

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'B', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 2442/Del/2017  
Assessment Year: 2013-14**

<b>Dhara Motor Finance Ltd., Civil Lines, Bijnor (U.P.). (PAN-AABCD8486H) (Appellant)</b>	<b>vs.</b>	<b>Dy. C.I.T., Najibabad. (Respondent)</b>
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<b>Appellant by</b>	Sh. Chander Mehra, C.A.
<b>Respondent by</b>	Ms. Ashima Neb, Sr. DR

<b>Date of Hearing</b>	18.03.2019
<b>Date of Pronouncement</b>	24.05.2019

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the assessee against the order of the ld. CIT(A), Muradabad dated 28.02.2017 for the assessment year 2013-14 on the following grounds :

*"1. FOR THAT on the facts and circumstances of the case the Ld. Assessing Officer was not justified in making addition of Rs. 8,55,000/- on account of Share Capital/Share Premium wrongly treating the same as 'Unexplained Cash Credit' u/s 68 of the Act and the Ld. CIT(A) unlawfully directed the Assessing Officer to enhance such addition by Rs. 26,42,500/- aggregating total disallowance u/s 68 of Rs. 34,97,500/- which is liable to be struck down in this forum.*

*2. FOR THAT the Ld. CIT(A) ought to have considered the appellant Company's submission in proper perspective as it had discharged its onus*

*by furnishing all relevant documents in connection with Share Capital raised and also proved the identity, credit worthiness of the Share Applicants and genuineness of transaction, beyond doubt.*

3. *FOR THAT the issue relating to the raising of share capital is concluded in favour of the assessee by the judgement of the Hon'ble Supreme Court in the case of Lovely Export (P) Ltd. 216 CTR 195 holding that addition on account of share capital cannot be made in the hands of the recipient company.*

4. *FOR THAT the reasoning given by the CIT(A) for enhancement of addition made by the Assessing Officer is motivated and her action is out of mere suspicion and not based on records.*

5. *FOR THAT the Hon'ble CIT(A) could not bring on record any nexus between cash deposited in Share Applicant's account routed through their account to the appellant and the findings of the CIT(A) were perverse findings inasmuch as those credits or deposit amounts were reflected in Income Tax Return of the Share applicants and accepted by the authority without any question and therefore the addition made by the below authorities are baseless and devoid of any merit and liable to be deleted at this forum.*

6. *THAT the appellant Company has fulfilled its obligations to explain the source of Share Capital and Premium and therefore, if the authority below regards the Share Capital/Premium as bogus, they have to assess the share holders but cannot assess the same as the share issuing company's unexplained cash credit.*

7. *FOR THAT the share premium receipt in question cannot be assessed as unexplained cash credit as the identity of the share applicant, genuineness of the transaction and capacity of the subscriber are not disputed.*

8. *FOR THAT at the assessment stage the Assessing Officer has conducted enquiry into the taxability of share capital receipt u/s 68 and after the due application of mind being satisfied about the source substantially accepted the same, the CIT(A) is not entitled to enhance the disallowance on mere change of opinion.*

9. *FOR THAT the Hon'ble Jurisdictional Delhi High Court in the case of CIT vs. Vrindavan Farm Pvt. Ltd. held that if the identity and other details of share applicants are available, the share application money cannot be treated as undisclosed income in the hands of the Company, the addition, if at all, could be made in the hands of the applicant if their credit worthiness could not be proved."*

2. The brief facts of the case are that the assessee filed return on 11.09.2013 declaring total income at Rs.50,60,810/-. The case was selected for scrutiny and statutory notices were issued. The assessee is a closely held domestic company engaged in the business of financing. On perusal of balance sheet, the Assessing Officer noted that there is increase of Rs.3 crores in share capital and Rs.15 lakhs in share premium during the year. The assessee was required to furnish complete details of allottees of shares and to prove the identity and creditworthiness and genuineness of the transactions. The assessee furnished the details of the allottees of shares. Total investors were 70 out of which only 23 were produced for statement on oath and regarding remaining allottees it was stated that they were unable to attend the office for statements on oath because of unavoidable circumstances and therefore, he produced their affidavits wherein the allottees had stated to have invested in assessee's company along with other facts of their source of income. In respect of other allottees who could not be produced by the assessee, the Inspector was directed to verify the contents of each affidavit by meeting all such allottees separately. The Assessing Officer on the report of Inspector observed as under :

*"Shri Ratan Prakash submitted his reports which are on record in respect of each non-produced allottees by physically seeing their living standards & sources of income as most of the non-produced allottees had claimed*

*that they had invested money in the form of share application money & premium in the assessee company by income from agriculture & sale of milk.*

*Out of forty seven persons whom Shri Ratan Prakash visited in order to estimate financial capacity, he named eight persons whose lending capacity was not fully proved keeping in view income generating capacity of the assets the possessed:"*

3. The assessee company was provided opportunity to put his side in respect of the capacity of the following 8 persons :

S.NO	NAME	Amt. not found proper as per ITI'S report
1	Smt. Kusum Devi	1,77,500/-
2	Smt. Leelavati	1,77,500/-
3.	Kumari Swati	70,000/-
4	Kumari Shilpi Chaudhary	27500/-
5.	Shri Arvind Kumar	72500/-
6.	Smt. Jagwati Devi	1,77,500/-
7.	Smt. Usha Khanna	1,25,000/-
8.	Kumari Dipty Chaudhary	27,500/-

4. The assessee submitted reply vide letter dated 16.10.2015. From the reply submitted by the assessee, the Assessing Officer noticed that there was contradiction in the reply of assessee and report of the Income-tax Inspector. The Assessing Officer noticed that the financial capacity of the above noted eight allottees was not proved. Accordingly, the Assessing Officer added Rs.8,55,000/- in the income of the assessee.

5. In appeal before the Id. CIT(A), the assessee made detailed written submissions and relied on many case laws. The Id. CIT(A) after considering all

the facts, examining the capacity of above eight allottees himself and by giving opportunity to the assessee, further enhanced the addition by Rs.26,42,500/- and dismissed the appeal of the assessee. Aggrieved by the impugned order, the assessee is in appeal before the ITAT.

6. The Id. AR of the assessee, reiterating the written submissions made before the Id. CIT(A), filed a paper book containing 101 pages and a written synopsis which reads as under :

1. *The Appellant is a Public Limited Company in which Public are not interested. The Equity is held by friends and relatives of the Directors.*
2. *The assessee Company issued 300000 Equity Shares of Rs.100/- each at a Premium of Rs 51- per share to seventy persons, thus collected Rs. 3,00,00,000/- as share capital and Rs.15,00,000/- as Premium during the financial year 2011 -12.*
3. *The assessee submitted the entire list of seventy persons who were issued shares and also submitted all other documents as and when was asked to do so.*
4. *The AO asked the assessee company to produce all the seventy investors for his verification, for the financial capacity, identity and genuineness of the transactions.*
5. *The assessee company could produce only twenty three investors for statement on oath and submitted affidavits of rest of the investors, who had confirmed of having invested with the company for purchase of shares at a premium.*
6. *The AO authorised his Inspector to meet all the remaining investors and to verify their financial capacity as they had informed of investing from their agriculture and sale of milk income.*
7. *The ITI named eight persons whose lending capacity was not fully proved keeping in view income generating capacity of the assets they*

*possessed and recommended Rs.8,55,000/- to be added back out of Rs.32,55,000/-*

8. *The report of the ITI was shown to the representative of the assessee who in reply relied upon the affidavits of the investors which were submitted during the assessment proceedings, however, requested for copy of report to study the same for appeal purposes.*

9. *The ITI recommended Rs.8,55,000/- out of Rs.32,55,000/- so invested by eight persons to be added back to the income of the assessee as he thought the amount of Rs.8,55,000/- to be beyond their capacity to invest in the share purchase account.*

10. *The assessee Company preferred an appeal before the CIT(A) who after discussing the individual capacity of each of the investor enhanced the additions by Rs.22,27,500/-. Thus the total addition to the income of the assessee became Rs.30,82,500/-. (8,55,000/- + Rs.22,27,500/-) The ground no one of form 36 states Rs.855000/- + Rs. 2642500/- which has been rectified by an application u/s 154 of the IT Act, 1961.*

11. *The Ld CIT(A) in her order vide para three page 17 of the paper book is subject to verification in the case of Leelawati, Investor, which the AO has not done. Even the amount of Rs.845000/- stated in her order is wrong as the total amount deposited is Rs. 5,77,500/- and Rs.27,500/- have been accepted by the CIT(A). The balance amount stands as Rs.5,00,000/- and not Rs.8,45,000/-, however, the amount to be added is conditional.*

12. *In the case of Investor, Smt Jagwati Devi the Lf CIT(A) in her order on page 21 - 22 of the paper book, last para of page 21 to first para page 22, has directed the AO to modify the addition accordingly after taking into account of appellant's explanation of letter dated 16th February, 2017. The AO has failed to do so.*

*List of eight Investors is annexed being Rs.32,55,000/-.*

*The order of the AO and the appeal order of Ld CIT(A) are against the natural justice and needs to be quashed. From the list of investors, it may be seen that even the petty amounts of Rs.50,000/- in the case of Shilpy Chaudhary and Dipty Chaudhary have been confirmed by the Ld CIT(A), the same cannot be ruled out of their past Savings.*

**Case laws in support:**

1. *ASSISSTANT COMMISSIONER OF INCOME TAX Vs GURNAM SINGH ITAT DELHI TRIBUNAL ( C ) I.T.A NO. 616/DEL/2012*

*Second Last line of page one of the order “ AO made addition on basis of Inquiry Report which had not been supplied to assessee - Estimation made by AO on cost of 50 wrist watches found during search and seizure was on assumption and presumption basis and without supporting any evidence and hence same was not sustainable in eyes of law.”*

2. *Similarly in the case law*

*ATUL KUMAR KHANDELWAL Vs COMMISSIONER OF INCOME TAX ITAT Delhi Tribunal (SMC-2 ) ITA NO. 871/DEL/2016*

*Second last line of the order of page one “ Thus addition was made on basis of statement collected at back of assessee and right of cross examination was not provided to him- Hence precedents .additions made by AO and confirmed by CIT(A) were deleted.” Copies of orders annexed.*

*In the above , the assessee requests for justice as ITO did not give the report of ITI, similarly CIT(A) added on assumptions of cash deposited, thus to quash the orders of lower authorities and return income be accepted.”*

7. On the other hand, the ld. DR relied on the order of the authorities below. She also relied on the judgment of Hon’ble Apex Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. 412 ITR 161 (SC). She submitted that the case is squarely covered by the above decision of Supreme Court. She also submitted that the financial capacity of the share application has not been proved by the assessee. The case laws submitted by the assessee are not applicable once the issue under consideration has attained finality by the decision of Hon’ble Supreme Court.

8. After hearing both the sides and perusing the entire materials available on record and case laws cited by both the sides, we observe that the Id. CIT(A) has dealt this issue in detail in his order. In the Income-tax Inspector's report, he has stated that the capacity of eight persons, as noted above, was not fully proved. The Id. CIT(A) has also examined the financial capacities of above eight persons and has found that they had no financial capacity to invest in shares and that the case deposit was also found preceding to issue of cheques in their bank accounts. All of them were also found having no sound sources of income. The affidavits filed by the assessee in respect of above 8 persons are not supported by any other material so as to place reliance thereon. The case law in the case of NRA Iron & Steel Pvt. Ltd. (supra) relied by the Id. DR is found squarely applicable to the present case, against which the decisions relied by assessee do not render any help to the assessee. Therefore, respectfully following the decisions of Hon'ble Supreme Court, as relied by the Id. DR, we do not find any justification to interfere with the order of the Id. CIT(A). Accordingly, the appeal of the assessee deserves to be dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 24.05.2019.

Sd/-

**(Amit Shukla)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 24.05.2019

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