

आयकर अपीलीय अधिकरण “ आई ” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL “I” BENCH
MUMBAI**

BEFORE SHRI RAJENDRA, AM & SHRI C.N.PRASAD, JM

Income Tax Appeal Nos.1956, 1957 & 2095/Mum/2011
(निर्धारण वर्ष / Assessment Years : 2005-06 to 2007-08)

DCIT, Central Circle-45, Vs. M/s Accurate Mercantile
Mumbai (P) Ltd. Shop No.13,
(अपीलार्थी / Appellant) Sector-I, Vashi, Navi
Mumbai- 400703
(प्रत्यर्थी / Respondent)

Income Tax Appeal Nos.1473 & 1478/Mum/2011
(निर्धारण वर्ष / Assessment Years : 2006-07 & 2007-08)

M/s Accurate Mercantile Vs. ACIT, Central Circle-45,
(P) Ltd. Mumbai
Shop No.13, (प्रत्यर्थी / Respondent)
Sector-I, Vashi,
Navi Mumbai- 400703
(अपीलार्थी / Appellant)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCA1711J

निर्धारिती की ओर से /Assessee by : None
राजस्व की ओर से /Revenue by : Shri B.C.S. Naik
सुनवाई की तारीख / **Date of Hearing** : **01/11/2016**
घोषणा की तारीख / **Date of Pronouncement** : **18/11/2016**

आदेश / O R D E R

PER C.N.PRASAD (J.M.) :

All these appeals are filed by Revenue and Assessee for the assessment years 2005-06 to 2007-08 against various orders of the Commissioner (Appeals). The Assessee filed the appeals wherever the CIT confirmed the additions made by the Assessing Officer towards unsecured loans as unexplained cash credits under Section 68 of the Act and the Revenue filed appeals for the Assessment years

2005-06 to 2007-08 against the deletion of additions made by the CIT (Appeals) in respect of share application money which was treated as unexplained cash credit under Section 68 by the Assessing Officer.

2. These appeals were posted for hearing on several dates from time to time and there was no representation by the Assessee in any of the occasions on the day the matters were listed. The Bench directed the CIT DR to serve notice to the Assessee. When the matter came up for hearing on 1st November 2016, the Learned DR informed the Bench that the Assessing Officer deputed Inspector to serve the notice of hearing at the premises of the Assessee namely Accurate Mercantile (P) Ltd., Hindvi Bhawan, Shop No.1, Plot No.13, Sector-I, Vashi, Navi Mumbai- 400703. The DR submits that since the Assessee does not exist at the given address, the Inspector affixed the notice of hearing at the given address and sent report dated 19/09/16 to the Dy.Commissioner of Income Tax (Central Circle) 8(2), Mumbai, who in turn informed the Registrar, ITAT by letter dated 22/09/16 that the notice was served by affixure at the given address of the Assessee. Therefore, DR submits that the notice of hearing was served by affixture at the given address.

3. Since the Assessee is not appearing in these matters and also since the notice was served by affixure by the Assessing Officer at the given address, we proceed to dispose of the appeals on hearing the Learned DR on merits.

4. The Learned DR submits that in all these three assessment years i.e. 2005-06 to 2007-08, the Assessee received share application money, share premium and unsecured loans. He submits that on examination by the Assessing Officer, it was proved that the Companies who advanced monies in the form of share capital, share

premium, share application money, unsecured loans etc. are only paper entities and non-existent at the addresses given. The Learned DR submits that since the Assessee failed to prove the identity, credit worthiness and genuineness of the transaction, the Assessing Officer treated all these share capital, share premium, share application money and unsecured loans as unexplained cash credit under Section 68 of the Act.

5. The Learned DR submits that the CIT (Appeals) gave relief to the Assessee stating that the Companies are incorporated under Companies Act and therefore identity is not in doubt. The CIT (Appeals) following the decision of the Hon'ble Supreme Court in the case of CIT Vs Lovely Exports [216 ITR 195] held that, in case the shareholders are bogus, the Assessing Officer can proceed against them but no addition can be made in the hands of the Assessee. The Learned DR submits that the CIT (Appeals) is not at all justified in deleting the additions made by the Assessing Officer towards share capital, share premium, share application money and unsecured loans totally ignoring the fact that Assessee has not proved the genuineness of the transaction, identity and credit worthiness of the creditor, as none of the creditors are in existence and they are only paper entities flouted for providing accommodation entities.

6. The Learned DR placing reliance on the decision of the Kolkata Bench of the Tribunal in the case of Subhlakshmi Vanijya Pvt. Ltd Vs. CIT [60 taxmann.com 60] submits that on identical facts Hon'ble Tribunal considering the decision of the Hon'ble Supreme Court in the case of Lovely Exports (supra) held that it is necessary to prove three ingredients i.e. identity, source and credit worthiness beyond doubt by the Assessee. He submits that the Tribunal further held that the amendment to Section 68 is retrospective in nature, hence, share

capital received by the Assessee company is also liable for assessment in its hands. The Learned DR submits that this decision of the Kolkata Bench has been affirmed by the Hon'ble Kolkata High Court in the case of Rajmandir Estates Pvt. Ltd Vs. Pr CIT in GA No.509 of 2016 with ITA No. 113 of 2016 dated 13/05/16. Copy is placed on record. The Learned DR also placing reliance on various decisions submits that onus is on the Assessee to prove the creditors / shareholder's identity, source, credit worthiness and genuineness where the Assessee received amounts from paper / non existing companies or money received from the private placements. The Learned DR, therefore submits that since the Assessee is a Private Ltd. Company and the amount received by the Assessee is towards share capital, share premium, share application money and unsecured loans from closely related persons, the onus is on the Assessee to discharge and prove that these creditors are genuine. Since the Assessee failed to establish that these creditors are genuine, identity is not proved, credit worthiness is not proved, he submits that Assessing Officer rightly brought to tax under Section 68 of the Act.

7. We have heard the Learned DR, perused the orders of the authorities below. None appeared on behalf of the Assessee to controvert the findings of the Assessing Officer and the Learned DR though several opportunities were given to the Assessee. In the circumstances, since the findings of the Assessing Officer as well as the submission of the DR have not been controverted, we reverse the orders of CIT (A) and restore that of the Assessing Officer and we reject the grounds of the appeals of the Assessee and we allow the grounds of the revenue.

In the result, all the Revenue appeals are allowed and all the Assessee's appeals are dismissed.

Order pronounced in the open court on the 18th Day of November 2016.

Sd/-
राजेन्द्र / **RAJENDRA**
लेखा सदस्य /
ACCOUNTANT MEMBER

Sd/-
सी. एन. प्रसाद / **C.N.PRASAD**
न्यायिक सदस्य /
JUDICIAL MEMBER

मुंबई / Mumbai; दिनांक / Dated 18/11/2016

LR, SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai