

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 6496/DEL/2014 (A.Y 2007-08)

Sikka Papers Subhash Chowk Shamli AAECS3643J (APPELLANT)	Vs	DCIT Circle-1 Shamli (RESPONDENT)
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Appellant by	Sh. K. Sampath, Adv Sh. V. Raja Kumar, Adv
Respondent by	Sh. Kaushlendra Tiwari, SR. DR

Date of Hearing	07.03.2018
Date of Pronouncement	23.04.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 27/08/2014 passed by CIT(A)-Muzzafarnagar for Assessment Year 2007-08.

2. The grounds of appeal are as under:-

“1. That on the facts and in the circumstances of the case and in law, action of the authorities below in treating the share application money of Rs.70,00,000/- as income from undisclosed source and making an addition u/s 68 of the Income Tax Act, 1961 therefore is arbitrary, mis-conceived and unjust and so must be quashed.”

3. In this case assessment u/s 143(3) of the Income Tax Act, 1961 was

completed on 22.12.3009 on an income of Rs. 1,54,61,630/- after making addition of Rs. 70,00,000/- on account of Share Application Money. Aggrieved with the addition the assessee went in appeal before the CIT(A), Muzaffamagar, who vide order dated 16.9.2010 deleted the addition. Thereafter, the department filed appeal before the ITAT, New Delhi, who vide its order dated 31.1.2012 remitted the matter to the file of the Assessing Officer to consider the issue afresh. Hence, the notice u/s 143(2) and 142(1) were issued to the assessee on 2.2013. In compliance to the statutory notices u/s 143(2)/142(1) of the Income Tax Act, 1961 Shri Yogendra Jain, Advocate attended the proceeding from time to time and filed the required-details and documents. The case was discussed with him. Vide notice u/s 142(1) dated 12.2.2013 the assessee was required to produce the

1. *Please prove identity and creditworthiness of the parties to whom share have been issued during the year under consideration. Also prove the genuineness of the -transaction.*
2. *Please explain with the permission of whom the share have been issued on premium.*

4. In response to the above queries the counsel of the assessee vide his reply dated 18.11.2013 submitted that the assessee company had already proved the identity, creditworthiness and genuineness of transaction on which basis the Commissioner of Income Tax Muzaffarnagar had allowed the issue of share capital in the case of the assessee Company. In his reply the counsel of the assessee has also mentioned the number of judgments. The Assessing Officer observed that perusal of the reply of the assessee reveals that all these judgments were mentioned by the assessee at the time of assessment proceedings u/s 143(3) and after considering all these judgments the then Assessing Officer added the amount of share application money to the income of the assessee. The ITAT has remit the matter to the file of Assessing Officer to consider the issue afresh. To verify the identity of the parties from whom the

share application money was received, the notices u/s 133(6) of the Income Tax Act, 1961 were issued to both the addresses provided by the assessee of M/s Maya Industries Ltd. and M/s Ishom Photo Color P) Ltd. but the envelop of Lucknow address of M/s Maya Industries Ltd. has been received back from the postal department with the remark "Not found at given address." And no reply has been received in response to the letter sent at Delhi address. Similarly no reply has been received from M/s Ishom Photo Color Lab (P) Ltd. Thereafter, the ITI of this office is also sent to the Delhi addresss of M/s Maya Industries Ltd. to serve the notice u/s 133(6). The IT of this office has reported that on the given address no such firm is exists. Therefore, vide notice u/s 142(1) dated 27/2/2014 the assessee was asked following queries:-

During the year under consideration the share application money has been shown as received from the following two companies

- 1. M/s Maya Industries Ltd.*
- 2. M/s Ishom Photo Color Lab (P) Ltd.*

Vide reply dated 18.11.2013 two addresses of M/s Maya Industries Ltd. were provided by you.. The confirmation letters u/s 133(6) of the Income Tax Act, 1961 were sent on both the addresses fixing the date of compliance for 20.2.2014. The envelop of Lucknow address has been received back from the postal department with the remark "Not found at given address". No reply has been received so far in response to the letter sent at Delhi address. The ITI of this office was also sent on the given address of Delhi. As per the report of ITI there is no such company exists at the given address. The residents of that locality we have heard both the parties and perused the material available on record not aware about the company.

The confirmation letter u/s 133(6) of the Income Tax Act, 1961 was also sent to M/s Ishom Lab (P) Ltd. at the address of Agra. For which no reply has been received so far.

Therefore, the identity of these companies is not proved. Therefore, you are required to rjd.se as to why the amount shown as received from above two companies should not be added to your income u/s 68 of the Income Tax Act, 1961 being unexplained cash credits. ”

5. In response to the notice the assessee vide its reply dated 10.3.2014 submitted that Maya Industries Ltd. has been amalgamated with Dishayen Leasing Pvt. Ltd. as per High Court order dated 23.9.2009, which is situated at 11/468- Telewara, Near Gita Bhawan, Shahadra, Delhi-110092 as per Company/ LLP Master Data and Company Master details. Regarding Ishom Photo Color Lab (P) Ltd. the assessee submitted that as per company/ LLP Master Data and company master details the present address of the company is MIG-I, No. 17 BDA Corporation, Zamnpur Colony, Bhadoi. The counsel of the assessee relied upon the judgment in the case of Commissioner of Income Tax Vs Victor Electrodes Ltd. (Delhi) ITA No. 586/2010. The Assessing Officer did not accept the contention of the assessee as the notices u/s 133(6) of the Income Tax Act, 1961 were issued at the addresses given by the assessee itself. And again during Assessment Proceedings afterwards the assessee provided fresh addresses of both the companies as per information available on the website of ROC. The assessee was giving fresh addresses of the parties repeatedly, the department can not verify the new address each time particularly when the new address was provided at the seventh hour when the assessment was going to be barred by limitation. The decision relied upon by the assessee was not applicable in the case of assessee as the onus to prove the identity of the person, from whom the money has been received, is on the assessee. The assessee produced any document in support of identity of the above two parties. No confirmation from the parties was produced by the assessee. During the course of assessment proceeding u/s 143(3) to verify the identity of both the above parties the commission u/s 131(d) of the Income Tax Act, 1961 were also issued to the ADIT (inv.)-2, Lucknow and DDIT(Inv.), Agra. As per reports submitted by both the authorities the address of above parties

were bogus. Therefore, the then Assessing Officer added the amount taken from these parties u/s 68 amounting to Rs. 70,00,000/- to the income of the assessee. After discussion, the assessment was completed at the income of Rs. 1,54,61,628/-.

6. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

7. The Ld. AR submitted that the assessment u/s 143(3) was completed on income at Rs.1,54,61,630/- after making addition of Rs.70,00,000/- on account of share application money. The assessee company filed appeal before the CIT(A) and the CIT (A) Muzaffarnagar had allowed on 16.09.2010, the issue of share capital in the case of the assessee company as the assessee company had already proved the identity, creditworthiness and genuineness of transaction. The Ld. AR submitted that the Assessing Officer had made the assessment u/s 143(3) read with Section 254 dated 14.03.2014 after about 4 years and 7 months after furnishing the current details on 07.12.2009 regarding amalgamation of Maya Industries Ltd. which had already amalgamated with Dishayen Leasing Pvt. Ltd. as per Hon'ble Delhi High Court order dated 23.09.2009. Further on 11.12.2013 master data of company Dishayen Leasing Pvt. Ltd. dated 04.02.2013 from MCA site, Form -2 filed before registrar of companies along with copy of resolution regarding allotment of shares to the assessee company and income tax return receipt for the Assessment Year 2010-11, 2011-12, 2012-13 and 2013-14 had already filed. The company /LLP Master Data and Company Master details dated 07.03.2014 on which balance sheet for the year ending 31.03.2012 was filed by the Company. The Ld. AR further submitted that regarding Ishom Photo Color Lab (P) Ltd. the Assessing Officer had made the assessment u/s 143(3) read with Section 254 dated 14.03.2014 after about 4 months of furnishing the current details of address of the another share applicant who had also changed address with the Registrar of the Companies, Kanpur and present address as

per Company/LLP Master Data and Company Master Details dated 07.03.2014 on which balance sheet for the year ending 31.03.2012 has been filed by the Company. The Ld. AR further submitted that the entire subscriber has subscribed the Share Application money through account payee cheques in favour of the assessee company. The assessee company already allotted and issued share to the said share applicant. The share applicants are regularly assessed to tax and has given their assessment details, PAN No. and filed application for allotment of shares. In the circumstances, share applicant was and is identifiable and creditworthy. The Assessing Officer could have called them under the provision of Section 131 of the Income Tax Act, 1961. All the shareholders had confirmed in writing about their investment in the share capital of assessee and all of them had given their PAN No. and other relevant particulars under which they were assessed to tax relied on CIT vs. Makhni and Tyagi (P) Ltd. 267 ITR 433. The Ld. AR also relied upon the decision of the Hon'ble Apex Court in case of CIT vs. Lovely export 299 ITR 268 and other decisions of the various High Courts.

8. The Ld. DR submitted that the assessee failed to prove identity, genuineness of the transactions and creditworthiness of the persons from whom share capital was received. The Ld. DR relied upon the following decisions with regard to addition made u/s 68 of the Income Tax Act, 1961:

- a) CIT vs. MAF Academy (P.) Ltd. 361 ITR 258 (Del)
- b) CIT vs. Navodaya Castle Pvt. Ltd. (2014) 367 ITR 306 (Del)
- c) Navodaya Castle Pvt. Ltd. vs. CIT 2015-TOIL-314-SC-IT
- d) Konark Structural Engineering (P.) Ltd. vs. DCIT (2018) 90 Taxmann.com 56 (Bom)
- e) Prem Castings (P.) Ltd. vs. CIT (2017) 88 taxmann.com 189 (Allh.)

The Ld. DR also relied upon the Assessment Order and order of the CIT(A).

9. We have heard both the sides and perused the material available on record. It is pertinent to note that the two parties firstly, Maya Industries Ltd. has been amalgamated with Dishayen Leasing Pvt. Ltd. as per High Court order dated 23.9.2009, which is situated at 11/468- Telewara, Near Gita Bhawan, Shahadra, Delhi-110092 as per Company/ LLP Master Data and Company Master details. Regarding second party, Ishom Photo Color Lab (P) Ltd. the assessee submitted that as per company/ LLP Master Data and company master details the present address of the company is MIG-I, No. 17 BDA Corporation, Zamnpur Colony, Bhadoi. The CIT(A) in his order observed that the Assessing Officer has not investigated. Therefore, despite issuing notices u/s 133 (6) and 131 of the Act, no confirmation from share applicants were produced by the assessee before the Assessing Officer. Thus, the CIT(A) was not correct in deleting the disallowance u/s 68 made by the Assessing Officer without going into the three details of identity, genuineness and creditworthiness of the share applicants. The ratio laid down by the Hon'ble Apex Court in the case of Lovely Export is applicable in the present case as in this case only when the opportunity is given to the assessee in respect of proving the identity, genuineness and creditworthiness of the share applicant. The Ld. DR relied upon the Jurisdictional High Court judgment in case of CIT Vs. MAF Academy Pvt. Ltd. (2014) 42 Taxman.com 377 wherein it is held that the Court or Tribunal should be convinced about the identity, creditworthiness and genuineness of the transactions. The CIT(A) has not taken cognizance of these three components while dismissing the appeal of the assessee. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer. We further direct the assessee to produce these parties before the Assessing Officer along with the relevant details for verification and thereafter if no party was found the Assessing Officer with proper reasons make addition on this issue. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 23rd April, 2018.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 23/04/2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	16/03/2018	PS
2.	Draft placed before author	16/03/2018	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	23.04.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	23 .04.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		