

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 6849/DEL/2018
[Assessment Year: 2009-10]

KMS Softech Pvt Ltd
31, North Avenue Road
West Punjabi Bagh
New Delhi

Vs.

The I.T.O,
Ward - 14 (3)
New Delhi

PAN: AACCK 5682 R

[Appellant]

[Respondent]

Date of Hearing : 22.04.2019
Date of Pronouncement : 24.04.2019

Assessee by : Shri R.S. Singhvi, CA.
Shri Satyajeet Goel, CA

Revenue by : Shri S.L. Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 5, Delhi dated 02.08.2018 pertaining to A.Y 2009-10.

2. Vide Ground Nos 1 and 2, the assessee has challenged the validity of notice u/s 148 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] and vide Ground No. 3, the assessee has challenged the addition of Rs. 10 lakhs made u/s 69A of the Act.

3. Ground Nos. 1 and 2 were not pressed. Accordingly, the same are dismissed as not pressed.

4. Coming to the facts relating to the addition of Rs. 10 lakhs, I find that the reasons for reopening the completed assessment relate to survey operation conducted u/s 133A of the Act in the following cases:

- a) Shri Nirbhay Shanker Gupta
- b) Shri Shyam Shanker Gupta
- c) Shri Rajeev Kumar Gupta
- d) Shri Madan Gupta

5. On perusing the documents impounded during the survey operation, it came to the notice of the Assessing Officer that Index Securities Research Pvt Ltd has given/received accommodation entries from the aforementioned persons.

6. On the basis of this revelation, during the course of scrutiny assessment proceedings of the assessee, statement of Shri Siddharth Sehgal, Director of the appellant company was recorded and the same is extracted at pages 3 to 5 of the assessment order. A perusal of the statement shows that the Director has denied his knowledge about Shri Rajeev Gupta.

7. Vide letter dated 20.12.2016, the assessee stated that it has received advance from Index Securities Research Pvt Ltd of Rs. 10 lakhs against a software development assignment.

8. After considering the submissions and statement of Shri Rajiv Gupta, the Assessing Officer was convinced that the impugned transaction does not have any relation with Shri Rajeev Gupta. However, the Assessing Officer was of the opinion that since Index Securities Research Pvt Ltd is a dummy company, whose director was Shri Surendra Kumar Jain, who, in his statement, accepted the fact that Jain Brothers are into providing accommodation entries. On the

basis of such findings, the Assessing Officer made addition of Rs. 10 lakhs.

9. The assessee carried the matter before the CIT(A) but without any success.

10. Before me, the ld. AR referred to the statement of Shri Rajeev Gupta, assessment order of Shri Rajeev Gupta and the fact that the alleged receipt of Rs. 10 lakhs from Index Securities Research Pvt Ltd has been refunded. It is the say of the ld. AR that the Revenue has not brought any evidence other than statements to show that the assessee has received any accommodation entries.

11. Per contra, the ld. DR strongly supported the orders of the authorities below.

12. I have carefully considered rival submissions and the documentary evidences brought on record. I find that the completed assessment was reopened on the basis of survey operations conducted in the premises of the persons mentioned elsewhere. I find that in the

statement of Shri Rajeev Kumar Gupta, that there is no reference to giving any accommodation entry to the assessee company. In fact, I had the benefit of going through the assessment order of Shri Rajeev Kumar Gupta framed u/s 143(3) of the Act vide order dated 26.12.2011 and in his assessment order, his statement was recorded wherein he has given the names of the companies in which he is a director.

13. I also find that Shri Rajiv Gupta has given details in the bank account in respect of credits which have been utilised for providing accommodation entries. In this list also, there is no mention of the assessee company. In fact, the Assessing Officer himself has admitted that Shri Rajeev Kumar Gupta has nothing to do with the appellant company but has drawn support from the statement of Jain Brothers, one of whom happens to be a director of Index Securities Research Pvt Ltd.

14. The ledger copy of account of Index Securities Research Pvt Ltd shows that the assessee has received advance for some software development programme on 26.07.2008 for Rs. 10 lakhs and since the software development could not be

executed, the advance amount was refunded immediately on 5.10.2008 by account payee cheque and transaction has been confirmed by the Punjab and Sind Bank. The certificate is placed at page 55 of the paper book.

15. Considering the facts in totality, I am of the opinion that the impugned transaction is not that of any accommodation entry and is a normal business transaction of the appellant company. I, therefore direct the Assessing Officer to delete the addition of Rs. 10 lakhs.

16. In the result, the appeal filed by the assessee in ITA No. 6849/DEL/2018 is allowed.

The order is pronounced in the open court on 24.04.2019.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 24th April, 2019.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	