

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.174/Hyd/2016
(Assessment Year: 2011-12)

M/s. Shree Raghav Ispat (India) Pvt. Ltd Azamabad, Hyderabad PAN: AANCS6181J (Appellant)	Vs	Income Tax Officer Ward 3(1) Hyderabad (Respondent)
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For Assessee :	Shri S. Rama Rao
For Revenue :	Smt. B.K.Vishnu Priya, DR

Date of Hearing:	27.06.2018
Date of Pronouncement:	29.06.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2011-12 against the order of the CIT (A)-3, Hyderabad, dated 27.11.2015.

2. Brief facts of the case are that the assessee, engaged in the business of manufacturing of steel ingots etc., filed its return of income for the A.Y 2011-12 on 22.01.2013 admitting a total income of Rs.17,88,100. During the assessment proceedings u/s 143(3) of the Act, from the books of account of the assessee, the AO noticed that the assessee has shown to have received share application money of Rs.48.00 lakhs during the year from three parties namely Axiom Goods Pvt. Ltd, Kolkata, Uplink Vyapar Pvt.

Ltd, Kolkata and Basukinath Developers Pvt. Ltd, Kolkata. The assessee was asked to prove the genuineness of the above share application money received during the year.

3. In response to the same, on 18.02.2014, the assessee filed a statement of share application money along with confirmation letters of only Basukinath Developers Pvt Ltd and Axiom Goods Pvt. Ltd. The assessee did not mention about the share application money of Rs.16.00 lakhs received from Uplink Vyapar Pvt Ltd. The AO observed that all the three companies, from whom the share application money was received during the year, are registered in Kolkata and that the share application money was contributed for allotment of shares of Rs.10/- each with a premium of Rs.310/- per share. Observing that the assessee company had no reserves for payment of such huge premium, the assessee was requested to prove the genuineness of the transaction.

4. In response to this, the assessee filed a letter dated 07.03.2014, explaining that the said two companies have made investment in the assessee company because of the boom in real estate sector, the steel industry also flourished in that year. Thus, he justified the premium of Rs.310/-. The AO observed that even in this letter, there is no mention about the share application money of Uplink Vyapar Pvt. Ltd. Therefore, he observed that the assessee is not clear about the investors from whom share application money was received during the year. In order to find out the genuineness of the investments. AO addressed letters to

all the three companies on 19.02.2014, calling for information u/s 133(6) of the Act. The letter addressed to Axiom Goods Pvt. Ltd was returned with the remarks “*No such firm in this address, So..unclaimed.*” Though the remaining two letters were duly served, there was no response from these companies. Therefore, the AO has observed that the assessee has not been able to prove the genuineness of the transactions and creditworthiness of the parties. Therefore, he treated the entire sum of Rs.48.00 lakhs as unexplained credit u/s 68 of the Act and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

5. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below, submitted that the assessee had received the share application money through banking channels through RTGS as is recorded by both the AO and the CIT (A). Therefore, according to him, the assessee has proved the genuineness of the transactions and also had given the PAN of those companies and therefore, their identity is also proved. As far as the creditworthiness is concerned, he submitted that the AO had never asked the assessee to prove or produce the parties and the assessee was not aware of the fact that notices issued to the parties have been returned unserved. However, he submitted that since the transactions are through banking channels, the creditworthiness of those parties is also proved. As regards the doubts raised about the premium paid by these companies, he drew our attention to the balance sheet of

the company to demonstrate that it had reserves which justified the premium paid by those companies.

6. The learned DR, however, supported the orders of the authorities below and submitted that the onus is on the assessee to prove not only the genuineness of the transactions but also the creditworthiness of the parties. She submitted that the notices sent to one company was returned unserved and there was no response from the two parties and therefore, the AO was right in making the additions.

7. Having regard to the rival contentions and the material on record, we find that the share application money has been received by the assessee through the banking channels and therefore, the identity of the parties is established. As far as the genuineness and the creditworthiness are concerned, the AO had issued notice to all the three parties. The assessee has also filed confirmation letters from two of the parties i.e. Axiom Goods Pvt. Ltd and Basukinath Developers Pvt. Ltd. Copies of the confirmation letters are also filed before us at pages 55 and 56 of the paper book and we find that the PAN of the said companies is also given in the said letters. The AO has recorded that there is no response from Basukinath Developers (P) Ltd, inspite of service of notice, and the notices to other parties has been returned unserved. There is no evidence on record that this fact has been confronted to the assessee and that the assessee was asked to produce the parties and prove the creditworthiness of the said parties. In such circumstances, when the assessee is not

confronted with the return of notices, it is not understandable as to how the assessee is expected to discharge its onus. However, the assessee also has not submitted any evidence with regard to Uplink Vyapar Pvt. Ltd and the copy of the confirmation letter filed in paper book, cannot be considered, as it was not filed before the authorities below earlier. Therefore, we confirm the addition of Rs.16.00 lakhs allegedly received from Uplink Vyapar Pvt. Ltd, Kolkata. As far as the other two parties are concerned, we deem it fit and proper to remand the issue to the file of the AO for reconsideration in accordance with law after giving the assessee due opportunity of producing the parties to prove their creditworthiness.

8. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 29th June, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 29th June 2018.

Vinodan/sps

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- 2 ITO Ward 3(1) I.T. Towers, AC Guards, Hyderabad
- 3 CIT (A)-3, Hyderabad
- 4 Pr. CIT – 3, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order