

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM**

I.T.A. No. 4520/Mum/2016
(Assessment Year: 2011-12)

ITO-4(1)(4), 6 th Floor, Room No. 637-A, Aayakar Bhavan, Mumbai-400 020	Vs.	M/s. Cincom Trading Pvt. Ltd. Room No. 3, Moolchandlalji Building, 2, 23-E, Zaobawadi, Thakurdwar, Mumbai-400 002
PAN/GIR No. AA ECC 0377 K		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Chaudhary Arunkumar Singh
Respondent by	:	Shri S. C. Tiwari & Rutuja Pawar
Date of Hearing	:	07.08.2018
Date of Pronouncement	:	22.10.2018

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the Revenue is directed against the order by the learned Commissioner of Income Tax (Appeals)-9, Mumbai ('Id.CIT(A) for short) dated 15.03.2016 and pertains to the assessment year (A.Y.) 2011-12.

2. The issue raised is that the Id. CIT(A) erred in directing the Assessing Officer (A.O. for short) to delete the addition of Rs.3,07,00,000/- made u/s. 68 of the Income Tax Act, 1961 (the Act hereinafter).

3. Brief facts of the case as emanating from the order of the A.O. are as under:

The assessee company was incorporated on 29.06.2010. Both the Directors, i.e., Shri Purushottam Khandelwal & Shri Mangelal Joshi are resident of Kolkata. The company's registered address is Moolchand Lalji Building No.2, Thakurdwar, Mumbai.

The authorized share capital of the company is Rs.7,50,000/- (75000 shares of Rs.10 each) and subscribed capital is Rs.7,14,000/- (71400 shares of Rs,10 each). The assessee company has not done any business during the year under consideration and only income of Rs.4.246/- has been offered for taxation. During the year under consideration, the only significant feature of the assessee company is that the assessee has shown Rs.3,07,00,000/- as securities premium amount. The assessee has made a fresh allotment of 61400 shares of Rs.10 each at a premium of Rs.490/- per share. The details of share premium received are as under -

Sr. No	Name of the Allottee	Address of Allottee	No.of shares allotted	Total amount received
1.	Agradooti Vanijya Pvt.Ltd.	1, R.N. Mukherjee Road, Mezanine Floor.Room No. 12, Kolkatta-700001	10400	52,00,000
2.	Anuska Vanijya Pvt.Ltd.	1, R.N. Mukherjee Road, Mezanine Floor,Room No. 12, Kolkatta-700001	12000	60,00,000
3.	Blue Lagoon Vanijya Pvt.Ltd.	Moolchand Lalji Building, Zaobvawadi, Room No. 3, Thakurdwar, Mumbai-400 002.	1800	9,00,000
4.	Morning Star Vanijyua Pvt.Ltd.	4, Netaji Subhash Road, 1 st floor, Kolkatta-700001.	9700	48,50,000
5.	Rockers Tradeling Pvt.Ltd.	29B Rabindra Sarani,3 ^{ra} Floor, Room No.2E, Kolkatta-700073.	15100	75,50,000
6.	Shreehari Vinimay Pvt.Ltd.	1, R.N. Mukherjee Road, Mezanine Floor.Room No. 12, Kolkatta-700001	12400	62,00,000
	Total		61400	3,07,00,000

4. The A.O. asked the assessee to file the details of the share applicants. The A.O. also issued notices u/s. 133(6) of the Act to all the share applicants and also referred the matter to Addl. DIT (Investigation), Kolkata for conduct of enquiry. The parties

responded to the notice and furnished the details. From these financial details, the A.O. found that the companies who have given the money in the form of share application money to the assessee company have generated the funds via share application money only. The natures of business of these companies are very general in nature and most of the companies are having the main objects to be pursued by the company on its incorporation to carry on the business of trading in shares and securities.

5. The A.O. further noted that since the matter was referred to the Investigation Wing, Kolkata, the Investigation Wing also carried out investigation and submitted the report. From all the information gathered, the A.O. referred to the profile of the share applicants and found that they were same. After mentioning the details of these companies, the A.O. summarized the silent feature of this company as under:

- i) Majority of the companies are working from the one or two addresses as stated above
- ii) Shri Purshottam Khandelwal who is the Director of the assessee company is also a Director in Agradooti Vanijya Pvt. Ltd. and Anushka Vanijya Pvt. Ltd, It means Shri Purshottam Khandelwal is engaged in the process of arranging the share application money for various parties including his own company itself, i.e., Cincom Trading Pvt.Ltd.
- iii) The nature of business of all the companies who have applied for the share application money to the assessee company are almost same as per the Memorandum of the company but the fact of the matter is that no company has ever done any business activity and their sources of income is negligible that too not a business income. Even the expenditure shown by the assessee company is in a few thousand rupees which clearly suggest that companies who are investing in big ways in various other companies are not doing any business at all. The companies do not have any asset and the investment made by the share applicant is highly risky and there is no guarantee that their investment is either secure or they will receive any return from their investment. Not only this, it is almost certain

that, seeing the profile of the assessee company, that the investment made by the share applicant will be lapsed in due course of the time.

iv) The name of the Directors in all companies is appearing to be a set of cartel who are involved in the process of just arranging share application money. This fact derive more strength from the fact that the companies who are applying the share application money on premium in the assessee company have also generated money through share application money. Neither the assessee company nor the applicant company has any business or assets.

Therefore, the investment made in the assessee company and investment made in applicant' company by some other parties are totally questionable and their reasonableness are certainly under the grab of suspicion. The assessee company's business profile and its share applicant's business profile is not able to convince that they can generate such a huge share premium on the financial data of the companies available with them.

v) The details of the investment of all the share companies have been seen and found that these companies have invested again in the companies which do not have any work at all. The majority of these companies are not listed in any stock exchange and profile of these companies is again the same as the assessee company and the share applicant companies of the assessee company. Therefore, it appears that the share applicant of the assessee company has invested the money in so called non genuine companies.

vi) The payment made to assessee company by share applicant company has been seen and found that money came from one of the companies and directly gone to the account of the assessee company. This also appears to be a structured arrangement for routing the money from one company to another company.

vii) The companies have funded M/s. Cincom Trading Pvt.Ltd. via share application money(with premium).

viii) All companies have generated majority funds via share Application money with premium.

ix) No Earnings per share has been calculated by these companies. Therefore, the question arises as to why anybody will come forward to invest, that too in such a heavy ways.

x) The Directors of all the companies are somewhat same and appears to be relatives. These are the persons, who are being nominated as directors and they control the 6 companies as stated above.

xi) The assessee company has shown the share application money (with premium of Rs 490) of Rs.300.88 lakhs in its balance sheet filed before the Department for A.Y. 2011-12. The assessee company's share capital is only Rs.7,50,000/-. Such a low capital base means there is no security of the money being invested, because in case of loss in the hands of recipient company, the amount of lender would go bad. It can happen only in a situation where lender just wants to give the money for uncertain hidden agenda best known to them only. This raises serious doubts about genuineness of the transaction.

6. Further, the A.O. noted that the assessee has submitted that no valuation report was obtained for the value of share prices. Thereafter the A.O. distinguished the decision referred by the assessee. He concluded as under:

16. Therefore, on the basis of discussion as made above, it is amply clear that the whole series of the transaction are structured and created only for the purpose of avoiding payment of taxes by way of share application money. In view of the above stated facts, the share application money of Rs.307.00 lakhs (including the premium of Rs.490 per share) shown in the books of the assessee treated as a non-genuine transaction and, therefore, it is added back to the total income/of the assessee by treating the same as unexplained cash credit u/s 68 of the IT. Act, 1961/and penalty u/s 271(1)(c) r.w. Explanation 1 is separately initiated for furnishing the inaccurate particulars of income .

7. Against the above order, the assessee appealed before the ld. CIT(A).

8. The ld. CIT(A) elaborately reproduced the submissions of the assessee. He also admitted additional evidences pertaining to valuation report for the value of the shares. In doing so, the ld. CIT(A) emphasized that the ld. CIT(A) had full power to make further necessary enquiry. In this regard, he referred to various decisions including that from the Hon'ble Bombay High Court in the case of *Smt. Prabhavati S. Shah vs. CIT* [1998] 231 ITR 1 (Bom). The ld. CIT(A) noted that full details have been submitted and verified by the A.O. He noted that the appraisal report of the Addl. DIT, Kolkata had also been obtained and valuation report of the equity shares has also obtained. Thereafter, the ld. CIT(A) observed that the features of the company as discovered by the A.O. in assessment order are of misleading. For this, the ld. CIT(A) observed as under:

1. The said order stated that majority of the companies are operating from one or two addresses whereas as stated and observed only two companies are operating from one address and rest five operating from different address.
2. A common director Mr.Purshottam Khandelwal has been inducted after the investment into the appellant company by the two companies in which he is a

director, viz. M/s Agradooti Vanijya Pvt Ltd and M/s Anuska Vanijya Private Ltd. In other words, he is nominee director on behalf of the shareholders.

3. The AO has observed that the directors of all the companies are somewhat same and appears to be relatives. It is not true as observed. There is no relation observed at list on record.

4. There is nothing on record to suggest that the companies in question are in the "Business of Entries" as presumed and/or alleged in the assessment order.

5. What the company has done is well within the provisions of the Companies Act, 1956 and Income Tax Act 1961.

6. There are more presumptions than facts mentioned in the Assessment order.

7. The assessing officer, has, in a confusion state of mind, has asserted that "the whole arrangements has been made only for the purpose of avoiding the legitimate tax due to the state coffers. The whole arrangement needs to be viewed in relation to the trust of the transaction hiding behind the forest of documentation and series of steps taken. The value of shares is just estimation and has no supporting at all and at no way it may attract any genuine investor for investments in the company."

9. Thereafter, the Id. CIT(A) found that the assessee has submitted all the necessary details of the parties providing the loans. He referred to the decision of the Hon'ble Apex Court decision in the case of *CIT vs. Lovely Exports (P) Ltd.* [2008] 216 CTR 195 (SC). He referred to certain case laws for the proposition that the share premium cannot be treated as revenue receipt. He referred to the decision of the ITAT, Mumbai in the case of *Green Infra Ltd. vs. ITO* 159 TTJ 728 (Trib-Mum). He also found that the provision of section 56(2)(viiia) and 56(2)(viib) cannot be applied for the impugned assessment year as they are applicable for assessment year 2013-14 onwards. He further held that case laws relied upon are distinguishable on facts. He accordingly held that the additions made are not justified.

10. Against the above order, the Revenue is in appeal before us.

11. We have heard both the counsel and perused the records. Upon careful consideration, we note that the A.O. has made a detailed enquiry. He also obtained a report from the Investigation Wing of Kolkata. All the companies who provided share capital to the assessee are from Kolkata. From the analysis of all the reports and business profiles the A.O. has given a finding that these companies do not have credibility, that they have common directors and shareholders. That their addresses are also similar. That these are not genuine companies. That it appears to be a structured arrangement for routing the money from one company to another. The directors and shareholders are somewhat same and appear to be related. The A.O. has also found the share premium not convincing.

12. Now while rebutting the findings of the A.O., the Id. CIT(A) has referred to various case laws including the one where he has mentioned that the Id. CIT(A) has sufficient powers to make further enquiry where the A.O. has not done enquiry. It is noted that no further enquiry was done by the Id. CIT(A). He only admitted the share valuation report submitted by the assessee company. As far as the issue of non justification of share premium is concerned, we find that it is settled by the Hon'ble jurisdictional High Court decision in the case of *CIT vs. M/s. Gagandeep Infrastructure Pvt. Ltd.* (in ITA No. 1613 of 2014 vide order dated 20.03.2017), the said issue cannot be considered prior to the assessment year when amendment was made in the concerned section. However, as regards the A.O.'s finding that these are structured companies meant for routing money in the form of share capital and share premium, has not been

rebutted by the Id. CIT(A) by any further enquiry. He has simply observed that the A.O.'s observations are misleading. For this, he has given the example that the A.O. has mentioned that majority of the companies are operating from one or two addresses. However, he found that the only two companies are operating from one address. Further, he has found that there is only one common director in two companies and there is no other common shareholding directorship or relationship.

13. Upon careful consideration and going through the records, we find that from the records it is emanating that one person Shri Rajkumar Saraswat who is director and shareholder in one company namely Anuska Vanijya P. Ltd. is also a director in another company namely Agradooti VAnijya Pvt. Ltd. It is further noted that Shri Mahavirprasad Saraswat is a shareholder in Shmbhavparshva Developers Pvt. Ltd. (formerly known as Morning Stary Vanijyua Pvt. Ltd.). The address of this person is same as that of Shri Rajkumar Saraswat that is 38, Lal Bazar, 5th Street, Room No. 2, Kolkata. The address of Shri Sushil Jain, a shareholder in Shmbhavparshva Developers Pvt. Ltd. is also the same. Again the address of shareholder in Shreehari Vinimay Private Limited, Shri Amalesh Sadhu is also of the same. The address of Shri Mangelal Joshi, a director in Anuska Vanijya Private Lintied is also the same. Again Shri Hanuman Mal Paiwal, who is a director in Rockers Tradelink Private Limited also has the same address. There is another shareholders namely, Shri Binod Kumar Saraswat in Rockers Tradelink Private Limited who is son of Shri M. P. Saraswat. Both of the directors of the assessee company are also director in two of the other share applicant companies.

14. There are umpteen such similarities in names, address and common shareholder ship and director-ship which leave no iota of doubt that these companies who have given share application to the assessee company are interlinked. The main activity of these companies has been found by the A.O. to be routing of share capital and share premium. Hence, the observation of the Id. CIT(A) that the A.O. has given misleading information is itself misleading and does not deserve to be sustained. When it is obvious that there is such close proximity in these companies and the evidence has been given by the A.O. that it is a modus operandi to route money in the form of share application and share money. In such situation, the minimum which was expected from the Id. CIT(A) was to make necessary enquiry and cogently rebut the finding of the A.O. It is settled law from the decision of Hon'ble Apex Court in the case of *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) and *CIT vs. Durga Prasad More* [1971] 82 ITR 540 (SC) that the Revenue authorities are not supposed to put on blinkers but should look into the surrounding circumstances and the contemporaneous evidence. The tests laid down in these case laws has also been reiterated by the Hon'ble Jurisdictional High Court decision in the case of *Sanjay Bimalchand Jain vs. Pr. CIT* order dated 16.12.2017.

15. Hence, in our considered opinion, on the facts and circumstances of the case, the Id. CIT(A) has passed an order not based upon the correct facts. Hence, we are remitting the issue to the file of the Id. CIT(A) to consider the issue afresh and pass a speaking order on all the issues raised by the A.O.

16. Needless to add, that as quoted by the Id. CIT(A) himself, the Id. CIT(A) has all the powers co-terminus with that of the A.O. to make the necessary enquiry.

17. In the result, this appeal by the Revenue stands allowed for statistical purpose.

Order pronounced in the open court on 22.10.2018

Sd/-

Sd/-

(Ram Lal Negi)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 22.10.2018

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai