

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 5458/Del/2012
(Assessment Year: 2007-08)

ITO, Ward 13(4), Room No. 338, CR Building, New Delhi	Vs.	Onflow Agro Pvt. Ltd, B-1521, Shastri Nagar, Delhi PAN:AAACO0816B
(Appellant)		(Respondent)

Revenue by :	Sh. Rajesh Kumar, Sr. DR
Assessee by:	None
Date of Hearing	23/02/2017
Date of pronouncement	10/04/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the Id CIT(A)-XVI, New Delhi dated 22.06.2012 for the Assessment Year 2007-08 wherein revenue has raised the following grounds of appeal:-
 - "1. *Whether on the facts & in the circumstances of the case, the Ld.CIT (A) has erred in deleting the addition of Rs. 1,00,00,000/- u/s 68 of the IT Act on account of unproved credits in the grab of share application money/share capital and share premium by allowing the alleged investors of share capital and premium without allowing the AO an opportunity to cross examine them.*
 2. *Whether on the facts & in the circumstances of the case, the Ld.CIT(A) has erred deleting the addition of Rs. 2,40,780/- made by the AO as income from other sources on account of amount credited in the P& L account as sales.*
 3. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has erred in holding that the assessee had submitted all books of account before the Assessing Officer, when he had clearly failed to do so."*
2. Brief facts of the case are that assessee is a private limited company who filed its return of income on 31/ 10/ 2007 showing income of Rs. 1231/-,

consequently, the return of income of the assessee was picked up for the scrutiny and several notices were issued by the Ld. assessing officer for verification of increase in share capital from Rs. 5.78 lakhs to Rs. 10.78 lakhs and share premium from Rs. 90.82 lakhs to Rs. 185.82 lakhs and consequently increasing the investment from 96.20 Lacs to 196.20 Lacs. During the course of assessment proceedings assessee was asked to prove the identity, genuineness and creditworthiness of the persons from whom share capital/share premium has been received. The Ld. assessing officer further noted the facts pertaining to the assessment year 2006 – 07 wherein the assessee has stated in earlier years before the appellate authority that assessee can produce all the principal officers of such shareholder companies and, therefore, the assessing officer asked the assessee to produce all the current directors of the company from whom share capital/share premium received for the current assessment year has been received. Further, the Ld. assessing officer issued summons to all of the parties but they did not come forward for examination. The Ld. assessing officer also kept asking the assessee to produce the parties. However, none of them was produced. Further, on 23/11/2009 the assessee officer further issued summons to the directors of the assessee company for their personal deposition and for producing the details but there was no compliance. The Ld. assessing officer further wrote a letter on 02/12/2009 to the assessee for submitting the requisite details. In response to which only on 17/12/2009 the chartered accountant of the assessee filed an undated letter along with one sheet containing the details of investment only. Further, Id AO conducted inquiry through the inspector, whose report dated 09/12/2009 showed That the investors do not carry on any business and same similarly, assessee company is also not carrying on any business but it is controlled by one Shri K K bansal group who floated many companies and who has given statement on 28/09/2004 before the Additional Director of Income Tax (Investigation), New Delhi to this effect. Thereafter, the Ld. assessing officer held that the entire amount of Rs. one crore, which was allegedly received in cash except Rs. 6 Lacs as source of the cash has not been explained the credit worthiness of the parties have also not been

established. He further held that the confirmations are undated and almost all the investors and Investor companies are at the same address and therefore there cannot be any credible evidence regarding the genuineness of the transactions or the creditworthiness of the investors forthcoming from the assessee or from the investors. Hence, Ld. assessing officer made an addition of Rs. one crore to the returned income of the assessee under section 68 of the income tax act and therefore determine the total taxable income of Rs. 10240780/- vide assessment order dated 21/12/ 2009.

3. On appeal before the first appellate authority, assessee submitted that company received share capital of Rs. 16 lakhs from eight individuals in cash and Rs. 78 lakhs in cash from nine corporate subscribers and further Rs. 6 Lacs in cheques. Assessee filed with respect to the details of the shareholders stating therein address and number of shares allotted to them as on 31st of March 2007. It also furnished the confirmation of eight persons. With respect to corporate entities, it submitted the copy of acknowledgement of the return, share application forms their PAN card, resolution passed by the Board of Directors and certificate of incorporation of the companies. Thereafter assessee relied upon plethora of case laws to substantiate its case. On considering the submission of the assessee, Ld. CIT (A), relying upon the decision of the Hon'ble Delhi High Court in CIT versus or Oasis Hospitality Private limited dated 31/01/2011, discussed the whole issue and ultimately held that assessee has discharged its onus on submitting the copies of the balance sheet etc and income tax return of the companies as well as the individuals. It was further held that the genuineness of the transaction is also verified from the copy of the share application forms filed as shares were allotted to the share applicants. It was also the contention of the Ld. CIT (A) appeal that if, AO had any doubt about the details filed by the appellant, he should have made further enquiries in the matter and brought on record adverse material to establish that the share application money was actually the appellant's own undisclosed money. He further held that the identity of the share applicants is conclusively proved by the assessee as the summons issued by the Id AO to that have not remained unserved.

Furthermore while exercising the powers vested in him, u/s 250 (4) of the act, parties were produced before him on 15/06/ 2012 along with the copies of their income tax return and final accounts for the assessment year 2007 - 08 and they all have confirmed having invested in the appellant company. Accordingly vide order dated 15/6/2012 she held that the identity, creditworthiness and genuineness of the transaction is established by the assessee of all the creditors and therefore the addition cannot be made under section 68 in the hands of the appellant. With respect to the statement of Sh. K.K .Bansal she held that the statement was not confronted to the appellant and if the Ld. assessing officer had to rely on the same, he would have made further enquiries to conclusively established that the share application received from various parties actually emanated from the coffers of the appellant, as this has not been done by the Ld. assessing officer and therefore addition cannot be made on that basis. Ultimately, she deleted the whole addition of Rs. 1 Crore. Revenue being aggrieved with the order of the Ld. CIT (A) has preferred appeal before us.

4. The Ld. departmental representative vehemently contested the order of the Ld. CIT (A) and submitted that she has deleted the addition without even verifying any details with respect to the identity, creditworthiness, and genuineness of the transaction. He further held that the Ld. CIT appeal has neither obtained remand report and nor confronted the LD AO with the details submitted by appellant before him. He further submitted that Ld. CIT appeal has even not cared to look at whether the details stated to have been filed by the assessee before the Ld. assessing officer are really filed by the assessee or not. Further, instead of remanding the matter back to the assessing officer, he examined the creditors or share applicants which were produced before him. He further stated that not a single word has been stated by the Ld. CIT appeal about the production of those persons before him by the appellant and how he has examined them. Therefore, the order of the Ld. CIT appeal is totally bald and deserves to be quashed. He further submitted that the Ld. CIT (A) has not at all cared to look at the strange facts of the case wherein in a non-discreet company which is just earning Rs. 1 231/- as is total income,

absolutely unknown person having invested huge capital at huge premiums where there is no scope of even returning of the capital. He stated that this is a fake transaction by which, in the books of accounts of the appellant, money from persons of no means have been introduced in cash. His main contention was that that the genuineness of the transaction are otherwise proved from the single instance that how the premium is determined and how and why those shareholders have invested in such a non-discreet company which does not have any business and even where the share capital introduced by them cannot be recovered is itself shows that transactions are ingenuine. He further submitted that even after 10 years, the original share application money was received in 2007 – 2008 and till to date there is no information available that how the shareholders have been rewarded for paying such a huge amount as a share capital with share premium. He further stated that Ld. CIT (A) has totally closed his eyes to the startling facts of the case and its connection with the noted entry operators. He further submitted that Ld. CIT (A) has further closed her eyes to the fact that most of the shareholders and are having the same address as of appellant. He further stated that before the assessing officer despite giving more than 15 opportunities, none appeared and whereas in the case of hearing before the Ld. CIT (A) all the persons appeared and were examined on a single date. He stated that the order of the Ld. CIT (A) merely believes what was stated before him by the appellant without verifying himself or directing AO and without applying his mind. He further submitted that the order of the CIT (A) does not have any legs to stand wherein the addition under section 68 of the act has been deleted. He stated that order of Id CIT (A) totally disregards the report of inspector, which shows that there are no such persons and none of them is carrying any business there. Therefore he submitted that the order of the Ld. assessing officer may be restored and the order of the Ld. CIT (A) may be set-aside. He further placed on record written submission containing 9 pages to support the order of the Ld. assessing officer.

5. On behalf of assessee, none appeared on the appointed date. On reading of the proceeding sheet it is noted that none appeared on behalf of the

assessee on the first date of hearing on 10th of October 2013. Subsequently on 11/03/2014, 21 April 2014, 27th May 2015, 09/03/2016, 08/06/2016, 14/09/2016, 29/11/2016, 22/02/2017 and on the last date of hearing on 23/02/2017, none appeared. It is painfully noted that only on one occasion i.e. on 08/06/2016, assessee responded by filing a written request for adjournment through his counsel, after that there is no cooperation from assessee for disposal of this appeal. In view of this, we do not find any reason to once again adjourn hearing and waste precious time of this court as well as of the revenue. It is apparent that assessee does not want to take this opportunity to represent its case before the tribunal. In view of this, we proceed to decide the issue in the appeal of the revenue on facts available on record on merit.

6. We have carefully considered the contention of the Ld. departmental representative as well as considered the orders of the lower authorities. Facts of the case have already been stated above. However, it is important to note that during the year the appellant company had received share application money of Rs. one crore from 17 subscribers, 8 individuals and 9 corporate entities, out of which Rs. 94 Lacs have been received in cash and only Rs. 6 Lacs have been received by cheque. The shares have been allotted at a premium of Rs. 190/ per share against the book value of Rs. 10 per share. Before the Ld. assessing officer, the appellant has filed confirmation, which was undated along with the copies of the income tax return acknowledgement from those share subscribers. The Ld. assessing officer has noted that the subscriber showed income in the range of Rs. 2629/- to Rs 153200/- . To examine the correctness of the information submitted by the assessee, the Ld. assessing officer issued summons under section 131 to the principles officer of the subscribing companies which remained uncomplied with. Therefore, as a last resort Ld. assessing officer deputed inspector to make local enquiries, who reported in his report dated 22/12/2009 that no business was being conducted from the given address of the subscribers and further the subscriber companies including the assessee company were being controlled by Sh. KK Bansal who is a known accommodation entry providers. The Ld. assessing officer also came to know that the

investigation wing of the Department has found this gentleman to be indulged in the activity of routing companies to and to use them for arranging accommodation entries. Furthermore, even the summonses issued to the directors of the company were also not complied with. Number of show cause notices were issued by the Ld. assessing officer to the appellant but no concrete details were submitted and in this background, the Ld. assessing officer made addition under section 68 of the income tax act. Therefore, assessee remained totally non-compliant before the Ld. assessing officer and furnished scanty details. Therefore, the details submitted by the assessee were examined by the Id AO and issued summons to the creditors/ subscribers. On non-attendance, he deputed inspector to conduct local spot inquiries, in response to that also the confirmation submitted by the appellant could not be verified. Hence Id AO on submission of details, kept asking assessee to submit complete details, further carried inquiry through inspector and also issuing summons to the subscribers, and as a last resort also issuing summons to the directors of the appellant, but all efforts in vain. Therefore, the Id AO reached at the correct conclusion that details in question could not be substantiated by the assessee. Therefore, according to us the assessee failed to discharge onus cast upon it under section 68 of the Income Tax Act. Surprisingly before the Ld. CIT (A) assessee files complete details and completely convinces the Ld. 1st appellate authority that assessee has discharged its initial onus. Further, on 15th of June 2012, assessee produced all the 17 parties in response to powers exercised by Ld. 1st appellate authority under section 250 (4) of the income tax act, along with the copies of their income tax returns, final accounts and they also confirmed having invested in the appellant company. Furthermore, the Ld. CIT (A) has stated that 'the fact that the notice is issued to the said applicants were served on them further proves that the share applicants do exist' has really perplexed us. Assessee has submitted before the Ld. CIT (A) the confirmation of 8 individuals along with the copy of acknowledgement of return of income, receipt of share application forms and PAN card. Similar details with respect to the corporate subscribers were also submitted along with the certificate of

incorporation of the companies. No doubt the assessee has submitted the basic details with respect to 8 individuals and 9 corporate entities. The Ld. assessing officer has prepared a chart at page No. 8- 10 of his order about the amount invested by these persons and page No. 6 to page No. 8 wherein the manner of depositing sum with the company and income shown in the return of income by them and the persons who control those companies is also mentioned. Chart Showing the names of the subscribers , name of the directors of subscribers, Income shown and manner of deposit is as under :-

S. No	Name of the Indl/company	Name of Director/Indl as Per confirmation	Income as per copy of ITR Acknowledgement	Amount claimed to have been received
1.	Aapki Marketing P.Ltd.,B-1521,Snastri Nagar, Delhi-52	Naveen Garg	14,1447-	9,00,000/-cash on 5.5.06 & 3,00,000/-by cheque on14.2.07
2.	Ashok Kumar Garg,L-132, Shastri Nagar, Delhi-52	Ashok Kumar Garg	1,23,780/-	2,00,000/-cash on21.1.07
3.	Bedeck Estate & Properties P.Ltd., A-2/58-B, Lawrence Road, Delhi-35	K.K. Bansal &Rakesh Kumar Garg	3,229/-	10,00,000/-cash on 05.05.06
4.	Chitransh Software & Marketing Pv.Ltd.,L-119, Shastri Nagar,Delhi-52	Naveen Garg	3,470/-	8,00,000/- cash on 5.5.06
5.	Jaywanti Bansal.A-2/58-B, Lawrence Road, Delhi-35	Jaywanti	1,53,200/-	2,00,000/- cash on 21.1.07
6.	Krishan Kumar Bansal, A-2/58-B, Lawrence Road, Delhi-	Krishan Kumar	1,26,270/-	2, 00,0007- cash on 8.1.07
7.	Kunjar Mercantile 1 P.Ltd.,L-119, Shastri ' Nagar, Delhi-52	Naveen Garg	3,8637-	5,00,000/-cash on 5.5.06 & 3,00,0007- cheque on 8.2.07
	Mr Madhu Garg, L-119, I Shastri Nagar, Delhi-52	Madhu Garg	1,18,5007-	200,0007- cash on 21.1.07
9.	Nitital Bansal,A-2/58-B, Lawrence Road, Delhi-35	Nitin Bansal	1,14,3407-	2,00,0007- cash on 21.1.07
10.	Noble Mercantile P.Ltd.,L-1 32, Shastri Nagar, Delhi-52	Sandeep Kumar	15,1437-	8,00,0007- cash on 5.5.06
11.	Sachin Garg,L-119, Shastri Nagar, Delhi-52	Sachin Garg	1,27,2807-	2,00,0007- cash on 15.12.06
12.	Solo Mio Marketing P.Ltd.,L-1 32, Shastri Nagar, Delhi-52	Sandeep Kumar	12,0127-	10, 00, 0007- cash on 5.5.06
13.	Surender Garg, L-119, Shastri Nagar, Delhi-52	Surender Garg	1,01,5507-	2,00,0007- cash on 15.12.06
14.	Susheela Garg, L-132, Shastri Nagar, Delhi-52	Susheela Garg	1,32,8187-	2,00,0007- cash on 21.1.07
15.	Twinkle Steels P. Ltd., L-132, Shastri Nagar, Delhi-52	Vinod Kumar Garg	8,2057-	12,00, 0007- cash on 5.5.06
16.	United Head Hunters P.Ltd.,B-1521, Shastri Nagar, Delhi-52	K.K. Bansal & Rakesh Kumar Garg	3,1407-	8,00,0007- cash on 5.5.06
17.	Vaare Exim P. Ltd.,A-J, Lawrence , Delhi-35	Naveen Garg	2,629/-	8, 00,0007- cash on 5.5.06

From the above chart it is apparent that none of individuals who have deposited the sum are shown to be creditworthy of depositing these sums in cash with the assessee. Further the companies who have subscribed have also shown meager income and none of them have shown the existence of cash in their books of accounts to the Id CIT (A). It is also not known that how CIT (A) got satisfied with the existence of cash in the books of the companies when they are known entry providers. There is not a single word in the order of the Id CIT (A) about the source of such cash and reasons for depositing them with the assessee at huge premium when they do not have any other sources of income. Only reason why Ld. CIT appeal has deleted the addition is that when basic details have been furnished by the assessee before the Ld. assessing officer, he did not make any further enquiry and therefore the addition made by the Ld. assessing officer is held to be invalid. We do not agree with it, the Ld AO has made attempt to examine the shareholders by issuing summons, as well as by deputing inspector to find make local inquiry and at last also summoned the directors of the company but none of them remained present. Even assessee who boasted of producing the directors in earlier assessment years, also did not produce them. Furthermore, all the persons who did not care to appear before the assessing officer throughout the assessment proceedings, spanning over a period of one and half year, suddenly appears before the Ld. CIT appeal on 15/06/2012 and she examines all of them with respect to the transactions and on the same date, she passes an order deleting the whole addition of Rs. one crore. We do not agree with such an approach of the Id CIT (A) and we are also surprised in the casual manner Id CIT (A) has dealt with the whole issue when the nature of transactions, shareholders creditworthiness and genuineness of the share issued are of dubious nature. It is also not proper to disregard the finding of the Ld AO that the depositors are also controlled by the K K Bansal who is an entry operator and all these parties have the same address. Ld CIT (A) should have looked at the totality of the facts instead of deleting the addition on flimsy grounds. Therefore we set aside the whole matter

back to the file of the Id CIT (A) with a direction to reexamine the whole issues of the share capital issued by the assessee to the conduits of entry operators at a huge premium after examining the shareholders , their creditworthiness , genuineness of the transaction with respect to their relationship with K K Bansal. The Id CIT (A) is further directed to grant Id AO an opportunity to examine the subscribers of the shares, directors of the appellant company and K K bansal and by this order assessee is further directed to produce the creditors, its directors before AO within 15 days from the receipt of notice of hearing from the office of the Id CIT (A). In the result ground no 1 and 2 of the appeal of the revenue is allowed with above direction.

7. The ground no 3 of the appeal is not pressed hence dismissed.
8. In the result appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 10/04/2017.

-Sd/-

**(BEENA A PILLAI)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 10/04/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi