

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं

श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2601/Chny/2017

निर्धारण वर्ष /Assessment Year: 2013-14

M/s.PNN Steel Pvt. Ltd.,  
No.265/266, Sundaram Pillai Nagar,  
Korukupet, Chennai-600 081.

**Vs.** The Income Tax Officer,  
Corporate Ward-5(2),  
No.121, M.G.Road,  
Chennai-600 034.

**[PAN: AAFCP 5850 P]**

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.T.Pramodkumar Chopda,  
Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.S.Nataraja, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.02.2018

घोषणा की तारीख /

Date of Pronouncement

: 12.02.2018

**आदेश / ORDER**

**PER GEORGE MATHAN, JUDICIAL MEMBER:**

ITA No.2601/Chny/2017 is an appeal filed by the assessee against the Order of Commissioner of Income Tax (Appeals)-3, Chennai, in ITA No.43/2016-17/CIT(A)-3 dated 31.07.2017 for the AY 2013-14.

2. Shri S.Nataraj, JCIT, represented on behalf of the Revenue and Shri T.Pramodkumar Chopda, Adv., represented on behalf of the assessee.

3. It was submitted by the Ld.AR that the assessee is a Private Ltd. Co., and doing business of Trading in iron and steel. The assessee had, during the relevant Assessment Year, received share application money to an extent of Rs.80.00 lakhs from M/s.NextGen Health Solution Pvt. Ltd., 4<sup>th</sup> Floor, 52, Weston Street, Kolkata, to an extent of Rs.50.00 lakhs for one lakh shares at face value of Rs.10.00 lakhs and share premium of Rs.40.00 lakhs from M/s.LemonGrass Investment Consultants Pvt. Ltd., 4<sup>th</sup> Floor, 52, Weston Street, Kolkata, to an extent of Rs.20.00 lakhs for 40,000 shares having face value of Rs.4.00 lakhs at a share premium of Rs.16.00 lakhs and M/s.Parasmani Planning and Development Pvt. Ltd., 75, Metcalf Street, Kolkata, to an extent of Rs.10.00 lakhs for 20,000 shares having face value of Rs.2.00 lakhs and premium of Rs.8.00 lakhs. It was a submission that the AO had questioned the share application money received and the assessee had submitted the details of the share applicants. It was a submission that the AO had got the details verified by the DDIT (Investigation), Unit 2(1), Kolkata, who had reported that M/s.NextGen Health Solution Pvt. Ltd., and M/s.LemonGrass Investment Consultants Pvt. Ltd., had not responded to the notices issued u/s.131(1) and the notices could not be served on M/s.Parasmani Planning and Development Pvt. Ltd., as the address was wrong. It was a submission that the assessee had produced the IT Returns filed by the companies and their bank statements were furnished to establish the identity and genuineness of the transactions. It was a submission that the shares had been issued to the Pvt. Ltd. companies, the shares subscribed through

cross-cheques with valid Share Application Form, Memorandum Association and Board Resolutions. It was a submission that as the first two companies had not responded to the summons issued and as the summons could not be served on the third company, the AO had treated the share application money received by the assessee as an unexplained cash credit u/s.68 of the Act. It was a submission that the AO had applied the amended proviso to Sec.68 to make the addition. It was a submission that in view of the decision of the Hon'ble Supreme Court in the case of Lovely Exports, the addition was liable to be deleted. He also relied upon the decision of the Hon'ble Jurisdictional High Court of Madras in the case of M/s.Lalitha Jewellery Mart Pvt. Ltd., reported in 399 ITR 425 (Mad) as also the decision of the Hon'ble Delhi High Court in the case of M/s.Kamdhenu Steel and Alloys Ltd. (2014) 361 ITR 220 (Delhi)(HC) reported in 361 ITR 220.

4. The Ld.AR also filed a petition for admission of additional documents, wherein, it has been submitted that at the time of hearing, the assessee had filed only the Board Resolutions, share application and fund flow statement and bank statements. It was a submission that now, the assessee has downloaded various statutory forms and balance sheets filed before the Registrar of Companies (in short "ROC") to support the claim of the share application money received.

5. The Ld.DR submitted that the decision of the Hon'ble Jurisdictional High Court in the case of M/s.Lalitha Jewellery Mart Pvt. Ltd., referred to supra, as also the decision of the Hon'ble Delhi High Court in the case of M/s.Kamdhenu Steel and Alloys Ltd., were prior to the amendment being the insertion of the first proviso to Sec.68 by the Finance Act, 2012. It was a further submission that though the assessee has given the evidences in the form of copies of the IT Returns filed and their bank statements, when the same was sent for verification, the companies did not respond and the third company was also not found at the address specified. It was a submission that the Inspector from the Office of the DDIT (Investigation), Unit 2(1), Kolkata, had also attempted to serve the notices personally in the case of M/s.Parasmani Planning and Development Pvt. Ltd., but the said company did not exist at the address given by the assessee. It was also a submission that the said three companies put together now held 59.07% of the share capital in the assessee's company and nothing stopped the assessee from producing the Directors of the said Company for examination. It was a submission that all the three companies which had made the share application money, were having bank accounts in the same branch of the same bank being M/s.Karnataka Bank Ltd. It was a further submission that a perusal of the bank accounts clearly shows that before making the investment or the share application money, funds had been brought into the bank account and immediately thereafter cheques have been issued. It was a submission that the

addition as made by the AO and as confirmed by the Ld.CIT(A) was liable to be confirmed.

6. We have considered the rival submissions.

7. At the time of hearing, the Ld.AR was asked why the companies did not respond to the notices, to which, the Ld.AR submitted that he had no idea, as to why the companies did not respond to the DDIT (Investigation), Unit 2(1), Kolkata. A perusal of the bank account in the case of three companies showed that in the case of M/s.NextGen Health Solution Pvt. Ltd., the address as shown in the letter head is different from the address as is available in the bank account, in the other two cases, the address tallies with the letter head. A perusal of the extract of the minutes of the Board Meeting as has been placed in the Paper Book shows that it does not contain the seal of the company nor does the confirmation letters. Interestingly, the share applicant companies having such huge fund availability does not have a proper letter head. Each letter head is different from the earlier one. The fresh evidences, more so, the additional evidence representing the downloaded details from the ROC Website shows that in none of the cases the PAN of the Directors are available and only the DIN is available. A perusal of the balance sheet in the three companies shows that they have no business transactions specifically and they have no fixed assets. However, the shareholder's funds are substantial along with the reserve surplus representing nearly

10 times the face value of their share capital. The financial statement as filed with the ROC also does not show any share application money having been given nor received. A perusal of the bank accounts shows that in all the cases, transactions are with identical companies, from where, the money is coming and it is received either on the same day or immediately previous day to the date of transfer of the funds through RTGS. Admittedly, these evidences need to be examined in detail. This being so, the issues in this appeal are restored to the file of the AO for re-adjudication. The facts in the present case showed that certain evidences had been produced before the AO. The AO had sent these details to Kolkata for examination as the share applicants are based in Kolkata. Now, examining such persons in Kolkata at the back of the assessee would be a clear violation of the principles of the natural justice. In these circumstances, keeping in mind the principles of natural justice, the issues in this appeal are restored to the file of the AO for re-adjudication. The AO should keep in mind that the share applicants hold 59.07% of the shares in the assessee company together. This being so, the AO shall give an opportunity to the assessee to produce the Directors of the share applicants companies for examination in respect of the share application money received. The AO is not barred from obtaining any adverse evidence that may come into his possession in the course of the re-assessment. However, if he proposes to use such adverse evidences, if any, against the assessee, he shall give the assessee adequate opportunity to rebut the same. The assessee shall co-operate in the set

aside proceedings and produce the Directors of the share applicants companies for examination along with all such evidences as required to prove the genuineness. This view of ours, find support from the decision of the principles laid down by the Co-ordinate Bench of this Tribunal in the case of M/s.Bisakha Sales (P) Ltd. reported in [2015] 152 ITD 750 (Kolkata-Trib.). The assessee is granted all liberty to produce such evidences as required to prove the claim of the share application money received. The decision relied upon by the Ld.AR in the case of M/s.Lalitha Jewellery Mart Pvt. Ltd., as also the decision in the case of M/s.Kamdhenu Steel and Alloys Ltd., referred to supra, clearly being prior to the amendment and being distinguishable on facts in so far as in those cases there was co-operation from the Creditors, the same would not apply to the facts in the assessee's case.

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

Order pronounced in the Open Court on February 12, 2018, at Chennai.

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: February 12, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF