

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'CAMP AT MEERUT'**

**BEFORE SHRI N. S. SAINI, ACCOUNTANT MEMBER AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4819/DEL/2018  
Assessment Year 2010-11**

DCIT, Circle-2, Meerut.	Vs	Reeta Singhal, A-312, Prahlad Vatika, Khair Nagar, Meerut. PAN : ABTPS 0061P
(Appellant)		(Respondent)

Appellant by :	Shri Yogesh Sharma, Sr.D.R.
Respondent by :	S/Shri Raj Kumar & Shri Sumit Goyal, CA

सुनवाई की तारीख/Date of Hearing : 09/01/2019  
घोषणा की तारीख /Date of Pronouncement: 17/01/2019

**ORDER**

**PER N.S. SAINI, A. M.**

This is an appeal filed by the Revenue against the order of learned CIT(A), Meerut dated 06.04.2018 for the Assessment Year 2010-11. The sole issue involved in this appeal is that the learned CIT(A) has erred in deleting the addition of Rs.69,00,000/- made by the Assessing Officer on account of unexplained cash credit in the guise of sale of shares.

2. The brief facts of the case are that the Assessing Officer observed that information was received from Assistant Director of Income Tax (Investigation), New Delhi that search

and seizure/survey operation was carried out upon the entry providers, Shri Pradeep Kumar Jindal, Shri Sajan Kumar Jain, Shri Prem Arora Group and Shri Pawan Arya and his family members. During the course of investigation, it was found that the said persons were entry provider and was providing accommodation entries in the form of bogus share premium, exempt Long Term Capital Gain and advance against property etc from front and non-descript companies and Smt. Reeta Singhal is one of the beneficiary who has received accommodation entry amounting to Rs.69 lac.

3. The AR of the assessee has filed written submission and stated that Smt. Reeta Singhal has sold share of Shri Ganga Paper Mills Pvt. Ltd. for a consideration of Rs.50 lac which is received through RTGS and balance amount of Rs.19 lac was returned back. It was submitted that shares of Shri Ganga Paper Mills Pvt. ltd. were acquired by the assessee during the Assessment Year 2009-10 and these shares were sold to M/s. Mayank Medilab Pvt. Ltd. in the Assessment Year 2010-11. There was no profit and gains in this transaction. The

Assessing Officer observed that submission of the assessee was examined and found devoid of merit and not convincing. During the course of hearing, the AR of the assessee was specifically asked why M/s. Mayank Medilab Pvt. Ltd. has paid Rs.19 lac in excess of sale consideration without receipt of shares of this value. He was not able to give satisfactory reply. Further the assessee has not filed any document to substantiate her claim regarding holding of shares of various companies by her and inflow/outflow of shares in her capital account. Therefore, he held that the amount declared on account of sale of shares by the assessee amounting to Rs.69 lac is hereby treated as unexplained cash credit and added to the income of the assessee.

4. On appeal, the Ld. CIT(A) deleted the addition by observing that the assessee received Rs.69 lac through RTGS from M/s. Mayank Medilab Pvt. Ltd. as under:

“Rs. 25,00,000/- through RTGS on 13006.2009 from M/s. Mayank Medilab (P) Ltd.  
Rs. 25,00,000/- -do-  
Rs. 19,00,000/- -do-  
Rs. 69,00,000/-”

4.1 He further observed that Rs.50 lac vide two RTGS of Rs.25 lac each received on 30.06.2009 was towards sale consideration of 5 lac shares of M/s. Shri Ganga Paper Mills Pvt. Ltd. of face value of Rs.10/- each, sold at par @ Rs.10/-. Thus, total sale consideration has been received at Rs.50 lac. The assessee acquired the shares prior to the Assessment Year 2010-11, i.e., partly in Assessment Year 2006-07 and partly in Assessment Year 2009-10 as under:

A.Y. 2006-07

Date of purchase	No. of shares purchased	Face value per share	Per share purchase cost	Total purchase cost at par
03.02.2006	92070	10/-	9.86	908000
03.02.2006	5000	10/-	10/-	50000
03.02.2006	200	10/-	10/-	2000
Total	97270			960000

A.Y. 2009-10

Date of purchase	No. of shares purchased	Face value per share	Per share purchase cost	Total purchase cost at par
22.11.2008	1473005	10/-	10/-	14730050

4.2 The opening number of shares as on 01.04.2009 were 15,17,275 out of which in Assessment Year 2010-11 assessee sold total 15,27,000 as Rs.10/- per share to M/s. Mayank

Medilab (P) Ltd., the shares sold were only 5 lac and balance 10,27,000 shares were sold to other parties. All the shares were sold at the same value of Rs.10/- per share. The details are as under:

Date	No. of shares sold	Sale value per share	Total sale value	Sold to
13.06.2009	260000	10/-	2600000	Others
13.06.2009	767000	10/-	7670000	Others
12.06.2009	500000	10/-	5000000	M/s. Mayank Medilab
Total	1527000		15270000	

4.3 He further observed that the Assessing Officer has not doubted genuineness of sale of 10,27,000 shares to parties other than M/s. Mayank Medilab (P) Ltd. and added only sale consideration of Rs.50 lac received on sale of 5 lac shares to M/s. Mayank Medilab (P) Ltd. This was done only on the ground that information was received from Investigation Wing that Shri Pradeep Kumar Jindal, Shri Prem Arora Group, Shri Sajjan Kumar Jain and Shri Pawan Arya and his family members were found to have indulged in the activity of providing accommodation entry and assessee was one of the beneficiaries for receipt of Rs.69 lac from the said group of

persons. He observed that the information received was that these parties were involved in providing bogus accommodation entry and bogus exempt Long Term Capital Gain in the hands of the assessee. It is not in dispute that there is no case of Long Term Capital Gain. Rs. 50 lac out of Rs.69 lac was received as sale consideration of 5 lac shares of M/s. Shri Ganga Paper Mill (P) Ltd. which were held since past by the assessee, i.e., partly from Assessment Year 2006-07 and partly from Assessment Year 2009-10. The holding of shares has never been doubted by the Assessing Officer. He observed that in this year 10,27,000 number of shares of the same company and practically at the same point of time and at the same value were sold to the parties other than M/s. Mayank Medilab (P) Ltd. and the Assessing Officer has not doubted the said sale transactions. The assessee has filed copy of sale invoice issued by the assessee to M/s. Mayank Medilab (P) Ltd. showing sale of 5 lac shares. The copy of ledger account of M/s. Mayank Medilab (P) Ltd. in the books of assessee, the bank statement of the assessee, the balance

sheet and the details of share holdings of the assessee as on 31.03.2009 and the balance sheet and the holdings of shares as on 31.03.2010 in the books of assessee which all documents has been placed on record clearly proves the contention of the assessee.

4.4 Ld. CIT(A) further observed that assessee was having the capital of Rs.50,00,000/- in the shape of 5 lac number of shares of M/s Shri Ganga Paper Mills (P) ltd., partly from A.Y. 2006-07 and partly from A.Y.2009-10, and the same holding has never being doubted which was being liquidated in this year at the face value itself brought in Rs.50,00,000/- from the purchaser of those shares being M/s Mayank Medilab (P) Ltd., and the same has been given vide two RTGS of Rs.25,00,000/- each, stood credited in the ICICI bank of the assessee on 13.06.09. He further observed that when the sale consideration of balance 10,27,000 number of shares of the same company, at the same point of time, at the same value, stands accepted by the A.O, he found no reason for not accepting the sale of 5,00,000 similar shares to M/s Mayank

Medilab (P) ltd. at the same point of time. He observed that he also did not find any specific cogent evidence on record in support of the contention of the A.O. that this sale transaction of shares for Rs.50,00,000/- is not the genuine transaction. In respect of Rs.19,00,000/- received in excess from M/s Mayank Medilab (P) Ltd., which amount was received through RTGS on 13.06.09, he found justification in the explanation of the assessee that under some confusion of sale of more shares, the said Rs.19,00,000/- were also given by M/s Mayank Medilab (P) Ltd. to the assessee. However, the said amount was returned back immediately by the assessee on the 2nd day i.e. on 15.06.09, therefore, no benefit was received on account of receipt of said sum of Rs.19,00,000/-. He further observed that under these facts when the money stood returned on the 2nd day, totally unutilized and without taking any benefit of any nature out of the said receipt, such receipts cannot be understood or taken as receipt of accommodation in nature. In case of any accommodation entry, the recipients will surely enjoy the benefits of the said receipt, which is not a

case here. Regarding the observation of report from the Inv. Wing, he observed that he found substance in the contention of the assessee that when specifically requested, the cross examination of the person was to be required, since the statements of such persons have been relied upon and acted upon by the A.O., specially when these statements were recorded at the back of the assessee and that too, not by the A.O. but by the Inv. Wing. Ld. CIT(A) has observed that he has seen that in the assessment order, the A.O. has specifically rejected the request of cross-examination of the assessee on the ground that it was only a secondary and subordinate material, therefore, the cross-examination was not necessary. Ld. CIT(A) observed that he did not agree with the findings of the A.O. for rejection of prayer of the assessee asking for cross-examination. In the entire assessment order, he found that only substantive material against the assessee relating to this amount was the report of Investigation Wing which was based on the statements of 3rd parties, recorded behind the back of the assessee and which have been used adversely. In

that case, as per the settled law, in case, the assessee, demands for cross-examination, it is necessary for the A.O. to facilitate for the cross-examination in the absence of which, such alleged adverse material cannot be used. This legal proposition stands laid down by Hon'ble Supreme in the case of M/s. Andaman Timber Industries, 281 CTR 241 (SC). The Hon'ble Supreme Court has held as that "Denial of opportunity to the assessee to cross-examine the witnesses whose statements were made the sole basis of the assessment is a serious flaw rendering the order a nullity inasmuch as it amounted to violation of principles of natural justice".

4.5 Ld. CIT(A) also observed that he found substance in the contention of the assessee that in the assessment order it is nowhere mentioned that the transaction under consideration has been specifically stated by the said persons as in the nature of accommodation entry. He observed that in the absence of cross-examination, no cognizance of such information and statements collected behind the back of the assessee can be used against the assessee. He observed that

he examined the facts of the case on its merits, it is not a case where any capital or accommodation entry of Rs.50,00,000/- has been received by the assessee since the said sum represents the sale consideration of shares of same value which already existed in records and had been coming from earlier years. Similarly Rs.19,00,000/- received on 13.06.09 were returned on 15.06.09 thereby no benefit and has been derived from this receipt also. Hence he held that there is no justification for holding the receipt of Rs.69,00,000/- as unexplained cash credit and accordingly deleted the same.

Learned Department Representative relied upon the order of the Assessing Officer. The AR of the assessee supported the order of the Ld. CIT(A).

5. We have heard the rival submissions and also perused the material available on record. In the instant case, the undisputed facts are that the Assessing Officer received information from Investigation Wing, New Delhi that search and seizure operation was carried out on Shri Pradeep Kumar Jindal, Shri Sajan Kumar Jain, Shri Prem Arora and Shri

Pawan Arya and his family members who were entry providers. They provided accommodation entries by way of bogus share premium, exempt Long Term Capital Gain and advance against property etc from non-descript companies and the assessee, Smt. Reeta Singhal was one of the beneficiary who has received accommodation entry amounting to Rs.69 lac. On a show cause notice, it was explained by the assessee that it received Rs.50 lac towards sale consideration of shares of Shri Ganga Paper Mills Pvt. Ltd. for Assessment Year 2010-11. The said shares were acquired by the assessee in the Assessment Years 2006-07 and 2009-10 and were already appearing in the balance sheet of the assessee. It was also explained that the said purchaser M/s. Mayank Medilab Pvt. Ltd. under a mistake that it was acquiring further shares from the assessee paid Rs.19 lac on 13.06.2009 and the same was returned back by the assessee on 15.06.2005 and that assessee did not derive benefit of Rs.19 lac as an accommodation entry. Further, the assessee submitted that nowhere it has been stated in the information received from Investigation Wing that

they had provided accommodation entry to the assessee, Smt. Reeta Singhal. Further, he requested the Assessing Officer to provide cross-examination of the maker of the statement. The Assessing Officer denied the same and added Rs.69 lac to the income of the assessee as unexplained cash credit u/s.68 of the Act.

6. On appeal, Ld. CIT(A) deleted the addition mainly on the ground that the sum of Rs.50 lac received by the assessee was towards sale consideration of shares of M/s. Shri Ganga Paper Mills Pvt. Ltd. at face value on which the assessee had not earned any capital gain. The shares already existed in the balance sheet of the assessee in the Assessment Years 2006-07 and 2009-10. Further, the assessee was not allowed cross-examination of the maker of the statement that the assessee received accommodation entry of Rs.69 lac in the guise of sale consideration of shares, and therefore, the statement of the persons cannot be used against the assessee for making addition u/s.68 of the Act and relied upon the decision of Hon'ble Supreme Court in the case of M/s. Andaman Timber

Industries (supra). No material has been brought on record by the Department to show that the above findings of the ld. CIT(A) are not correct. Even otherwise, no specific error in the order of the ld. CIT(A) could be pointed out by the learned Department Representative. Hence, we find no good reason to interfere with the order of the ld. CIT(A) which is hereby confirmed and the grounds of appeal of the Revenue is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

***Order pronounced in the Court on this day, the 17/01/2019.***

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**  
Dated: 17/01/2019  
*Prabhat Kumar Kesarwani, Sr.P.S.*

**Sd/-**  
**(N. S. SAINI)**  
**ACCOUNTANT MEMBER**