of the Income tax return filed for AY2015-16 by the investor along with the statement of affairs for the year ended 31<sup>st</sup> March 2015.*

*29.1 We find the A.O. has not found anything adverse on these evidences. We find the assessee has given the source of Mr Taranpal Singh Kandhari according to which he has received unsecured loan of Rs 4,78,00,000/- from the following 08 parties apart from salary of Rs 24,00,000/-.*

| <i>S.No</i> | <i>Particulars</i>                              | <i>Amount<br/>(Rs.)</i> |
|-------------|-------------------------------------------------|-------------------------|
| <i>1.</i>   | <i>M/s SE Finvest Pvt. Ltd.</i>                 | <i>75,00,000</i>        |
| <i>2.</i>   | <i>M/s Glacier Tradex Pvt. Ltd.</i>             | <i>60,00,000</i>        |
| <i>3.</i>   | <i>M/s K.G. Finvest Ltd.</i>                    | <i>1,40,00,000</i>      |
| <i>4.</i>   | <i>M/s Glacier Communication Pvt. Ltd.</i>      | <i>10,00,000</i>        |
| <i>5.</i>   | <i>M/s Perigee Land &amp; Housing Pvt. Ltd.</i> | <i>25,00,000</i>        |

|    |                                                         |             |
|----|---------------------------------------------------------|-------------|
| 6. | <i>M/s Perigee Power &amp; Infrastructure Pvt. Ltd.</i> | 25,00,000   |
| 7. | <i>Sh. Sarajit Singh Chadha</i>                         | 50,00,000   |
| 8. | <i>M/s G.C. Bhalla &amp; Sons (HUF)</i>                 | 93,00,000   |
|    | <i>Total</i>                                            | 4,78,00,000 |

29.2 We find the assessee while explaining the capacity of loan creditors who had given unsecured loan of Rs 4,78,00,000/- to Mr. Taranpal Singh Kandhari had filed the following details:

- i) Extracts from MCA.
- ii) Confirmation from lenders.
- iii) Bank statements of lenders showing payment towards loan.
- iv) Copy of PAN Card of lenders.
- v) Copy of Acknowledgement of income" tax return filed for the AY 2015-16 by lenders along with the copy of Audited financial statements for the year ended 31- 03-2015.

29.3. A perusal of the details filed by the assessee in the paper book in respect of the above 08 parties who had extended unsecured loan of Rs 4,78,00,000/- shows that they have sufficient capacity to extend the loan to Mr. Taranpal Singh Kandhari who in turn had invested in the shares of the assessee company. There is no evidence on record to show that the funds of the assessee company have gone to these persons which in turn had come back to the assessee company.

29.4. Secondly, the A.O. has referred to the statements of Shri Pradeep Kumar Shastri and Shri Varindar Pal Singh Kandhari. However, these statements pertain to M/s Indogulf Infrastructure and Investment Pvt. Ltd. and M/s MSG Finance Pvt. Ltd., and these statements do not have any relevance to the case of the assessee. We, therefore, find merit in the submissions of the learned counsel for the Assessee that reference to these statements is infructuous.

29.5. Thirdly, one of the observations of the A.O. at para 4.10 of the assessment order is that the profit declared by the investor companies over the years is negligible and even

*the turnover declared by the investor companies is not very significant in most of the cases. However, the assessee company has received share capital and share premium only from one individual namely Shri Taranpal Singh Kandhari and, therefore, we find merit in the argument of the learned Counsel for the Assessee that this observation of the A.O. is infructuous. Even otherwise also the assessee company has filed sufficient details to not only prove the source but the source of the source. We, therefore, hold that addition could not have been made on this issue also.*

*29.6. So far as the allegation of the A.O. that the investor was not produced by the assessee group is concerned, the submission of the Learned Counsel for the Assessee that the A.O. never asked the assessee to produce any investor, could not be controverted by the Ld. D.R. The assessee filed the requisite details in response to summon under Section 131 of the I.T. Act, 1961 and the order nowhere speaks that the A.O. had asked the assessee to produce the investor.”*

9. The aforesaid findings of fact would show that in this case, there was one investor, i.e. Mr Taran Pal Singh Kandhari who had invested Rs.4,87,99,855/-.

9.1 This investment was made by way of purchase of equity stake in the respondent/assessee company.

9.2 The said investor, as per the findings of fact returned by the Tribunal, had purchased 2,63,783 equity shares of a face value of Rs.10/- each at a premium of Rs.175/- per share. The source of funds was the investor's salary, who is also a Director in the respondent / assessee company, amounting to Rs 24 lakhs, while the balance amount was secured by him *via* unsecured loans amounting to Rs 4,78,00,000/-.

10. The above extract from the Tribunal's order, i.e. paragraph 29.1, lists out the eight companies from which unsecured loans were received.

11. Clearly, the respondent/assessee had furnished the documents to establish that it was a genuine transaction where the companies which provided unsecured loans to the investor, i.e., source of source, were identified, insofar as the creditworthiness is concerned.

12. Insofar as the valuation of shares was concerned, the respondent/assessee had also produced the valuation report of the Chartered Accountant which indicated that as per the audited accounts of the respondent/assessee, its shares were worth Rs.185 per share inclusive of premium.

13. Having regard to the findings of fact, not only were creditworthiness, identity and genuineness established, but also the valuation stood established. Pertinently, nothing contrary to be valuation report produced by the respondent/assessee is available on record.

14. In view of these findings of fact, no substantial question of law arises for consideration in the matter.

15. Accordingly, appeal is dismissed.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**DECEMBER 23, 2022/r**

*Click here to check corrigendum, if any*