

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SMT. BEENA A. PILLAI, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 3122/Del/2012
(Assessment Year 2003-04)
I.T.A. No. 3123/Del/2012
(Assessment Year 2004-05)
I.T.A. No. 3124/Del/2012
(Assessment Year 2006-07)
I.T.A. No. 3125/Del/2012
(Assessment Year 2007-08)
I.T.A. No. 3126/Del/2012
(Assessment Year 2008-09)
I.T.A. No. 3127/Del/2012
(Assessment Year 2009-10)**

Matchless Glass Services Pvt. Ltd. B-4/71A, Lawrence Road Keshav Puram, New Delhi GIR/PAN: AADCM5759L	Vs.	ACIT, Central Range Ghaziabad
(Appellant)		(Respondent)

A n d

**I.T.A. No. 2998/Del/2012
(Assessment Year 2003-04)
I.T.A. No. 2999/Del/2012
(Assessment Year 2004-05)
I.T.A. No. 3000/Del/2012
(Assessment Year 2006-07)
I.T.A. No. 3001/Del/2012
(Assessment Year 2007-08)
I.T.A. No. 3002/Del/2012
(Assessment Year 2008-09)
I.T.A. No. 3003/Del/2012
(Assessment Year 2009-10)**

ACIT, Central Range Ghaziabad	Vs.	Matchless Glass Services Pvt. Ltd. B-4/71A, Lawrence Road Keshav Puram, New Delhi GIR/PAN: AADCM5759L
(Appellant)		(Respondent)

Assessee by : Sh. C. S. Aggarwal, Sr. Advocate
Department by : Ms.Nirupama Kotru, CIT, DR.

Date of hearing : 21.02.2017
Date of Pronouncement: 27.02.2017

ORDER

PER BEENA A. PILLAI, JM:

1. This is a batch of 12 appeals filed by assessee as well as revenue, relating to assessment year 2003-04 to 2009-10. Since issue involved in all these appeals is common, they are heard together and are disposed off by way of a common order.

2. The brief facts of the case are as under:

The aforesaid group includes 6 appeals preferred by assessee and 6 appeals by revenue. These appeals were decided by Ld. CIT(A) by 6 separate orders, all dated 22.02.2012, against which assessee as well as revenue had preferred appeals before this Tribunal. On 29.10.2014 this Tribunal passed a consolidated order in a batch of 115 appeals involving various other assessee's, which included 6 appeals by assessee and 6 appeals by revenue in case of

assessee before us. Against the order passed by this Tribunal, revenue preferred appeal before Hon'ble High Court under section 260A of the Act. Before Hon'ble High Court Revenue raised questions:

- (i) *Whether in the facts and circumstances of the case, ITAT could have deleted additions under section 68 of the Act on the ground that they are not based on any material found as a result of the search on the assessee company?*
- (ii) *Whether in the facts and circumstances of the case, ITAT could have held that there was no valid search since the impugned additions have been made under section 153A/143(3) of the Act without reference to any material found as a result of search?*
- (iii) *Whether in the facts and circumstances of the case, ITAT could have held that additions made in non-abated assessments, are invalid?*
- (iv) *Whether on the facts and circumstances of the case, findings of the ITAT are perverse?"*

3. Hon'ble High Court vide order dated 18.12.2015, on the basis of various observations held as under:

"Insofar as question nos. (ii) and (iii) are concerned, the same do not arise from the impugned orders passed by the ITAT. The ITAT had noted in its order that the Assessee had not pressed the legal issues involved in its appeal. It was further noted that the Assessee had also not challenged the assumption of jurisdiction under Section 153A of the Act. The only grounds that were agitated before the ITAT were related to the merits of the additions made by the AO under Section 68 of the Act. In the circumstances, the only question that arises is whether the ITAT has erred in holding that additions under section 68 of the Act were invalid.

27. At this stage, we must also observe that the stand of the Revenue is somewhat unclear; while the Revenue is contending that the Assessee is liable to pay tax on the amount credited in its books as under Section 68 of the Act. It is also deleted the amount invested by the Assessee in shares of SVP Group companies on the ground that the Assessee is only a conduit. The AO has been influenced by the fact that several companies who had subscribed to share capital of SVP Group aggregating a sum of Rs.85,48,50,000/- out of which shares subscribed/purchased at an aggregate value of Rs. 81,19,32,000/- had subsequently been sold/transferred to other SVP concerns/promoters for a sum of Rs. 10,38,65,200/-. Resultantly, the shareholders of SVP group had acquired shares corresponding to funds of Rs. 81,19,32,000/- infused in SVP Group of companies for an aggregate consideration of Rs.10,38,65,200/-. Thus, acquiring hidden capital of 70,80,66,800/- without payment of corresponding taxes required to generate that wealth. This fact had led the AO to believe that all the companies that had subscribed to the share capital of core SVP Group companies and had subsequently transferred them at a fraction of the value, had acted as a conduit for routing the money generated by SVP operational companies by charging 'on money' on booking of flats. Although, the transactions at such scale definitely give rise to suspicion that money generated by SVP Group has been re-routed, the same cannot be established as a fact without other relevant evidence. Thus, the AO cannot be faulted for proceeding on a hypothesis that the funds invested into SVP Group by the Assessee and other such companies were cash funds generated by SVP Group that had been routed through companies such as the Assessee. However, AO

needed evidence to establish the hypothesis and without any material to establish the link between the source of funds received by the Assessee company (and such other companies) and the investee companies of SVP Group, it was not permissible for the AO to hold that the Assessee had acted as a conduit. There was no material before the AO which would establish that the funds received by the SVP Group were cash funds generated by the SVP Group and, therefore, the question of deleting any alleged unexplained credit on account of the funds invested with the SVP Group did not arise. In the circumstances, the only issue that could be examined by the AO and the CIT(A) was whether the Assessee had explained the sources of the credit entries in its books. It cannot be disputed that the fact; (a) that the Assessee's registered office was located at a Janta Flat occupied by the persons belonging to lower middle class; (b) that no commercial activity was found at the registered office of the company; (c) that several persons/companies which the Assessee claimed had paid funds to the Assessee for acquiring its share capital or for purchase of shares of other companies held by the Assessee were also stated to be located/residents of the same Janta Flat, it was also the registered office of the Assessee Company; (d) that a large amount of payments received by the Assessee were in cash; (e) that the Assessee did not have a bank account in two years, would certainly be relevant factors in determining whether the credit entries in the books of the Assessee were genuine and from creditworthy sources. However, it was for the fact finding authorities to finally examine the evidence on record and determine whether the Assessee could satisfactorily explain the credit entry in its books and could establish the genuineness of the

transactions claimed to have been entered into by it. Clearly, the ITAT has not examined the facts relating to the Assessee. The ITAT had simply proceeded on the basis of the facts obtaining in the case of Pranjul Overseas (P) Ltd. on the statement of the parties that the facts of that case were similar to the facts in the case of the Assessee. However, an examination of the documents filed before us, it does not appear that the facts in the case of Pranjul Overseas (P) Ltd., were similar to that as obtaining in the present case. While it appears that in the case of Pranjul Overseas (P) Ltd., the Assessee disputed that any search took place at its registered office, the written submissions filed by the Assessee in this case, does not indicate that any such dispute was raised. Even before us it has not been contended that no search took place at the declared registered office of the Assessee.

28. In the circumstances, we find it is necessary to remand the matter to the Tribunal to examine the facts relevant to the Assessee for determining whether an addition under Section 68A of the Act was sustainable. Needless to mention that it would also be open for the ITAT to remand the matter for further enquiries if it is so considered necessary.

4. The issue that has been remanded by Hon'ble High Court to this Tribunal, in all these appeals to verify details of the share capital/application money received by assessee during the years under consideration.

5. Ld. Counsel for assessee has submitted that for assessment year 2003-04 and 2004-05 additions have been made by Ld. AO on the basis of bank deposits, that has been alleged to have been unexplained under section 68 of the Act.

It was stated before Ld. AO that assessee did not have a bank account during assessment years 2003-04 and 2004-05. Ld. Counsel submitted that, only activity carried on by assessee during these two years was sale of shares, which was purchased and settled without taking delivery. Ld. Counsel submitted that, in these assessment years being 2003-04 and 2004-05 there does not arise any issue of unexplained cash credits under section 68 and grounds raised by revenue for assessment year 2003-04 and 2004-05 cannot be sustained.

6. It has been submitted that grounds that requires addition are ground Nos. 2.2, 2.3 and 2.4 in assessee's appeal Ld. Counsel submitted that besides trading in shares, assessee did not carry on any other activity. Ld. Counsel further submitted that, Ld. AO has not disputed trading in shares for these assessment years and hence no addition under section 68 could be made.

7. Ld. DR on the other hand relies upon the decision of authorities below.

8. We have perused relevant materials on record in the light of the arguments advanced by both sides.

9. On perusal of balance sheet and profit and loss account for assessment years 2003-04 and 2004-05 it is observed that, only activity carried on by assessee was sale of shares. In fact from order of Ld. AO it is observed that there is a categorical finding which is as under:

“No business activity such as receipt of share application money and its investment thereof in unquoted share seems to have made during the year under consideration as per the details filed till the finalization of the assessment order. No bank statement is filed. Therefore a lump sum of Rs. 50,00,000/- is added to protect the revenue leakage.”

10. Similar is the finding given by Ld. AO for assessment year 2003-04.

11. We are, therefore, of considered opinion that, since the credit edition has been made without any evidence by only to protect the revenue leakage, there does not arise any verification of the creditors for assessment year 2003-04 and 2004-05.

12. Accordingly appeal filed by assessee on Limited grounds remanded stands allowed and appeal filed by the revenue stands dismissed.

Assessment year 2006-07 to 2009-10

13. Additions made by Ld. AO in respect of alleged unexplained credits in the bank account vis-a-vis investment made with SVP group for the assessment years 2006-07 to 2009-10 are tabulated year under:

Sr. No.	Particulars	Assessment Years			
		2006-07 (Rs.)	2007-08 (Rs.)	2008-09 (Rs.)	2009-10 (Rs.)
ii)	Unexplained credits in the bank accounts	2,89,65,6807-	4,93,20,4987-	2,50,67,3247-	2,18,05,7337-
iii)	Less: Investment made with SVP Group	51,00,0007-	84,00,0007-	-----	-----

	Addition u/s 68 of the Act	2,38,70,8277-	4,09,43,5897-	2,50,67,3247-	2,18,05,7337-
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14. Ld. Counsel for assessee submitted that as issues involved are common to all assessment years under consideration, arguments advanced are to be applied to assessment years 2006-07 to 2009-10. He submitted that in appeals filed by assessee for these years, ground No. 2 needs to be adjudicated, in the light of directions passed by Hon'ble High Court.

15. On perusal of order dated 18.12.2015 passed by Hon'ble High Court, direction has been given to this Tribunal to examine, sources of credit entries in its books during the years under consideration. Accordingly we proceed to examine the identity, creditworthiness of persons, who are stated to have deposited money with to assessee as well as the genuineness of the transactions.

16. Ld. Counsel contended that, assessee had received funds from persons which have been taxed on their income, and it was not open for revenue to now contest their identity or genuineness in respect of transactions, which has been accepted by revenue itself, while making assessment in respect of those persons. Ld. Counsel further submitted that assessee was carrying on with its business of trading in shares and stocks of different companies, details of which were filed before Ld. AO. He submitted that credit entries in

bank are either receipts on account of sale of old investments or deposits out of cash in hand or recovery of old debts.

17. On the other hand, revenue has contested that funds invested into SVP group by assessee were cash funds and there was no material placed before Ld. AO which could establish that cash credit for alleged sale of shares, share capital etc., were genuine and from creditworthy sources. Ld. DR submitted that registered office of assessee was located at Janta flat and there was no commercial activity that was found to have been carried on by assessee. She submitted that large number of payments received by assessee in cash has been shown in the nature of share capital in its books, and assessee has not discharged its onus to prove identity, creditworthiness of creditors and genuineness of such transaction as per the mandate of section 68 of the Act. It has been submitted by Ld. DR that assessee was a conduit engaged in rotating undisclosed investment of beneficiaries of others.

18. We have perused arguments advanced by both sides in the light of the records placed before us.

19. Before proceeding to discuss above submissions, a brief recapitulation of legal position as regards section 68 of the Act is necessary. Under section 68 of the Act, assessee has to offer an explanation in regard to any sum credited in the books of accounts. This could be any sum whether in the form of sale proceeds or receipt of share capital money.

Thereafter, Ld. AO is to enquire whether, explanation offered by assessee is satisfactory or not. Truthfulness of the assertion by assessee regarding the nature and source of credit in its books of account can be examined by Assessing Officer subsequently. Where identity and creditworthiness of depositors along with genuineness of transaction stands established and it is shown that they had in fact invested their own money in the purchase of assessee's shares, such amount received would not be charged to tax. Where no explanation at all or explanation offered is unsatisfactory, provision of section 68 may be invoked and such capital or revenue income may be taxed in the hands of the assessee.

20. The entire controversy in present appeals revolves around addition made under section 68 of the Act, where assessee either offers no explanation for the credit entries in the books of accounts, or explanation offered by it, is found to be unsatisfactory. In cases where identity of creditors has been established by assessee along with explanation about credit entries and genuineness of transaction, as to the nature of transaction, leading to such credit entries in the books of accounts, assessee is considered to have discharged its initial onus and burden.

21. It is observed from the records placed before us that assessee has submitted only copies of statement and Ledger account. During the assessment proceedings Ld.AO, vide various letters had called for details like Bank account

details, complete narration regarding the source of fund credited in the accounts and detailed explanation on the entries etc., which has not been produced. In the submissions filed before the assessing officer the assessee has submitted that it has been working as Investment Company and was dealing in purchase and sale of investment in shares and other companies. The assessee had also submitted that assessee had received investment from various different sources for fresh shares have been issued and form No.2, has been filed regarding allotment of shares with the registrar of companies, Delhi and Haryana.

22. On further verification of the paper book and the records it is observed that the assessee has tried to substantiate by way of an affidavit in order to prove credit entries in the bank account being in the nature of share capital. The affidavit of the depositor has been examined. These affidavits do not show any evidence of the creditworthiness and genuineness of the transaction. It merely shows mean, addresses and amount deposited with the assessee. Specific reference is made to page Nos. 378, which is an affidavit of Sh. Danesh Sadiue, who deposited Rs.25,000/-for funding initial expenses. Likewise most of the affidavits are similarly worded. Therefore according to us, assessee does not discharge the initial onus cast upon, with respect to the cash credit. Ld.Counsel on these affidavits, relied upon the decision of ***Hon'ble Supreme Court in the case of Mehta***

Parekh & Co. vs. CIT, reported in 30 ITR 181 to submit that, when affidavits filed by assessee are not controverted by assessing officer, they should be accepted. We have carefully considered the argument advanced by the Ld. Counsel and are not impressed with that. Had these affidavits been of the nature which discharged the initial onus cast upon the assessee to identify the creditors and also prove creditworthiness and genuineness of the transaction, we could have said that, unless these affidavits are proved contrary by Ld. AO, it would be accepted as it is. However that is not the case in the present facts before us.

23. Apart from these details the assessee has not filed any other documents which could have established genuineness, identity and creditworthiness of creditors neither has assessee produced creditors before assessing officer. Ld. Counsel has placed reliance upon ***CIT v. Lovely Exports P. Ltd. [2008] 216 CTR 195 (SC)***, wherein it has been held that, if the share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Ld. AO by assessee, then Department can proceed to reopen their individual assessments of alleged shareholders, in accordance with law. Ld. Counsel submitted that assessee therein had submitted affidavits of creditors, and thus initial onus has been discharged. He submitted that assessing officer thereafter should have verified all the necessary facts.

He submitted that there was no material before Ld. AO to allege that share applicants were bogus.

24. We have carefully perused the decision of Hon'ble Delhi High Court in the case of *CIT vs. Lovely Exports (supra)*. Hon'ble court has held as under:

"18. In this analysis, a distillation of the proceedings yield the following prepositions of law in the context of section 68 of the income tax act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely whether it has been transmitted through banking channel or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber; (4) if relevant details of the address or pan identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders registered, share application forms should, share transfer register, etc., It would constitute acceptable proof or acceptable explanation by the assessee. (5) the department would not be justified in drawing an adverse inference only because the creditor/subscriber failed to neglect to respond to blitz notices; (6) the onus would not stand discharge if the creditor/subscriber denies to repudiate the transaction set up by the assessee nor should the assessing officer take such repudiation at face value to construe it, without more against the assessee; and (7) assessing officer is duty bound to investigate the creditworthiness of the creditor/subscriber to

the genuineness of the transaction and the veracity of the repudiation.”

25. It is also observed that assessee in the case of *CIT vs. Lovely Exports (supra)* had established by way of confirmation and affidavits of share applicants, containing the details including PAN/IT Ward number, racial card of share applicants, and further the payments were made through proper banking channels. In that particular case all the necessary details, particulars of the creditors were furnished thereby discharging the onus. However in the present case assessee has failed to discharge the initial onus. Hence the ratio of the decision of fundable Delhi High Court in the case of *CIT vs Lovely Exports (supra)* cannot be construed in favour of assessee whereas it supports the contentions of the revenue.

Further it is held that it was in the context of public issue made by the company and not in the case of issue of shares other than public issue.

26. During the course of the arguments, Ld. Counsel had also placed heavy reliance upon decision of Hon'ble Delhi High Court in the case of ***CIT vs. Sofia Finance Pvt. Ltd., reported in (1994) 205 ITR 98.*** But on perusal of judgment we observe that in the context of section 68 of the Act, Hon'ble court observed as under:

(i) The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it

has been transmitted through banking or other indisputable channels ; (3) the creditworthiness or financial strength of the creditor/subscriber'.

(ii) has also been held that use of words "any sum found credited in the books" in section 68 indicates that the section is very widely worded and the income tax officer is not precluded from making an enquiry as to the true nature and source of sum credited in the accounts books even if it is credited as receipt of share application money. Hon'ble Court has further held that if an amount is credited as capital receipt, then it could not be taxed but it is for the income tax officer to be satisfied that the true nature of the receipt is that of capital. Merely because the company chooses to show the receipt of money as capital, it does not preclude the income tax officer from going into the question whether it is actually so.

27. In the facts of present case before, it has been argued by Ld. Counsel that monies credited into books of accounts of assessee, are invested by the respective shareholders and is share capital in the hands of assessee. If that is so the assessee is duty bound to establish the true nature of the credit by providing evidences about identity, creditworthiness and genuineness of the transaction which could discharge the initial onus cast upon the order under section 68 of the act. On perusal of the order passed by Ld.CIT(A), it is observed that he has merely deleted the addition without initial onus being discharged by the assessee as per section 68. 1st that he also erred in holding that assessee is a conduit company without any evidence on record or being placed by assessee, either before the Ld. AO, the Ld. CIT (A) himself. He is on the basis of skanky evidences placed before

him dearly paid their respective additions under section 68 for assessment year 2006-07 to 2009-10. The Hon'ble High Court while reminding the issue of cash credits to this Tribunal, has directed that it would be also open to ITAT to remind the matter for further enquiry if it is considered necessary. We are therefore of the considered opinion that might have Ld. AO the Ld.CIT (A) has made any enquiry towards the amount credited in the books of the either as share capital or as sale of shares which is in the profit and loss account. The Ld.Counsel and Ld. CIT. DR, agreed that such enquiries can only be conducted at the level of Ld. AO. Therefore we set aside the issue for examination of cash credits either as share capital and premium or as sale of shares from back to the file of Ld. AO. The Ld. AO shall 1st grant an opportunity to assessee to discharge its initial onus by providing the identity, creditworthiness and most importantly genuineness of the transactions as per section 68 of the act. After the discharge of initial onus by assessee, the Ld. AO may conduct any enquiry that he may deem fit and proper to inquire about the veracity of the evidences/information submitted by the assessee in respect of the credit entries. Ld. AO may take all necessary steps in order to identify, examine the creditors and decide the issue on merits nearest say that adequate opportunity may be granted to the assessee to support the case.

28. In the site appeals filed by the revenue for the assessment years 2006-07 to 2009-10, are allowed with above directions.

As we have already set aside and the appeals filed by the revenue on the issue of section 68, the appeal filed by assessee is allowed in lieu of spectrum ground number. The Ld.AO is directed to site the appeals of revenue on merits. In the result the appeal filed by revenue for assessment years 2006-07 to 2009-10 is allowed for statistical purposes and that of assessee stands dismissed.

Order pronounced in the open court on 27th February, 2017.

Sd/-

Sd/-

(PRASHANT MAHARISHI)

ACCOUNTANT MEMBER

Date: 27.02.2017

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Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi)