

**Alfa Bhoj Limited vs.dy. Commissioner of Income Tax Central Circle -13**

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**SooperKanoon Citation :** [sooperkanoon.com/1220677](http://sooperkanoon.com/1220677)

**Court :** Delhi

**Decided On :** Jan-16-2019

**Appellant :** Alfa Bhoj Limited

**Respondent :** Dy. Commissioner of Income Tax Central Circle -13

**Judgement :**

§~28 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + INCOME TAX APPEAL272019 Date of decision:

16. h 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 SANJIV KHANNA, J.

(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). ITA No.27/2019 Page 1 of 11 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

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	2,00,000	20,00,000	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	2,00,000	20,00,000	28.02.2002	28.02.2002	28.02.2002
Rabik Exports Ltd. RZ-41A, Mohan Nagar, Panka Road, New Delhi	1,00,000	10,00,000	30.03.2002	30.03.2002	30.03.2002
Changla Steels Pvt. Ltd. 10- 3596, Regarpur Karol Bhag, New Delhi	2,50,000	25,00,000	28.02.2002	28.02.2002	28.02.2002
Bic Consultants Pvt. Ltd. 204, Delhi Chamber, Delhi	50,000	5,00,000	28.02.2002	28.02.2002	28.02.2002

ITA No.27/2019 Page 3 of 11

Gate, New Delhi Sehgal Fluid Equipment RZ- 41A, Mohan Nagar Pankha Road, New Delhi FNS Consultancy Pvt. Ltd. A-66, Tagore Garden, New Delhi Rajesh Kumar Gupta 127, Mohalla Kanjimal Dasna Gate (Ghaziabad) Maestro Marketing Adversiting Pvt. Ltd, A-4/181, Sec-17, Rohini Delhi-85 Harish Bhashin T-1, Rajori Garden, New Delhi Harish Bhashin T-1, Rajori Garden, New Delhi Jyoti Bhasin T-1, Rajori Garden, New Delhi 1,00,000 10,00,000 30.03.2002 30.03.2002 30.03.2002 1,50,000 15,00,000 30.03.2002 30.03.2002 30.03.2002 30,000 3,00,000 30.03.2002 30.03.2002 30.03.2002 1,50,000 15,00,000 30.03.2002 30.03.2002 30.03.2002 1,50,000 15,00,000 10.12.2001 10.12.2001 10.12.2001 1,00,000 10,00,00 22.03.2002 22.03.2002 22.03.2002 1,00,000 10,00,00 10.12.2001 10.12.2001 10.12.2001 ITA No.27/2019 Page 4 of 11 Jyoti Bhasin T-1, Rajori Garden, New Delhi Jyoti Bhasin T-1, Rajori Garden, New Delhi Connoisseur Management Services Pvt. Ltd. 34, Engineers Enclave, Pitampura, New Delhi Connoisseur Management Services Pvt. Ltd. 34, Engineers Enclave, Pitampura, New Delhi Tanita Leasing Finance Ltd. A- 2/3, Lusa Tower 3rd floor, Azadpur New Delhi Tanita Leasing Finance Ltd. A- 2/3, Lusa Tower 3rd floor, Azadpur New Delhi Ethnic Creatio Pvt. Ltd. A-32, Tagore Garden Ex., New Delhi Ethnic Creatio Pvt. Ltd. A-32, 1,00,000 10,00,00 22.03.2002 22.03.2002 22.03.2002 20,000 2,00,000 30.03.2002 30.03.2002 30.03.2002 1,00,000 10,00,00 22.03.2002 22.03.2002 22.03.2002 1,00,000 10,00,00 28.02.2002 28.02.2002 28.02.2002 70,000 7,00,000 10.12.2001 10.12.2001 10.12.2001 1,30,000 13,00,000 28.02.2002 28.02.2002 28.02.2002 1,00,000 10,00,000 10.12.2001 10.12.2001 10.12.2001 50,000 5,00,000 28.02.2002 28.02.2002 28.02.2002 ITA No.27/2019 Page 5 of 11 Tagore Garden Ex., New Delhi SGC Publishing Pvt. Ltd. 50/15, Ashok Nagar, New Delhi-18 SGC Publishing Pvt. Ltd. 50/15, Ashok Nagar, New Delhi-18 Polo Leasing & Finance Ltd. A- 4/181, Rohini Sector-17, New Delhi Polo Leasing & Finance Ltd. A- 4/181, Rohini Sector-17, New Delhi M.v. Marketing Pvt. Ltd. A-32, Tagore Garden(Ext) New Delhi M.v. Marketing Pvt. Ltd. A-32, Tagore Garden(Ext) New Delhi Shree Niwas Leasing & Finance Ltd. A- 10,204 Sai Bhawan, Ranjeet Nagar, New 1,50,000 15,00,00 10.12.2001 10.12.2001 10.12.2001 50,000 5,00,000 30.03.2002 30.03.2002 30.03.2002 1.25.000 12,50,000 13.12.2001 13.12.2001 13.12.2001 1,00,000 10,00,000 28.02.2002 28.02.2002 28.02.2002 1,00,000 10,00,000 10.12.2001 10.12.2001 10.12.2001

20,000 2,00,000 28.02.2002 28.02.2002 28.02.2002 60,000 6,00,000 10.12.2001  
10.12.2001 10.12.2001 ITA No.27/2019 Page 6 of 11 Delhi Shree Niwas Leasing  
& Finance Ltd. A- 10,204 Sai Bhawan, Ranjeet Nagar, New Delhi Laxman Indus  
Resources Ltd. 101, 3rd Floor, A Commercial Chambers Satwant Singh Sodhi &  
Sons Pvt. Ltd. A-66 Tagore Garden New Delhi Satwant Singh Sodhi & Sons Pvt.  
Ltd. A-66 Tagore Garden New Delhi Geeface Finance Ltd. 3rd Floor, 13/34, WEA  
Karol Bagh, New Delhi Geeface Finance Ltd. 3rd Floor, 13/34, WEA Karol BAgh,  
New Delhi Rahul Finlease Pvt. Ltd. A-2/23, Shakti Nagar 50,000 5,00,000  
28.02.2002 28.02.2002 28.02.2002 30,000 3,00,000 10.12.2001 10.12.2001  
10.12.2001 30,000 3,00,000 10.12.2001 10.12.2001 10.12.2001 1,65,000  
16,50,000 28.02.2002 28.02.2002 28.02.2002 1,00,000 10,00,000 10.12.2001  
10.12.2001 10.12.2001 1,30,000 13,00,000 28.02.2002 28.02.2002 28.02.2002  
55,000 5,50,000 28.02.2002 28.02.2002 28.02.2002 ITA No.27/2019 Page 7 of 11  
Extn., New Delhi Suma Finance & Investment 1366/21,Nalwala, Karol Bagh, New  
Delhi Performance Trading and Investment Pvt. Ltd. A-261, Sashhtri Nagar, New  
Delhi Technocom Associates Pvt. Ltd. 205, Delhi Chambers, Delhi Gate New  
Delhi Transpan Financial Services Ltd. E- 36, Jawahar Park, Laxmi Nagar, Delhi-  
92 Jasdeep Financers Pvt. Ltd. 203, Mukund House Commercial Comple, s  
Azadpur, New Delhi S.N. Electrical Pvt. Ltd. S-172, Co Cir. 29(4), New Delhi  
20,000 2,00,000 28.02.2002 28.02.2002 28.02.2002 1,65,000 16,50,000  
28.02.2002 28.02.2002 28.02.2002 1,65,000 16,50,000 28.02.2002 28.02.2002  
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15,00,000 28.02.2002 28.02.2002 28.02.2002 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 ITA No.27/2019 Page 8 of 11 Ltd. A-2/3, Lusa Tower,  
Azadpur, New Delhi Tanuja Industries Credit A-2/3, Lusa Tower, 3rd Floor,  
Azadpur, Delhi Arun Finvest Pvt. Ltd. CA/16-D, Hari Nagar, New Delhi Fair N  
Square A-66, Tagore Garden Ex, New Delhi Surya Udyog 4832/24, Ansari Road,  
Daryaganj, New Delhi Zed Leasing & Finance 4A, Pusa Road, New Delhi Zed  
Leasing & Finance 4A, Pusa Road, New Delhi 75,000 7,50,000 28.02.2002  
28.02.2002 28.02.2002 2,00,000 20,00,000 28.02.2002 28.02.2002 28.02.2002  
2,00,000 20,00,000 28.02.2002 28.02.2002 28.02.2002 2,00,000 20,00,000  
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28.02.2002 30.03.2002 30.03.2002 30.03.2002 1,00,000 10,00,000 all 9. The Managing Director/partners of 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 ITA No.27/2019 Page 9 of 11 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. ITA No.27/2019 Page 10 of 11 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. JANUARY16 2019 MR SANJIV KHANNA, J.

**ANUP JAIRAM BHAMBHANI, J.**

ITA No.27/2019 Page 11 of 11

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