

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "E", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.6917/Del/2014
Assessment Year: 2006-07

Income Tax Officer, Ward-17(2), New Delhi	Vs.	M/s. Mridul Estate Pvt. Ltd., H-108, Connaught Circus, Delhi
PAN :AAACM1124A		
(Appellant)		(Respondent)

And

ITA No.200/Del/2014
Assessment Year: 2005-06

Income Tax Officer, Ward-5(4), New Delhi	Vs.	M/s. Mridul Estate Pvt. Ltd., H-108, Connaught Circus, New Delhi
PAN :AAACM1124A		
(Appellant)		(Respondent)

Department by	Ms. Rinku Singh, Sr.DR
Assessee by	Sh. Ashwani Seth, AR

Date of hearing	25.03.2019
Date of pronouncement	27.03.2019

ORDER

PER O.P. KANT, A.M.:

These appeals by the Revenue are directed against two separate orders dated 18/10/2013 and 22/10/2014 passed by the Ld. Commissioner of Income Tax (Appeals)-VIII, New Delhi [in

short 'the Ld. CIT(A)'] for assessment year 2005-06 and 2006-07 respectively. In both these appeals identical issues are involved, hence both these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of the facts.

ITA No. 6917/Del/2014 for AY: 2006-07

2. First, we take up the appeal bearing ITA No. 6917/Del/2014 for assessment year 2006-07. The grounds raised by the Revenue are reproduced as under:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,32,00,000/- made by the A.O. on account of Bogus accommodation entries?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,64,000/- made by the AO on account of expenditure incurred to arrange accommodation entry u/s 69C?*
3. *The Ld. CIT(A) has ignored the findings of the Investigation wing of the department that the entry operator had accepted in his statement that the amount received by the assessee company from M/s. Hillridge Investment Ltd. was not genuine.*
4. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
5. *That the grounds of appeal are without prejudice to each other.*
6. *That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of the hearing.*

3. Briefly stated facts of the case are that originally assessee filed return of income electronically on 24.10.2006 declaring loss of Rs.44,165/-, which was processed u/s 143(1) of the Income-tax Act, 1961 (for short 'the Act') and intimation of the same was

sent on 05.10.2007. Subsequently, on receipt of information from the Investigation Wing of the Income Tax Department, New Delhi that that the assessee received accommodation entry from a company, namely, M/s Hillridge Investment Limited , which was operated by Sh. Surendra Kumar Jain group of entry operators, of Rs.1,32,00,000/-, the Assessing Officer reopened the assessment by way of issue of notice under section 148 of the Act on 19/03/2013. In response the assessee, vide letter dated 03/04/2013 submitted that the return of income filed originally might be treated as return of income in response to notice under section 148 of the Act. The objections filed by the assessee against reopening of the assessment were disposed off by the Assessing Officer on 23/07/2013. Thereafter, statutory notices were issued and assessment proceedings were commenced.

3.1 During assessment proceeding, the assessee company explained of receipt of 1st call and 2nd call in respect of the shares already allotted (partially paid) in the year ended 31/03/2005 relevant to assessment year 2005-06 from M/s Hillridge Investment Limited, having details as under:

Date	Cheque No./DD No.	Share Capital	Share Premium	Total	Name of the Company
15/06/2005	035755	3,00,000/-	63,00,000/-	66,00,000/-	Hillridge Investments Ltd.
30/12/2005	004168	3,00,000/-	63,00,000/-	66,00,000/-	Hillridge Investments Ltd.

3.2 The Assessing Officer has mentioned that the assessee filed confirmation from M/s Hillridge Investment Limited along with

audited balance sheet, bank account etc. The said confirmation mention that M/s Hillridge Investment Limited had purchased 1,00,000/- partly paid equity shares of M/s Mridul Estate Private Limited, i.e., the assessee company from M/s Steller Investment Private Limited, on which Rs.88 per share (Rs. 4 towards share capital and Rs. 84 towards share premium account) have been paid by Steller Investment Limited and M/s Hillridge Investment Limited paid 1st call and 2nd and final call of Rs.66 lakhs each.

3.3 The Assessing Officer has further noted that in the balance sheet of M/s Hillridge Investment limited, only investment of Rs.1,32,00,000/- was shown in the shares of the assessee company, whereas no amount was shown to have paid to M/s Steller investment limited for purchase of partly paid shares of the assessee.

3.4 The Assessing Officer issued notice under section 133(6) of the Act to M/s Hillridge investment limited and requested to furnish the relevant information by 10/01/2014, however, no reply was received till 17/01/2014.

3.5 In view of the non-compliance of notice under section 133(6) issued to M/s Hillridge investment limited, the assessee was asked to produce the said party in person along with the details asked for to justify the identity, genuineness of the transaction and creditworthiness of said company.

3.6 However, on 30/01/2014, a reply was received from M/s Hillridge Investment Limited through post containing the details asked for. But the assessee failed to produce the said party for verification of the nature and source of the credit of Rs.1,32,00,000/-appearing in the books of accounts of the

assessee. The Assessing Officer issued summon under section 131 of the act on 17/02/2014 seeking personal attendance of the directors of the said company fixing the date on 27/02/2014, however, none attended. The Assessing Officer in the assessment order has referred to the extensive enquiries conducted by the investigation wing of the Income-tax Department and as a result modus operandi adopted by the Surinder Kumar Jain Group of cases for providing accommodation entries against receipt of unaccounted cash was detected. The Assessing Officer concluded that in absence of books of accounts of M/s Hillfridge investment limited, non-disclosure of amount paid to Steller Investment limited in their balance sheet for the partly paid-up shares purchased of the assessee and nonproduction of the persons who has provided amount of Rs.1,32,00,000/- to the assessee, the entire amount was income of the assessee from undisclosed sources and held the as unexplained cash credited in terms of section 68 of the Act.

3.7 The Assessing Officer also made addition for commission paid for obtaining accommodation entry to the entry operator at the rate of the 2% of the amount of entry taken, which was claimed as usually paid in cash. The addition on this account was worked out Rs. 2,64,000/-.

3.8 Against the additions made, the assessee filed appeal before the Ld. CIT(A) and challenged the legality of the reassessment proceedings as well as merit of the addition. According to the assessee, the reasons to believe that income escaped assessment are mere change of opinion and not based on a valid material. The Ld. CIT(A) dismissed the challenge to the validity of the

reassessment proceeding observing that new material has come on record of the Assessing Officer and notice under section 148 of the Act has been issued on the basis of a specific, realistic and relevant information coming to his possession, subsequent to issue of intimation under section 143(1) and, accordingly, the Assessing Officer had reason to believe that the appellant company had not made true and full disclosure of income in its return of income. However, on the issue of merit of the addition, on the basis of the documents filed of M/s Hillridge investment limited including copy of return of income, audited balance sheet, bank statement, copy of assessment order etc and decision of the Hon'ble Supreme Court in the case of CIT Vs lovely export Private Limited (216 ITR 195)(SC) and other decisions cited by the assessee, he deleted both the additions.

3.9 Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

4. Before us, the Ld. DR submitted that the assessee filed only documents in the form of the paper trail and the said party was not produced before the Assessing Officer for verification of the claims of the assessee. She referred to page 44 of the paper book filed by the assessee and submitted that M/s Hillridge Investment Limited has shown to have made huge investments as against loss of Rs.4,89,169/- shown in the return of income filed. She also referred to the page 43 of the paper book, which is a copy of bank statement of M/s Hillridge Investment Limited and submitted that in the bank statement money has been received by way of the cash as well as cheques and almost identical amount has been transferred immediately, leaving a very small

balance of approximately Rs.12,000 in the bank account. According to the Ld. DR, the company has not carried out any business activity except providing accommodation entries and thus the assessee has failed to establish creditworthiness of the party and genuineness of the transaction. In support of contention, she relied on the decision of the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax (Central-1), Vs. NRA Iron and Steel Private Limited, arising out of SLP (Civil) No. 29855 of 2018. She also relied on the decision of the coordinate bench of Tribunal in the case of M/s Synergy Finlease Private Limited in ITA No. 4778/Del/2013 for assessment year 2006-07.

5. On the other hand, on behalf of the assessee, the Sh. Ashwini Seth attended and filed an application for adjournment of the case on the ground that person looking after the affairs of the company has fallen ill and therefore could not engage the counsel in the matter. It was brought to his knowledge that he himself appeared on last date of hearing i.e. 20/03/2019 and requested adjournment for engaging another counsel. On an undertaking given by him that no further adjournment shall be sought by the assessee, the case was adjourned for 25.03.2019 and last opportunity was granted to argue the case. We may like to mention here that this appeal was fixed for the hearing for first-time on 14/08/2014 and thereafter it has been adjourned on many occasions on the request of the, then counsel of the assessee, namely, M/s Vaish and Associates, on the ground of process of collecting necessary information. Such letters of request dated 05/01/2016, 21/04/2016 and 29/06/2016 are

available on record. On 30/08/2018, an application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 was filed and matter was adjourned to 18/09/2018 and last opportunity was granted to the assessee to argue its case. But, the assessee has not complied with many opportunity granted. Thus, from facts and circumstances of the case, it is evident that that the assessee is not interested in prosecuting the appeal and only wasting time of the Tribunal. Accordingly, the person appeared was directed to argue the case, which he declined.

6. Thus, we heard the case on the basis of the available record and arguments of the Ld. DR. We find that neither the assessee has filed any cross objection or any appeal on the issue of validity of the reassessment proceeding decided against the assessee by the Ld. CIT(A). The assessee has only filed an application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963, and seeks to support the order of the Ld. CIT(A) on the ground that notice issued under section 148 and reassessment proceedings initiated by the Assessing Officer under section 147 are without jurisdiction and bad in law. We find that, the Assessing Officer has reopened the assessment on the basis of the information received from the Investigation Wing of the Department wherein there is a reference of receipt of accommodation entries by the assessee. The Assessing Officer has made his belief on the basis of the detailed enquiry carried out by the Investigation Wing in the case of Sh. Surinder Kumar Jain, who was engaged in providing accommodation entries through a number of companies managed and controlled remotely by him. In our opinion, this being a new material, which was not before the Assessing Officer

in any prior proceedings and thus reopening cannot be said to be based on change of opinion. In the application under Rule 27, no other ground has been mentioned for challenging the jurisdiction assumed by the Assessing Officer under section 147 of the Act for reopening of the assessment. Before us also, no arguments have been made in support of the application under Rule 27. Accordingly, we reject the request of the assessee for invoking Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963.

7. As far as merit of the appeal is concerned, we find that addition for the credit appearing in the bank account of the assessee of Rs.1,32,00,000/- by way of two transactions of Rs.66,00,000/- each on 15/06/2005 and 30/12/2005 claim to have been received from M/s Hillridge Investment Limited is concerned, the assessee has failed to justify the nature and source of the credit as required under section 68 of the Act. It is settled law that to justify nature and source of the credit, the onus is on the assessee to establish identity, creditworthiness of the creditor and genuineness of the transaction. In the instant case, the assessee has though filed confirmation from M/s Hillridge Investment Limited, but the said party failed to respond for the first time to notice dated 30/12/2013 issued under section 133(6) of the Act and said party responded only after when this fact of non-compliance was brought to the notice of the assessee. On the specific request of the Assessing Officer to produce the said party, also the assessee failed to comply. The assessee has filed documents in the form of paper trails like audited balance sheet, confirmation, bank statement, income tax return and assessment record etc of the said party. But the

assessee has failed to explain as how the said party with a loss of more than Rs.4 lakh, could justify investment in the shares of the assessee company. Before us the assessee, in the paper book containing pages 1-100 has filed only balance sheet of M/s Hillridge Investment Limited and no profit and loss account has been filed. In the balance sheet available on page 52 of the paper book, we find that carry forward losses of Rs.30,62,817/- and loss of Rs.4,94,669/- for the year under consideration is appearing. We are not able to understand how a loss-making company is making investment in the shares of the assessee company at huge premium, without any financial rational. The assessee company has shown either loss or small amount of income in earlier years/during the years. Further, on perusal of the bank statement of the said company available on page 43 of the paper book, we find that a nominal balance of Rs.7000 - 12000 is only available in the bank account except deposit of the money by way of cash or cheque and immediate withdrawal of the equivalent amount. This shows that no worthwhile business activity has been carried out by the said company except providing accommodation entries. The Assessing Officer has already mentioned the modus operandi of the companies managed and controlled by Sh. Surinder Kumar Jain, and the company who provided this entry to the assessee is also one of the company managed by Sh. Surinder Kumar Jain. In the case of Synergy Finlease Private Limited (supra), the said company M/s Hillridge Investment Limited has been found to be engaged in providing accommodation entry. The relevant part of the decision

related to financials of M/s Hillridge investment limited is reproduced as under:

“13. In the case of M/s. Hillridge Investment Limited, from whom share application money of Rs.20,04,000/- has been shown, documents have been filed from page 83 to 108 of the paper book. The documents include balance sheet and bank statement for the period from 01/02/2006 to 31/03/2006 and for the period from 01/04/2010 to 31/03/2011. On perusal of profit and loss account available on page 87 of the paper book, we find that the alleged share applicant has shown income only from interest on loans of Rs. 6,60,414/- and share profit from partnership firm amounting to Rs. 18,866/-against which operating expenses of Rs. 6,45,574/-, interest and finance charges of Rs. 60,110/-and loss on sale of investment of Rs. 4,62,760/- has been shown, and thus overall loss has been shown. In the balance sheet as on 31/03/2006 on liability side , paid-up share capital of Rs. 8,52, 00,000/-share premium of Rs. 16,18,00,000/-under reserve and surplus has been shown On the asset side, investment in equity shares of companies has been shown as Rs. 35,66,54,000/- loan advances, share application money paid of Rs. 49,00,000/- loans of Rs. 10,60,72,542/-have been shown. The investment in equity shares is mostly in private limited companies. The copy of bank accounts available on page 92 to 96 is not found to be legible but in this also money has been withdrawn immediately after deposit in the bank account. The confirmation filed by the alleged share applicant is undated and without any address of the alleged share applicants. In the list of the directors, two names have been provided namely Sh. Rajesh Kumar Mishra and Sh. Pradeep Kumar Sharma, both having same address at 3198/15,Gali No. 1, 4th Floor , Sangatrashan, Paharganj, New Delhi - 110055 i.e. address of directors provided in the case of another alleged share applicant M/s SR Cables Private Limited. Other documents filed are merely document in the form of paper trail and do not assist in establishing the creditworthiness or genuineness of the transaction of alleged share application money.”

8. In view of the observations of investment by the similar share applicants including by M/s Hillridge Investment Limited, the Tribunal (supra), upheld the addition of unexplained credit under section 68 of the Act.

9. In the circumstances identical to the instant case, the Hon'ble Supreme Court in the case of NRA Iron and Steel Private Limited (supra) has held that the primary onus under section 68 of the Act would not be discharged in following circumstances:

“11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.

10. In view of the above, respectfully following the decision of the Hon'ble Supreme Court in the case of NRA Iron and Steel Private Limited (supra) and decision of the coordinate bench in the case of Synergy Finlease P. Ltd (supra), we are of the opinion that the assessee failed to discharge its onus u/s 68 of the Act and accordingly, we set aside the finding of the Ld. CIT(A) on the issue in dispute and uphold the finding of the Assessing Officer on the issue in dispute. The grounds of appeal of the Revenue are accordingly allowed.

11. The appeal of the Revenue for assessment year 2006-07 is, accordingly, allowed.

ITA No.200/Del/2014 for AY: 2005-06

12. The grounds of appeal raised by the Revenue in ITA No. 200/Del/2014 for assessment year 2005-06 are reproduced as under:

1. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 88,00,000/- made by the A.O. on account of bogus accommodation entries?*
2. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) ignored the finding of the Investigation Wing of the department that the entry operator had accepted in his statement that the amount received by the assessee company from M/s Stellar Investment Ltd. was not genuine?*
3. *That the order of the Ld. CIT(A) is erroneous and is not tenable of facts and in law.*
4. *That the grounds of appeal are without prejudice to each other.*
5. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.*

13. The facts and circumstances of the case for the year under consideration are identical to the facts of the case decided in ITA No. 6500/Del/2017 for assessment year 2006-07 except that the accommodation entry of Rs.88,00,000/- in the year under consideration has been received by M/s Steller Investment Limited, i.e., a company operated from Sh. Surinder Kumar Jain Group. The facts and circumstances being identical to the facts and circumstances of the case for assessment year 2006-07,

respectfully following the same, the grounds of the appeal of the year under consideration, i.e., 2005-06 are also allowed.

14. The appeal of the Revenue for assessment year 2005-06 is accordingly allowed.

15. In the result, both the appeals of the Revenue are allowed.

Order pronounced in the open court on 27th March, 2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 27th March, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi