

## No additions on ground that shares were issued at excess premium if creditworthiness of investors established

**Summary – The High Court of Madhya Pradesh in a recent case of Chain House International (P.) Ltd., (the Assessee) held that Once genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on ground that shares were issued at excess premium**

### Facts

- The search, seizure and survey operations under section 132/133A were conducted along with other concerns/group companies of the assessee-company at various residential and business premises. A notice under section 153A was issued to the assessee. In response to the said notice, the assessee filed its returns declaring its total income of Rs. 1.03 crores.
- During the course of search, it had been allegedly revealed that the assessee had received an unsecured loan of Rs. 30 crores from company 'BSPL' who shown to have got a bogus share application money and premium of Rs. 55 crores from 5 entry providing companies viz. Aadhaar Ventures (Rs.40.75 crores), Emporis Project (Rs.3 crores), Dhanus Technologies (Rs. 9.75 crores), L.N. Polyester (Rs.0.75 crores) and Yantra Natural Resources (Rs.0.75 crores) during the Financial Years 2011-12 and 2012-13 in the form of accommodation entires and the some share capital with exorbitant premium from the said 5 companies against payment of unaccounted cash which was *inter-alia* routed back as share capital and share premium during financial years 2011-12 & 2012-13. Further, it was allegedly found that BSPL had transferred the said receipts of Rs. 55 crores of bogus share capital and premium to the main Group companies *ie.*, Rs.30 crores during the financial year 2011-12 as unsecured loan which was transferred to the assessee company and again Rs. 8 crores during the financial year 2012-13 as unsecured loan were transferred to the assessee-company and further during financial year 2012-13 and Rs. 17 crore was transferred as unsecured loan to company RCCPL. During the investigation, it was allegedly found that commission at the rate of 5 per cent had been charged by the aforesaid 5 entry providers companies for providing accommodation entries, therefore, commission of Rs. 1.50 crores (5 per cent of Rs. 30 crores) for the financial year 2011-12 and Rs. 1.25 crores (5 per cent of Rs.25 crores) for financial year 2012-13 was added to the total income on the assessee company for infusion of accommodation entries as unexplained expenditure.
- The investigation wing issued notices under section 131(1A) to the investor companies and also to its Directors. The investigation wing, Delhi was having some information relating to statements of two persons, namely, Shah and Jajoo, who had stated that they were engaged through the web of various companies including the five companies who had contributed to the share capital of BSPL in providing accommodation entries to various entities.
- During the assessment proceedings, the Assessing Officer also issued notice under section 133(6) to all the investor companies and also their Directors separately all of them confirmed the investment made in the assessee-company and in support thereof furnished the relevant supporting documents

including the ledger account of BSPL in their books of account, copy of ITRs, bank statements and also explained their source of investments.

- While passing the assessment order under section 143(3), read with section 153C, the Assessing Officer did not agree with the evidences filed and treated the amount of Rs. 55 crore as income of the assessee company under section 68 on the basis of statement / evidence of various persons, which were recorded behind the back of the assessee-company.
- On appeal to the High Court:

#### **Held**

- The Tribunal after due examination of the order of Commissioner (Appeals) and the documents on record insofar as identity creditworthiness, genuineness of transaction of Aadhaar ventures, Dhanush Technologies, Emporis Projects and L.N. Industries (formerly known as L.N. Polyester) came to the conclusion that the assessee company having receipt share application money through bank channel and furnished complete details of bank statements, copy of accounts and complied with notices issued and the directors of the subscriber company also appeared with books of account before the appellate authority and confirmed the investment made by them with the assessee company, therefore, the identity and creditworthiness of investor and genuineness of transaction of the share applicant has been proved in the light of the ratio laid down by the M.P. High Court, Delhi High Court and the Supreme Court and were of the opinion that the onus cast upon the assessee as provided under section 68 has been duly discharged by the assessee the identity of the share subscriber, creditworthiness and genuineness of the transaction is not to be doubted. The Tribunal considered the case of the each company in great detail and recorded its finding. The aforesaid finding of fact recorded by the Tribunal are based on the material available on record which is a finding based on appreciation of evidence on record.
- Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.
- Once the genuineness, creditworthiness and identity of investors are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case.
- There is no dispute about the receipt of funds through banking channel nor there is any dispute about the identity, creditworthiness and genuineness of the investors and, therefore, the same has been established beyond any doubt and there should not have been any question or dispute about premium paid by the investors; therefore, unless there is a limitation put by the law on the amount of premium, the transaction should not be questioned merely because the assessing authority

thinks that the investor could have managed by paying a lesser amount as Share Premium as a prudent businessman. The test of prudence by substituting its own view in place of the businessman's has not been approved by the Supreme Court.

- The question of share premium has been considered by the Delhi High Court in the case of *CIT v. Anshika Consultants (P.) Ltd.* [\[2015\] 62 taxmann.com 192](#) wherein it was held that question as to whether the assessee company charged a higher premium or not, should not have been the subject matter of the enquiry in the first instance.
- It is well settled that if the creditworthiness of the investor company and genuineness of the transaction is proved no addition under section 68 could be made and no substantial question of law arises.
- The question raised by the revenue in regard to issuing the share at a premium is purely a question of fact. It is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe to shares at such a premium or not and, moreover, the section 68 does not envisages any law on share premium it only requirement is to identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants which has been discharged by the respondent authority and the same has been accepted by the appellate authorities; thus, the same cannot be reconsidered in these appeals as it is a pure question of fact.