

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 2922/Del/2008
AY: 2004-05**

Dy.CIT, Circle 6(1)
New Delhi

vs. M/s Lattu Finance & Investment Ltd.
(Now known as Minda Investment Ltd.)
36 A, Rajasthan Udyog Nagar
Delhi

(Appellant)

(Respondent)

Appellant by : Sh.R.S.Negi, Sr.D.R.
Respondent by : Sh.Pradeep Dinodia and
Sh. RK Kapoor, C.As.

ORDER

PER J.SUDHAKAR REDDY, A.M.

This is an appeal filed by the Revenue is directed against the order of the Ld.Commissioner of Income Tax (Appeals), New Delhi dated 24.06.2008 pertaining to the Assessment Year (A.Y.) 2004-05.

2. **Facts in brief:-** The assessee is a company and is in the business of leasing, finance and investments. It belongs to the Minda Group of Companies. For the A.Y. 2004-05, it filed a return of income on 30.7.2004 declaring total income of Rs.45,57,170/-. The A.O. passed an order u/s 143(3) of the Income Tax Act 1961 (the Act) on 28.12.2006, assessing the total income at Rs.4,01,36,258/- inter alia making an addition u/s 14A as well as u/s 68 of the Act.

2.1. The assessee has received share application money of Rs.3,50,88,000/- (i.e. Rs.3,51,00,000 (-) 12,000/- refund) with premium from 54 companies. The A.O. has given details in his order. When asked

to substantiate the genuineness of this share application money, the assessee filed certain details such as copies of confirmation from the companies, Pan details, evidence of filing of income tax returns by these companies and copies of bank statements of the share applicants. The AO at page 4 observed the following defects/deficiencies in the evidences filed.

1. Verification affidavits do not bear the date and month;
2. Signature on affidavits are not attested;
3. Stamp Venders from whom papers purchased are common;
4. Affidavits do not carry own address of the director;
5. Sh.Jeet Ram Gupta is shown as director of the assessee company in the affidavit whereas in fact he is the director of M/s Empro Gas Co.P.Ltd.
6. Prints of affidavits are same;
7. Office addresses of the companies are same in some cases.

2.2. He conducted local enquiries through Inspector. The Inspector's Report is given at pages 5 to 8 of the paper book. The sum and substance of which is that:

- (a) The premises of these companies are locked;
- (b) That they are operated by one Mr.Pardeep Kumar Jindal, C.A. who visits this premises once or twice in a month. Most of them are located in the same premises. The stamp vendor of affidavits made could not be traced. Notice u/s 131 of the Act was issued to Shri Jindal but he could not be traced. The AO verified the transactions of the bank accounts, while issuing notices u/s 133(6) of the Act to various banks and obtaining bank statements. At pages 9 to 11, the findings are given and the modus operandi is described by the AO as follows.

"The modus operandi of the assessee to manage share application money of Rs.3,51,000/- is same. Cash is handed over by the assessee to the accommodation entry providers, who deposited in bank accounts of the persons/firms being operated by them and from those accounts, the money is

transferred to the bank accounts of the companies who used to provide or issue cheques/DD or pay order in favour of the beneficiaries.

It is very much clear from the above that the money received by the assessee company by way of share application money, is its own money but routed through the bank accounts of various persons/firms/companies.”

2.3. Thereafter the AO referred to the information received from DIT (Investigations), New Delhi and the statements of the alleged Directors of these companies recorded u/s 131 of the Act in the month of April, 2005 by Addl.DIT (Investigation), New Delhi, wherein they had admitted that they are not men of means and were providing accommodation entries on commission basis. Thereafter, he placed reliance on a number of case laws and came to conclusion that the amount of Rs.3,50,88,000/- are unexplained cash credits appearing in the books of accounts. He made an addition u/s 68 of the Act.

3. On appeal the First Appellate Authority deleted the same.

4. Aggrieved the Revenue is in appeal before us on the following grounds.

“1. The order of the learned CIT(Appeals) is erroneous & contrary to facts and law.

2. On the facts and in the circumstances of the case, the learned CIT(Appeals) has erred in deleting addition of Rs.3,50,88,000/- - made u/s 68 of the I.T. Act, 1961 in respect of share application money ignoring -

a) that the assessee company has miserably failed to explain the amount introduced and apart from the identity, the genuineness and creditworthiness of the involved entities remained to be proved.

b) the detailed findings as discussed by the Assessing Officer in the assessment order wherein unambiguously, it is held that one Shri Pradeep Jindal was the person behind all the companies from which accommodation entries have been taken. The flow of unaccounted money has also been verified after calling information from banks.

- c) *the material discrepancies as pointed out by the Assessing Officer in the affidavits filed from the alleged share applicants.*
- d) *that the purchase of stamp papers from the respective stamp vendors remained to be proved.*
- e) *that the said additions were made by Assessing Officer on the basis of definite information from investigation wing that the said amounts were accommodation entries.*
- f) *that in respect of many involved entities, their key persons have admitted on oath before the investigation Wing of the Deptt. as reproduced in the assessment order that the said entities merely functioned as entry operators and not carried out any actual business.*
- g) *that the inspector also reported on local enquiries that all the said companies are either not existing at the given address or the impugned premises found locked.*
- h) *that the assessee company failed to produce the Directors of the said concerns.*
- i) *even at the time of remand proceedings, the assessee company failed upon by first appellate authority are not applicable at all. Inter-alia, it is also not a case where share application money was received in a public offer.*

3. *The learned CIT(Appeals) has erred In deleting addition U/S 14A of Rs.4,89,587/- notwithstanding -*

- a) *that due to non-furnishing of any details by assessee attributable to earning of exempt dividend income, the Assessing Officer was left with no other alternative except to work out the proportionate disallowable expenses relatable to the earning of dividend Income.*
- b) *the provisions of sections 14A, wherein it is clearly mentioned that all expenses incurred in relation to the exempt income must be disallowed. Notably, the expression used in section 14A is 'in relation to' and the same has a much broader connotation that the expression 'for the purpose of, thus therefore it is not necessary for any expenditure.*
- c) *that the money originates from a common pool 7 there is no reason why interest expenses cannot be attributed to dividend earned. Had there been a surplus of funds, the assessee would have not borrowed.*

d) the case laws cited by the Assessing Officer in his assessment order. The ratio laid down in the cited cases are applicable to the facts of the case of the assessee company.

e) the working adopted by the Assessing Officer for computing the proportionate disallowance is also in consonance with amendments made to section 14A w.e.f. 01.04.2007.

f) the ratio of the decision in the case of CIT Vs. HR Sugar Factory (P) Ltd. 187 ITR 363, where it has been held that if parts of the funds have been utilized for non business purposes, part disallowances of interest is justified.

g) the ratio of the decision in the case of India Metals & Ferro Alloys Ltd. Vs. CIT 193 ITR 344, where it was held that it is for the assessee to prove that the borrowed fund has been utilized for business purposes.

4. *The appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of hearing.”*

5. We have heard Shri Pradeep Dinodia, the Ld.Counsel for the assessee and Shri R.S.Negi, the Ld.Sr.D.R. on behalf of the Revenue. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

6. The Ld.CIT(A) in this case has deleted the addition on the sole ground that the identity of the share applicants has been established. On the contentions of the assessee that he was not confronted with the Inspector's Report, the Ld.CIT(A) provided the report to the assessee and obtained his comments. Regarding statements and information obtained by the A.O. from the ADIT (Investigation) and which was used against the assessee, the Ld.CIT(A) held that no opportunity was given to the assessee to examine the witness or rebut the material gathered from the investors etc. and hence the same cannot be used against the assessee.

7. We observe that in the case of ITO vs. M.Pirai Choodi (2011) reported in 334 ITR 262 (SC) it was held that denial of opportunity to cross examine

the witness by itself could not vitiate the assessment proceedings especially when the assessee has not asked for the same. In this case the assessee had not asked for cross examination of the witnesses. Hence the ground of the Ld.CIT(A) on this issue is bad in law.

8. In our view, certain investigations have been done by the A.O. Evidences have been gathered by the A.O. in support of the addition made by him. The deletion by the Ld.CIT(A) of this addition, on the ground that these evidences were not confronted to the assessee, was not proper. When the inspection report can be put to the assessee by the Ld.CIT(A), other evidences should have also been put to the assessee by the Ld.CIT(A). The assessee contends that all the information and material obtained by the A.O. has to be put to him before coming to a conclusion. He further contends that the assessee has furnished whatever material it could, and as considerable time has elapsed no further burden should be put on the assessee to furnish any further evidences. We find force in these submissions of the assessee. The A.O. in our view should not put further burden on the assessee.

9. In view of the above discussion, we are of the considered opinion that this case should be set aside to the file of the AO for fresh adjudication. We issue the following directions to be followed by the A.O.

- (a) The assessee should be confronted with the information and material based on which the AO made this addition and there after pass a speaking order after considering the contentions of the assessee.
- (b) Similarly, in case the A.O. chooses to rely on the statement of any person, copies of the same should be furnished to the assessee and opportunity to cross examine those witnesses of Revenue should be provided to the assessee.

9.1. In short the AO should confront the assessee with all the material and information which are in his possession and, which he proposes to use against the assessee.

9.2. In the result this ground against addition u/s 68 of the Act is set aside to the A.O. for fresh adjudication and in accordance with law.

9.3. As far as disallowance u/s 14A of the Act is concerned, after considering rival submissions, as the Ld.D.R. could not controvert the finding of the Ld.CIT(A), we agree with the finding of fact given by the Ld.CIT(A) that no part of interest expenditure can be disallowed u/s 14A of the Act. As regards administrative expenses u/s 14A, we are of the opinion that disallowance of Rs.1 lakh on adhoc basis would meet the interest of justice.

10. In the result assessee's appeal is partly allowed.

Order pronounced in the Open Court on 29th January, 2016.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 29th January, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar