

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E, 'MUMBAI**

**BEFORE SHRI RAJENDRA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

**ITA No. 4607/MUM/2012
(Asst. Year : 2008-09)**

ACIT, Circle-3,
Thane.

Vs. Shree Rajlaxmi Textile Park Pvt. Ltd.,
502-503, Abhiman-II,
LBS Marg, Near Damani Estate,
Thane (W).

(Appellant)

PAN No. AAKCS 5236 M
(Respondent)

Assessee by : Shri Reepal Tralshawala – CA
Department By : Shri Manjunatha Swamy – CIT DR
Date of hearing : 20/07/2016.
Date of pronouncement : 18/10/2016.

ORDER

PER C.N. PRASAD, JUDICIAL MEMBER

This appeal is filed by the Revenue against the order of the Id.CIT(A)-1, Thane dated 28/03/2012 for the Assessment Year 2008-09.

2. The Revenue has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT (A)-I, Thane has erred in deleting the addition of Rs. 14,50,40,000 made u/s 68 of the I.T. Act, 1961 being the amount of money invested by 20 companies as share capital ignoring the fact that identity, capacity of the investing companies and genuineness of the transaction has not been proved by the assessee.

2. On the facts and circumstances of the case and in law, the Ld. CIT (A)-I, Thane has erred in accepting the identity of the Company ignoring the fact these companies were not found to be existing on the addresses given and the letters sent to these companies by RPAD were returned by the postal authorities with the remark "no such company

existed".

3. On the facts and circumstances of the case and in law, the Ld. CIT (A)-I, Thane has erred in accepting the capacity of the companies even though the returned income of all these companies is between Rs. 10,000 to Rs. 20,000 and thus these companies didn't have capacity to make investment as share capital in the assessee company.

4. On the facts and circumstances of the case and in law, the Ld. CIT (A)-I, Thane has erred in accepting the genuineness of the transaction ignoring the fact that all the companies operated from the same address at New Delhi and the companies at Tamil Nadu also operated from the same address in Chennai. The bank accounts of all the 20 companies was in the same bank and the same branch at New Delhi even though a few of the companies were located in Chennai and that most of the money is transferred between 1st March and 7th March and also overlooking the fact that these companies are mere conduits for routing money as there are simultaneous deposits and withdrawals of the same amounts in their bank statements all throughout and thus transaction of investment by these companies as share capital is not genuine.

5. The appellant prays the order of the Ld CIT(A)-I, Thane, may be vacated and that of the Assessing Officer be restored .

6 The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary."

3. Brief facts of the case are that the assessee engaged in the business of construction of godowns and filed its return of income on 01/10/2008 declaring NIL income. The assessment was completed under section 143(3) on 30/12/2010 determining the income of the assessee at Rs. 19,40,40,000/-. While completing the assessment, the Assessing Officer noticed that the assessee has received share application money (including share premium) to the tune of Rs.19,40,40,000/-. The Assessing Officer required the assessee to furnish the addresses, returns and computations of the share applicants. It appears that, this information was called for on 14/12/2010. By 30/12/2010, the assessee furnished only partial information and the Assessing Officer came to the conclusion that the share application money provided by the share applicants are only from companies established for providing accommodation entries and

genuineness of the transactions are not proved by the assessee. Therefore, he concluded that the share application money (including share premium) amounting to Rs.19,40,40,000/- is treated as unexplained cash credit under section 68 of the Act.

4. On appeal, the Id. CIT(A) deleted the addition based on the submissions of the assessee and the remand report sent by the Assessing Officer. Now the revenue is in appeal before us challenging the order of the Id. CIT(A) in deleting share application money to the extent of Rs. 14,50,40,000/- under section 68 of the Act.

5. Departmental Representative vehemently supported the order of the Assessing Officer. He further submitted that the Id. CIT(A) went wrong in relying on the remand report because during the remand proceedings, letters were sent to the parties by RPAD and those letters were returned back by the postal authorities with an endorsement "no such companies exists in the given addresses". The Departmental Representative further submitted that it was asked the assessee to produce Directors of the companies, but he failed to do so. Departmental Representative further submitted that all companies filed returns of income with meagre amounts and there are no much activities in the companies which show that the companies are paper companies to provide accommodation entries. The Departmental Representative placed reliance on the decision of CIT Vs. Nipun Builders and Developers (2013) 350 ITR 407 (Del) and CIT Vs. N.R. Portfolio Pvt. Ltd. (2014) 206 DLT 97 (DB).

6. The Authorized Representative of the assessee submitted that all the observations made by the Assessing Officer in the assessment order are all negated in the remand report. All the evidences in the assessment order are not correct. The Authorized Representative of the

assessee further submitted that Shri Ramesh Kumar J. Saboo appeared on behalf of all the companies and given statement before the Assessing Officer confirming the share application money given by the companies on their behalf. The Authorized Representative of the assessee further submitted that change of address was also given to the Assessing Officer along with MCA. The Authorized Representative of the assessee further submitted that the assessee has undertaken for construction of textile park and the various companies were interested in investing to meet share application money. The details of the companies, confirmations, their bank statements, returns of income, balance sheets and profit & loss accounts along with annexures returns filed with ROC etc. were filed before the authorities below. Referring to page Nos. 30 & 31, the Authorized Representative of the assessee submitted that the Revenue has recorded the statement of Shri Ramesh Kumar J. Saboo authorized representative of various companies, who clearly stated that all these companies have interested in making investment in projects, offering good returns. The observation of the Assessing Officer that all the companies are from Delhi and Chennai were also not correct. He submitted that out of twenty companies, five are from Bombay, eleven are from Delhi, three are from Calcutta. The Authorized Representative of the assessee further referring to page No. 81 of the paper book submitted that in fact one of the Directors of the company Shri Rajesh Kumar namely Unique Diagnostics Ltd. has given affidavit stating that the company Unique Diagnostics Ltd. has paid a sum of Rs. 30 Lac by way of cheque/DD towards 30,000 equity shares of Rs. 10/- each at a premium of Rs. 90/- to the assessee company. The Authorized Representative of the assessee further submitted that all these details are filed and the detailed enquiries were made in the course of remand proceedings and no discrepancies were pointed out in the remand report. The Authorized Representative of the assessee further submitted that the evidences placed on record and the remand

report were examined by the Id.CIT(A) and deleted the addition as the transactions were genuine and shareholders were also identified and they are genuine and no addition is sustainable under section 68 of the Act. He placed reliance on the following decisions in support of his contentions.

- 1) ITO Vs. M/s. Superline Construction P. Ltd. in ITA No. 3645/MUM/2014 dated 30/1/2015. (Mumbai – Trib.)
- 2) ACIT Vs. M/s. Dhanlaxmi Equipment Pvt. Ltd. in ITA 1103/JP/2011 dated 21/03/2016 (Jaipur – Trib.)
- 3) CIT Vs. Five Vision Promoters Pvt. Ltd. in ITA NO. 234 to 236/2015 dated 27/1/2015 (Delhi – HC)

7. We have heard the rival submissions, perused the orders of the authorities below and the case-laws relied on by the parties. In this case, the Assessing Officer while computing the assessment treated the share application money as unexplained cash credits under section 68 of the Act, as the assessee could not file the details before completion of assessment. The assessee preferred an appeal before the Id. CIT(A), who after calling for the remand report and the details furnished by the assessee, deleted the addition by observing as under:-

"4.1 Now coming to the share application money received from the investor companies, amounting to Rs. 14,50,00,000/-, I find that the Assessing Officer during the course of remand report preparation, has carried out detailed enquiries under section 133(6) of the Act and also recorded the statement of their Authorized Representative, Shri Ramesh Saboo, CA. After examination of the documentary evidences collected under section 133(6) such as confirmation letter, share application form, copy of Audit Report along with Balance Sheet and profit & loss account copy of Bank Statement, Income Tax particulars and Form No. 23AC filed with Registrar of Companies, etc., the A.O has furnished his Remand Report dt. 02.03.2012. The Remand Report is forwarded to me by the Jt. CIT, Range-3, Thane, vide his letter dated 06.03.2012. As is evident from the Remand Report reproduced in para 3 of this order, the A.O has not pointed out anything to suggest applicability of provisions of section 68 of the Act. Thus, it emerges that the A.O is fully satisfied with the explanation/documents in respect of genuineness of share application money. In view of such a situation, I do not find any reason for not accepting the submission of appellant.

Hence the addition deserves to be deleted on the basis of remand report itself.

4.2 I have also perused the documents listed in Remand Report and noticed that the identity of the share holders has been clearly proved with the support of Income Tax particulars, Audit Reports, Form No. 23AC filed to ROC and appearance of Chartered Accountant on their behalf. Copy of Bank statements clearly Showing transfer of money for investment in shares, share application form, share allotment, etc. establish the genuineness of the transactions. Further, the Bank Statements contain several transactions on regular basis of substantial amounts and there appears to be no cash deposit in the Bank A/c. The Balance Sheets reflect sources of funds as share capital, Reserve and surplus, etc. and investment in shares of various companies. Thus, on the basis of documentary evidences brought on record by the A.R of the appellant and the A.O, the source of share application money also stands explained satisfactorily. Since all the three ingredients name/identify and capacity of the shareholders and genuineness of the transactions are proved in respect of share application money under consideration, the case laws relied upon by the appellant become squarely applicable in the favour of appellant. To be specific, the A.O has relied upon the decision of Hon'ble High Court in the case of CIT Vs. Sophia Finance Ltd., 205 ITR 98 (Del)(FB) wherein it has been held that in case on enquiry, the ITO finds that shareholders do not exist, share application money can be treated as unexplained cash credit for the purposes of addition u/s, 68 and if share holders exist then, possibly, no further enquiry need be made. Since in the case of the appellant, there is not even a slightest doubt about the existence of share holders, the decision in fact, supports the case of appellant. In another important case of CIT Vs. Divine Leasing & Finance Ltd. (2007) 299 ITR 268 (Del) which is heavily relied upon by the A.R., The Hon'ble High Court has held that if relevant details of address and identity, PAN/Income Tax Ward Nor Confirmation, share allotment, etc. are furnished and share subscriptions were received through Banking Channel, it would constitute acceptable proof or explanation by the assessee. It is further observed that if the A.O fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed share capital as the undisclosed income of the company long with this case, the Hon'ble High Court has also decided the case of Lovely Exports (P) Ltd. on the same issue. The SLP filed by the department has been dismissed by the Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC) accordingly, by observing that if the share application money is received by the assessee company from alleged bogus share holders, whose names are given to AO, then the department is free to proceed to re-open their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company. Following the decision of Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. (supra), the Hon'ble Bombay High Court in the case of CIT Vs. Creative World Telefilms Ltd. (2011) 333 ITR 100 (Bom.) has

also decided the appeal in the favour of assessee since name and address of the share holders, their PAN/GIR No., cheque No., Bank names, etc. were given to the A.O.

4.3 In view of the above factual and legal position, respectfully following the ratio laid down by various courts, particularly Hon'ble Supreme Court and jurisdictional High Court which are binding on me, I hold that the share application money under consideration cannot be treated as unexplained cash credit under section 68 of the Act. The Assessing Officer is, accordingly, directed to delete the addition made under section 68 of the Act. Appellant, thus, succeeds on grounds No. 1 & 3 to 7."

8. On going through the above findings of the Id. CIT(A), we do not find any infirmity or valid reason to interfere with the decision in deleting the unexplained cash credit since the decision is based on the remand report and after examining the voluminous details filed by the assessee to prove the identity, genuineness, creditworthiness of the share applicants. None of the findings of the Id. CIT(A) have been rebutted with evidences by the revenue. Thus, we sustain the order of the Id. CIT(A) on this issue.

9. In the result, appeal of the Revenue is dismissed.

Order Pronounced in the open Court on 18th October, 2016

Sd/-
(RAJENDRA)
Accountant Member

sd/-
(C.N. PRASAD)
Judicial Member

Dated : 18th Oct., 2016.

vr/-

Copy to:

- 1. The Assessee.*
- 2. The Revenue.*
- 3. The CIT*
- 4. The CIT(A)*
- 5. The D.R.*
- 6. Guard file.*

By order

//True Copy//

Assistant Registrar
I.T.A.T., Mumbai