

आयकर अपीलीय अधिकरण, "सी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4897/M/13
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Chitwan Developers Private Limited A-9/2, MIDC Talaja Industrial Estate, Talaja Raigarh - 410208	बनाम/ Vs.	Income Tax Officer 6(2)(1) Aaykar Bhawan, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCC7160J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ronak Doshi
Department by:	Shri Ashish Heliwal

सुनवाई की तारीख / Date of Hearing: 04.03.2016
घोषणा की तारीख /Date of Pronouncement: 16.06.2016
आदेश / ORDER

PER AMARJIT SINGH, JM:

This is an appeal filed by the assessee against the order dated 06.09.2013 passed by the Commissioner of Income Tax (Appeals)16, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2007-08.

2. The brief facts of the case are that the assessee filed the return of income for the A.Y.2009-10 on 30.09.2009 declaring total income to the tune of Rs.1,67,690/-. The return was assessed u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act") and the total income of the assessee was assessed to the tune of Rs.8,59,67,690/- by virtue of order dated 29.12.2011. The Assessing Officer treated the share application money to the tune of Rs.8,58,00,000/- as unexplained cash credit u/s. 68 of the Act because the assessee failed to prove the identity, genuineness and creditworthiness of the creditors, therefore the above said credit was treated as unexplained cash credit u/s.68 of the Act and added to income of the assessee, thereafter the assessee filed the appeal before CIT(A) who also confirmed the said addition, therefore, the assessee filed the present appeal before us.

3. The assessee has raised the following ground before us:-

1. *The Ld. CIT(A) erred in law and on facts in confirming the addition of Rs.8,50,00,000/- made by the assessing officer under section 68 of the Act without appreciating the details / explanation / submission made before the assessing officer as well as before CIT(A). Thus, the addition confirmed must be deleted.*
2. *The Ld. CIT(A) erred in law and on facts in not considering on whimsical reasons the documents submitted by downloading from the site of the ROC as supporting evidences to prove the genuineness of the said share capital transactions.*
3. *The Ld. CIT(A) erred in law and on facts in not directing the assessing officer to provide copies of the documents directly submitted by the share*

applicants to the assessing authority in the assessment proceedings despite a specific request made to her but who confirmed the addition ignoring these documents totally.

4. *The Ld. CIT(A) erred in law and on facts ignoring the facts that no proper opportunity was provided by the assessing officer to the assessee in assessment proceedings. Thus, the addition made by assessing authority merely on assumptions and presumptions must be deleted.*

4. We have heard the arguments advanced by the learned representative of the parties and have gone through the record carefully. The representative of the assessee has argued that the assessee has furnished the details of seven creditors which is on record and the creditors also furnished the details u/s.131 and 133(6) of the Act, but their details were discredited on the basis of the partial bank statement, therefore, their share application money was treated as unexplained cash credit u/s. 68 of the Act wrongly and illegally. It is also argued that the share application money cannot be treated as unexplained cash credit on account of assessee even after purchase by bogus shareholders in view of the law settled in CIT Vs. Lovely Exports (P.) Ltd. (216 CTR 195) (SC) and CIT Vs. Creative World Telefilms Ltd. (333 ITR 100) (Bom.)(HC) and CIT Vs. Steller Investment Ltd. (251 ITR 263) (SC). It is also argued that the assessee have established the identity of the share applicants and therefore in the said circumstances the said amount is not required to be added towards taxable income of the assessee, in view of the law

settled in CIT Vs. AI Anam Agro Foods (P.) Ltd. (2013) (219 taxman 125) (All.)(HC). It is also argued that the assessee has also furnished the details in additional evidence which has been lies at page 59 to 1739 of the paper book and can be considered to decide the claim of the assessee in accordance with law.

5. It is also argued that if the transaction of bogus shareholder is found then in the said circumstances the department can reopen the assessment and their individual but the share application money is not required to be credited as income of the assessee in view of the law settled in CIT Vs. Venkateshwar Ispat (P.) Ltd. (319 ITR 393) (Chhat.) (HC). However, the learned departmental representative strongly relied upon the order passed by the CIT(A). Keeping in view of the argument advanced by the learned representative of the parties, it came into the notice that the assessee received the share application money to the tune of Rs.9,58,00,000/- from 17 parties and names thereof are hereby mentioned below:-

Sr. No.	Name and address of the allottees	Total amount received (Rs.)	Remarks
1	Kapindra Multitrade Pvt. Ltd. 14, Papatwadi, 1 st Floor, Kalbadevi, Mumbai - 400002	35,00,000	1 st & 2 nd notice returned unserved
2	Fairmont Venture Pvt. Ltd. 105, Sagar Shopping Centre J.P.Road, Andheri(W) Mumbai - 400058	50,00,000	Notice served on new address

3	Kumaon Engineering Company Pvt. Ltd. Jai Durga Complex CHS Ltd. B G/12 Cabin Road, Bhayander (E), Thane 401105	25,00,000	1 st & 2 nd notice returned unserved
4	Laurels Ventures Pvt. Ltd. Next to Mafatlal Mill Ration Shop, N.M.Joshi Marg, Lower Parel, Mumbai - 400013	50,00,000	2 nd notice served but no reply received
5	Motor Soft Tel Pvt. Ltd 105, Sagar Shopping Centre J.P.Road, Andheri(W), Mumbai - 400058	40,00,000	2 nd notice served but no reply received
6	Blazer Ventures Pvt. Ltd. Kedarnath Mishra, Khotwadi, Santacruz (W), Mumbai – 400054	50,00,000	2 nd notice served but no reply received
7	Angel Ventures Pvt. Ltd. 105, Sagar Shopping Centre J.P.Road, Andheri(W), Mumbai -400058	50,00,000	1 st & 2 nd notice returned unserved
8	Neel Ventures Pvt. Ltd. Room No.2/8 Kamble Niwas, Farid Nagar, Pratap Road, Bhandup (W) Mumbai - 400078	50,00,000	2 nd notice served but no reply received
9	Proficient Mercandise Pvt. Ltd. Room No.311, 3 rd Floor, 545, Kalbadevi Road, Mumbai – 400002	15,00,000	1 st & 2 nd notice returned unserved
10	VSR Steel Fabricators Pvt. Ltd. Room No.2, Hanuman Road, IIT Market, Powai, Mumbai- 400076	1,08,00,0 00	1 st & 2 nd notice returned unserved
11	Sagar Tex Creation Pvt. Ltd. A 303, Bhattad Tower, 3 rd Floor, Opp Kora Kendra Ground, Borivali(W), Mumbai-400092	1,00,000	Reply received
12	Flash Ventures Pvt. Ltd. Room No.2/8 Kamble Niwas, Farid Nagar, Pratap Road, Bhandup (W) Mumbai - 400078	1,00,000	2 nd notice served but no reply received
13	Nihal Mercantile Pvt. Ltd. 3-25, Zaheers Mansion, 260/268, Yusuf Meharali	50,000	1 st & 2 nd notice returned unserved

	Road, Masjid(E), Mumbai -400003		
14	Safford Mercantile Pvt. Ltd. 3-25, Zaheers Mansion, 260/268, Yusuf Meharali Road, Masjid(E), Mumbai -400003	50,00,000	1 st & 2 nd notice returned unserved
15	Nozaki Finance & Investments P. Ltd. C 7, Industrial Assurance Bldg., Veer Nariman Road, Churchgate, Mumbai	1,00,000	1 st & 2 nd notice returned unserved
16	IFSL Ltd. Block No.53, Janki Nagar NX, Nr Ramesh n Ramesh Club, Indore 452001	50,00,000	133(6) returned unserved
17	Prog Dye Chem Pvt. Ltd. 101, Gopal Sadan, Ground Floor, Behind Hira Complex, Chandanbag Kamatghar, Bhiwani-421302	35,00,000	1 st & 2 nd notice returned unserved
	Total	9,58,00,0 00	

6. To verify the claim of the assessee, the Assessing Officer issued the notice to the parties u/s.131 of the Act and also issued the notice to the IFSL Ltd. u/s.133(6) of the Act requiring the following details:-

1. Bank statement for A.Y.2008-09(for the period 1.4.2008 to 31.3.2009).
2. Share application copy
3. Letter of share allotment
4. Copies of share certificates
5. Copy of return of income for A.Y.2009-10 alongwith all its annexures
6. Profit and Loss Account, Balance Sheet and Audit Report for A.Y.2009-10 along with all its annexures.

6.1 The notices u/s.131 of the Act were received back on account of the seven parties whose names are hereby mentioned below:

1. Kapindra Multitrade Pvt. Ltd.
2. Angel Ventures Pvt. Ltd.
3. VRS Steel Fabrication Pvt. Ltd.
4. Nihal Mercantile Pvt. Ltd.
5. Safford Mercantile Pvt. Ltd.
6. Kukaon Engineering Co. Pvt. Ltd.
7. Nozaki Finance & Investment Pvt. Ltd.

6.2 Thereafter the Assessing Officer sent the notice to the assessee requiring the details. Assessee filed the details in tapal in connection with the above said seven parties. Thereafter, the bank statement of the above said parties were also requisitioned by issuance of fresh letters but complete bank statement were not furnished. However, Sagar Tex. Creation Pvt. Ltd. furnished the details fully. Thereafter, observing these facts that the parties furnished partial bank statement and their identity, genuineness and creditworthiness remain unproved therefore, the share application money to the tune of Rs.8,58,000/- relating to the 16 parties were treated as unexplained cash credit u/s.68 of the Act and added to the income of the assessee. The said order passed by the Assessing Officer, was also confirmed in appeal filed before the CIT(A). On perusal of the order passed by the Assessing Officer it came into the notice that the documents which have been furnished by the parties were not discussed. There is not dispute with regard to the law relied by the learned representative of

the assessee is concerned, but we are of the view that the learned representative of the assessee adduced the additional evidence with regard to the 16 parties lies from page 59 to 1739 of the paper book. On appraisal of this paper book, we find that the necessary details with regard to the each party have been mentioned, however, the same is no doubt required to be looked into to verify the claim of the assessee. Since these documents are necessary to consider the claim of the assessee in the interest of justice, therefore, we are of the view that in the said circumstances the order passed by the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the order passed by the CIT(A) in question and direct the Assessing Officer to consider the additional evidence afresh by giving an opportunity of being heard to the assessee in accordance with law and pass the fresh order on this issue.

7. Accordingly the appeal filed by the **assessee is hereby allowed for statistical purpose.**

Order pronounced in the open court on 15th June, 2016.

Sd/-
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 15th June, 2016

MP

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai