

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA Nos. 6583 & 7016/Del./2014
Assessment Years: 2008-09 & 2009-10**

M/s. Galgotia Infotech Pvt. Ltd., 4405/6, Prakash Apartments-II, 5, Ansari Road, Daryaganj, New Delhi (PAN-AABCG6075B) (Appellant)	vs.	A.C.I.T., Central Circle, Noida. (Respondent)
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**ITA Nos. 6579, 7019, 6580 & 7020/Del./2014
Assessment Years: 2008-09 to 2011-12**

M/s. Galgotia Software Pvt. Ltd., 4405/6, Prakash Apartments-II, 5, Ansari Road, Daryaganj, New Delhi (PAN-AACCG8886D) (Appellant)	vs.	A.C.I.T., Central Circle, Noida. (Respondent)
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**ITA Nos. 7017, 6581 & 7018/Del./2014
Assessment Years: 2008-09 to 2010-11**

M/s. Galgotia Book & Departmental Store Pvt. Ltd., 4405/6, Prakash Apartments-II, 5, Ansari Road, Daryaganj, New Delhi . (PAN-AACCG8886D) (Appellant)	vs.	A.C.I.T., Central Circle, Noida. (Respondent)
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Appellants by	Sh. Ved Jain, Advocate & Sh. Ashish Chadha, C.A.
Respondent by	Sh. Navin Chandra, CIT/DR

Date of Hearing	07.09.2017
Date of Pronouncement	25.09.2017

ORDER**Per L.P. Sahu, A.M.:**

Out of above batch of appeals by different three appellants, ITA Nos. 6583 & 1016/Del./2014 filed by M/s. Galgotia Infotech Pvt. Ltd. are directed against the orders passed by the learned CIT(A), Noida dated 29th September, 2014 and 01.10.2014 for the assessment years 2008-09 & 2009-10 respectively.

2. ITA Nos. 6579 & 6580/Del/2014 for A.Yrs. 2008-09 & 2010-11 and ITA Nos. 7019 & 7020/- for A.Yrs. 2009-10 & 2011-12 filed by M/s. Galgotia Software Pvt. Ltd. arise out of separate orders dated 29.09.2014 & 1.10.2014 of ld. CIT(A), Nodia respectively.

3. By means of ITA Nos. 7017 & 7018/Del./2014 for A.Yrs.2008-09 & 2010-11 and ITA No. 6581/Del./2014 for A.Y. 2009-10, the appellant M/s. Galgotia Books & Departmental Store has challenged separate orders of ld. CIT(A) Noida dated 01.10.2014 and 29.09.2014 respectively.

4. Since the common questions of law and facts are involved in all these appeals, the same were heard together and, therefore, for the sake of convenience and brevity all these appeals are being decided by this consolidated order. We, therefore, take up the appeal of M/s. Galgotia

Infotech Pvt. Ltd. in ITA No. 6583/Del./2014 for assessment year 2008-09 first. The grounds raised in this appeal read as under :

“1. That the order of learned Commissioner of Income Tax (Appeals) is bad in law and on facts and in the circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) has erred in treating the ground No. 2 agitating the issuing of notice under section 153A as general and thereby not adjudicating upon the same.

3. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs.70,00,000/- on account of share capital and share premium money received without there being any corroborating material on record.”

5. The brief facts leading to the present appeal are that the search and seizure operation was conducted on the assessee on 17th September, 2010, consequent upon which assessment proceedings were initiated against the appellant by issuing notice under Section 153A on 07.09.2011. The AO during the course of the assessment proceedings observed that Share Capital of Rs. 70,00,000/- was shown to have been received by the assessee during the year. In response to the notices u/s. 142(1)/143(2), the assessee filed necessary details before the AO. The AO thereafter recorded the statement of one Mr. Tarun Goyal on 21st February, 2013 whereby he stated that he is an entry operator and the amount deposited by him in his group of companies was provided by Galgotia group of companies and their individuals. On the basis of

the above statement the AO made addition of Rs. 70,00,000/- in the hands of the assessee company as unexplained share application money.

6. Aggrieved by the order of the AO, the assessee company carried the matter in appeal before the learned CIT(A). In the appeal before the CIT(A), it was contended that the notice issued under Section 153A by the AO was bad in law. Further, it was contended that the addition made by the AO on the basis of the statement of Mr. Tarun Goyal is not sustainable as assessee has filed all the necessary documents in support of the Share Capital raised and no opportunity for cross examination was allowed. The CIT(A) however, confirmed the addition made by the AO vide impugned order, irked by which, the assessee is in present appeal before the Tribunal.

7. It was contended by the learned AR that the addition made by the learned AO are unsustainable both on law and facts. In this regard, it was submitted that a search on the premises of the assessee was carried out on 17th September, 2010. No incriminating material was found during the course of the search as is evident from the assessment order itself. The assessee during the course of the reassessment proceedings submitted all the details as is evident from the paper book. During the year the assessee had received Share Capital from 2 companies namely Bhavani Portfolio Pvt. Ltd. and Safal Investment Ltd. It is submitted by the learned counsel that the assessee has

duly discharged the onus of proving the share application money by producing the confirmation of the creditors, certificate of incorporation of the applicant company, income tax return of the applicant company, Balance Sheet, Bank statement and share application form before the Assessing Officer himself. He, therefore, submitted that in view of these evidences furnished by the assessee, the assessee has duly discharged the onus of proving the cash credit which lay upon the assessee.

7.1 It was further submitted by the Id. AR that the statement of Mr. Tarun Goyal was recorded at the back of the assessee. The assessee has specifically stated before the AO that they have not given any cash to Mr. Tarun Goyal or any of his group companies. It was further stated that the Share Capital received are genuine. The AO has arbitrarily rejected the contention of the assessee without giving any opportunity of cross examination. The learned AR, therefore, submitted that the addition made only on the basis of statements of Tarun Goyal, without getting him cross examined with assessee, is not sustainable at all, as in the absence of his cross-examination having been allowed to the assessee, his statement cannot be utilized against the assessee. He further submitted that as per statement of Mr Tarun Goel recorded by the Assessing Officer, the assessee has taken the accommodation entry from Tarun Goyal group by paying cash to him and then obtaining the

cheque in the form of share capital against such cash payment. He stated that from the bank account of the share applicants, it would be evident that in the bank account of none of the share applicants, cash has been deposited, therefore, the allegation, that the assessee provided cash to Shri Tarun Goyal who deposited the same in his group company and issued cheques to the assessee is factually incorrect.

7.2 It was next contended that the assessee has submitted all the documents in support of Share Capital received by it. The AO has not pointed out any error or mistake in any of these documents. The CIT(A) has also rejected the contention of the assessee ignoring the fact that nothing incriminating was found during search. Further, the AO has not carried out any investigation and AO has placed reliance on the statement of Mr. Tarun Goyal without allowing cross examination. It was contended that in the present case there is no material, whatsoever, against the assessee despite the search having been carried out on the assessee. This statement of Mr. Tarun Goyal was also not recorded at the time of the search. It was also pointed out that search has also been carried out on Mr. Tarun Goyal and nothing incriminating about the assessee was unearthed during the course of such search on Mr. Tarun Goyal also. The learned AR submitted that addition in all

the appeals for Assessment Year 2008-09 are otherwise untenable since these assessments have not abated.

7.3 In support of its contention the learned AR placed reliance on the following judgments:

- (i). CIT Vs. Kabul Chawla [2016] 380 ITR 573.
- (ii). CIT Vs. MeetaGutgutia [2017] 395 ITR 526.
- (iii). CIT Vs. Singhad Technical Education Society in Civil Appeal No. 11080 of 2017 dated 29th August, 2017.
- (iv). CIT Vs. Best Infrastructure (India) Pvt. Ltd. [2017] 397 ITR 82.
- (v). CIT Vs. Laxman Industrial Resources Pvt. Ltd. ITA No 169/2017 dated 14th March, 2017.
- (vi). CIT Vs. Fair Finvest Ltd. [2014] 357 ITR 146.
- (vii). CIT Vs. Vrindavan Farms Pvt. Ltd. ITA No. 71, 72, 85/D/2015.
- (viii). ITO Vs. Softline Creations Pvt. Ltd. ITA No. 744/Del/2012.

8. The learned Departmental Representative, on the other hand, submitted that this is a case of accommodation entry. The AO has recorded the statement of Mr. Tarun Goyal wherein he has categorically stated that his group of companies has provided accommodation entries to the assessee. It was contended that assessment proceedings having been reopened under Section 153A, the AO is entitled to look into all the issues which come to the notice of AO during such proceedings. From the facts, it is evident that the assessee company has raised Share Capital during the year. Though, the assessee has submitted documents in support of the same but the fact remains that Mr. Tarun Goyal in the statement recorded before the AO has admitted that it has

provided accommodation entries. To a question from the Bench the learned DR confirmed that there is no other material and the addition is solely based on the statement of Mr. Tarun Goyal recorded by the AO on 21st February, 2013. The learned DR relied upon the following judgments in support of this contention:

- (i). CIT Vs. Nipun Builder & Developers Pvt. Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34).
- (ii). CIT Vs. Nova Promoters & Finlease Pvt. Ltd. (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187).
- (iii). CIT Vs. Ultra Modern Exports Pvt. Ltd. (40 taxmann.com 458, 220 Taxman 165).
- (iv). CIT Vs. Frostair Pvt. Ltd. (26 taxmann.com 11, 210 Taxman 221).
- (v). CITVs N R Portfolio Pvt Ltd [2013] 29 taxmann.com 291 (Delhi)/ (2013) 214 Taxman 408 (delhi)/[2013] 263 CTR 456 (Delhi).
- (vi). CIT Vs. Empire Builtech Pvt. Ltd. (366 ITR 110).
- (vii). CIT Vs. MAF Academy Pvt. Ltd. (361 ITR 258).
- (viii). CIT Vs. Focus Exports Pvt. Ltd. (51 taxmann.com 46 (Delhi)/[2015] 228 Taxman 88).
- (ix). N K Proteins Ltd Vs. CIT (2017-TOIL-23-SC-IT).

9. In rejoinder, the learned AR submitted in all these case laws referred by the Learned DR are distinguishable on their facts situation, inasmuch as the learned AO in those cases had carried out extensive investigation and assessee has not cooperated in the investigation and AO has discredited the documents filed by the assessee. The summons issued to the share applicants were not served. In the present case it is a matter of record that assessee has provided all the details and rendered full cooperation to the department. There is no

allegation that these shareholders were not found in existence. It was further pointed out by the learned AR that in the present case the learned AO has not even bothered to examine how these companies are related to Mr. Tarun Goyal. The case of the assessee as such is different from the case laws relied upon by the learned DR.

10. We have heard the rival submission and perused the order passed by the authorities below and we find substantial force in the contentions of the assessee. On going through the assessment order, it is evident that the sole basis for making addition is the statement recorded by the AO during the assessment proceedings. It is also a fact that the assessee has submitted all the details and the documentary evidences in support of share capital received, wherein the learned AO has not pointed out any deficiency. It is also born out on record that a search was carried out on assessee and nothing incriminating was found about the impugned Share Capital. In these circumstances, the addition merely on the basis of statement of Mr. Tarun Goyal cannot be sustained. The learned DR was fair enough to admit that there is no material other than the statement recorded by the AO. This statement was recorded during the assessment proceedings. It is also a matter of fact stated by the AO in the assessment order that post recording of the statement the assessee did not agree with the statement of Mr. Tarun Goyal and categorically stated that

it has not given any cash to Mr. Tarun Goyal or any of his group companies. The AO still went on to rely on the statement. We are of the view that in these circumstances the addition made in the hands of the assessee can't be sustained.

11. Similar issue has come up recently before the Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax Delhi-2 Vs. Best Infrastructure Pvt. Ltd. ITA No. 13/2017 dated 1st August, 2017 where addition on account of Share Capital received by the assessee company in that case were made on the basis of the statement of same Mr. Tarun Goyal. In that case the statement of the Tarun Goyal was in fact recorded on the same date on which the search on the assessee was carried out. In the statement made by Mr. Tarun Goyal, he has stated that approximate 8 crore of bogus Share Capital was provided to Best Group and he has earned a commission at the rate of 0.25 %. The Hon'ble High Court after examination of the facts held that the statement of Mr Tarun Goyal itself, without any further corroboration, can't be a basis for making addition as has been explained in the case of CIT vs. Harjeev Aggarwal 290 CTR 263 (Delhi). The court also approved the deletion of the addition by the ITAT on merit by referring to the following observations of the ITAT:

- (i) *“His statement was recorded behind the back of the assessee and the assessee was not allowed any opportunity to cross-examine him.*
- (ii) *There is no corroborative evidence in support of the statement of Shri Tarun Goyal. On the other hand, the material found during the course of search and other evidences placed on record by the assessee are contrary to the allegation made by Sh. Tarun Goyal in his statement”*

In the instant case also once the assessee on confrontation, denied the statements of Tarun Goyal, it was incumbent upon the AO to enforce the presence of Tarun Goyal for cross examination with the assessee, which he failed to do. Per contra, The assessee has furnished all the details including share application form, confirmation from share applicant, certificate of incorporation of the shareholder company, Balance Sheet, Bank statement and copy of income tax return of share applicant company. The detail of cheque number and the name of the bank have also been provided. The permanent account number of the share applicant company has also been provided. It is mentioned that the share applicant company is registered with Registrar of Companies and registration number along with date of registration is also given. In presence of all these details and documentary evidences laid before the AO, we are of the opinion that the assessee has duly discharged the onus which lay upon it to prove the credit in the form of share capital.

12. As regards the judgments relied upon by the learned DR we have gone through these judgments and we find that as rightly pointed out by the learned AR, these judgments have substantial distinguishable features and are not fully applicable to the present scenario of present case. In fact, Hon'ble Delhi High Court has been repeatedly made distinction between the cases where the AO has carried out extensive investigations and discredited the evidences submitted by the assessee and where the AO has failed to carry out any investigation so as to discredit the evidences submitted by the assessee in support of its contention. Therefore, the decisions relied on by the ld. DR do not go to render any help to the Revenue.

13. In view of the above discussion, we find no justification to sustain the orders of the authorities below and accordingly, the appeal of the assessee deserves to be allowed.

14. Now we advert to take up the other appeals i.e. ITA No. 7016/Del/2014 of Galgotia Infotech Pvt. Ltd. for assessment Year 2009-10, ITA No. 6579/Del/2014 and 7019/Del/2014 of Galgotia Software Pvt. Ltd. for assessment year 2008-09 and 2009-10, ITA No. 7017/Del/2014 and 6581/Del/2014 of Galgotia Books & Departmental Stores Pvt. Ltd. for assessment year 2008-09 and 2009-10. In respect of the above appeals, at the

time of hearing before us, both the parties fairly agreed that the grounds raised and the facts in all these appeals are identical to the facts and grounds raised in the case of M/s Galgotia Infotech Pvt.Ltd. for assessment year 2008-09 (ITA No.6583/Del/2014), except the difference in amounts of share capital. Therefore, both the parties fairly stated that the outcome of the appeal in ITA No.6583/Del/2014 in the case of M/s Galgotia Infotech Pvt. Ltd. for assessment year 2008-09 would be equally applicable in all the above appeals. In view of this and the detailed discussion made in the appeal of M/s Galgotia Infotech Pvt.Ltd. for assessment year 2008-09 (ITA No.6583/Del/2014), these appeals of the assessee also deserve to be allowed and respective additions made on account of unexplained share capital are directed to be deleted.

15. We may further add that ITA No. 6583/Del/2014 in the case of Galgotia Infotech Pvt. Ltd., 6579/Del/2014 of Galgotia Software Pvt. Ltd. and ITA No. 7017/Del/2014 of Galgotia Books & Departmental Stores Pvt. Ltd., are for the assessment year i.e. 2008-09. The assessments in these cases have not abated consequent to search carried out on 17th September, 2010. Hence, the addition in these appeals are also untenable in the absence of any incriminating material being found during the search as has been held by the Hon'ble Delhi

High Court in the case of Commissioner of Income Tax Vs. Kabul Chawla, 380 ITR 573 (Delhi).

16. In remaining appeals, i.e., ITA No. 7018/Del/2014 of Galgotia Books & Departmental Stores Pvt. Ltd. for assessment year 2010-11, ITA No. 6580/Del/2014 and 7020/Del/2014 of Galgotia Software Pvt. Ltd. for assessment year 2010-11 and 2011-12, the additions are made on account of the share capital. The grounds raised and the facts involved in these appeals are agreed by both the parties to be identical to the facts and grounds raised in the case of M/s Galgotia Infotech Pvt.Ltd. for assessment year 2008-09 (ITA No.6583/Del/2014), except that in these appeals share capital received by the assessee during the year for which additions have been made are not from the companies belonging to Mr. Tarun Goyal. As we have already decided the appeal of M/s Galgotia Infotech Pvt. Ltd. for assessment year 2008-09 (ITA No. 6583/Del/2014) deleting the addition made on account of the share capital, these appeals are also allowed on the other identical facts of these appeals. On the exceptional fact involved that no share capital has been received by the assessee from the companies belonging to Mr. Tarun Goel, we are of the view that in these appeals AO was not justified in making the addition despite the fact that the assessee has not even received any share capital from group of companies of Mr. Tarun Goel. In fact in the absence of any share capital being

received from Tarun Goyal group of companies, there remains no material whatsoever to make such addition. The assessee has submitted all the necessary evidences in support of the share capital received by it. The AO has not pointed out any deficiency in such documents. The A.O. has made the addition by just making reference to the statement of Tarun Goel despite acknowledging that during the year share capital received is not from Tarun Goyal group of companies, as categorically mentioned by the AO in respective assessment orders. In our opinion, each transaction of share capital received by assessee, cannot be viewed on the anvil of Tarun Goyal's statement, unless the AO brings any adverse material against the assessee to belie the genuineness of share capital received from the companies which do not belong to Tarun Goyal. Hence, the statement of Tarun Goyal utilized in these appeals by the AO is not tenable at all. As discussed hereinabove the assessee having discharged its onus there was no reason for making such addition in these appeals. In view of these facts and for the detailed discussion in the ITA No. 6583/Del/2014, we allow these appeals of the assessee also directing to delete the additions made.

17. On the conspectus of what has been discussed above, all the nine appeals of the assesseees are found full of merits and are accordingly allowed,

thereby setting aside the impugned orders and directing to delete the additions made.

18. In the result, the appeals are allowed.

The order pronounced in the open court on 25.09.2017.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 25.09.2017

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Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi