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

+ **ITA 486/2023**

AB MEDICOS PRIVATE LTD

.....Appellant

Through: Mr. Gagan Kumar and Mr.
Gagandeep, Advs.

versus

INCOME TAX OFFICER WARD 1(1) & ANR.

.....Respondent

Through: Mr. Debesh Panda, SSC with
Ms. Zehra Khan, Mr.
Vikramaditya Singh, JSCs, Mr.
Hardeep Mathur, Ms. Anaunita
Shankar & Mr. Ojaswa Pathak,
Mr. Sajal, Mr. Nitish Kant,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **12.08.2024**

1. The appellant impugns the order of the **Income Tax Appellate Tribunal**¹ dated 15 March 2023 and posits the following questions of law for our consideration:-

“I. Whether on the facts and circumstances of the case and under law, the order of the Income Tax Appellate Tribunal is not perverse, as the same has been passed without considering the facts on record, without taking a holistic view of the matter, without giving any independent findings?

II. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in sustaining the addition amounting to Rs. 2.20 crores pertaining to the share capital/share premium money received by the Appellant from M/s Technicare Biomed India Pvt. Ltd?

III. Whether on the facts and circumstances of the case, the Income

¹ Tribunal



Tax Appellate Tribunal is correct in law confirming the order of the CIT (A), without considering that the provisions of section 68 are not strictly applicable in the present case as the money has been merely routed through the Appellant Company and the said amount has been landed in the account of the ultimate beneficiary i.e. M/s Rockland Hospital Limited?

IV. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal has erred in law in not considering that the Appellant in the present case is not required to fulfill the onus casted upon it under the provision of section 68 for the reason that it is only a conduit/pass-through entry?

V. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in law in not considering that the addition has already been made in the hands of M/s Rockland Hospital Limited and making the said addition again in the present case shall tantamount to making double addition, which is unsustainable in law?"

2. The issue emanates from additions made under Section 68 of the **Income Tax Act, 1961**² and the receipt of INR 2.20 crores by the appellant from M/s. Technicare Biomed India Pvt. Ltd during the **Financial Year**³ 2014-15 and corresponding to **Assessment Year**⁴ 2015-16.

3. The Tribunal has found that, undisputedly, the aforesaid amount as received was reinvested by the appellant in the shares of **M/s. Rockland Hospitals Limited**⁵. It has, however, taken the view that it was the obligation of the appellant to establish that the investor company, namely M/s. Technicare Biomed India Pvt. Ltd was duly identified and had the capacity and creditworthiness of making those investments.

4. The Tribunal noted that the appellant had failed to place on record any material which may have established the capacity and

² Act

³ FY

⁴ AY

⁵ RHL



creditworthiness of M/s. Technicare Biomed India Pvt. Ltd. It also took into consideration that the entire amount received from M/s. Technicare Biomed India Pvt. Ltd was invested in RHL and the additions which came to be made in the hands of the latter. It ultimately went on to hold as follows:-

“8. In the present case, from the orders of the authorities below as well as from the paper book filed by the assessee before us, we are unable to see any document such as copies of PAN, return of income, balance sheet, confirmation, bank statements of investor company M/s Technicare Biomed India Pvt. Ltd. discharging the onus as per the requirement of section 68 of the Act. We also note that the assessee has successfully demonstrated that almost the entire amount received from M/s Technicare Biomed India Pvt. Ltd. was invested in Rockland Hospitals Ltd. and the AO made addition u/s 68 of the Act in the hands of M/s Rockland Hospitals Ltd. on account of two investments including the investment made by the assessee. These documents only establish the use of amount received by the assessee, but, these facts are not capable to discharge the onus lay on the shoulders of the assessee in this regard under provisions of section 68 of the Act. The theory of conduit company is not acceptable as, for being a conduit company, the assessee is duty bound to establish that the company from whom it received the amount and the company in which it invested the same amount were of the same group and it was merely an intermediary or conduit company. In the present case the assessee has miserably failed to substantiate the identity, capacity and credit worthiness of the investor M/s Technicare Biomed India Pvt. Ltd. as well as the genuineness of the transaction. Except name, no details of PAN No., address, bank statement, ledger, confirmation and supporting copies of financial statements of investor M/s Technicare Biomed Pvt. Ltd. have been filed by the assessee. At the cost of repetition, we may also point out that the assessee has shown that the amount invested by the assessee company in Rockland Hospitals Ltd. has been added in the hands of recipient M/s Rockland Hospitals Ltd. u/s 68 of the Act, but, ultimate factual position of that addition is missing. Therefore, the benefit of the order of the ITAT in the case of Sukumar Enterprises Limited (supra) and other orders pertaining to AY 2014-15 is not available to the assessee in the present case as, in that case, it was established that the recipient and ultimate beneficiary company has paid taxes, etc., on the impugned amount. Therefore, we are unable to agree with the contentions of the Id. Counsel of the assessee in this regard and hence, are unable to see any valid reason to interfere with the orders of the authorities below. Consequently, the



grounds of the assessee being devoid of merits are dismissed.”

5. As is manifest from the above, the Tribunal has undoubtedly found that the entire amount invested by the appellant in RHL had been added in the hands of the latter under Section 68 and subjected to tax. This is also manifest from the Tribunal, clearly observing that the recipient and ultimate beneficiary company had paid taxes on the stated amount.

6. In view of the aforesaid, and in our considered opinion, it would be the principles enunciated by us in **Pr. Commissioner of Income Tax (Central)-2 Vs. Heritage Beverages Pvt. Ltd.**⁶ which would apply.

7. While dealing with an identical question and of whether additions under Section 68 could be doubly made, we had in *Heritage Beverages Pvt. Ltd.* held as follows:-

“3. The aforesaid issue arose in the context of the Tribunal while dealing with the additions under Section 68 of the **Income Tax Act, 1961**⁶, having observed as follows:-

“7. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Undisputedly, the dispute in the aforesaid three assessment years relates to addition of investments made on account of share capital and share premium by two entities with the assessee company. On a careful reading of the assessment orders, it is very much clear that the sole basis for the additions made u/s. 68 of the Act at the hands of the assessee company is the statement recorded from one, Mr. Praveen Kumar Shastri, stated to be the director of Kandhari group of companies. On a perusal of the observations made by the Assessing Officer in the assessment order, it can be seen that in the statement recorded, the concerned person has stated that the share capital and share premium received by M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd., and in turn, invested with assessee company, were nothing but these two entities income

⁶ ITA 1/2024



from undisclosed sources, which are introduced in the names of other entities. He has also stated that the concerned person admitted to offer certain amount of income at the hands of M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd. Aforesaid facts recorded by the Assessing Officer clearly demonstrate that, at best, the share capital and share premium invested in assessee company were unexplained income of M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd.. However, as far as the Assessee is concerned, the source of investment stands explained, as the investment has come from M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd., even, assuming that such investments were out of unexplained income of these two entities. On a reading of the order of Id. Commissioner (Appeals), it is observed that in course of assessment proceedings, the assessee had furnished various documentary evidences, as enumerated in para 5.2 of Id. Commissioner (Appeals)'s order for the assessment year 2011-12, to prove the genuineness of the transactions. However, the Assessing Officer has not brought any material on record to controvert the claim of assessee or falsify the evidences furnished before him. As rightly observed by Id. Commissioner (Appeals), without factually examining the evidences furnished by the Assessee through proper enquiry, the Assessing Officer has placed much reliance on the appraisal report and judicial precedents. Reading of the assessment orders reveal, the Assessing Officer has not referred to any incriminating material found as a result of search and seizure operation conducted in case of the Assessee, which could have even remotely linked to the additions made. In this regard, following observations of Id. Commissioner would be of much relevance :

“5.6 Respectfully following the above judgment, which is on identical factual matrix, it can be reasonably inferred that since, no material was found during the search in respect of the equity share capital, it cannot lead to the conclusions drawn by the AO. No specific corroborative evidence has been brought on record by Assessing Officer to prove that the equity subscription is an accommodation entry. Besides, appellant has also discharged its onus and submitted all the documentary evidence in respect of the investment. The details submitted in this



*regard by the appellant have also been made part of order by Assessing officer. It is also undisputed fact that the director of the appellant companies have never made any statement regarding the share capital / share premium / share application money and no disclosure have been made with regard to share capital / share premium / share application money / unsecured loan. As such, the addition made by the Assessing officer is unsustainable on the various legal grounds and on facts of the case. The addition made in the case of the appellant is deleted. Therefore, **ground no. 3 is allowed.***

However, it has been pointed out to us that the unexplained money which formed the corpus of the share application already stood taxed in the hands of M/s Indogulf Infrastructure Investment Pvt. Ltd. and M/s MSG Finance India Pvt. Ltd. This becomes evident from a reading of paragraph 4.5 of the assessment order dated 29 December 2016, which is extracted hereinbelow:-

*“4.5 During the course of search action conducted at the office premises of Sh. Varinder Pal Singh Kandhari at Plot no. 237-238, Udyog Vihar, Gurgaon on 28/03/2015, the above facts are confronted to Mr. Pradeep Kumar Shastri, Director in Kandhari group companies, who had admitted that a part of share premium received by M/s Indogulf Infrastructure Investment Pvt. Ltd and M/s MSG Finance India Pvt Ltd which was further given to M/s Heritage Beverages Pvt. Ltd and M/s Versatile Polytech Pvt. Ltd was nothing but its own unexplained income from undisclosed sources of these two companies introduced in the names of other entities. Therefore, **he admitted to offer for taxation a sum of 8,63,36,000/- in the hands of M/s Indogulf Infrastructure Investment Pvt. Ltd for the F.Y. 2008-09 and further sum of Rs. 3,50,00,000/- in the hands of M/s MSG Finance Pvt. Ltd for the F.Y. 2010-11, aggregating to Rs. 12,13,36,000/-.***

The relevant portion of statement of Sh. Pradeep Kumar Shastri recorded u/s 132(4) of I.T. Act on 29.03.2015 at Plot No. 237-238, Udyog Vihar, Gurgaon is reproduced as under:-

Q.3 In your statement on 28/03/2015, you have stated that you are the director in M/s Indogulf Infrastructure & Investment Pvt. Ltd and M/s MSG Finance Pvt. ltd. However, you are not aware of the activities/affairs of these companies which are registered at your residential address.



You also stated that you are the director in these two companies as desired by your employer i.e. Sh. Varinder Pal Singh Kandhari who is also promoter/director of M/s Heritage Beverages Pvt. Ltd and M/s Versatile Polytech Pvt. Ltd. Do you abide by the statement? Are these companies floated by/being also the interested party of Kandhari.

Ans. Yes, I accept and abide by statement as mentioned above. M/s Indogulf Infrastructure Investment Pvt. Ltd and Ms MSG Finance India Pvt. Ltd were floated by Sh. Varinder Pal Singh Kandhari. He is the main who is in control of these companies. He is main interested party in these two companies. I am also the interested party in these two companies to some extent.

Q.4 The two companies mentioned in question no. 3 have invested in M/s Heritage Beverages Pvt. Ltd and M/s Versatile Polytech Pvt. Ltd. Please explain the source of invested amount with these companies lay M/s Indogulf Infrastructure Investment Pvt. Ltd and M/s MSG Finance India Pvt. Ltd?

Ans. I have gone through the income tax returns and accounts of these two companies of last seven years along with Sh. Varinder Pal Singh Kandhari and I accept that, a part of share premium received by M/s Indogulf Infrastructure Investment Pvt. Ltd and M/s MSG Finance India Pvt. Ltd is own unexplained income from undisclosed sources of these two companies introduced in the names of other entities. After considering all the affairs and account of these two companies with due diligence. I accept and come in open with clean hands before the Income Tax Department that share premium of Rs.8,63,36,000/- introduced in the books of accounts of M/s Indogulf Infrastructure Investment Pvt. Ltd in F.Y. 2008-09 and share premium of Rs. 3,50,00,000/- introduced by M/s MSG Finance India Pvt. Ltd in F.Y. 2010-11 cannot be explained. I am unable to explain the source of above mentioned two amounts totalling to Rs. 12,13,36,000/- (8,63,36,000+3,50,00,000) in words Rs. Twelve crore thirteen lakh and thirty six thousand only. To buy peace of mind and avoid litigation I hereby offer a sum of Rs. 8,63,36,000 in the hands of M/s Indogulf Infrastructure Investment Pvt. Ltd in F.Y. 2008-09 and a sum of Rs. 3,50,00,000/- in the hands of M/s MSG Finance India Pvt. Ltd in the F.Y. 2010-11 as additional income over and above the income already declared in the ITRs of the respective aforesaid companies. I will pay the due tax on



these amount along with the due interest as per I.T. Act, 1961 as early as possible. I am offering this income with request that penalty under the income tax act may not be initiated, I am submitting balance sheet set of above said two companies.”

4. We note that an identical question arose for consideration in **Principal Commissioner of Income Tax-Central-I v. Surya Agrotech Infrastructure Limited**⁷ and where the following questions had arisen for the consideration of the Court:-

“10. The appeals are admitted on the following question of law, which arises for consideration:

“Once the flagship company of the group of companies had paid tax on its unaccounted income by way of proceedings conducted before the Settlement Commission, as accepted by the revenue, whether the same money when used in the form of share capital in the respondents/assessee's companies can again be subjected to tax in the hands of the respondents/ assessee's?”

5. Upon due consideration of precedents rendered on the subject, the Court ultimately had held as follows:-

“14. We have examined the judicial precedents cited on behalf of the appellant/revenue and it is found that the same are of no help to the appellant/revenue as the same stand on distinguishable footing. Unlike the present case, circumstances in the judicial precedents (*except in one case*) cited on behalf of appellant/revenue did not pertain to the issue of double taxation possibility.

15. The judicial precedent in the case *Dharamdas Agarwal* (supra) cited by learned counsel for appellant/revenue supports the case set up by the respondents/assessee's. In the said case, placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Anantharam Veerasinghaiah & Co. v.s CIT*, (1980) 3 SCR 618, it was held that when cash credits were treated as income from undisclosed sources, the assessee can take an alternative contention before the Appellate Assistant Commissioner that the cash credits were out of the undisclosed income taxed in earlier years.

16. In the case of *Laxmipat Singhania v. Commissioner of Income Tax, UP*, AIR 1969 SC 501, the Hon'ble Supreme Court reiterated the fundamental principle of law of taxation



that unless otherwise expressly provided, income cannot be taxed twice; and that it is not open to the Income Tax Officer, if income has accrued to the assessee and is liable to be included in the total income of a particular year, to ignore the accrual and thereafter to tax it as an income of another year on the basis of receipt.

17. In the case of *Commissioner of Income Tax IV v. Sarjan Realities Ltd.*, 2010 SCC OnLine Guj 8298 also it was held that when the assessee had already paid tax on the interest income in the earlier years, no fault could be found in the impugned order of the Tribunal in holding that the assessee was entitled to write off the excess income shown in the earlier years, inasmuch as the same income cannot be taxed twice, once in the earlier years and again in the year under consideration.

18. In the case of *CIT v. K. S. M Guruswamy Nadar and Sons*, (1984) 149 ITR 127, it was held that when there are two separate additions, one on account of suppression of profit and another on account of cash credit, it is open to the assessee to explain that the suppressed profits had been brought in as cash credits and one has to be telescoped into the other resulting in only one addition; and that the Tribunal was right in its view in telescoping the additions made towards the cash credits.

19. In the case of *M/s M.R. Shah Logistics Pvt Ltd v. DCIT*, (2018) SCC OnLine Guj 4850, the Gujarat High Court held that once a company disclosed the unaccounted cash amount in the Income Declaration Scheme, 2016 and paid tax thereon, upon utilization of the same towards investment in share capital of the assessee company through various companies, the same could not be again subjected to tax in the hands of the appellant assessee.

20. In the case of *B. Nanji Enterprise Ltd v. DCIT*, 2017(8) TMI 189 (Gujarat), the Gujarat High Court held thus:

“7. It is this judgment the assessee has challenged in the present appeal. From the material on record, it can be seen that the sum of Rs.74 lakhs was offered to tax by Bhikhubhai N. Padsala in his settlement application. Such application has been granted by the Settlement Commission by passing order of settlement. By very statutory scheme of provisions, acceptance of such income in the hands of Bhikhubhai N. Padsala would have to be preceded by payment to tax. We have therefore proceeded on the basis that the Settlement Commission accepted the



said sum as income of Bhikhubhai N. Padsala and the department has already received the tax and interest on such income. That being the position, it would not be possible for the department to tax the same income once again in the hands of the present assessee. This would be for multiple reasons. Firstly, there is nothing on record to suggest that before the Settlement Commission, the declaration of Bhikhubhai N. Padsala in this respect was opposed by the Revenue. Secondly, the Settlement Commission having accepted such settlement, with or without the opposition by the Revenue, finality of the conclusions of the Settlement Commission would attached in terms of section 245I of the Act. Thirdly, the department concedes that the order of Settlement Commission has not been challenged further. Under the circumstances, allowing the department's appeal, levying tax on the same amount from the assessee would be wholly impermissible. In fact, it also would be opposed to the observations of the Assessing Officer and those of the Tribunal that under no circumstances, the same income would be subjected to tax twice".

21. In the case of *Pr. CIT (Central) v. Krishan Kumar Modi*, 2022:DHC:676-DB, also a coordinate bench of this court reiterated that same money cannot be taxed twice.

22. In the cases of *Omaxe Limited v. DCIT*, 2014:DHC:1985-DB, a Division Bench of this Court and *Komal Kant Fakir Chand Sharma v. DCIT*, (2019) SCC OnLine Guj 696, a Division Bench of the Gujarat High Court held that once Settlement Commission had completed proceedings, its order is conclusive vide Section 245I and reopening any proceeding in respect of matters covered in the said order would be barred, except to the extent that the revenue can seek remedy under Section 245D(6) read with Section 245D(7) of the Act.

23. To recapitulate, in the present case, the material on record reflects that the Assessing Officer throughout the proceedings placed heavy reliance on the statement of Shri Shekhar Aggarwal to the effect that the undisclosed income of Priya Gold Group of Companies was routed in the form of share capital of the respondents/assessee companies by way of accommodation entries from Kolkata based entry provider companies and such share capital is liable to be taxed as income in the hands of the respondents/assessee companies. At the same time, it is also not in dispute that Surya Food & Agro Limited, the flagship company of the group has already offered the said undisclosed income to



the tune of Rs. 49,12,00,000/- to tax before the Settlement Commission, which income was enhanced by the Commission to Rs. 55,77,00,000/- and the final order of the Settlement Commission having not been challenged by either side has attained finality. It is also not in dispute that before the Settlement Commission the flagship company specifically declared that the undisclosed income which was offered before the Settlement Commission had been applied by way of share capital to the group entities, namely the present respondents/assesseees. Further, before the Settlement Commission, the flagship company also explicitly stated that there is no other undisclosed asset found or application of funds by the group, which statement remains unchallenged till this stage.

24. In view of aforesaid, the irresistible conclusion is that since the undisclosed income which is subject matter of the present dispute had already been taxed in the hands of the flagship company Surya Food & Agro Ltd., it cannot be again subjected to tax in the hands of the respondents/assessee companies in the form of application of the said income as their share capital. Accordingly, the question as framed above is answered against the appellant/revenue and in favour of the respondent/assessee.”

8. Following the aforesaid decision, we allow the instant appeal and answer the questions posited in favour of the appellant and quash the impugned order dated 15 March 2023 passed by the Tribunal.

9. We thus hold, that the additions made in its hand under Section 68 would not sustain.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 12, 2024/neha