

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

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI AT VARKEY, JUDICIAL MEMBER**

**ITA No. 1541/Del/2013
AY: 2009-10**

BTM Exports

vs.

ACIT, Circle 3(1)

G II, 17/41

New Delhi

West Punjabi Bagh

New Delhi 110 026

PAN: AACCB 5093 M

(Appellant)

(Respondent)

Appellant by : Sh. Ajay Wadhwa, Adv.

Respondent by : Sh. SK Jain, D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Ld. Commissioner of Income Tax (Appeals)-VI, New Delhi dt.31.01.2013 pertaining to the Assessment Year (A.Y.) 2009-10 on the following grounds.

1. *That the order of the Ld. CIT (Appeals)-VI, New Delhi is bad in law and on facts.*

2. *That on the facts and in law the Ld. CIT (Appeals)-VI has erred in upholding the addition of Rs.3,84,00,000/- representing share application money received from 16 shareholders despite of furnishing confirmation from each shareholder indicating their PAN, name of the bank on which cheque was drawn and number of shares allotted.*

3. *That the Ld. CIT (Appeals) should have accepted the share application money as genuine and deleted the addition as the assessee was able to*

discharge its burden u/s 68 by filing their income tax return and bank statement of each shareholder.

4. *That the addition confirmed by the Ld.CIT (Appeals) is against the rulings of the Hon'ble Supreme Court and High Courts holding that once the assessee has proved identity of creditor/ share applicant by either furnishing PAN or copy of their bank account, the addition under Sec. 68 cannot be made without any additional material to support the same [CIT vs. Kamadhenu Steel & Alloys Ltd., (2012) 248 ITR 33 (Del)].*

5. *That the Ld.CIT(A) has erred in law in confirming the addition even though the source of the funds of the shareholders were known, i.e. being Shubh Laxmi Textile. The factum of the business dealings of the appellant with the said two concerns was established and the PAN card etc. of the shareholders was also a fact.*

6. *That the Ld. AO has conducted complete inquiry about the shareholders and their sources of funds which reveal that the said shareholders were existent had their bank accounts had introduced funds through account payee cheques and had received funds through known sources.*

7. *The appellant craves leave to alter, amend or add any other ground of appeal either before or during the course of hearing.*

1.1. The assessee moved an application for admission of additional evidence under Rule 29 of ITAT Rules stating that confirmations from M/s Shubh Laxmi Tax Company and M/s Sri Ram Enterprises were filed wherein the proprietors of M/s Shubh Laxmi Tax Company and M/s Sri Ram Enterprises have given their PAN numbers, Ward where they are assessed, Address and have also confirmed the transactions.

2. The Ld.Counsel for the assessee Mr.Ajay Wadhwa submitted that share capital was received by the assessee from 16 shareholders and that the assessee has filed confirmations along with bank statements and copies of PAN card of all these 16 shareholders in order to establish their identity, credit worthiness and genuineness. It was submitted that the AO made

further enquiries and found that the source of funds of all these 16 shareholders were from two entities i.e. M/s Subh Laxmi Textile Company and M/s Shri Ram Enterprises. The AO also obtained the bank statements of these entities. As the AO did not find these two entities at their given addresses, he came to a conclusion that these are not genuine concerns.

2.1. The Ld.Counsel for the assessee further submitted that these two entities are genuine and had been in the business of trading in fabrics since long and have been associated with the assessee company for many years and also have extensive business transactions of purchase and sale. He submitted that these two entities had infused money into the company through these shareholders. He argued that both these companies have made all the transactions through crossed account payee cheques and have credible and sufficient balances in their bank accounts and that there were no cash deposits. He submitted that as these two entities are source of source of the credits in the assessee's books, the assessee was advised that these facts need not be mandatorily projected before the authorities. He argued that the non-submission of these facts before the lower authorities was because of the belief that the assessee need not prove the source of source of a cash credit, as laid down by various Courts in different case laws. As the assessee seeks to prove the source of sources as was done by it in the subsequent A.Y. 2008-09, he prayed that the following additional evidences may be admitted.

“Confirmation from M/s Shubh Laxmi Tax Company and M/s Sri Ram Enterprises along with PAN numbers, Ward, address etc.”

2.2. The Ld.Counsel further submitted that in case of the assessee, for the A.Y. 2008-09, these two entities i.e. M/s Shubh Laxmi Tax Company and M/s Sri Ram Enterprises had, in response to a notice from the A.O. u/s 133(6) of the Act had furnished confirmations, balance sheets, tax audit reports along with income tax returns and the Assessing Officer had accepted these documents and held that the credits are genuine. Thus he submits that the very same information should be admitted for the current

A.Y. also on the ground of consistency as well as natural justice for arriving at a fair and correct decision. On a query from the Bench he submitted that the assessments for the A.Y. 2008-09 was completed subsequent to the impugned assessment year. He prayed that the additional evidence be admitted the matter may be remanded to the file of AO for fresh adjudication in accordance with law.

3. The Ld.D.R. Mr.SK Jain, on the other hand, opposed the contentions of the assessee and submitted that sufficient opportunity was granted to the assessee by the AO as well as the Ld.CIT(A) and the application of the assessee should be rejected. He filed a letter dt. 14.12.2015 from the ACIT, Central Circle 5(1) New Delhi wherein it is stated as follows.

- (a) The assessee failed to discharge the onus in establishing the identity, credit worthiness of the shareholders and the genuineness of the transactions.
- (b) The AO had made enquiries and found that the source of money of the shareholders were two entities M/s Shubh Laxmi Tax Company and M/s Sri Ram Enterprises and the bank statements of these two entities were obtained. It was these two entities which had remitted money to the various shareholders, who have invested in the assessee company.
- (c) The two entities were not found at the address by the department and hence are not genuine.
- (d) The notices issued u/s 133(6) were received back from the postal authorities.
- (e) These two firms shared the address with 16 shareholders and the bank account was opened only for a short period.
- (f) When the assessee was asked to furnish information, it was submitted that they had approached the shareholders to collect the same but it was not done.
- (g) That the present application is contrary to the factual position as the assessee claims to have extensive business transactions with these two concerns.

3.1. The Ld.D.R. submitted that the assessee had been given ample opportunity and submits that at this point of time he should not be entertained. On a query from the Bench he admitted that for the previous A.Y. on the very same facts the genuineness of the transactions was accepted by the revenue.

4. In reply the Ld.Counsel for the assessee submitted that as the transactions were accepted in the previous Assessment Year the AO should examine the same based on the findings in that assessment order as well as the material now sought to be produced. He submitted that the assessee was prevented by sufficient cause from furnishing these evidences, as he was advised that source of source need not be proved in the case of money received from shareholders.

5. After hearing rival contentions, we find that the assessee has submitted confirmations along with bank statements, copies of PAN card etc. of all the 16 shareholders. The present additional evidence pertains to the source of funds of these 16 shareholders. The submissions of the Ld.Counsel for the assessee that its belief that source of the source, need not be proved lead to the assessee not filing these confirmations from third parties before the revenue authorities has force. Judicial pronouncements support this belief that the assessee need not prove source of source. Yet another factor which goes in favour of the assessee is that, in the previous assessment for the A.Y. 2009-10 in the case of the same assessee, the assessment of which was completed after the assessment of the impugned assessment, the source of sources was enquired into by the A.O. and confirmations were obtained from both M/s Shubh Laxmi Tax Company and M/s Sri Ram Enterprises . Balance sheets, tax audit reports and income tax returns of these companies are available on the file of the A.O. for the immediately preceding A.Y. Under these circumstances we are of the considered opinion that the additional evidences filed by the company under Rule 29 of the ITAT Rules should be admitted in the interest of justice. While doing so we rely on the decision of the Hon'ble Delhi High Court in

the case of CIT vs. Text Hundred Industries Ltd. (2013) 351 ITR 57 wherein it is held as under.

"13. The aforesaid case law clearly lays down a neat principle of law that discretion lies with the Tribunal to admit additional evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter. This can be done even when application is filed by one of the parties to the appeal and it need not to be a suo motto action of the Tribunal. The aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice in the matter. It is well settled that the procedure is handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect."

Further the Hon'ble Delhi High Court in the case of CIT vs. Virgin Securities & Credits P.Ltd. 332 ITR 396 at para 8 held as follows.

"8. The aforesaid contention appears to be devoid of any merit. It is a matter of record that before admitting the additional evidence, the CIT (A) had obtained remand report from the AO. While submitting his report, the AO had not objected to the admission of the additional evidence, but had merely reiterated the contentions in the assessment orders. it is only after considering the remand report, the CIT(A) had admitted the additional evidence. It cannot be disputed that this additional evidence was crucial to the disposal of the appeal and had a direct bearing on the quantum of claim made by the assessee. Plea of the assessee which was taken before the AO remains the same. The AO had taken adverse note because of non-production of certain

documents to support the plea and it was in these circumstances the additional evidence was submitted before the CIT(A). It cannot be said not is it the case of the Revenue that additional evidence is not permissible at all before the first appellate authority. On the contrary, Rule 46A of the Act permits the (IT (A) to admit additional evidence if he finds that the same is crucial for disposal of the appeal. In the facts of this case, therefore, we are of the opinion that on this aspect, no substantial question of law arises

5.1. In the result we allow the application of the assessee for admission of additional evidence under Rule 29 of the ITAT Rules.

5.2. As we have admitted additional evidence, we deem it fit and proper to set aside the matter to the file of the A.O. for fresh adjudication in accordance with law. The A.O. is directed to consider all the evidences to be produced by the assessee and adjudicate the issue de-novo.

6. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 24th February, 2016.

Sd/-

(A.T.VARKEY)
JUDICIAL MEMBER

Sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 24th February, 2016

- *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR