

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM**

आयकर अपील सं./I.T.A. No.3240/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

ITO-14(3)(2), 458, 4 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai-400 020	<b>बनाम/</b> Vs.	M/s. Vinaylene Textile Industries Pvt. Ltd. Gala No. 8, 1 <sup>st</sup> Floor, Kuntal Modi Estate, L.B.S. Marg, Ghatkopar (West), Mumbai-400 086
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACV 1653 K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Ms. Aarjoo Goradia
प्रत्यर्थी की ओर से/Respondent by	:	Dr. K. Shivaram & Shri Rahul K. Hakani
सुनवाई की तारीख / Date of Hearing	:	07.12.2017
घोषणा की तारीख / Date of Pronouncement	:	23.02.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) and pertains to the assessment year 2012-13.

2. The grounds of appeal read as under:

1. "On the facts and in the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.70,00,000/- on a/c of unexplained cash credit u/s 68. The Companies from which the assessee has accepted shares application money of Rs.70,00,000/- were controlled and

operated by Shri Praveen Kumar Jain, who admitted in his statement recorded during the course of search and seizure action that the concerns/companies controlled by him were only engaged in providing accommodation entries to various parties of which the assessee is also one of the beneficiaries.

2. The appellant craves leave to add, amend, vary, omit or substitute the aforesaid ground of appeal at any time before or at the time of hearing of appeal.
3. Brief facts of the case are that the assessee is engaged in the business of manufacturing of grey fabrics on jobwork basis. On perusal of the Balance Sheet it has been noticed that the assessee has received share premium of Rs.1,39,50,000/- during the relevant A.Y.. During the course of assessment proceedings vide notice u/s 142(1) dt.07.08.2014, the assessee was requested to furnish details of share premium received during the year with name and address of the person from whom the share premium was received along with the bank statement. In response to this, the assessee vide letter dt. 20.08.2014 submitted the name and address of the person from whom the share premiums was received during the relevant assessment year. On perusal of the details furnished it is noticed that assessee has issued share of face value of Rs.10 at a premium of Rs.90 per share.
4. The Assessing Officer noted that in this case there is information received from DGIT (Inv)-II, Mumbai vide letter along with list of beneficiaries of accommodation entries in the case of Mr. Praveen Kumar Jain. It has been further informed that a search and seizure action was carried out in the case of Shri Praveen Kumar Jain group on 1/10/2013. In the statement recorded during the course of search, Shri Praveen Kumar Jain admitted that the only activity carried out by all concerns

controlled by him is providing accommodation entries in the nature of bogus unsecured loans, share application money, bogus sales and LTCG etc. Further from the statements of dummy directors/proprietors it was revealed that they were used to sign different papers for nominal consideration given by Shri Praveen Kumar Jain. Shri Praveen Kumar Jain himself is a director in few concerns only. However, through various dummy directors/proprietors he controls, operates and manages a large number of concerns. All these concerns are not carrying out any genuine business. They do not have any physical stock of goods. Further these concerns have not employed any persons except a few common accountants who manage accounts and banking transactions of all such concerns and all these concerns are indulged in the activity of providing accommodation entries only.

5. The Assessing Officer further noted that subsequent to the search action in the case of Shri Praveen Kumar Jain, search and seizure action was carried out by the Mumbai Investigation Wing in Subhlaxmi Group. Subhalaxmi Group engaged in the business of manufacturing of textiles, had taken accommodation entries of bogus share capital from various entry providers including the concerns of Shri Praveen Kumar Jain. In his statement recorded on oath u/s 132(4), Shri Yogesh Agarwal, promoter of the group admitted that such entries of share capital are in the nature of accommodation entries only. The above search findings corroborate that all the concerns run, controlled and operated by Shri Praveen Kumar Jain are indulged in the activity of providing accommodation entries only.

6. The Assessing Officer further noted that subsequently another letter dt. 07.07.2014 was furnished wherein it was stated that certain enquiries in the case of few beneficiaries and brokers were carried out by the Directorate on 25.03.2014 and forwarded a revised note incorporating the new findings. It has been further stated that on further analysis of seized material it has been revealed that Mr. Praveen Kumar Jain directly controls and operates certain companies and furnished the data containing the details of beneficiaries who have taken accommodation entries from the concerns directly under the control of Mr. Praveen Kumar Jain. On perusal of the details, it has been noticed that the assessee is one of the beneficiary of the accommodation entry from Mr. Praveen Kumar Jain Group for share application money. As per the details, the assessee has obtained accommodation entries in respect of share application money from the following parties:

Name of the Bogus Concern Operated by Praveen Kumar Jain	Assessment Year	Nature of Transaction	PAN of the Beneficiary	Name of the Beneficiary as per Books of Bogus Concerns	Amount of Transaction (in Rs.)
Casper Enterprises P Ltd (Ostwal Trading(I) P Ltd)	2012 -13	Share Application Money	AAACV1653K	Vinaylene Textile Industries Pvt Ltd	2,500,000
Olive Overseas P Ltd (Realgold Trading Co. P Ltd)	2012 -13	Share Application Money	AAACV1653K	Vinaylene Textile Industries Pvt Ltd	2,500,000
Triangular Infocom Ltd (Lexus Infotech Ltd)	2012 -13	Share Application Money	AAACV1653K	Vinaylene Textile Industries Pvt Ltd	2,000,000

7. During the course of assessment proceedings it has been claimed by the assessee that it has received the share application money from the above parties as under :

Name of the Party	No. of shares	Paid Up Value of Share	Premium	Total
Casper Enterprises P Ltd (Ostwal Trading(I) P Ltd) AAACO7955M	25000	250000	2250000	2,500,000
Olive Overseas P Ltd (Realgold Trading Co P Ltd) AACCR4512K	25000	250000	2250000	2,500,000
Triangular Infocom Ltd (Lexus Infotech Ltd) AAACL 4646 G	20000	200000	1800000	2,000,000
Total	70000	7000	6300000	7000000

8. During the course of assessment proceedings notice u/s 333(6) vide letter dt. 06.02.2015 was issued to the above mentioned three parties, to verify the genuineness of assessee's contentions. In response to this all the parties have replied to the notice u/s 133(6) and affirmed that they had subscribed to the share capital in the assessee's company.

9. As already stated there was a search and seizure operation in the case of Mr. Praveen Kumar Jain Group and consequent to the search the statement of Shri Praveen Kumar Jain was' recorded and during the course of statement he has confirmed that he and his .groups has not carried out any business activities and engaged in providing accommodation entries for bogus purchases, long term capital gain and share application money Shri Praveen Kumar Jain in his statement furnished details of the concerns operated by him. The above mentioned parties are the concerns operated by Shri Praveen Kumar Jain. In view of this, vide order sheet noting dt. 02.03.2015, the assessee was requested to explain as to why the alleged share .application money from the above parties should not be assessed to tax as

unexplained cash credit u/s 68 of the I.T.Act. In response to this, assessee vide letter dt. 09.03.2015 submitted as under:

"With reference to the queries raised by you relating to the issue of shares at a premium to the three investors namely (i) Olive Overseas P.Ltd. (ii) Casper Enterprises P. Ltd. and (iii) Triangular Infocom Ltd. we are instructed by our above client to write to you as under:

1. That a statement has been submitted giving name, address and PAN of the above investors to whom the shares have been issued at a premium. The statement also contains the particulars of no. of shares issued and amounts received towards share capital and share premium. Copies of the bank statements have also been submitted highlighting the amount received through banking channel. Kindly also find enclosed the following:

- i. Copies of Share Application received from the investors
- ii. Confirmation letters of the investors for the investment in shares and mode of payment of share application money.
- iii. Certified copy of resolution of the Board of Directors of the investor company for the investment in the shares of our above client.
- iv. Copies of the bank statements of the investor companies highlighting the amount paid to our above client through banking channel.

You will kindly appreciate the fact that in support of the transactions relating to the share application money received from the above investors, their existence is proved. The copies of the bank statements of our above client and of the investors on record prove that the share application money has been received through banking channels. In view of the documentary evidences submitted in support of the addition can be made u/s 68 of the Act. Reliance is made on the ratio of the judgements of Hon'ble Rajasthan High Court in Shree Barkhs Synthetics Ltd. Vs Assistant CIT (2006) 155 Tax 289 (Raj), Delhi High Court in CIT vs. VLS Foods P.lid. (2011) 203 Tax 213/15 taxmann.com 225(Delhi).

3. In view of the information and explanations given and evidences on record merely because the transactions are alleged to be bogus, the amount of share application money received from the investors through banking channels cannot be regarded as undisclosed income u/s.68 of our above client. Reliance is made on the ratio of the judgement of Hon'ble Supreme Court in CIT V/s Lovely Exports P.Ltd. (2008) 216 CTR 195 (SC).

4. Under the circumstances we request you not to make addition u/s 68 of the Act for the share application money received from the above investors".

10. Assessee's above submission has been carefully considered but the same is not acceptable as the statement recorded consequent to action u/s 132, Shri Praveen Kumar Jain has categorically confirmed that he and his company controlled by him did not engage in any business activity and they were providing accommodation entry in purchase, long term capital gain and unsecured loan and share application money. In the information gathered by the Investigation Wing from the premises of Shri Praveen Kumar Jain, it is seen that the assessee is one of the beneficiary of the accommodation entries in respect of share application money from the above referred concerns. In view of this the alleged share application money of Rs.70,00,000/- is assessed to tax as unexplained cash credit u/s 68 of the I.T. Act, 1961.

11. Against the above order the assessee appealed before the learned CIT-A.

12. The Id. Commissioner of Income Tax (Appeals) found that assessee has submitted all the necessary details. Hence, he found that the identity, creditworthiness and genuineness of the share applicants has been proved. He further referred to various decisions from Hon'ble jurisdictional High Court and Hon'ble Apex Court on this subject. He also held that if there were some more enquiries required the assessing officer has failed to do the same. The learned CIT-A concluded as under:

5.3.23. Thus, it has to be said that the appellant had done everything in its power to prove the 3 ingredients required to prove the satisfactory nature of the loan transactions. In these circumstances, the onus had shifted to the AO. If the AO was still not satisfied, he had the option of making inquiries from the alleged share applicants by summoning them. However, as seen from the assessment order, he did not any such thing. Further, if the AO was not

satisfied with what had been given to him by the appellant, he was duty bound to specify what more material he wanted the appellant to furnish. The AO never asked for any further material, though time and again the appellant asked in their submissions. This leads to the inescapable conclusion that the AO could not think of any further material to ask for and proceeded to reject the appellant's claims, relying upon the information/material, which he never even brought to the notice of the appellant for any rebuttal. The unequivocal conclusion is that all the 3 ingredients having been satisfied, the impugned share application money have to be treated as explained 'satisfactorily and the AO was not justified in having disregarded overwhelmingly supportive evidence. No cogent material was adduced by him to show that loans were unexplained. Therefore, the impugned addition of under the heading share application money as made in the assessment order, fails on several counts - (1) reliance on evidence that is totally inadequate; (2) failure to make available incriminating material (reports, statements, etc.) forming basis for action by the AO; (3) failure to give due opportunity to the appellant to cross examine witnesses, whose statement might have been relief upon; and (4) failure to recognize the satisfactory nature of the explanation /evidence tendered by the appellant to explain identity of creditors, creditworthiness of the creditors and the genuineness of the loan transactions. Hence the impugned addition cannot be sustained.

13. Against the above order, the assessee is in appeal before the ITAT.
14. We have heard both the counsel and perused the records. Learned departmental representative submitted that the share applicants in this case are bogus companies being operated by Shri Praveen Kumar Jain. He submitted that before the Investigation Department Shri Praveen Kumar Jain has clearly admitted that the share applicants companies were controlled by him and these companies used to indulge in providing bogus accommodation entries, which in the present case is in the form of share application at premium of Rs.90 for share of Rs.10. Hence, the learned departmental representative submitted that CIT-A has grievously erred in disregarding this basic fact. Learned departmental representative submitted that if that learned CIT-

A was of the opinion that some more enquiry was required in this case, it was incumbent upon the learned CIT-A to carry out the same as his powers are coterminous with that of the assessing officer.

15. Per Contra learned departmental representative relied upon the order's of the learned CIT-A. He submitted that assessee has fully discharged its onus. He referred to several case laws on the subject from the Hon'ble High Court as well as Hon'ble Apex Court. He further submitted that Shri Praveen Kumar Jain has duly retracted his statement. Hence, Id. Counsel of the assessee submitted that addition has rightly been deleted by the Id. Commissioner of Income Tax (Appeals).

16. We have carefully considered the submissions and perused the records. We find that the basis of the revenue's action in this case is that the assessee company has received accommodation entries in the guise share application money including huge share premium. These were found to have been received from bogus/Shell companies operated by Shri Praveen Kumar Jain. The perpetrators of these bogus companies had accepted before the revenue that these companies were engaged in providing bogus accommodation entries in the guise of share application money, unsecured loan, long-term capital gain. In a number of cases, such companies have even accepted before the revenue that they are only providing accommodation entry and their income is only 1 to 2 percent of the turnover. Thus, the background of bogus accommodation entry cannot be ignored by putting on blinkers and only looking at the documents being submitted. None of the case laws referred by the learned CIT-A and the learned

counsel of the assessee were not in connection with bogus accommodation entry provider. As a matter of fact Hon'ble High Court's decision in the case of *Major Metals Ltd. vs. Union of India* [2013] 359 ITR 450 (Bom) has upheld the settlement commission's order where in unjustified huge share premiums were added as bogus accommodation entry. The Hon'ble Apex Court in the case of *CIT vs. Durga Prasad More* [1971] 82 ITR 540 (SC) and *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) has also expounded that revenue should not put upon blinkers and should look into the surrounding circumstances and the theory of preponderance of probability was also upheld. Honourable judicial High Court in the case of *Sanjay Bimalchand Jain vs. Pr. CIT* [2018] 89 taxmann.com 196 (Bom) has upheld the addition as bogus long-term capital gain in light of huge improbable increase in share prices of little-known companies on the touchstone of preponderance of probability. The Hon'ble Apex Court in the case of *Security Exchange Board of India vs. Rakhi Trading Pvt. Ltd.* in Civil Appeal No. 1969 of 2011 and others vide order dated 08.02.2018 in the context of bogus share market activity has noted in paragraph 42 the Hon'ble Apex Court decisions where it was held that in absence of direct proof of meeting of minds elsewhere in synchronized transactions, the case should be one of preponderance of probabilities as far as adjudication of civil liabilities arising out of the violation of the act or the provision of the regulation is concerned. Further Honourable apex court in paragraph 4, 6 of the same decision has observed that it will be too naive to view all such transactions dehorse the surrounding circumstances.

17. On the touchstone of above said honourable apex court decision, in our considered opinion, learned CIT-A has totally erred in ignoring the background of this case wherein it has been found that the assessee company had received bogus accommodation entries in the form of huge unjustified share premiums from bogus/Shell companies operated and controlled by noted bogus entry operator Shri Praveen Kumar Jain. The Learned CIT-A has held that only the documents being shown should be considered. He has further held that assessing officer has not made any further enquiry. In our considered opinion, the facts and circumstances of the case clearly mandated that where the learned CIT-A was not satisfied with the enquiry made by the assessing officer, he should have himself made the necessary enquiry. It is settled law that powers of learned CIT-A are coterminous with that of the assessing officer. Furthermore honourable apex court has held in the case of *Kapoorchand Shrimal* [1981] 131 ITR 451 (SC) that it is the duty of the appellate authority to correct the errors in the order's of the authorities below.

18. Hence on the facts and circumstances of the case, we are of the considered opinion that the issue in this case needs to be remitted to the file of the assessing officer. Assessing officer is directed to make further enquiries by issuing necessary summons to the shell companies operated by Shri Praveen Kumar Jain who are said to have contributed share application money in assessee company. This is necessary in view of the background finding of revenue that the share applicant's companies are bogus companies. Furthermore, thousands of such companies have been struck from

the register of companies. The assessing officer should also make reference to the action taken by the Finance Ministry in this regard, as to whether names of these companies appear in the list of such struck off companies. In the result, the issue stands remitted to the file of the assessing officer. Assessing officer is directed to consider the issue afresh keeping in mind our observations here in above. Needless to add assessee should be granted adequate opportunity of being heard.

19. In the result, this appeal filed by the Revenue stands allowed for statistical purposes.

*Order pronounced in the open court on 23.02.2018*

Sd/-  
(Ram Lal Negi)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 23.02.2018

व.नि.स./Roshani, Sr. PS

**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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**