

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 1160/DEL/2013	
	A.Y. 2007-08	
INCOME TAX OFFICER, WARD-6(3), NEW DELHI ROOM NO. 185, C.R. BLDG., NEW DELHI	VS.	M/S MAYUR RESORTS PVT LTD., 49, ARAKASHAN ROAD, PAHAR GANJ, NEW DELHI - 55 (PAN: AAACM0922G)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by : Sh. P. Dam Kanunjna, Sr. DR  
Assessee by : Sh. Ved Jain, Adv.

**Date of Hearing : 17-11-2015**

**Date of Order : 18-11-2015**

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed this appeal against the Order dated 31.12.2012 passed by the Ld. CIT(A)-IX, New Delhi on the following grounds:-

1. The order of the Ld. CIT(A) is erroneous and contrary to facts and law.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 59,00,000/- made u/s. 68 as all the 17 shares applicants failed to establish creditworthiness and genuineness of transactions.
3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the onus of establishing the

creditworthiness of creditors and genuineness of transaction was on assessee which the assessee failed to discharge.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the recent landmark judgment of Jurisdictional High Court in the case of Nova Promoters and Finlease Pvt Ltd. (2012) 342 ITR 169 in which the Hon'ble Delhi High Court has interpreted the judgment of Hon'ble Apex court given in Lovely Exports.
5. The appellant craves leave to add, to alter, or amend on the ground of at the appeal raised above at the time of hearing.

2. The brief facts of the case are that the assessee filed the return of income for the AY 2007-08 on 25.10.2007 declaring income of Rs. 2,50,220/- and the same was processed u/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny and statutory notice u/s. 143(2) was issued and duly served upon the assessee. The assessment was completed u/s. 143(3) vide order dated 24.12.2009 by the AO at an income of Rs. 61,50,220/- making an addition of Rs. 59,00,000/- u/s. 68 of the I.T. Act.

3. Aggrieved by the assessment order, Assessee appealed before the Ld. CIT(A), who vide impugned order dated 31.12.2012 has partly allowed the appeal of the Assessee.

4. Against the order dated 31.12.2012 passed by the Ld. First Appellate Authority, Revenue is in appeal before the Tribunal.

5. Ld. DR relied upon the order passed by the AO and reiterated the contentions raised in the grounds of appeal. He stated that the AO has asked the assessee to furnish the requisite information to establish the genuineness of

receipts of share application money and establish the genuineness thereof and creditworthiness and identity of the share holders. In response to the same, assessee filed some information. The AO examined the same and found that the money deposited in the Bank Account of the share applicant and later on issuance of cheque to the assessee company were originated from the assessee company and the so-called alleged share applicants are benami persons of the company. He further submitted that Ld. CIT(A) has wrongly deleted the addition in dispute, without examining the genuineness of the transaction, creditworthiness and identity of the share applicants and therefore, requested that the order passed by the Ld. CIT(A) may be cancelled and the assessment order may be upheld.

6. On the contrary, Ld. Counsel of the Assessee relied upon the order of the Ld. CIT(A). In support of the impugned order, he has also filed the Synopsis in which he has narrated the facts of the case supported with the various decisions rendered by the Hon'ble Jurisdictional High Court. He further stated that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court passed in the case of PR. CIT vs. Rakam Money Matters Pvt. Ltd. 2015 (10) TMI 2057 - Delhi High Court decided vide ITA No. 778 of 2015 dated 13.10.2015. He has filed the copy of the said judgment with the advance copy of the Ld. DR.

7. We have heard both the parties and perused the records, especially the orders passed by the Revenue Authorities alongwith Synopsis filed by the Assessee's counsel and the judgment dated 13.10.2015 passed by the Hon'ble Jurisdictional High Court in the case of PR. CIT vs. Rakam Money Matters Pvt. Ltd. (Supra). The relevant portion of the said judgment is reproduced below for the sake of convenience.

- “13. *It is not in dispute that extensive material was produced by the assessee in the present case to prove the identity, genuineness and creditworthiness of the companies who had subscribed to its shares. Among the materials produced were the Income Tax Returns and the PAN card details of the eight companies. Even if the Directors of these companies did not respond to the summons issued by the AO, it was not impossible for the AO to make proper enquiries to ascertain the genuineness of these entities and satisfy himself of their creditworthiness. As pointed out by the CIT(A), the AO failed to make any effort in that direction. He did not take to the logical end the half-hearted attempt at getting the Directors to appear before him. He did not even seek the assistance of the AOs of the concerned companies whose ITRs and PAN card copies had been produced.*
14. *The view taken by the CIT(A) that the AO failed to come up with the material to disprove what had been produced by the assessee is certainly a plausible view in the facts and circumstances of the case. Likewise, the view taken by the ITAT concurring with the CIT(A) on facts cannot be said to be perverse.*
15. *The decisions cited by Mr. Sahni turn on their own facts. As far as the broad principles governing the law under section 68 of the Act is concerned, the Court is satisfied that the order of the CIT(A) as confirmed by the ITAT suffers from no legal infirmity. No substantial question of law arises.*
16. *The Appeal is dismissed.”*

7.1 After going through the aforesaid judgment of the Hon'ble High Court as well as the impugned order passed by the Ld. First Appellate Authority, we are of the considered view that Ld. CIT(A) has rightly deleted the addition in dispute, because the assessee has furnished all necessary documentary evidence for substantiating the claim in dispute. For the sake of convenience, the relevant observations of the Ld. CIT(A) at pages 6 to 8 vide para no. 5.1.3 to 5.1.4 is reproduced below:-

*“5.1.3 The appellant has furnished the following:*

*a. Name, address, PAN, acknowledgement of IT Return, Cheque number through which the payment was received, Copy of bank account, copy of driving license/ration card, share application form and signed confirmation of all the investors to the AO during the assessment proceedings.*

*b. Copies of income tax returns along with computation and balance sheets of all the investors filed by them for the AY. 2006-07 before your good self. Perusal cash in hand as on 31.03.2006 to deposited the same in their respective bank accounts. Copies of all the above mentioned documents have also been submitted for the AY. 2008-09, 2009-10, 2010-11 and 2011-12 before your good self which proves that the investors are genuine people, existing and doing gainful vocations.*

*c. All the investors, in response to notice u/s. 133(6) issued by the AO to verify the genuineness of transactions, have responded with confirmation of account, copy of bank statement, proof of filing returns of income and a sworn affidavit affirming the investments made by them with the appellant company.”*

*5.1.4 The appellant has relied on the legal propositions as laid out in the following cases:-*

*1. In case of Commissioner of Income Tax Vs. Dolphin Can Pack Ltd [2006] 283 ITR 190 (Delhi) Delhi High Court inter-alia held that: "Where the credit entry relates to the issue of the share capital, the ITO is entitled to examine whether the alleged shareholders do in fact exist or not. In the course of said enquiry, "The assessee had disclosed to the Assessing Officer not only the names and the particulars of the subscribers of the shares but also their bank accounts and the permanent account numbers issued by the Income Tax Department. Superadded to all this was the fact that the amount received by the company was all by way of cheques. That materials was, in the opinion of the Tribunal, sufficient to discharge the onus that lay upon the assess."*

*2. In another case of Commissioner of Income-Tax vs. Gangour Investrment Ltd [2009] 179 Taxman 1 (Delhi) Delhi High Court. Inter-alia hela as under: "The revenue can make addition under section 68 only if the assessee is unable to explain the credits appearing in its books of account. In the instant case, the assessee had filed subscription form of each of the investors. The said subscription forms contained details, which set out not only the identity of the subscriber, but also gave information with respect to their addresses as well as PANs. During the course of scrutiny, the Assessing Officer had also asked for and was supplied with a copy of the statement of the bank accounts of subscribers. The payments were made by way of a cReque. Finding of fact in respect of those ingredients had been returned both by the Commissioner (Appeals) as well as the Tribunal. In those circumstances, it could be said that the*

*assessee had discharged its onus in respect of the veracity of transactions.”*

3. *CIT vs. Steller Investment Ltd. [1991] 59 Taxman 568 (Delhi) Delhi High Court Inter-alia held as under:*

*“Even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances can the amount of share capital be regarded as an undisclosed income of the assessee. It may be that there are some bogus shareholders in whose name the shares had been issued and the money may have been provided by some other persons. If the assessment of the persons, who are alleged to have really advanced the money, is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself”*

4. *In case of CIT vs. Divine Leasing & Finance Ltd [2007] 158 Taxman 440 (Delhi) the High Court observe inter alia that:*

*“The assessee has to prima facie prove (1) the identity of the subscriber; (2) genuineness of the transaction, namely: whether such transaction has been transmitted through banking or other undisputed channels; (3) creditworthiness of the subscriber; (4) if relevant details of the address, PAN identity of the creditor/subscriber are furnished to the department along with the copies of share application form etc., it would constitute acceptable proof or acceptable explanation by the assessee.”*

5. *Commissioner of Income Tax vs. Oasis Hospitalities (P) Ltd. (2011) 238 CTR (Del) 402: (2011) 333 ITR 119*

6. *Commissioner of Income Tax vs. Dwarkadhish Investment(P) Ltd. (211) 239 CTR (Del) 478: (2011) 330 ITR 298.*”

7.2 From the above, we find that the Ld. CIT(A) has deleted the addition in dispute on the basis of the aforesaid documentary evidences as well as the decisions rendered by the Hon’ble Jurisdictional High Court. We further find that the issue in dispute is also squarely covered by the judgment of the Hon’ble Jurisdictional High Court dated 13.10.2015 passed in the case of PR. CIT vs. Rakam Money Matters Pvt. Ltd. 2015 (10) TMI 2057, as referred above. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A), hence, we uphold the impugned order on the issue in dispute and dismiss the Appeal filed by the Revenue.

8. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 18/11/2015.

Sd/-  
[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER

Sd/-  
[H.S. SIDHU]  
JUDICIAL MEMBER

Date: 18-11-2015

“SRBHATNAGAR”

Copy forwarded to: -

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

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By Order,

Assistant Registrar