

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1619/Del/2013
Assessment Year : 2009-10**

Rahul Singhal Securities Pvt. Ltd., 169, Kohat Enclave, Pitampura, New Delhi.	Vs.	DCIT, Circle- 15(1), New Delhi.
PAN : AADCR7998G		
(Appellant)		(Respondent)

Assessee by : Shri Sunil Kumar, FCA
Department by : Shri Atiq Ahmad, Sr.DR
Date of hearing : 27-12-2017
Date of pronouncement : 27-12-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 02.01.2013 of the CIT(A)-XVIII, New Delhi relating to assessment year 2009-10.

2. Although a number of grounds have been raised by the assessee, they all relate to the order of the Id. CIT(A) in confirming the addition of Rs.95,00,000/- made by the Assessing Officer u/s 68 of the I.T. Act on account of share capital.

3. Facts of the case, in brief, are that the assessee is a private limited company and is engaged in the business of trading in shares. It filed its return

of income on 29.09.2009 declaring loss of Rs.66,22,866/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee during the year has issued fresh share capital. On being questioned by the Assessing Officer, the assessee furnished the names and addresses of the parties from whom share capital as well as share premium was received from time to time. From the various details furnished by the assessee, the Assessing Officer observed that the assessee has received the following amounts from the three parties which are as under :-

<i>Name of the Party</i>	<i>Share capital</i>	<i>Share Premium</i>
<i>Thar Steel Pvt. Ltd.</i>	<i>6,00,000</i>	<i>24,00,000</i>
<i>Aries Craft Ltd.</i>	<i>10,00,000</i>	<i>40,00,000</i>
<i>Maa Taluka Buildcon P. Ltd.</i>	<i>3,00,000</i>	<i>12,00,000</i>

4. The Assessing Officer asked the assessee to furnish the ledger account of the above three parties. He also asked the assessee to produce the above parties along with their books of accounts to support the share application money and the source of the same and the share certificate issued to them. The assessee failed to produce the above shareholders and file the necessary documents as called for by the Assessing Officer to prove their identity and creditworthiness. The Assessing Officer called for information u/s 133(6) from the said shareholders in order to cross-examine their genuineness and creditworthiness. However, the notices issued to the M/s Thar Steel Pvt. Ltd. and M/s Maa Taluka

Buildcon Pvt. Ltd. were received back unserved by the Postal Authorities with the remarks either “no such person” or “left without address”. So far as Aries Craft Ltd. is concerned, the Assessing Officer observed that neither the notice has been received back unserved nor the same has been complied with. He, therefore, held that the identity as well as genuineness and creditworthiness of the share applicants remained unverified and the assessee had not made any efforts to prove its claim. He observed that it is not the duty of the Assessing Officer to run from pillar to post to gather evidence in support of the claim of the assessee but it is the assessee’s duty to furnish the documentary evidences to the satisfaction of the Assessing Officer. Since the assessee in the instant case failed to discharge the onus cast on it, the Assessing Officer made addition of Rs.95,00,000/- to the total income of the assessee u/s 68 of the I.T. Act.

5. Before the Id. CIT(A), the assessee filed certain additional evidences to support the identity and creditworthiness of the subscribers. Various decisions were also brought to the notice of the Id. CIT(A) to the proposition that the addition made by the Assessing Officer is uncalled for when the assessee had filed various details such as PAN, Bank a/c, audited accounts etc. Since the assessee did not move an application under Rule 46A for admission of additional evidence, Id. CIT(A) did not accept the additional evidences filed before her. She further noted that the documents filed by the assessee show that

the companies are mere paper companies created for routing unaccounted money into the books of account. Relying on various decisions, she held that the assessee, in the instant case, did not offer any credible explanation about the amounts credited in its books. Therefore, the receipt of Rs.95,00,000/- cannot be treated as explained. She accordingly upheld the addition made by the Assessing Officer.

6. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

7. Ld. counsel for the assessee referring to the Paper Book submitted that the assessee has filed necessary documentary evidences to prove the identity and creditworthiness of the share applicants and the genuineness of the transactions. Relying on various decisions, he submitted that when the assessee has filed the necessary documents by giving the PAN details, bank details, share applicants and affidavits of directors of the share applicant company, the share application money cannot be considered as unexplained cash credit in the hands of the assessee. He relied on the following decisions :-

- (a) CIT vs. Lovely Exports (P) Ltd. [2009] 319 ITR (St) 5 (SC).
- (b) CIT vs. Fair Finvest Pvt. Ltd. [2013] 357 ITR 146 (Delhi).
- (c) Pr.CIT vs. N.C. Cables Ltd. [2017] 391 ITR 11 (Delhi).
- (d) CIT vs. Divine Leasing and Finance Ltd. [2008] 299 ITR 268 (Delhi).
- (e) CIT vs. Gagandeep Infrastructure Pvt. Ltd. [2017] 394 ITR 380 (Bom).

(f) CIT vs. Orchid Industries Pvt. Ltd. [2017] ITA no.1433 of 2014 (Bom).

8. Ld. DR on the other hand while supporting the order of the Id. CIT(A) submitted that the assessee has not produced the share applicants despite being asked for by the Assessing Officer. The notices issued u/s 133(6) remained uncomplished with. Even the postal authorities had returned the letters issued by the Assessing Officer with the remarks “no such person” or “left without address”. Further, the Id. CIT(A) has given a finding that these companies are mere paper companies created to routing the unaccounted money. Therefore, merely by furnishing certain documents the assessee cannot absolve itself from the onus cast on it. He accordingly submitted that the order passed by the Id. CIT(A) be upheld and the appeal filed by the assessee be dismissed.

9. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Id. CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee, during the impugned assessment year, has received fresh share capital of Rs.19,00,000/- and share premium of Rs.76,00,000/- from the three companies, the details of which are already given in the preceding paragraphs. We find the Assessing Officer, during the course of assessment proceedings, had specifically asked the assessee to produce the

above three parties and certain other details which the assessee failed to do. Even the notices issued u/s 133(6) were returned unserved by the postal authorities with the remark “no such person” or “left without address” in two cases and in another case there was no compliance from the said party. Under these circumstances, the very identity of the share applicant companies are doubtful. The various decisions relied on by the ld. counsel for the assessee, in our opinion, cannot be accepted as a precedent to accept the identity of the three shareholder companies especially when the assessee has not taken any steps to produce the directors of the above companies before the Assessing Officer. However, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the matter to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the identity and creditworthiness of the three companies and the genuineness of the transactions. The assessee is hereby directed to produce the directors of the above three companies before the Assessing Officer for establishing the identity and creditworthiness of these companies and genuineness of the transactions. The Assessing Officer shall decide the issue afresh in accordance with law after giving due opportunity of being heard to the assessee. We hold and direct

accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court at the time hearing itself i.e. on this 27th day of December, 2017.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 27-12-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi