

**In the Income-Tax Appellate Tribunal,
Agra Bench, Agra**

**Before : Shri Laliet Kumar, Judicial Member And
Dr. Mitha Lal Meena, Accountant Member**

**ITA No.347/Agr/2017
Assessment Year: 2011-12**

DCIT, Circle 2(1), Gwalior. (Appellant)	vs.	M/s. B.P. Edible Oil Pvt. Ltd., 92, Jiwaji Ganj, Morena. PAN: AADCB1227C) (Respondent)
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Appellant by	Sh. Waseem Arshad, Sr. DR
Respondent by	S/Sh. Rajendra Sharma and Manuj Sharma, Advocates

Date of Hearing	03.07.2019
Date of Pronouncement	30.07.2019

ORDER

Per Laliet Kumar, J.M.:

This appeal is being filed by the Revenue feeling aggrieved by the order passed by the Id. CIT(A) on 09.05.2017 for the assessment year 2011-12 on the following ground :

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and in fact in deleting the addition of Rs.1,31,50,000/- on account of unexplained credits in the form of share application money, in spite of the facts on records that the assessee has failed to produce any admissible evidence during the course of assessment proceedings before the AO as required."

2. The brief facts of the present case, as recorded by the Assessing Officer are as under :

The case was selected for scrutiny manually for the following reasons :

- (1). Share application money of the assessee company has increased from Rs.24,50,000/- to Rs.1,31,50,000/-. The identity and creditworthiness of the persons from whom money has been accepted needs detailed verification.
- (2). Fixed assets of the assessee company have increased from Rs.1,42,82,380/- to Rs.1,75,22,202/-.
- (3). Following requires verification of the genuineness and correctness:
 - (a). Salary and wages paid amounting to Rs.11,34,125/-
 - (b). Creditors amounting to Rs.1,31,15,424/-
- (4). The assessee has shown income of Rs.5,32,602/- even when gross receipts of the company has increased from 7,16,66,316/- to Rs.12,79,02,891/- which requires detailed verification.

2.1 The assessee was called upon by the AO to prove identity, genuineness and creditworthiness of the share application money/share premium of Rs.1,31,50,000/-. The assessee was also asked to produce the (i) copy of bank account in which the share premium money was credited, (ii) copy of bank account of share applicants and (iii) copy of Income-tax return of share applicants. In response to the show cause notice, the assessee filed the reply and submitted the following information :

- (i). Copy of bank account of assessee company
- (ii). Names and addresses of the share applicants
- (iii). PAN details of these entities.

However, the assessee has not filed the copy of bank account as well as the return of income as sought by the AO. It was submitted by the assessee that the assessee had

discharged the primary onus by disclosing the identity of the share applicants. The Assessing Officer in paragraph No. 3.2 has tabulated various share applications for Rs.1,31,50,000/- to the following effect :

S.No.	Name of share applicants	Address	PAN	Amount of share application money
1	Startrans Logistics Pvt. Ltd.	U -16, Shankarpur, Delhi	AAJC50491H	8,00,000
2	Acumen Paper Binders Pvt. Ltd	A-212, Mahlotra Complex, Shakarpur, Delhi-92	AAACA2172J	22,00,000
3	Spam Amusement Pvt Ltd	D-25A, Laxmi Nagar, Delhi	AACOS2000B	22,00,000
4	Shree Balaji Sainath Buildwell Pvt Ltd	B-1058, Shastri Nagar, Karol Bagh, Delhi	AAJCS7086E	2,00,000
6	Happening Motor Pvt Ltd	U-18, Upadhyay Block, Shakarpur Block, Delhi-92	AAACH4607F	20,00,000
7	BGR Fabricon India Pvt Ltd.	A-115, Ground Floor, Shakarpur, Delhi.	AABCB8092K	13,50,000
8	R. J. Fabtax Pvt Ltd	A-115, Vakil Chamber Shakarpur, Delhi-92.	AADCR3947D	6,00,000
9	Sten Bernie Surgical Laser Pvt Ltd	D-25, First Floor, Laxmi Nagar, Delhi-92.	AAICS0183K	26,00,000
10	ANJ Forex Services Pvt Ltd.	A-215, Ground Floor, Shakarpur , Delhi	AAGCA8287L	6,00,000

The Assessing Officer has sent notice u/s. 133(6) of the Act to ascertain the identity, genuineness and creditworthiness of 10 share applicants. However, the notices sent to 10 share applicants were returned un-served. As mentioned in para 3.5, it was mentioned that once the notice was sent to Shri Balaji Sainath Buildwel at B-1058, Shastri Nagar, Karol Bagh, Delhi, the postal department recorded that no such company existed at the given address. The Assessing Officer in paragraph No. 3.7 has reproduced the order sheet entry of the assessment proceedings dated 27.03.2014 to the following effect :

"27.03.2014

Shri Chetram Goyal, Director of the assessee company and Shri Shyam Goyal, CA, attended. Case discussed on the following points:

- The issue of receiving Rs. 1,31,50,000/- as share application money (with share capital and share premium) was discussed. It was asked whether there had been a valuation of the shares of the assessee company. The AR submitted that no valuation had been done. Rather, it was a tentative approximate value of the shares that was calculated based on the norms of the market.
- The AR was asked whether the assessee company had projected any expansion plans, or was in need of cash / working capital because of which taking such an amount as share premium was necessitated. To this, Shri Chetram Goyal responded that the assessee company was not in need of cash, but the amount so received was utilized in working capital of the company. It was only an investment opportunity presented by his uncle, and the assessee company responded by taking such investments.
- The details about the investors were also asked. Shri Chetram Goyal informed that all the investing concern belong to the same community, and might be related to each other.

Case discussed and adjourned sine die."

Based on the above said conclusion, the Assessing officer made and confirmed the addition of Rs.1,31,50,000/- and the findings recorded by the Assessing Officer in para 3.9 to 3.11 to the following effect :

3.9. The above discussion establishes this beyond doubt that the companies have been used as conduits to route the assessee company's unaccounted funds in the guise of share premium.

3.10. In view of the above discussion amount of Rs. 1,31,50,000/- received by the assessee company, during the year under consideration, in form of share application money and share premium are treated as unexplained credits of the assessee u/s 68 of the Income Tax Act and are added to the total income of the assessee for the year under consideration.

3.11. Penalty proceedings are separately being initiated for concealment of income / furnishing inaccurate particulars of income.

(Addition of Rs. 1,31,50,000/-)

3. The assessee feeling aggrieved by the order passed by the Assessing Officer preferred an appeal before the Commission. Before the Commissioner, the assessee had filed various written submissions and also filed documents. In all fairness, the Id. Commissioner has forwarded the documents to the Assessing Officer seeking his comments/remand report. The Assessing Officer vide letter dated 03.04.2017 had submitted the remand report and in the remand report, which is part of the appellate order, at page 30 it was mentioned as under :

“Ground No. 1. Addition of Rs.1,31,50,000/- on account of unexplained share application money received.

Reply of ground No. 1. On going through the record, it has been noted that the assessee has claimed to have received share application money from ten various companies to the tune of Rs.1,31,50,000/-. During the course of remand proceedings letters have also been issued to all the ten share applicants and all the applicants have confirmed to have share application except one applicant namely Shree Balaji Sainath Build Well Pvt. Ltd. through the assessee has claimed to have received share application amounting to Rs.2,00,000/-. The confirmation received has placed in the assessment file. This fact has also been examined by the ITO-1, Morena in the A.Y. 2012-13.

Further the categorical findings of the A.O. in the assessment order [para 3 to 3.11] cannot be ignored, hence, in view of the above finding the AO has rightly made the additions under s. 68 of the IT Act, 1961 as unexplained credits.”

3.1 Thereafter, the Commissioner discussed the order passed by the Assessing Officer and reproduced the order in para 5.1.5 to 5.6 as under :

“5.1.5. Now, from the discussion in the assessment order, it would appear that the Assessing Officer has disbelieved the genuineness of the transactions in respect of receipt of share application money aggregating to Rs. 1,31,50,000/- from the aforesaid ten parties treating the transactions as suspicious. The non-compliance with notices under sec. 133(6) of the Act by the parties lent support to the Assessing Officer to hold that the entries relating to share application money remained unexplained. However, whether the credit entries represented the income of the appellant company has to be examined strictly in the light of the provisions of section 68 of the IT Act. Whether the appellant company discharged its onus proof is to be judged from the material evidence brought on record.

5.1.6. In this case, the appellant company had filed (i) application forms for share application money; (ii) Copy of Assessee's Bank Account in which the share application money was credited; (iii), Names and addresses of the Share Applicants; and (iv) PAN of Share Applicants. Thus, it is apparent that the appellant company had discharged its primary onus of proof. It is further noted that the Assessing Officer having issued notices u/s 133(6) of the Act and such notices having been returned unserved, has not confronted the appellant with the facts and did not require it to adduce further evidence, if any, to prove the genuineness of the transactions. The finding of the Assessing Officer that the transaction of share application was not based on any formal valuation carried out by the assessee company, for determination of its share price; that the assessee company had no expansion plans which made it call for such substantial investment; and that the assessee company was in no requirement of cash of working capital so as to invite such an investment and the share applicants were closely related did not by itself prove that the credits appearing in the books of the appellant company in the form of share application money and share premium represented its income of the financial year relevant for the assessment year under consideration. Though the share applicants apparently did not respond to notices under sec. 133(6) of the Act, it is evident that during the course of remand proceedings letters have also been issued to all the ten share applicants and all the applicants have confirmed to have share application except one applicant namely Shree Balaji Sainath Build well Pvt. Ltd, though the assessee has claimed to have received share application amounting to Rs. 2.00,000/- The Assessing Officer reported that confirmation received is placed in the assessment file. He further reported that this fact has also been examined by the I.T.O.-I, Morena in the A.Y. 2012-13. The information placed on record further shows that the share applicants were in existence in the subsequent years, the present ACIT, Circle-2(I) has got confirmation from them during the year 2016-17 in the course of remand proceedings. There is also merit in submission of the appellant company that it has made substantial expansion in its business, as a result of which the turnover of the appellant increased to Rs. 12,79,02,891/-as against

the turnover of Rs. 7,16,66,316/- of the immediately preceding year, apart from new investment in stone business. On these facts and circumstances of the appellant, it is abundantly clear that the appellant company had discharged its onus of proving the ingredients of genuine credits under section 68 of the IT Act, 1961. Even in the case of Shree Balaji Sainath Build well Pvt. Ltd, the appellant company had filed confirmation and other documents to establish the identity and genuineness of the transaction of deposit of share application money of Rs.2,00,000/-. Neither during assessment proceedings, nor during remand proceedings, did the Assessing Officer put this issue to the appellant or undertake further enquiry to show that money has been introduced by the appellant in the garb of share application money and share premium.”

The basis of grant of relief to the assessee is that during the remand proceedings, all the share applicants have confirmed to have share applications except Shree Balaji Sainath Buildwell Pvt. Ltd. It was further reported that the share applicants were in existence which was confirmed by Income-tax Officer, Morena for the assessment year 2012-13.

4. The ld. DR had made various legal submissions and had submitted that neither the identity of the share applicants nor the genuineness of the transactions have been examined by the Commissioner and he had merely relied upon the remand report wherein the confirmation was filed by the share applicants stating that they have applied for shares. The ld. DR relied upon the following judgments :

- (i). CIT vs. Vacmet Packaging(India) Pvt. Ltd. ITA No. 1 of 2014- Alld. HC.
- (ii). CIT vs. Ultra Modern Exports Pvt. Ltd., ITA No. 262/2012 – Del. HC
- (iii). ITO vs. Babu Lal Jain, 116 TTJ – Jab-741-ITAT Jabalpur
- (iv). Cornerstone Property Investments Pvt. Ltd. vs. ITO-ITAT Bangalore
- (v). CIT vs. M/s. Soni Hospital Pvt. Ltd. ITA No. 588/Jp/2011-ITAT Jaipur

4.1. On the basis of the above said, it is submitted that the deletion of the additions made by the first appellate authority is without any basis and is therefore, required to be reversed by this Tribunal.

5. Per contra, the ld. AR had submitted that the requirement of law had duly been complied by the assessee which has been verified by the Assessing Officer in the remand proceedings. The confirmations as recorded by the Assessing Officer in the remand proceedings is forming part of the order of ld.CIT(A). However, our attention was drawn to paper book filed by the assessee where the assessee has compiled the following documents :

- (i). Confirmation letters
- (ii). ITRs for the assessment year 2012-13 and 2011-12
- (iii). Copy of bank account relevant to the transactions in respect of all the 10 companies.

5.1 On the basis of the above, it was submitted that the assessee has brought on record the necessary and sufficient evidence to satisfy that the share application was genuine transaction and there was no routing of money by way of share application money.

6. During the course of arguments we have directed the ld. DR to produce the (i)copy of the assessment order as mentioned by the ld. CIT(A) for the assessment year 2012-13, whereby the genuineness of these companies were confirmed and

examined by the ITO, (ii) the remand report and the context in which the remand report was sought. Pursuant to the direction issued by the Bench, the assessee had filed copy of the assessment order for the assessment year 2012-13 and the Revenue had also filed copy of the assessment order and the remand report. From the perusal of the assessment order for A.Y. 2012-13, it is the Assessing Officer in the assessment order mentioned as under :

करदाता कम्पनी ने वित्तीय वर्ष 2011-12 के दौरान अधिक से अधिक शेयर प्रियियम प्राप्त करने के आधार को जांचने हेतु कहा गया, निर्धारण कार्यवाही के दौरान सभी शेयर धारको को आयकर अधिनियम की धारा 133 (6) के तहत जारी कर उनसे प्राप्त पृष्टि पत्र एव. बैंक खाता, आयकर विवरणी की कॉपी आदि प्राप्त किये जिन्हें जॉचा एव. रिकार्ड पर रखा गया।

6.1 From the order of the Assessing Officer for A.Y. 2012-13, it is clear that the Assessing Officer in the F.Y. 2011-12 had examined the existence of the share applicants which was subject matter of the present appeal.

7. We have heard the rival contentions, perused the records and have also gone through the decisions cited by both the parties. At this stage, it would be sufficient to mention here that for the purpose of adjudicating the list pending before us what is necessary to determine is whether the assessee has discharged the onus cast upon him by virtue of section 68 of the Act or not. Essentially, this is a question of fact and therefore, it has to be decided based on the facts available on record and the judicial decisions cited by both the sides will be considered under the narrow compass. The Id. CIT(A) sent letter to the Assessing Officer along with the documents and written

submissions for submitting the remand report. The Assessing Officer had submitted the remand report and in the remand report, it was mentioned that the letters were sent to all the 10 share applicants and all the applicants have confirmed to have confirmed to have made the share application except one Balaji Sainath Buildwell Pvt. Ltd., as the notice sent was received un-served. The confirmations received were also placed on record by the Assessing Officer in the assessment file. Now, in the present case, there were total 10 share applicants, the details of which are mentioned in para 2.1. The Id. CIT(A) had relied on the decision on various parameters including following :

- (i). That the assessee had provided the copy of application forms for share application money;
- (ii). That the assessee had provided its bank account in which share application money was credited;
- (iii). Names and addresses of the share applicants were provided;
- (iv). PANs of share applicants were provided;
- (v). In the remand proceedings, the Assessing Officer had confirmed that nine applicants except Shree Balaji Sainath Buildwell Pvt. Ltd. (Sl. No. 4) had confirmed the share applications made by them.

7.1 The Assessing Officer in the remand report has not brought on record or otherwise after issuing notices u/s. 133(6) to the said share applicants that the companies were having the sufficient funds in their account before making

application for allotment of shares. The AO has not brought on record that the cash amount was deposited in the bank account by these share applicants before applying for the allotment of shares. The AO has also not brought on record that the money belonging to the assessee have been routed by way of share application money through conduit of these share applicants. In our considered opinion, once the share applicants (9) were traceable, their PANs, bank accounts, returns of income are available with the Assessing Officer and also available in the form of Paper Book before the Tribunal, where specific share transactions have been entered and shown by the applicants, in that eventuality, in our considered opinion, the assessee was able to discharge his onus. For the purpose of bringing home the addition u/s. 68 of the Act, it is necessary that the onus shifted to the Assessing Officer is required to be discharged by the Assessing Officer, as the primary onus had already been discharged by the assessee. There is one more reason that besides confirming by way of remand report, the Assessing Officer in the assessment year 2012-13 in the assessment order had again confirmed that after issuance of notices u/s. 133(6) of the Act, the share applicants, their confirmations, ITRs etc. were examined/verified and kept on record. In view of the above, in our considered opinion, nothing has been brought on record by the Assessing Officer or by the Id. DR before us which shows that the share applications made were not in accordance with law. Therefore, the addition deleted by the Id. CIT(A) is required to be declared void. In fact, the Assessing Officer is bestowed with ample powers u/s. 133(6) as

well as section 142(2) of the Act. The Assessing Officer should have exercised all his powers at his ends and should have made enquiries and brought on record some cogent material contradicting the confirmations made in the remand report as well as subsequent assessment order for the assessment year 2012-13. Nothing has been brought on record and therefore, we do not find any perversity or illegality in the order passed by the Id. CIT(A). Our view is supported by the decision of Delhi High Court in the matter of fair Finvest Ltd., 357 ITR 146 (Del). The relevant finding of Hon'ble High court in paragraph No. 6 is as under :

6. This Court has considered the submissions of the parties. In this case the discussion by the CIT(Appeals) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the Directors, Form 2 filed with the ROC by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the assessing officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the assessing officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the assessing officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of Section 68.

8. The Id. DR had relied upon the following judgments in the synopsis :

- (i). CIT vs. M/s. Vacmet Packaging (India) Pvt. Ltd. (Alld. HC)
- (ii). CIT vs. Ultra Modern Exports Pvt. Ltd.(ITA No. 262/2012 –Del. HC
- (iii). Cornerstone property Investments Pvt. Ltd. vs. ITO dated 09.02.2018 (ITAT Bangalore)
- (iv). DCIT vs. M/s. Soni Hospital Pvt. Ltd.(ITA No. 588/Jp/2011-ITAT Jaipur

- (v). PCIT vs. NRA Iron & Steel Pvt. Ltd. (SC)
- (vi). Mahaveer Kumar Jain vs. CIT (Civil Appeal No. 4166 of 2006 – SC)
- (vii). Jagmohan Ram Ram Chandra vs. CIT, 1993 CTR All-153(Alld. HC)

9. We have gone through all the decisions relied by the ld. DR. The facts of none of these cases are similar to the case before us, as in none of the matter, the Assessing Officer had confirmed the bank accounts, ITRs and issuance of certificates as it has been done in the present case of the share applicants. In our view one the share applicants are traceable by way of PAN, ITRs, Bank accounts and are also responding to the notices u/s. 133(6) of the Act then it is for the Assessing Officer to bring on record the material in the form of extra premium paid to the assessee for the shares and that the case was deposited prior to issuance of cheques. Nothing has been done in the present case. Thus, in the peculiar facts and circumstances of the instant case, the judgments relied upon by the ld. DR are not applicable to the facts of the present case.

10. In the result, the appeal filed by the Revenue is devoid of merits and accordingly, the same is dismissed.

Order pronounced in the open court.

Sd/-
(Dr. Mitha Lal Meena)
Accountant Member

Sd/-
(Laliet Kumar)
Judicial member

Dated:
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