

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 91/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

The Income Tax Officer, Ward 7(2), Jaipur.	बनाम Vs.	M/s. High Rise Propcon Pvt. Ltd., C-504, Mahima IRIS-A, Swaj Farm, New Sanganer Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCH 0140 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 99/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

M/s. High Rise Propcon Pvt. Ltd., C-504, Mahima IRIS-A, Swaj Farm, New Sanganer Road, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCH 0140 B		
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राजस्व की ओर से / Revenue by: Shri A.K. Rawat (JCIT)
निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal (CA)

सुनवाई की तारीख / Date of Hearing : 19.09.2018.
घोषणा की तारीख / Date of Pronouncement : 24/09/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

These two cross appeals are directed against the order dated 18th November, 2016 of Id. CIT (A)-5, Jaipur for the assessment year 2012-13. The assessee is a private limited company and engaged in the business of real estate development and share trading during the year under consideration. The assessee filed the return of income electronically on 30th September, 2012 declaring loss of Rs. 83,670/-. The case of the assessee was taken up for scrutiny and during the scrutiny assessment

the AO noted that the assessee has issued shares at a premium of Rs. 390/- per share of Rs. 10/- each to three parties as under :-

S.No.	Name & address of the shareholder	No. of share	Rate of share allotted at premium	Total amount
01.	M/s. Diamention Mercantiles Pvt. Ltd., 85, Netaji Subhas Road, Dal house, Kolkata-700001.	6250	390/-	24,37,500/-
02.	M/s. Giltedge Vincom Pvt. Ltd., 85, Netaji Subhas Road, Dal house, Kolkata-700001.	3750	390/-	14,62,500/-
03.	M/s. NR Vincom Pvt. Ltd., 08, Ganesh Chandra Avenue, 1 st Floor, Chandani Chowk, Kolkata-700013.	2500	390/-	9,75,000/-
	Total :	12500	390/-	48,75,000/-

The AO asked the assessee to furnish various details of the share applicants vide letter dated 23rd January, 2015. In compliance to the said letter, the assessee furnished various documents in support of the claim that the transactions of issue of shares at premium are genuine and the assessee received the share application money through banking channel against which the shares were allotted to these three companies. The AO did not accept the contention of the assessee and made the addition of Rs. 48,75,00/- towards the premium received by the assessee against the allotment of shares to these three companies. The assessee challenged the action of the AO before the Id. CIT (A). The Id. CIT (A) after considering the facts of the case and particularly the receipt of the share application money by the assessee from these three parties come to the conclusion that so far as the share application money received from two parties, namely, M/s. Diamention Mercantiles Pvt. Ltd. of Rs. 25 lacs and M/s. Giltedge Vincom Pvt. Ltd. of Rs. 15 lacs, the assessee has

furnished all the supporting evidence to substantiate the claim of genuineness of the transactions and, therefore, the addition made by the AO in respect of these two parties was deleted to the extent of Rs. 39 lacs being the share premium received from these parties. However, the Id. CIT (A) has confirmed the addition of Rs. 10,00,000/- on account of the share application money received from M/s. NR Vincom Pvt. Ltd. on the ground that the notice issued under section 133(6) by the AO was received back unserved with the remarks that the party was not available at the address. Hence both the assessee as well as the revenue are aggrieved by the impugned order of Id. CIT (A) and filed these cross appeals. The grounds raised in the cross appeals are as under :-

ITA No. 91/JP/2017 (REVENUE) :

- (i) On the facts and in the circumstances of the case, the CIT (A) has erred in deleting the addition u/s 68 of Rs. 39,00,000/- without the assessee proving the creditworthiness of share subscribers and genuineness of the transactions.
- (ii) The appellant craves leave to add, alter, amend, withdraw or insert any ground or grounds of appeal before or at the time of hearing of the appeal.

ITA No. 99/JP/2017 (ASSESSEE) :

- 1) That on the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in law in confirming the addition of Rs. 10,00,000.00 made by Id. AO on account of receipt of share application money from N R Vincom Pvt Ltd merely on the ground that Notice sent to share applicant company was returned unserved.
- 2) That on the facts and in the circumstances of the case and in law, the Id. CIT (A) was not justified in confirming the addition of Rs. 10,00,000.00 made by Id. AO on account of receipt of share application money from N R Vincom Pvt. Ltd. when the Appellant had discharged the onus cast by law on it by proving identity of share applicant company, their creditworthiness and genuineness and relying on the same set of documents furnished in respect of each share applicant company the Id.

CIT (A) had deleted the addition made in respect of share application money received from Diamention Mercantiles Pvt Ltd. and Giltgedge Vincom Pvt Ltd.

3) That the appellant craves the permission to add or to amend to any of ground of appeal or to withdraw any of them.

2. As far as Revenue's appeal is concerned, there is no dispute that the Id. CIT (A) has granted the relief of Rs. 39 lacs by deleting addition made by the AO under section 68 of the IT Act in respect of two share applicants and hence the tax effect in the revenue's appeal is not exceeding Rs. 20,00,000/- as per CBDT Circular No. 3 of 2018.

3. The Id. D/R has fairly submitted that the tax effect involved in the Revenue's appeal is less than 20 lacs which is prescribed threshold limit in terms of the CBDT Circular No. 3/2018 dated 11th July, 2018 issued in supersession of its earlier Circular No. 21 of 2015 dated 10.12.2015.

4. We have heard the rival contentions and perused the materials available on record. It is observed that the demand/ tax effect in the Revenue's appeal in question is below Rs. 20.00 lacs. Under the powers vested by section. 268A(1) of the IT Act, CBDT has recently issued Circular No. 3/2018 dated 11th July, 2018 (F No. 279/Misc. 142/2007-ITJ(Pt) instructing the authorities below that departmental appeal should not be filed before ITAT where the demand/tax effect does not exceed Rs. 20 lacs. The circular is specifically mentioned to be applicable for all pending appeals.

5. Subject to some exceptions, it is further directed by CBDT that all the departmental appeals pending before ITAT where the demand/tax effect is not

exceeding than 20 lacs should be either withdrawn or not pressed by the departmental representatives.

6. The present appeal is not covered by any exceptions mentioned in the said CBDT circular. Since the tax demand in dispute in this departmental appeal is below the limit set out by CBDT for the appeal, the appeal of the assessee is not maintainable in view of CBDT Circular No. 3 of 2018 dated 11.07.2018. Accordingly the appeal of the Department is dismissed as not pressed/withdrawn.

7. Now we take up the assessee's appeal wherein the assessee has challenged the addition sustained by the Id. CIT (A) in respect of the share application money of Rs. 10,00,000/- received from M/s. N.R. Vincom Pvt. Ltd. The Id. A/R of the assessee has submitted that though the AO made the addition in respect of the share application money received from M/s. N.R. Vincom Pvt. Ltd. only to the extent of Rs. 9,75,000/- being the premium component, however, the Id. CIT (A) has enhanced the said addition by making a disallowance of entire amount of Rs. 10,00,000/-. He has further submitted that the only ground of sustaining the addition by the Id. CIT (A) is that the notice issued by the AO under section 133(6) was returned back unserved as the party was not available at the address whereas the said notice was issued by the AO at the incorrect address. The Id. A/R has submitted that the AO issued the notice under section 133(6) to M/s. N.R. Vincom Pvt. Ltd., O-8, Ganesh Chandra Avenue, 1st Floor, Chandani Chowk, Kolkata-700013 whereas the correct address of the said party is : O-8, Ganesh Chandra Avenue, 1st Floor, Saha Court, Kolkata-700013. The Id. A/R has also referred to the assessee's letter dated 12.03.2015 at page 66 of the Paper Book and submitted that the assessee had duly brought this fact to the knowledge of the AO that the notice

issued under section 133(6) of the Act was at the wrong address and the correct address was again furnished by the assessee though it was already on record. Thus the Id. A/R has submitted that when the AO has issued the notice at a wrong address then the non-receipt of the said notice cannot be a reason for disallowance of claim of share application money.

7.1. The Id. A/R has further submitted that when the assessee has furnished the confirmation from the said party on account of share application, allotment of shares as well as the bank record of the assessee company to show that the amount was received through banking channel, then the assessee had discharged its onus of proving the genuineness of the transaction, identity of the creditor and creditworthiness of the creditor. The Id. A/R has also filed a copy of Balance Sheet of M/s. N.R. Vincom Pvt. Ltd. and submitted that as per the Balance Sheet as on 31st March, 2012 the said company was having sufficient funds for making the investment and also the said investment was duly reflected in the Balance Sheet of the said company. Hence, the Id. A/R has submitted that even if the AO was of the view that the share applicant was not having the creditworthiness, the addition can be made only in the hands of share applicant and not in the hands of the assessee.

In support of his contention, he has relied upon the following decisions :-

CIT vs. Oasis Hospitalities Pvt. Ltd.
238 CTR 402 (Delhi HC)

CIT vs. Devine Leasing & Finance Ltd.
207 CTR 38 (Delhi HC)

CIT vs. A.K.J. Granites Pvt. Ltd.
301 ITR 298 (Raj. HC)

8. On the other hand, the Id. D/R has submitted that the AO has recorded in the assessment order that the notice was issued to the said party being share applicant at the address provided by the assessee and, therefore, if the assessee subsequently comes out with a plea that the said notice was issued at incorrect address then there was no time left with the AO at that point of time and, therefore, the assessee himself is at fault in not furnishing the correct particulars. He has relied upon the orders of the authorities below.

9. We have considered the rival submissions as well as the relevant material on record. As it is apparent from the details of the share applications received by the assessee from the three parties the address of M/s. N.R. Vincom Pvt. Ltd. is mentioned in the said table of the assessment order reproduced in the foregoing part of this order, the said address has been stated to be not a correct address. The assessee vide letter dated 12th March, 2015 has furnished the correct address of the said company as under :-

M/s. N.R. Vincom Pvt. Ltd.,
08, Ganesh Chandra Avenue,
1st Floor, Saha Court,
Kolkatta-700013.

We further note that the address which is furnished by the assessee vide letter dated 12th March, 2015 was also available in the other records filed by the assessee during the assessment proceedings which includes the copy of Board Resolution of the assessee, copy of application form and the certificate of Incorporation of said company M/s. N.R. Vincom Pvt. Ltd. Though the AO has noted this address based on the particulars furnished by the assessee, however, when the assessee has subsequently provided the correct address of the said company then the notice was

required to be issued at the correct address to verify the genuineness of the transaction as well as the creditworthiness of the share applicant. The Id. CIT (A) has confirmed the addition made by the AO in para 3.5 as under :-

" 3.5. As far as the third entity namely M/s. N.R. Vincom Pvt. Ltd. is concerned, it is observed that the notice u/s 133(6) sent to the said entity was returned back unserved and the said party was not found to be operating from the address given by the assessee. As a result, the primary onus was not discharged by the assessee since the AO could not verify the veracity of documents submitted in respect of the said entity in the absence of the correct address. The AO brought these facts to the notice of the assessee asking it to show cause as to why addition u/s 68 should not be made and also requested the assessee to produce the directors of the said company. In response, the assessee could still not give the correct address of the said entity. As a result, the assessee has failed to discharge the primary onus on it to prove the identity, genuineness and creditworthiness of the concerned entity since the failure to give the correct address has rendered the entire information submitted in respect of that entity as unverifiable. In similar circumstances, Hon'ble Delhi High Court, in the case of CIT v. Ultra Modern Exports P. Ltd. (2013) 40 taxmann.com 458 (Delhi) has held that where, in order to ascertain genuineness of assessee's claim relating to receipt of share application money, AO sent notices to share applicants which returned unserved, however assessee still managed to secure documents such as their IT Returns as well as bank account particulars, in such circumstances, AO was justified in drawing adverse inference and adding amount in question to assessee's taxable income u/s 68. Accordingly, the amount of Rs. 10,00,000/- received from M/s. N.R. Vincom Pvt. Ltd. is liable to be treated as unexplained cash credit

*u/s 68. Therefore the addition u/s 68 is restricted to Rs. 10,00,000/-.
This ground is partly allowed."*

Thus it is clear that the Id. CIT (A) has observed that the failure on the part of the assessee to give the correct address has rendered the entire information submitted as unverifiable. We find that when the assessee has subsequently brought the correct address on record and to the knowledge of the AO as well as the Id. CIT (A), then the verification of the evidence submitted by the assessee could have been done by issuing the notice under section 133(6) at the correct address provided by the assessee. Accordingly, the in the facts and circumstances of the case and in the interest of justice, we set aside this issue to the record of the AO for conducting a proper enquiry and verification by considering the correct address furnished by the assessee.

10. In the result, appeal of the revenue is dismissed as not maintainable and appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 24/09/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 24/09/2018.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- The ITO Ward 7(2), Jaipur.
2. The Respondent – M/s. High Rise Propcon Pvt. Ltd., Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 91 & 99/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

