

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 6528/Mum/2016

(निर्धारण वर्ष / Assessment Year 2009-10)

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| The Asst. Commissioner of Income Tax, Circle 16(3), Room No. 446, 4 th Floor, Aayakar Bhavan, M.K. road, Mumbai-400 020 | Vs. | Shrey Technologies Pvt. Ltd Flat No. 606, 6 th Floor, Model Residency, Baburao Jagtap Marg, Saat Rasta, Mumbai-400 011 |
| (अपीलार्थी / Appellant) | .. | (प्रत्यर्थी / Respondent) |
| स्थायी लेखा सं./PAN No. AAJCS7399N | | |

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| अपीलार्थी की ओर से / Appellant by | : | Shri Chaudhary Arun Kumar Singh, AR |
| प्रत्यर्थी की ओर से / Respondent by | : | Shri Vimal Punmiya, DR |

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| सुनवाई की तारीख / Date of hearing: | 09-04-2019 |
| घोषणा की तारीख / Date of pronouncement : | 09-04-2019 |

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal filed by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-7, Mumbai [in short CIT(A)], Appeal No. CIT(A)-7/IT-10/2015-16 vide order dated 09.08.2016. The Assessment was framed by the Asst. Commissioner of income Tax, Circle-16(3) (in short 'ACIT/ AO') for the A.Y. 2009-10 vide order dated



16.03.2015 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO on account of share capital introduced by assessee amounting to ₹ 2.50 crores as unexplained under section 68 of the Act. For this Revenue has raised the following ground No. 1: -

“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made on share capital amounting to ₹2,50,00,000/-.”

3. Briefly stated facts are that the assessee is engaged in the business of facility management services and earning commission on sales. The AO during the course of reassessment proceedings under section 147 of the Act read with section 143(2) of the Act noted that the assessee has received share capital and share premium to the extent of ₹ 2.50 crores from the following three parties: -

| <i>Sr. No.</i> | <i>Name of the company</i> | <i>No of shares</i> | <i>Face value/ premium</i> | <i>Total amount</i> |
|----------------|-------------------------------------|---------------------|----------------------------|---------------------|
| 1. | <i>Blazer Venture Pvt. Ltd.</i> | <i>5000</i> | <i>100/900</i> | <i>5000000</i> |
| 2. | <i>Fairmont Venture Pvt. Ltd</i> | <i>10000</i> | <i>100/900</i> | <i>10000000</i> |
| 3. | <i>Kumaon Engineering Pvt. Ltd.</i> | <i>10000</i> | <i>100/900</i> | <i>10000000</i> |
| | | | <i>Total</i> | <i>25000000</i> |



4. The AO issued notice under section 133(6) to the above three parties and asked for balance sheet, profit and loss account and banking accounts for AY 2009-10 relating to these entities. These parties furnished replies in response to these notices under section 133(6) of the Act. The AO noted that these companies who have subscribed the shares of the assessee company at a premium of ₹ 900/- on the face value of shares of ₹ 100/-, these companies income does not commensurate with the operations of the company. It was noted by the AO that companies are not having regular income from the business operations and are having no fixed assets. It was noted that these companies does not have commensurate share capital to the funds of the assessee company. It was also noted that the said companies are routing money as compared to their financial accounts. Considering these evidences, he noted that the assessee was not able to prove the creditworthiness of the creditors beyond doubt and to the satisfaction of the AO. Hence, he treated this share capital and share premium as unexplained under section 68 of the Act. Aggrieved, against the action of the AO, assessee preferred the appeal before CIT(A).

5. The CIT(A) deleted the addition by observing in Para 4.3 and 4.4 as under: -

“4.3. I have carefully considered the facts of the case and the submissions made by the Ld. AR. I have also gone through the decisions relied on by the Ld. AR. The AO has added the share capital and share premium of Rs. 2,50,00,000/- received from these companies namely, Blazer venture Pvt. Ltd, Fairmount



Venture Pvt Ltd and Kumaon Engineering Pvt Ltd. The AO has not accepted the credit-worthiness of the above share applicants. The Ld AR. On the other hand, has submitted the names, addresses and PANs of the shareholders, audited profit and loss accounts, balance sheets, returns of income, ledger confirmations, bank statements, MCA data downloaded from Ministry of Company Affairs, Board resolution, form 2(Return of allotment) etc. in support of its contention that addition is not warranted. It is seen from the details that the appellant had issued shares to the Blazer Venture Pvt. Ltd of Rs. 50,00,000, Fairmount Venture Pvt. Ltd of Rs. 1,00,00,000, and Kumaon Engineering Pvt Ltd. Of Rs. 1,00,00,000. These sums are reflected in the bank account of the appellant maintained with State Bank of Hyderabad, (7olaba, Mumbai. It is further seen that these payments are also reflected in the bank statements of Blazer venture Pvt. Ltd, Fairmount Venture Pvt. Ltd, and Kumaon Engineering Pvt Ltd. with Kotak Mahindra Bank Ltd. These applicants have filed their respective returns of income for the subject assessment year. It is seen from the profit and loss accounts and balance-sheets of the above share applicants that these companies are having huge share capital and reserves &



surplus of Rs. 18,97,26,322/- (BVPL), Rs. 37,56,43,283/- (KEPL) and Rs. 20,17,63,084(FVPL). Against such large shareholders' fund, the share investments were Rs. 50,00,000/-, Rs. 1,00,00,000/- and Rs. 1,00,00,000/- respectively. The identity of the share applicants is supported by their PANs, income-tax returns, bank statements and MCA data downloaded from the website of Ministry of Company Affairs. In fact, these shareholders have independently attended before the AO also. Regarding the capacity of the share applicants, it has already been discussed that they had substantial capital and reserves and their investment in the shares of the appellant company was relatively small. Further, the amounts have been paid through banking channel and bank statements have been submitted in this regard. The genuineness of the transaction is also supported by the ledger confirmation of each of the applicants, bank statements, Board Resolution passed in this regard, actual allotment of shares to the share applicants and return of allotment filed with ROC etc. In view of these facts, the appellant has satisfactorily explained the credit found in its books of account.



4.4 It may be stated u/s.68 (I) there has to be credit of the amounts in the books maintained by the assessee; (ii) such credit has to be a sum of money during the previous year; and (iii) either (a) the assessee offers no explanation about the nature and source of such credit found in the books or (b) the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. The expression that "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the A.O. is required to be formed objectively with reference to the material on record. Application of mind is a sine qua non for forming the opinion. In this case, the appellant has given reasonable, proper and acceptable explanation with relevant supporting documents in respect of the said share application money of Rs.2,50,00,000/- received from three parties. The decisions relied on .by the Ld. AR in the case of Lovely Exports (P) Ltd. (supra), Divine Leasing & Finance (supra) and Stellar Investment Ltd. (supra) and other decisions relied upon by the Ld. AR support the case of the appellant. The Hon'ble Supreme Court in case of Lovely Exports Pvt. Ltd (supra) has held that if the details including names of share



holders are given, the Department is free to proceed to reopen the individual assessments of the shareholders, but it cannot treat the share application money as undisclosed income of the assessee company. The Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd. 307 ITR 334 has held that if the department wants to make addition on account of share application money, burden is on the department to show that even if the applicants do not have the means to make the investment, investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as undisclosed income of the assessee. It is clear from the facts discussed above that the conditions for applying the provisions of section 68 are not fulfilled in the instant case. In view of the above facts and respectfully following the precedents, I am of the considered opinion that the appellant has satisfactorily explained the nature and source of the impugned share capital and premium of Rs.2,50,00,000/-. Hence, the addition made by the AO u/s.68 is not justified. Accordingly, the same is deleted and the ground is allowed.

Aggrieved, against deletion of addition by CIT(A), Revenue came in appeal before Tribunal.



6. Before us, the learned Counsel for the assessee filed paper book consisting of pages 1-90 and additional paper book consisting of pages 91-144 in which he has filed the details of companies. The learned Counsel for the assessee explained that these parties had capacity and creditworthiness and hence, these parties have genuinely invested share capital and share premium with the assessee company. With regard to the capacity and creditworthiness of the investors, the assessee filed audited accounts, financial statements of the year in respect of investee companies. It was explained that in view of the details of financial strength of the investee companies, which is based on its net worth as depicted from audited accounts, which has been placed before AO and before CIT(A). The learned Counsel for the assessee drew our attention to the facts and figure as culled out from audited financial accounts as against findings of AO, the relevant reads as under:

| Name of the Investee company | Total net worth of the investee | | | | Total value of shares applied in the Assessee company ₹ | Share application money paid % of Total net worth |
|----------------------------------|---------------------------------|--------------|--------------|------|---|---|
| M/s Blazer Venture Pvt. Ltd | 19,95,950 | 187,743,737 | 18,97,39,687 | 2012 | 50,00,000 | 2.63% |
| M/s Fairmount Venture Pvt. Ltd. | 21,16,500 | 1,99,601,656 | 20,17,18,156 | 2014 | 1,00,00,000 | 4.96% |
| M/s Kumaon Engineering Pvt. Ltd. | 76,32,000 | 36,82,49,151 | 37,58,81,151 | 2014 | 1,00,00,000 | 2.66% |
| Total Rs | | | | | 2,50,000 | |

On the other hand, the learned Sr. Departmental Representative relied on the assessment order.



7. We have heard rival contentions and gone through the facts and circumstances of the case. On the perusal of the above data placed, we noted that the net worth of these companies is in several Crores of Rupees. Accordingly, in our view having net worth of several Crores of Rupees is more than sufficient for investee Company to advance only a few lakhs of Rupees to the assessee Company for share application money. We also noted that the assessee company had furnished all the required details for all the parties, who had invested the money and that itself is a sufficient proof for genuine Investor, Shareholders. Accordingly, the above financials along with the audited accounts of the investee company placed on record is evidencing and proving the satisfactorily the capacity and credit worthiness of each of the investee company. We have also noted the observation of the AO in his assessment order at Para 7.5, wherein he had depicted the adequacy of the evidence placed on record with regard to the capacity and credit worthiness of the subscribers in terms of the solid financial standing as per Net Worth of the subscribing companies as per the tabulated data and Genuineness of the transaction in question. We noted that the assessee company had placed on record various documents including copies of bank statements of the each of the investee Companies highlighting the amount paid towards Share Application Money invested and reflected in the Bank Statement. We also noted that this information was called by the AO himself i.e. for the Bank Statements documents of all the Investee Companies and the respective Bankers of all the investee companies, which was provided. On the perusal and verification of the banking entries of the share transaction as appearing in the bank account of the investee company and corresponding entries in the bank statement of assessee company, it clearly establish the entire transaction through banking channel and the same proves the genuineness of the transactions. In view of the above,



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we are of the view that the CIT(A) has rightly deleted the addition and we confirm the same.

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

Order pronounced in the open court on 09-04-2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 09-04-2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai