

IN THE INCOME-TAX APPELLATE TRIBUNAL "H" BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI PAWAN SINGH JUDICIAL MEMBER  
ITA No. 4484/Mum/2017 (Assessment Year 2012-13)

Shri Kabeer Khan Cold Storage Pvt Ltd. 33, Jasmine Villa, Opposite, YMCA Ground , Mumbai-400008. <b>PAN: AAECK3490K</b>	Vs.	Income Tax Officer 5(2)(2) Mumbai
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Appellant

Respondent

Appellant by

: None

Respondent by

: Shri B. Srinivas CIT-DR

Date of Hearing

: 08.08.2019

Date of Pronouncement

: 08.08.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT  
PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Commissioner (Appeals)-10, Mumbai dated 24<sup>th</sup> March 2017, which in turn arises from assessment order dated 30<sup>th</sup> March 2015 passed under section 143 (3) of the Income –tax Act (Act) for assessment year 2012- 13. The assessee has raised following grounds of appeal:

- (i) *On the facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in adding the share capital money of ₹ 63 crore under section 68 of the Income tax Act 1961, without considering the facts of the case.*
- (ii) *The appellant craves, leaves to add, alter, amend is or deletes any grounds of appeal at the time of hearing.*

2. Brief facts of the case as gathered from the order of lower authorities are that assessee is a company engaged in the business of development of

Cold storage and Warehouse, filed its return of income on 12<sup>th</sup> September 2012, declaring total income of Rs. nil and current year loss of ₹ 5640/-. Thereafter, assessee filed revised return on 31<sup>st</sup> March 2014, declaring Nil income and loss of current year of ₹ 9475/-. The assessment was completed on 30<sup>th</sup> March 2015 determining total income at ₹ 63 crore by making addition under section 68. The assessing officer made addition under section 68 by taking his view that there was no banking transaction of share application money received from 44 parties. During the assessment the assessee was asked to explain the mode of receipt of share application from 44 parties. It was explained on behalf of assessee that none of the parties has given any cheque for purchase of shares from the assessee company and that the shares were bought from the shares transfer from different companies. The assessee also filed the copy of agreement for transfer of shares and consideration of allotment of shares on premium. After perusal of those agreements and detail of investment, the assessing officer took his view that the agreements were made at Calcutta and the companies are from the Delhi, Haryana and from Calcutta. The agreements are not authentic; all these agreements are made on plain papers and are signed by one of the director of Assessee Company or by authorised signatory of the other companies. The assessee also filed two different Audit report. The assessing officer also issued notice under section 133(6) of the Act. The notices were returned back by

the postal authorities with the remark 'left' or 'not known'. The assessing officer has recorded these categorical finding from para 5 to 10 of the assessment order. On appeal before Commissioner (Appeals) the action of assessing officer was confirmed. Thus, further aggrieved by the order of Commissioner (Appeals) the assessee has filed present appeal before Tribunal.

3. This appeal was fixed on 8<sup>th</sup> August 2019, none appeared on behalf of the assessee nor is any application for seeking adjournment filed. Perusal of record reveals that the notices sent through registered post were returned back by the postal authorities with the remark of postal authorities 'left'. Notice for hearing fixed on 8<sup>th</sup> August 2019, was also directed to be served through learned departmental representative (DR). A report of ward inspector, who was deputed to serve the notice, was furnished by Id. DR for the revenue. Perusal of report of inspector reveals that no such address belonging to the assessee company could be found at the given address, the watchman of society confirmed that there is no such assessee company available on the given address. In these circumstances, we left no option except to hear the submission of learned DR for the revenue and to decide the case on the basis of material available on record.
4. The learned DR for the revenue supported the order of assessing officer. The learned DR further submit that during the assessment as well as before first appellate authority the assessee failed to prove the transaction

of alleged share application money. The assessee failed to prove the identity of parties, creditworthiness and the genuineness of transaction. The assessee has received huge amount by way of share application money on the basis of self-serving agreements, since assessee failed to discharge the onus lies on the assessee, the assessing officer made addition under section 68, which were confirmed by learned first appellate authority. Before, Tribunal the assessee has neither filed any documentary evidence nor any submission to substantiate their contention. Therefore, the order of learned Commissioner (Appeals) is liable to be sustained.

5. We have considered the submission of learned DR for the revenue and perused the material available on record. We have noted that during the assessment the assessing officer noted that the assessee has received share application money from 44 parties. All the share application money was received without any banking channel. When this fact was confronted to the assessee the assessee filed copy of various agreements. The assessing officer examined those agreements. And scanned the copy of one of such agreement is referred at page 4 of the assessment order. The assessing officer noted that the similar agreements were exhibited with other remaining 43 parties. The assessing officer has recorded the details of all share replica and in para 7 of the assessment order. The assessing officer issued notice to various share applicants companies under section 133(6).

None of the parties were served with the notice of assessing officer. The notices were written back with the remark of proposal authorities that 'no such person exists' or 'left'. The assessing officer treated the entire amount as unexplained cash credit under section 68.

6. During the first appellate stage the assessee made similar submissions and furnished similar documents, as furnished to the assessing officer. The assessee also relied upon the decision of Hon'ble Bombay High Court in Vodafone India Services Private Limited (368 ITR 1 Bombay). The contention of assessee was accepted by learned Commissioner (Appeals) holding that premium received in the taxable under the head "income from other sources" after amendment by Finance Act, 2012 under section 56(2)(vii) of the Act, if the shares exceed the fair market value. However, learned Commissioner (Appeals) accepted the contention of assessee that the amendment made by way of Finance Act is not applicable for the year under consideration. However, the same can be brought to the tax as deemed receipt under section 68, if the credit in the books of account is not explained by the assessee by fulfilling the ingredients of section 68; with regard to identity of parties, creditworthiness and genuineness of transaction. Since the assessee failed to substantiate its contention, therefore, the appeal of assessee was dismissed. Before, us neither the assessee has filed any written submissions nor any documentary evidence or any written submission nor come to explain the facts before us. There

is no material before us to substantiate the grounds of appeal raised by assessee. Therefore, we do not find any reasons to interfere with the finding of learned Commissioner (Appeals), which we affirm. In the result the grounds of appeal raised by assessee are rejected.

7. In the result appeal of the assessee is dismissed.

Order pronounced on 8<sup>th</sup> August 2019 in the open court while hearing the appeal.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 08.08.2019

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**Copy of the Order forwarded to :**

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|-------------------------------|----------------------|
| 1. Assessee                   | 2. Respondent        |
| 3. The concerned CIT(A)       | 4. The concerned CIT |
| 5. DR "H" Bench, ITAT, Mumbai |                      |
| 6. Guard File                 |                      |

**BY ORDER,**

**Dy./Asst. Registrar**  
**TAT, Mumbai**