

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4762/Del./2018
Assessment Year 2009-2010

M/s. Iskon Developers Pvt. Ltd., Ambala City. Haryana. PAN AABCI3354F C/o. Rajiv Goel & Associates, 179, Bank Road, Ambala Cantt.	vs.	The Income Tax Officer, Ward-12(4), C.R. Building, I.P. Estate, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rohit Goel, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	12.02.2019
Date of Pronouncement :	01.03.2019

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A)-22, New Delhi, Dated 31st May 2018, for the assessment year 2009-2010.

2. I have heard the Learned Representatives of both the parties and perused the material available on record.

3. Learned Counsel for the Assessee did not press Ground Nos.2 and 3 of the appeal. The same are dismissed as not pressed. On the remaining grounds assessee

challenged the reopening of assessment under section 148 of the Income Tax Act, 1961, addition Rs.15 lacs under section 68 of the Income Tax Act, 1961 and addition of Rs.30,000/- on account of commission.

4. Briefly the facts of the case of that assessee is a Company which was incorporated on 3rd March 2005 under the Companies Act. The assessee-company filed its return of income declaring loss of Rs.19,390/-. In this case, an information was received from the Investigation Wing (DIT Investigation)-2, New Delhi, Dated 12th March, 2013. After receipt of information from the Investigation Wing, New Delhi, enquiries were made. The return of income filed by assessee was downloaded from ITD-System and same was examined which shows that assessee has received fresh share application money of Rs.15 lacs. In the information received from the Investigation Wing Dated 12th March 2013, it was mentioned that search operation was carried out in the case of Shri SK Jain Group of cases wherein after intensive and extensive enquiry and examination of the documents seized during the course of search, it was

noticed that the said group was involved in providing accommodation entries to the persons which were named in the report. The assessee-company also figured in the said list as one of the beneficiary. The A.O. recorded reasons for reopening of assessment and issued notice under section 148 on 22nd March 2016 with the approval of the Competent Authority. The assessee was asked to file return of income. The assessee later on filed letter stating there in that original return filed may be treated as return having been filed in response to the notice under section 148 of the Income Tax Act. The assessee through his representative attended the assessment proceedings before the A.O. The A.O. noted that assessee has received accommodation entry of Rs.15 lacs from intermediary Shri SK Jain. A part of the cash was used to issue cheque in favour of the assessee. It was noted that assessee has received Rs.15 lacs from M/s.Victory Software Private Limited on 28th March, 2009 through cheque drawn on Axis bank through the mediator Shri Rishi. The A.O. gave show cause notice to the assessee. The assessee, however, submitted that it has not received

any accommodation entry. The assessee also provided address of the Investor. The A.O. in order to verify the genuineness and creditworthiness of the Investor, issued summons under section 131 of the Income Tax Act at the address given by the assessee. However, the Inspector reported that no such company is available at the given address. The assessee has provided another address. The A.O. issued summons under section 131 of the Income Tax Act which was served upon the Investor-company. In response to the summons under section 131 of the Income Tax Act, no Director of the Investor appeared. However, Shri Rajinder Kumar, Accountant, of the Investor-company attended the proceedings who was authorised by the Director of the Investor-company to appear before A.O. whose statement was recorded by the A.O. The A.O, however, noted that Shri Rajinder Kumar stated that he has no idea about the transaction or investment made because he has joined the service of the Investor-Company only in 2010. The assessee was asked to prove the creditworthiness of the Investor and genuineness of the transaction and also

directed to produce books of account and related documents. The assessee explained before the A.O. that amount in question was received through banking channel, through cheque and assessee entered into the genuine transaction. However, the Director did not appear before the A.O. The A.O, thereafter, recorded the *modus-operandi* for taking accommodation entry in which cash have been handedover to the middleman and then entry have been obtained. The A.O. relied upon several decisions of the High Court and Supreme Court and came to the findings that the immediate source of the funds are controlled by Jain brothers. The A.O, therefore, held that assessee failed to prove the creditworthiness of the Investor and genuineness of a transaction in the matter. The A.O. made the addition of Rs.15 lakh under section 68 of Income Tax Act. The A.O. also noted that for obtaining such type of entry, 2% commission is paid, for which, addition of Rs.30,000/- was made.

5. The assessee challenged the reopening of the assessment as well as both the additions on merit before Ld.

CIT(A). The detailed written submissions of the assessee is re-produced in the appellate order. However, the Ld. CIT(A) did not consider the explanation of assessee favourably and dismissed the appeal of assessee. The Ld. CIT(A) observed that assessee has stated that it has not been provided with adverse report and no opportunity have been given to cross examine any person/witness whose statement have been used against the assessee. The Ld. CIT(A) noted that it is not an absolute right of the assessee because it depends upon the circumstances.

6. The Learned Counsel for the Assessee submitted that reasons under section 148 were recorded only on the basis of information received from Investigation Wing, copy of which is not provided to the assessee. No statement of any witness whose statement have been recorded by Investigation Wing have been provided to assessee and no right of cross examination have been allowed to assessee. The assessee filed RTI application (PB 22). But the Revenue Department intimated that copies of the documents received from Investigation Wing cannot be provided to assessee

being confidential in nature. Learned Counsel for the Assessee, therefore, submitted that it was merely a borrowed satisfaction and reassessment proceeding is illegal and bad in Law. He has relied upon the decision of the Delhi High Court in the case of Pr.CIT vs., Meenakshi Overseas Private Limited 395 ITR 677 and Pr.CIT vs., GNG Pharma India Limited 384 ITR 147. Learned Counsel for the Assessee submitted that information from DIT was received on 12th March 2013, but, the A.O. did not make any enquiry and recorded the reasons only on 15th March, 2016. Therefore, initiation of reassessment proceedings is illegal. He has submitted that assessee filed an affidavit of Director of the Investor Company (PB-3). PB-4 is copy of the ITR of Investor Company. PB 5 to 20 is balance-sheet of the Investor Company showing the net worth of the Investor Company at Rs.1.92 crores. PB-21 is bank statement of the Investor company in which it was having sufficient funds to make investment in assessee-company and no cash have been deposited. PB-29 is details of Directors of the Investor company in which 03 Directors have been shown in the

records viz., (1) Sanvar Mal Nai (2) Shri Pradeep Kumar Sharma and (3) Shri Anil Kumar Bansal. Shri SK Jain or any other person has no connection with the Investor company and nothing is established if the Investor company was controlled by SK Jain Group of cases. He has submitted that A.O. did not make any efforts to enforce the attendance of the Directors of the Investor company, despite summons under section 131 was served upon the Investor company and statement of the Accountant Shri Rajinder Kumar was recorded by the A.O. Since no evidence have been brought on record that Investor company was controlled by SK Jain Group of Companies and that worth of the Investor company was sufficient to make investment in assessee company, therefore, addition on merit is wholly inappropriate and in absence of cross-examination to the statement of any person recorded by the Investigation Wing, no addition could be made against the assessee. In support of his contention, he has relied upon the Orders of the ITAT, Delhi Bench, in the cases of M/s. Vee Ess Sales Pvt. Ltd., vs. ITO 2017-(9)-TMI-116, M/s. Heat Flex Cables Pvt. Ltd.,

2018-(9)-TMI-59 and Prinku Landfin P. Ltd., vs. ITO 2018(2)-TMI-1752. He has, therefore, submitted that the additions are also wholly unjustified.

7. On the other hand, Ld. D.R. relied upon the orders of the authorities below and filed list of cases on the proposition that reopening of the assessment on the basis of report of Investigation Wing is valid which is taken on record.

8. I have considered the rival submissions. The A.O. noted that in this case information was received from Investigation Wing, New Delhi, vide letter Dated 12th March, 2013 that assessee has received accommodation entry from SK Jain Group of cases in a sum of Rs.15 lacs through cheque. The A.O. on that basis recorded reasons for reopening of assessment and issued notice under section 148 of the Income Tax Act, 1961, on 22nd March 2016. The assessee filed an affidavit of Director of Investor company M/s. Victory Software Private Limited in which the Investor has confirmed making investment in assessee-company of Rs.15 lacs through cheque. Copy of the acknowledgement of

ITR is filed to show that Investor company is assessed to tax. Balance-sheet of the Investor company is filed to show that it has sufficient to share capital and reserve etc to make investment in assessee-company. Copy of the Bank statement of the Investor company is filed in which Investor was having sufficient funds to make investment in assessee company and no cash have been found to have been deposited in their bank account. The assessee provided address of the Investor company where summons under section 131 of the I.T. Act, 1961, have been served upon the Director of the Investor company. The Director of the Investor company instead of appearing personally, deputed Shri Rajinder Kumar, Accountant to appear before the A.O. whose statement was recorded by the A.O. who has denied any knowledge of the transaction because he was employed subsequently. The A.O, thereafter, did not make any effort to summon the Director of the Investor company or to enforce his attendance. The assessee filed list of the Directors in which 03 Directors have been mentioned who are conducting business of the Investor and no evidence has

been brought on record to establish if they are connected with SK Jain Group of cases. The assessee also filed RTI application seeking copies of the documents received from Investigation Wing, but, the same were denied to assessee being confidential in nature. These facts supports the explanation of Learned Counsel for the Assessee that assessee has not been provided any material collected by the Investigation Wing during the course of search from the premises of SK Jain Group of cases and no statement of any person have been provided to assessee which were recorded by Investigation Wing during the course of search which is used against assessee. Therefore, the material which was collected at the back of assessee and used against the assessee without confronting the same to the assessee, cannot be read in evidence against the assessee. I rely upon the Judgment of the Hon'ble Supreme Court in the case of Kishan Chand Chellaram 125 ITR 713. The only evidences available on record are the documentary evidence filed by assessee to prove identity of the Investor, their creditworthiness and genuineness of the transaction, which

have not been rebutted by the A.O. through any evidence or material on record. Therefore, in the absence of any further enquiry on the documents filed by assessee and in the absence for any confrontation of adverse material to the assessee, no addition could be made in the hands of the assessee. Assessee has, thus, proved all the ingredients of Section 68 of the Income Tax Act, 1961. In support of my findings, I rely upon Judgments of Hon'ble Delhi High Court in the case of CIT vs. Fair Finvest Ltd., 357 ITR 146, CIT vs. Kamdhenu Steel & Alloys Ltd., 361 ITR 220, CIT vs. Dwarakadheesh Invesment Pvt. Ltd., 330 ITR 298 and CIT vs. Winstrall Petro Chemicals Pvt. Ltd., 330 ITR 603. Considering the totality of the facts and circumstances of the case, I do not find any justification to sustain the addition under section 68 of the Income Tax Act, 1961. Further, in the absence of any evidence on record, no addition could be made with respect to alleged commission paid by assessee. I, accordingly, set aside the orders of the authorities below and delete the additions of Rs.15 lacs and Rs.30,000/-. Both the grounds of appeal of assessee are

allowed. Since the addition have been deleted on merit, therefore, the issue of initiation of reassessment proceedings under section 148 of the I.T. Act, is left with academic discussion only and there is no need to decide the same.

9. In the result, appeal of Assessee is allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st March, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.