

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.Nos. 2245 TO 2248/MUM/2016
(A. Ys: 2011-12, 2010-11,2008-09 & 2009-10)**

Income Tax Officer – 3(1)(2)
Room No. 666, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400 020

v. M/s. Doshi Holdings Pvt Ltd.,
5th Floor, Neela House,
M.L. Dahanukar Marg,
Mumbai – 400 026

PAN No: AABCM 0243 P

(Appellant)

(Respondent)

Assessee by : Shri Jayesh Dadia
Revenue by : Shri M.C. Omi Ningshen
Shri B. Srinivas

Date of Hearing : 17.05.2018

Date of Pronouncement : 13.07.2018

ORDER

PER C.N. PRASAD (JM)

1. All these four appeals are filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 10, Mumbai dated 29.12.2015 for the Assessment Years 2008-09 to 2011-12.

2. The Revenue has raised common grounds in all these appeals except for the figures. As the issues in all the four appeals are common they are disposed off by this common order for the sake of convenience.

3. First we take up the appeal for the Assessment Year 2009-10 in ITA.No. 2248/Mum/2016 which is the lead year where the Ld.CIT(A) passed detailed order and has been followed for the Assessment Years 2008-09, 2010-11 & 2011-12. The Revenue has raised the following grounds in its appeal for the Assessment Year 2009-10: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition u/s. 68 of the Income Tax Act amounting to Rs. 17,94,77,088/-, even though the assessee has not brought anything on record to prove the identity, genuineness and creditworthiness of the investor company and further erred in deciding the matter on the documents which were never produced before the assessing officer and survey team?"

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in ignoring the fact that the decision of the Hon'ble ITAT remanding matter back to the file of the CIT(A) has not been accepted by the department and appeal u/s. 260A has been filed on 07.04.2014.?"

3. The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer restored.

4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

4. Briefly stated the facts are that, assessee is engaged in the business of investments. In the Financial Year relevant to the current Assessment Year i.e., 2009-10 the assessee company received share capital of ₹.17,94,77,088/- from M/s. McGuffin Ltd., the company incorporated in British Virgin Island (BVI) Company. The Assessing Officer completed the assessment u/s. 143(3) of the Act on 26.12.2011 considering the

entire share capital of ₹.17,94,77,088/- as unexplained cash credit u/s. 68 of the Act. Aggrieved by the addition, the assessee filed appeal before the Ld.CIT(A) and the Ld.CIT(A) by order dated 02.11.2012 confirmed the addition made by the Assessing Officer. Against this order of the Ld.CIT(A) the assessee company filed further appeal before the ITAT in ITA.No. 7614/Mum/2012 and the ITAT by order dated 27.11.2013 has set-aside the order of the Ld.CIT(A) and restored the matter back to the file of the Ld.CIT(A) observing as under: -

“4.1. We have heard both the sides and perused the material before us. We are of the opinion that before deciding the matter on merits, issue of additional evidences had to be addressed. During the course of hearing, before us, AR submitted that assessee was in possession of the original papers, that assessee was in position to produce the same before the departmental authorities. We find that assessee had not produced the required papers and documents before the survey team/AO. Even before FAA, it had filed the Xerox copies of the papers. From the order of the FAA, it is not clear as whether the Xerox copies were certified by the assessee; as true copy of the original; or not. In our opinion, original documents have to be considered before taking final decisions with regard to the additions made by the AO. So, in the interest of justice, we are remanding the issue to the file of the FAA for fresh adjudication. Assessee-company is directed to furnish all the original papers before the FAA. While finalizing the appeal before him, FAA may consider the decision of the Special Bench of Hyderabad Bench to be delivered in the case of Jagan Publication. With these observations, we allow the appeal filed by the assessee, in part.”

5. Assessee subsequently filed miscellaneous petition in M.A.No.27/Mum/2015 for the Assessment Year 2009-10 before the ITAT and the ITAT by order dated 10.06.2015 held as under: -

“3. We have heard the rival submissions and perused the material before us. We find that the Tribunal had restored the matter to the file of FAA as certain documents furnished before the FAA have certain additional evidence as per Rule 46A of the I.T. Rules. The Tribunal had directed the FAA to consider the outcome of the decision of the Special Bench in the case of Jagan Publication. In our opinion, the order dated 27.11.2013 has to be modified considering the peculiar facts and circumstances of the case. It is found that the matter of Jagan Publication has been

adjourned sine-die and therefore, the possibility of not adjudication the case by the FAA is very high. Our intention while restoring the matter to file of FAA was to direct the AO to decide the appeal afresh after considering all the documents produced as additional evidences. Therefore, we modify the last portion of our order dated 27.11.2013 and same should be read as under: -

“While finalizing the appeal the FAA should consider all the papers and decide the issue as per law”.

6. Thus, the Ld.CIT(A) was asked to decide the issue afresh in the light of the above directions of the Tribunal. Therefore, the solitary issue before us in this appeal relates to the addition made towards share capital in the hands of the assessee by treating the share capital as unexplained cash credit u/s. 68 of the Act. Before the Ld.CIT(A) the assessee company has filed the following documents duly certified by the Chairman and the Managing Director of the assessee company as true copies of the originals which have been verified by the Ld.CIT(A) as well as the Assessing Officer.

- (1) Affidavit of Mr. Maitreya V. Doshi, CMD of the assessee company.
- (2) Copy of letter dated 23.04.2012 which M/s. McGuffin Ltd., has sent along with copies of the audited accounts.
- (3) Copy of audited accounts for the year ended 31.03.2009, 31.03.2010 and 31.03.2011.
- (4) Copy of the letter of M/s. McGuffin Ltd., dated 27.03.2012 confirming the date of investment as 12th February, 2010 instead of 12th January, 2010 which was wrongly mentioned earlier.

7. The assessee company to establish the identity of the investor M/s.McGuffin Ltd., its credit worthiness and genuineness of the transaction filed the following documents: -

- (1) Certificate of foreign inward remittance by the HDFC Bank, where the name of the beneficiary, name of the remitter, purpose and the amount of the remittance were clearly disclosed.
- (2) Correspondence with the RBI regarding discloser of other information and its approval by RBI.
- (3) KYC of M/s. McGuffin Ltd., by RBI before giving approval.
- (4) Form No. 2 being return of allotment filed with the Registrar of Companies in respect of shares allotted to M/s. McGuffin Ltd.
- (5) Copy of share certificates issued to M/s. McGuffin Ltd., where it has been shown as shareholder.
- (6) Audited financial accounts of M/s. McGuffin Ltd., for the year ended 31.03.2008, 31.03.2009, 31.03.2010 & 31.03.2011 along with the auditor's certificate to shown and establish identity and credit worthiness of M/s. McGuffin Ltd.
- (7) Confirmation of M/s. McGuffin Ltd. foreign investor dated 12.01.2010.

The Ld.CIT(A) has analyzed all these documents in his order in Paras 4.3.1 to 4.3.2 and held that the addition made u/s. 68 is not in order.

8. Before us also, the assessee company filed Paper Book containing all the above documents which were filed before the Ld.CIT(A) and the Assessing Officer.

9. Ld. DR submitted that directions of the ITAT have not been followed in spirit by the Ld.CIT(A). Ld. DR submitted that during survey proceedings assessee admitted the transaction as bogus. However, the statement was retracted after three months. Ld. DR submitted that additional evidences were produced before the Ld.CIT(A) which were not produced before the Assessing Officer. Ld. DR in his submissions did not dispute the contents of the financial accounts but doubted all the documents filed before the Ld.CIT(A) and also before us. Ld. DR has only raised technical issue that these documents were never produced before the Assessing Officer or survey team. According to the Ld. DR the assessee company failed to establish the identity, credit worthiness of the investor and genuineness of the transaction.

10. On the other hand, the Ld. Counsel for the assessee Mr. Jayesh Dadia has submitted that, the Ld.CIT(A) had in fact called for remand report in the first round against the additional evidences furnished by the assessee. He submitted that remand report is placed at Page Nos. 91 to 96 of the Paper Book. The Learned Counsel for the assessee submitted that an opportunity was given to the Assessing Officer to examine all these documents which were filed before the Ld.CIT(A) and the remand report was sent by the Assessing Officer rejecting the contentions of the assessee and since the assessee made declaration in the course of

survey proceedings Assessing Officer was of the view that assessee doesn't deserve any relief on the basis of additional evidences. Therefore, the Ld. Counsel for the assessee submitted that no additional evidences were filed before the Ld.CIT(A) and all the additional evidences which were filed were in fact considered by the Assessing Officer and therefore the contention of the Ld. DR has no merit.

11. Ld. Counsel for the assessee further invited out attention to Para Nos. 4.3.1 to 4.3.3 of the Ld.CIT(A) order and submitted that, the Ld.CIT(A) has analyzed the financial accounts of the M/s. McGuffin Ltd., i.e. Assets and Liabilities, sources as per the balance sheet, investments in HDPL, allotment of shares in DHMC, inward remittance through HDFC and share holding pattern in DHPL establishing the credit worthiness of the investor. Referring to the Paper Book filed by the assessee the Learned Counsel for the assessee submitted that all these documents fulfill the parameters as required u/s. 68 of the Act. Ld. Counsel for the assessee further submitted that the Revenue did not bring any material or documents on record to justify their stand. In support of his contention that, when the transaction is genuine the investor is credit worthy and has identified the parameters of the provisions of section 68 of the Act are fulfilled and no addition is warranted treating such investment as unexplained cash credit, placed reliance on the following cases: -

- (1) *Kira Jewellers Pvt Ltd in ITA No. 4911/Mum/2009 dated 11.12.2009.*
- (2) *Green Infra Ltd (392 ITR 7) (Bom).*
- (3) *Gagandeep Infrastructure Ltd (394 ITR 680) (Bom).*
- (4) *Paradise Inland Shipping (P) Ltd (400 ITR 43) (Bom).*
- (5) *Goodview Trading (P) Ltd (77 taxmann.com 204) (Del).*
- (6) *Steller Investment Ltd (251 ITR 263) (SC).*
- (7) *Gujarat Heavy Chemicals Ltd (256 ITR 795) (SC).*
- (8) *Lovely Exports Pvt Ltd (313ITR 5) (SC).*
- (9) *Wold Telefilms Ltd (333 ITR 100) (Bom).*
- (10) *Peoples General Hospital Ltd (346 ITR 65) (MP).*
- (11) *Russian Technology Centre Pvt Ltd (251 ITR (Trib) 521) (Del.).*

12. We have heard the rival contentions, gone through the facts of the case and documents filed before the Ld.CIT(A) as well as before us. After careful examination of the documents submitted by the assessee, we agree with the view taken by the Ld.CIT(A) and his findings that the assessee company has established the identity and credit worthiness of the investor M/s. McGuffin Ltd. The Hon'ble Bombay High Court in the case of Green Infra Ltd [392 ITR 7] held that once the assessee complied with all the parameters of section 68 of the Act i.e. identity of the genuineness of the transaction and the credit worthiness the share capital cannot be taxed in the hands of the assessee u/s. 68 of the Act. Similar view has been taken in the case of the Goodview Trading (P) Ltd (supra) by the Hon'ble Delhi High Court. We find that the Ld.CIT(A) based on the details of financial accounts of the investor i.e. M/s. McGuffin Ltd.,

analyzed that the investor has financial capacity to invest in the assessee company.

13. In the case of Kira Jewellers Pvt Ltd in ITA.No. 4911/Mum/2009 dated 11.12.2009 the Mumbai Bench of the Tribunal held that, if financial accounts of the foreign company established its capability the addition u/s. 68 cannot be made. As a matter of fact, financial accounts of the investor company was filed for the first time before the Hon'ble Tribunal and considering the said financial accounts of the investor company the Tribunal held that no addition u/s. 68 of the Act can be made as the investor company established its capability in making investment. Moreover, the Ld. DR has not brought any evidence on record nor filed any documents before us to counter the findings of the Ld.CIT(A).

14. In the grounds of appeal, the Revenue stated that the documents were not filed before the Assessing Officer and the survey team, however the Ld.CIT(A) has given a finding that the additional evidences were filed first time before the Ld.CIT(A) and remand report was also obtained, but the Ld.CIT(A) in the first round did not admit the additional evidences, Therefore, the matter came to the Tribunal and this Tribunal had admitted the additional evidences and directed the Ld.CIT(A) to verify and decide the issue accordingly. The Ld.CIT(A) has verified all the documents and

gave his findings accordingly with which we agree. Thus, we do not interfere with the findings of the Ld.CIT(A). Therefore, the grounds raised by the Revenue are rejected.

15. Coming to the appeals for the Assessment Years 2008-09, 2010-11 & 2011-12, the grounds are identical and similar to the grounds raised in the Assessment Year 2009-10 and therefore our findings in Assessment Year 2009-10 are applicable *mutatis-mutandis* for the Assessment Years 2008-09, 2010-11 & 2011-12. Thus the grounds raised in these appeals are also dismissed.

16. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on the 13th July, 2018.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 13/07/2018
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar)
ITAT, Mum