

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.703/Bang/2014
Assessment year : 2007-08

The Deputy Commissioner of Income Tax, Circle 11(5), Bangalore.	Vs.	M/s. Lumbini Gardens Ltd., Nagawara Lake, Nagawara Ring Road, Hebbal, Bangalore – 560 045. PAN : AAACL 9979L
APPELLANT		RESPONDENT

Appellant by	:	Shri P. Dhivahar, Jt. CIT(DR)
Respondent by	:	Shri Zain Ahmed Khan, C.A.

Date of hearing	:	10.02.2015
Date of Pronouncement	:	20.02.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This is an appeal by the Revenue against the order dated 30.1.2014 of the CIT(Appeals)-I, Bangalore relating to assessment year 2007-08.

2. The only issue raised in this appeal is as to whether the CIT(A) was justified in deleting the addition of Rs.2,40,00,000 made by the AO u/s. 68

of the Act treating the receipt of share application money by the assessee as unexplained cash credit.

3. The facts in this regard are that the assessee is a company and is engaged in the business of development and maintenance of gardens, beautification of lakes, amusements and entertainment. The assessee was incorporated in Jan. 2004. During the previous year, assessee received share application money of Rs.2.40 crores. The AO called upon the assessee to furnish full details about share application money by providing identity, genuineness and credit worthiness of the shareholders. The assessee submitted that the shareholders are more than 200 in number and are directly or indirectly related to the directors of the assessee. The share application money had been paid by the shareholders in cash. The assessee did not submit any evidence regarding source of income of these persons. In these circumstances, the AO treated the receipt of share application money as unexplained and added the same to the total income u/s. 68.

4. Before the CIT(A), the assessee filed a letter dated 27.2.2012 seeking to file certain additional evidence regarding the shareholders who contributed share application money. The additional evidence was forwarded to the AO and remand report called for from him. Despite sufficient opportunities, the AO did not file any remand report.

5. Before the CIT(Appeals), the assessee submitted name and addresses, as also copies of share application forms, which were provided to the AO for verification. According to the CIT(A), the AO has not conducted any enquiry even after repeated reminders. On perusal of the details furnished by the assessee, he found that the assessee had received share application money amounting to Rs.2.40 crores from 313 persons ranging from Rs.20,000 to Rs.10,00,000 and entire share application money was received by cash only. He was of the view that the assessee has furnished addresses of all investors and PAN in few cases and based on the said information the AO could have made enquiry. It was also observed by him that the relevant year under consideration is the first year of commencement of assessee's business and loss was incurred during the year.

6. The CIT(A) thereafter referred to the decision of the Hon'ble Delhi High Court in *CIT v. Dewan Leasing Finance Ltd. (2007) 158 Taxman 440 (Del)* and the decision of Hon'ble Supreme Court in *CIT v. Lovely Export Pvt. Ltd., 216 CTR 195 (SC)*. The proposition laid down in the aforesaid decision is that once the assessee gives the details of the addresses of the persons who contributed to share application money, then it is for the department to conduct necessary enquiries and establish the creditworthiness and genuineness of the transaction before making addition u/s. 68. According to the CIT(A), the assessee had

furnished identity and correct addresses of the creditors and PAN details of 20 creditors. According to him, this was sufficient discharge of onus that lay on the assessee. Since the AO has not proved anything to the contrary, he was of the view that addition made should be deleted. Accordingly the addition made by the AO was deleted by the CIT(A).

7. Aggrieved by the order of CIT(A), the Revenue is in appeal before the Tribunal.

8. The submission of the Id. DR before us was that the powers of the CIT(A) are co-terminus with that of the Assessing Officer and he ought to have examined the claim of assessee regarding receipt of share application money. He ought to have also examined the genuineness of the transaction and creditworthiness of the creditors. According to him, the fact that out of 313 share applicants, only 20 persons were assessed to tax and the fact that the payments were made in cash towards share application money are all suspicious circumstances. According to him, the CIT(A) without verifying the genuineness of the transactions and creditworthiness of the creditors, ought not to have deleted the addition made by the AO merely because the AO did not file a remand report before the CIT(A).

9. The Id. counsel for the assessee relied on the order of CIT(A).

10. We have considered the rival submissions. As rightly contended by the Id. DR, the mere proof of identity of the creditors would alone not be sufficient to delete the addition made u/s. 68 of the Act. In the present case, there was a complete failure on the part of assessee to furnish any details before the AO. It is only before the CIT(A) that the assessee filed the necessary details. It is no doubt true that the AO did not file any remand report, despite several opportunities by the CIT(A). As alleged in ground No.3, the AO could get replies only from 49 share applicants out of 313 share applicants. In such circumstances, it was difficult for the AO to have given a remand report. The powers of the CIT(A) are co-terminus with that of the AO and he ought to have examined the genuineness of the transaction and creditworthiness of the creditors. Absence of a remand report cannot lead to the conclusion that the transactions were genuine and that creditworthiness of the creditors are established. In the given circumstances, we are of the view that it would be just and appropriate to set aside the order of the CIT(A) and remand the issue with regard to the addition u/s. 68 back to the AO for fresh consideration. The AO in the set aside proceedings will examine the three ingredients necessary for satisfactory explanation of credit u/s. 68 of the Act. The AO will afford opportunity of being heard to the assessee.

11. For statistical purposes, the appeal by the Revenue is treated as allowed.

Pronounced in the open court on this 20th day of February, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 20th February, 2015.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.