

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH.R. K. PANDA, ACCOUNTANT MEMBER  
AND  
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

ITA No.6514/DEL/2013

Assessment Year: 2009-10

ACIT Central Circle -17, Room No. – 353, E-2, ARA Centre, Jhandewalan Extension , New Delhi - 110055	Vs	BDR Builders & Developers P. Ltd., C-43, LGF, Jangpura Extn., New Delhi -110014  PAN AACCB3977G
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Shri Amit Jain, CIT DR
Respondent by	Shri Sanjeev Kapoor, CA Sh. G.S Grewal FCA

Date of hearing:	15/05/2018
Date of Pronouncement:	08/06/2018

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 30.09.2013 of the CIT (A) –XII, New Delhi relating to A. Y. 2009-10.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of land. It filed its return of income on 24.07.2009 declaring total income of Rs.5,63,0003/-. During the course of assessment

proceedings the Assessing Officer observed that the assessee company during the year has shown to have received share capital of Rs.2,25,00,000/- which included share premium of Rs.1,96,00,000/- on sale of 45,000 nos. of shares of the face value of Rs.10/- per share with premium of Rs. 490/- per share from the following companies / persons, the details of which are as under :-

S. No.	Company/ Persons name	No. of share	Face value per share	Premium per share	Total (Rs.)
1.	M/s. VIP Leasing and Finance co. (P) Ltd.,	10000/-	10/-	490/-	50,00,000/-
2.	M/s. Delhi Housing Development Ltd.	10000/-	10/-	490/-	50,00,000/-
3.	M/s. Euro Asia Mercantile (P) Ltd.	10000/-	10/	490/-	50,00,000/-
4.	Sh. Rohit Mathur	15000/-	10/	490/-	75,00,000/-
				Total	2,25,00,000/-

3. From the inquiries conducted in the case of above 3 companies, it was found that these 3 companies are not doing any real business and are engaged in the business of providing accommodation entries. There is negligible profit shown by these 3 companies though their balance sheets show huge share premium reserves on one side and investment in unquoted shares on the other sides. The Assessing Officer analyzed the summary details of the balance sheets of these 3 companies as on 31.03.2009 the summary of which is as under :-

Particulars	M/s. Euro Asia Mercantile (P) Ltd.	M/s. Delhi Housing Development	M/s. VIP Leasing and Finance Co. (P)
As on			

31.03.2009		Ltd.,	Ltd.
Issued subscribed and paid up capital	4,82,00,000/-	30,10,000/-	1,93,54,900/-
Share premium	43,29,00,000/-	26,91,32,000/-	15,21,00,000/-
Profit / ( Loss)	42,084/-	(10456/-)	(2357370/-)
Quoted shares	--	--	115000/-
Un- Quoted shares	46,40,27,500/-	7,99,00,000/-	1,66,00,000/-
Other Current Assets	1,69,02,156/-	1,92,23,65,544/-	29,09,911/-

3.1 Rohit Mathur was also summoned by the Assessing Officer for verification about the genuineness of this transaction. Although he did not appear before the Assessing Officer on the appointed date, however, a written letter was received from him confirming the purchase of these shares.

3.2 The Assessing Officer noted that the above companies from whom huge share premium was received have transferred their entire share holding to the companies connected with the assessee company and their confidants. The Assessing Officer asked the assessee to intimate whether shares allotted to the above persons still exist in their names or have been sold to someone else. From the details filed by the assessee he noted that the shares have been sold by the above 3 companies to the following tranferrees. The rate at which these shares were sold and the addresses of the tranferrees were, however, withheld.

Name of the transferor	Name of the Transferee	No. of shares
M/s. VIP Leasing and Finance co. (P) Ltd.	Gulab Builtech (P) Ltd.	10000
M/s. Delhi Housing Development Lt.d	Verma Buildtech & Promoters (P) Ltd.	10000
M/s. Euro Asia Mercantile (P) Ltd.	Gulab Buildtech Ltd.	10000

4. The addresses of the transferee companies were located by the Assessing Officer from the ROC website and enquiries were got conducted through the ward inspector. From the said enquiry it transpired that M/s. Gulab Buildtech (P) Ltd. is a concern controlled by the assessee's family and also running from the premises no. 31, Jangpura Road, Bhogal, New Delhi which belongs to the family of the assessee. The other 2 companies namely Verma Buildtech & Promoters (P) Ltd and Gulab Buildtech (P) Ltd. though operating from a different address in Green Park, New Delhi are close confidantes of the assessee company. Though the inspector could contact the Director of M/s. Verma Buildtech & Promoters (P) Ltd. at Green Park address but he was also evasive in intimating the rates at which the shares were purchased by them. He, therefore, was of the opinion that these companies are also in collusion with the assessee company. In view of the above, the Assessing Officer held that this is the money of the assessee which was rotated through the accounts of the above companies and these credits in the books of accounts of the assessee, in the shape of share capital / share premium are un-explained and accordingly liable to be added to total income of the assessee. Rejecting the various explanation given by the assessee and distinguishing the various decisions cited before him, the Assessing Officer invoked the provisions of section 68 of the IT Act and made addition of Rs. 2,25,00,000/- to the total income of the assessee on

account of the share premium of Rs. 2,20,50,000/- and the share capital of Rs.4,50,000/-.

5. Before the Ld. CIT (A) it was submitted that the assessee, during the course of assessment proceedings, had furnished the names and addresses of the share holders and proved their identity, credit worthiness and genuineness of the transaction by filing the copies of their confirmations, bank statements from where the share application money had been received, copies of their balance sheets, acknowledgment of return of income to show that each of the share holder was assessed to tax with their PAN number etc. It was submitted that Euro Asian Mercantile Private Limited is an existing company which is assessed to income tax vide PAN Number AABCE 7522 P and that it was duly registered under the Companies Act, having CIN No.U 74999DL 2007 PTC 160643. It was further explained that copy of the share application form as well as the bank account of the investor company had already been filed before the Assessing Officer and that the share application money was received through banking channels through a pay order which was drawn on the same bank account. It was explained that the address given on the bank statement was also the same as was furnished to the Assessing Officer. The assessee company also filed a copy of the balance sheet of the investor company namely Euro Asia Mercantile Private Ltd. and drew the attention of the Ld. CIT (A) to schedule III of the Balance Sheet where the investment made by that company in the shares of the assessee company was duly shown. The assessee company also submitted a copy of Form No.2 which is the return of allotment filed before ROC and submitted that share certificate No.55 bearing distinctive Nos. 1795001 to 1805000 had been issued to the investor company.

6. As regards the individual shareholder Shri Rohit Mathur is concerned, it was submitted that this shareholder had also sent a letter dated 14.11.11 to the Assessing Officer confirming the investment in the

assessee company and had also sent his bank account as well as copy of the physical share certificate and his income tax particulars to the Assessing Officer. The copy of the letter sent by Shri Rohit Mathur to the Assessing Officer which was obtained by the assessee from him was also filed before the Ld. CIT (A) to show that Shri Rohit Mathur had duly responded to the notice of the Assessing Officer.

7. As regards Delhi Housing Development Private Ltd. is concerned it was submitted that this shareholder had also directly replied to the A.O. vide his letter dated 28.11.11 confirming the investment in the assessee company and it was thus explained that this shareholder had also directly responded to the notice / summon of the Assessing Officer. The assessee also filed a copy of the balance sheet of this shareholder.

8. As regards VIP Leasing & Finance Private Ltd., the assessee furnished copy of current company master data of that company and submitted that this shareholder had shifted its office and the new address was submitted along with a copy of the audited balance sheet of that company filed by them in the ROC. It was also pointed out that the complete income tax particulars and bank statement of that company had already been submitted by the assessee to the learned Assessing Officer and was available on his record.

9. Various decisions were also cited before the CIT (A) to the proposition that when the assessee satisfactorily establishes the identity and credit worthiness of the share holder and the genuiness of the transaction by furnishing the full details alongwith the permanent account numbers of the share holders, copies of their bank accounts showing the credit worthiness and the genuiness of the transaction, then in that case the onus to disprove the same shifts to the revenue. It was accordingly argued that since the assessee has discharged the onus cast on it and nothing adverse was

brought on record by the Assessing Officer, therefore, the addition made by the Assessing Officer has to be deleted.

10. Based on the arguments advanced by the assessee, the Ld. CIT (A) deleted the addition by observing as under :-

*“I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant. The Assessing Officer has added Rs.2,25,00,000/- on account of unexplained credits to the income of the assessee holding that this is the money of the assessee rotated through the accounts of the said companies (as mentioned in the assessment order and submissions) and the credits in the books of accounts of the assessee, in the shape of share capital/share premium are unexplained and accordingly liable to be added to the total income of the assessee. Whereas the AR of the appellant has vehemently contended that the addition u/s 68 cannot be made in the hands of the appellant company for shares allotted to the outsiders once their identity is proved.”*

*All the shareholders were duly existing income tax payees and their identity and creditworthiness stood proved from the copies of the income tax return acknowledgements, PAN numbers, copies of bank statements and the genuineness of the transactions stood proved from the fact that each of them had duly confirmed the fact of having invested share capital in the assessee company and each of them had paid the share capital through normal banking channels. Further the Assessing Officer has not brought on record any material to prove that the transaction of issue of share capital to any of the four holders is an accommodation entry. It is evident that the appellant company had duly discharged its onus to prove the receipt of share capital money. The appellant has duly proved that the share capital was received from identified and existing persons who have invested said amounts out of their own bank accounts and have confirmed the factum of such investment directly to the Assessing Officer and have also filed copies of their bank accounts and balance sheets to prove their creditworthiness and genuineness of the transactions.*

*The Hon'ble High Court of Delhi in the case of Fair Finvest Limited in ITA No. 232/2012 dated 22.11.2012 has decided the same issue in the favour of the appellant referring to the ratio of the decision of the Supreme Court in Lovely Exports. Facts of the case being the same this order of the Hon'ble High Court is applicable in the case of the appellant.*

*Further the Hon'ble Delhi High Court in the case of Gangeshwari Metal Private Limited in ITA No.597/2012 dated 21.01.2013 has allowed the same issue in favour of the appellant by relying upon the Hon'ble Supreme Court judgement in the case of Lovely Exports Private Limited. Facts of the case being the same this order of the Hon'ble High Court is applicable in the case of the appellant.*

*In view of the facts of the case and the legal position in the aforementioned cases I am of the opinion that the appellant has proved the creditworthiness and the genuineness of the transactions that the share capital was received from identified and existing persons who have invested said amounts out of their own bank accounts and have also filed copies of their bank accounts and balance sheets to prove their creditworthiness and genuineness of the transactions.*

*In view of this the addition of Rs.2,25,00,000/- made to the income of the appellant as unexplained credit is held as explained and genuine and accordingly the same is directed to be deleted. Grounds raised in appeal are allowed."*

11. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal by raising the following grounds :-

- 1 *The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs. 2,25,00,000/- made by the AO by treating the bogus share application money as unexplained cash credit.,*
2. *(a) The order of the CIT (A) is erroneous and not tenable in law and on facts.  
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

12. The Ld. DR strongly relied upon the order of the Assessing Officer. He submitted that when the assessee failed to discharge the onus cast on it by proving the identity and capacity of the share holders and the genuineness of the transactions the Assessing Officer was fully justified in making the addition u/s 68 of the IT Act. He submitted that the assessee has charged huge premium for the shares allotted by it. The investors do not have sufficient means to invest in the shares of the assessee company due to their meager income. Relying on various decisions as per the written

synopsis he submitted that the Ld. CIT (A) is not justified in deleting the addition made by the Assessing Officer.

13. The Ld. Counsel for the assessee on the other hand heavily relied on the order of the CIT (A). The Ld. Counsel for the assessee drew the attention of the bench to the following chronology of events :-

S. No.	DATE	PARTICULARS
1.	28.12.2011	Assessment concluded by DCIT CC 17 u/s 143 (3) making an addition u/s 68 of 2.25 Cr in respect of share capital received from 4 parties
2.	30.09.2013	Order of Hon'ble CIT (A)-XII, wherein relief was allowed against the entire addition.
3.	02.01.2014	Search proceedings u/s 132 of the I. T. Act conducted on the assessee company.
4.	11.03.2014	During the post search investigations notices issued to the 4 parties and the requisite compliance made by the shareholders ..... No adverse inference drawn.
5.	Jan-Feb 2016	Notices issued to the 4 parties u/s 133 (6) of the I. T. Act during the course of the assessment proceeding u/s 153 A / 143 (3) by ACIT, CC-15
6.	31.03.2016	Order u/s 153 A/ 143 (3) passed by the ACIT, CC-15 accepting the returned income of the assessee company.

14. He submitted that during the assessment proceedings the assessee had discharged the onus cast on it by filing various details such as copy of the acknowledgement of income tax returns, copies of bank statements, copies of return of allotment etc. based on which the Ld. CIT (A) deleted the

addition. He submitted that subsequent to the order passed by the CIT( A) a search u/s 132 of the IT Act 1961 took place on 02.01.2014 on the business premises of assessee company. During the course of investigation notices were issued to the above four parties and the requisite compliances were made by the share holders both during the investigation proceedings as well as during the assessment proceeding and nothing adverse was found.

15. Referring to paper book page No. 195 to 216 Ld. Counsel for the assessee drew the attention of the Bench to the copy of response filed by VIP Leasing & Finance Pvt. Ltd. before the DDIT (Inv.), Unit (V) (2) during the course of the post search investigation. Referring to page No. 217 to 241 of the paper book he drew the attention of the Bench to the copy of response filed by Euro Asia Mercantile Pvt. Ltd. before the DDIT (Inv.), Unit (V) (2) during the course of the post search investigation. Referring to page No.242 to 252 of the paper book, he drew the attention of the bench to the copy of response filed by Delhi Housing Development Pvt. Ltd. before the DDIT (Inv.), Unit (V) (2) during the course of the post search investigation. Referring to page No. 253 to 264 of the paper book, he drew the attention of the bench to the copy of response filed by Mr. Rohit Mathur before the DDIT (Inv.), Unit (V) (2) during the course of the post search investigation.

16. Referring to page No. 265 to 272 of the paper book, he drew the attention of the bench to the copy of response filed by Delhi Housing Development Pvt. Ltd. before the ACIT CC-15, in response to notice u/s 133 (6)during the course of the assessment proceedings u/s 153 A / 143 (3). Referring to page No. 273 to 275 of the paper book, he drew the attention of the bench to the copy of response filed by VIP Leasing & Finance Pvt. Ltd., before the ACIT CC-15 in response to notice u/s 133 (6) during the course of the assessment proceedings u/s 153 A/143 (3). Referring to page No. 276 to 281 of the paper book he drew the attention of the bench to the copy of response filed by Euro Asia Mercantile Pvt. Ltd. before the ACIT-CC-15,

in response to notice u/s 133 (6) during the course of the assessment proceedings u/s 153 A/ 143 (3). Referring to page No. 282 to 283 of the paper book he drew the attention of the bench to copy of response filed by Mr. Rohit Mathur before the ACIT-CC-15, in response to notice u/s. 133 (6) during the course of the assessment proceedings u/s 153 A/ 143 (3).

17. Referring to page No. 284 to 287 of the paper book, he drew the attention of the Bench to the assessment order dated 31.03.2016 passed u/s. 153 A/ 143 (3) for A. Y. 2009-10 wherein the Assessing Officer has assessed the income at Rs. 5,63,003/- only and no addition on account of share capital has been made. He accordingly submitted that neither during the search proceedings nor during the post search enquiries or assessment proceedings thereafter, any adverse material was found for such share capital or share premium. He accordingly submitted that the order of the CIT (A) be upheld and the grounds raised by the revenue be dismissed.

18. We have considered the rival arguments made by both the sides perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs. 2.25 crores being share capital and share premium received by the assessee from the four parties the details of which are given at paragraph No.2 of this order. While doing so he invoked the provisions of section 68 of the IT Act on the ground that this is the money of the assessee which was routed through the accounts of the above companies and such share capital and share premium are unexplained. We find the Ld. CIT (A) deleted the addition, the reason for which has already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that the assessee has discharged the onus cast on it and therefore, the Ld. CIT (A) was justified in deleting the addition. It is an admitted fact that the assessee, during the course of assessment proceedings, had filed the copies of the income tax returns, complete details

of the names and addresses of the persons and the companies who have invested in the shares of the assessee company alongwith their bank statements and copies of balance sheet, income tax return acknowledgment, pan number etc. It is to be noted here that subsequent to the order passed by the CIT (A) a search u/s. 132 of the IT Act was conducted at the premises of the assessee. During the post search inquiries conducted by the investigation wing the four persons have filed the requisite details before the DDI (investigation) confirming investments made by them in the shares of the assessee company. Such details are filed at page No. 195 to 264 of the paper book. Further during the course of assessment proceedings u/s. 153 A / 143 (3), the four parties have filed the requisite details in response to notice u/s 133 (6) of the IT Act as called for by the Assessing Officer. We find the Assessing Officer in the order dated 31.03.2016 passed u/s 153 A / 143 (3) has accepted the returned income and not made any addition on account of such share capital and share premium by recording as under

*“Original return in this case was filed on 24.07.2009 declaring income of Rs. 5,63,003/- which was processed u/s 143 (1) of the Act. Assessment u/s 143 (3) of the Act was completed in this case vide order dated 28.12.2011 at total income of Rs.2,30,63,003/- which was reduced to Rs.5,63,003/- as per order u/s 250/143(3) dated 13.11.2013. Subsequently, action u/s 132 of the Act was carried out in this case on 02/03.01.2014 and various books of accounts/ documents etc. were found and seized. Notice u/s 153 A of the Act was issued on 22.4.2015 requiring the assessee to file the return of its income within 15 days of the receipt of the said notice. In response to notice u/s 153 A of the Act the assessee filed the copy of the original return vide its letter dated 05.05.2015 Notice u/s 143 (2) was issued on 21.09.2015. Notice u/s 142(1) with questionnaire was also issued on 21.09.2015. In response to the statutory notices Shri S. P. Jain, CA and Shri Rajesh Gupta AR of the assessee attended the proceedings from time to time, filed the required details which were examined and placed on record. The case was discussed with them.*

*During the year the assessee company was engaged in the development and construction of residential properties.*

*After discussion with the ARs of the assessee company income already assessed at Rs.5,63,003/- u/s 250/143 (3) vide order dated 13.11.2003 is accepted u/s 153A/143(3) of I. T. Act.*

*Assessed u/s 153 A/ 143 (3) at Rs.5,63,003/-. Charged interest u/s 234A,B,C &D as applicable. Demand notice u/s 156 of the Act issued. Credit for prepaid taxes has been given.*

*The order passes with the approval of the Joint Commissioner of Income Tax, Central Range-IV, New Delhi as accorded by him vide letter F. No. JCIT/CR-4/2015-16/1687 dated 31.03.2016.”*

19. From the above it is very clear that no adverse material was found during the course of search or post search inquiries to establish that the assessee has received any bogus share capital or share premium. However, these are all subsequent to the order passed by the CIT (A) and neither the Assessing Officer nor the CIT (A) had the benefit of all these details where in all the parties have responded to the inquiry conducted by the investigation wing as well as responded to the notice issued u/s 133 (6) by the Assessing Officer during the search assessment proceedings. Under these circumstances we deem it proper to restore the issue to the file of the Assessing Officer with the direction to go through the enquiries conducted by investigation wing of the department as well as the enquiry conducted by the Assessing Officer in the 153A proceedings in respect of the above 4 parties. In case nothing adverse has been found, the Assessing Officer shall delete the addition. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per law in the light of our above observations. The grounds raised by the revenue are accordingly allowed for statistical purposes.

20. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 08.06.2018

Sd/-  
**(BEENA A. PILLAI)**  
**JUDICIAL MEMBER**

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

*\*NEHA\**

*Date:- 08.06.2018*

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	21.05.2018	PS
2.	Draft placed before author	22.05.2018	PS
3.	Draft proposed & placed before the second member	22.05.2018	JM/AM
4.	Draft discussed/approved by Second Member.	08.06.2018	JM/AM
5.	Approved Draft comes to the Sr.PS/PS	08.06.2018	PS/PS
6.	Kept for pronouncement on	08.06.2018	PS
7.	File sent to the Bench Clerk	08.06.2018	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.		