

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA Nos.3456/Del/2017 & 7644/Del/2018
Assessment Year: 2012-13

Mahalaxmi Crafts & Tissues (P) Ltd., Jansath Road, Muzaffarnagar.	Vs	ACIT, Circle-1, Muzaffarnagar.
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PAN: AADCM1213B

(Appellant)

(Respondent)

Assessee by	:	Shri R.S. Singhvi, CA & Shri Satyajeet Goel, CA
Revenue by	:	Ms Rakhi Vimal, Sr. DR
Date of Hearing	:	19.11.2019
Date of Pronouncement	:	25.11.2019

ORDER

PER R.K. PANDA, AM:

ITA No.3456/Del/2017 filed by the assessee is directed against the order dated 26th March, 2017 of the CIT(A), Muzaffarnagar, relating to assessment year 2012-13. ITA No.7644/Del/2018 filed by the assessee is directed against the order dated 28th September, 2018 of the CIT(A), Muzaffarnagar, relating to assessment year 2012-13 wherein the assessee has challenged the penalty levied u/s 271(1)(c) of the IT Act. For the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.3456/Del/2017

2. The grounds raised by the assessee are as under:-

“1. The L'd Commissioner of Income Tax (Appeals) has erred in sustaining addition of Rs 3,00,00,000/- credited in the books of assessee as share application money. Observations made, inferences drawn and findings recorded are against the facts and circumstances of the case.

2. The L'd Commissioner of Income Tax (Appeals) has failed to appreciate the facts and circumstances of the case while sustaining the disallowance of Rs 27,072/- U/S 40A(3) of the Income Tax Act, 1961.

3. That the L'd Commissioner of Income Tax (Appeals) has erred on facts and law in sustaining addition of Rs 2,83,160/- alleged to be interest income of this year.”

3. The ld. counsel for the assessee, at the outset, did not press ground of appeal No. 2 on account of smallness of the amount for which the ld. DR has no objection. Accordingly, ground No.2 is dismissed.

4. So far as ground No.1 is concerned, the same relates to the order of the CIT(A) in sustaining the addition of Rs.3 crores made by the Assessing Officer u/s 68 of the IT Act being share application money received by the assessee.

5. Facts of the case, in brief, are that the assessee is a private limited company and is engaged in the business of manufacturing of craft paper. It filed its return of income on 27.09.2012 declaring the total income at Rs.17,07,650/-. However, tax was paid u/s 115JB on book profit of Rs.36,83,044/-. During the course of assessment proceedings, the Assessing Officer noted that there is increase in share capital and share premium aggregating to Rs.3 crores which is depicted in Schedule-1 to the balance sheet. The assessee, during the impugned assessment year, has issued 3 lakh

shares of face value of Rs.10/- at a premium of Rs.90/-. He, therefore, asked the assessee to prove the identity, genuineness and credit worthiness of the shareholders from whom such money has been received on this account. From the details filed by the assessee, the Assessing Officer noted that the assessee has issued 3 lakhs shares to the following entities:-

S. No.	Name of the shareholder	No. of shares allotted	Total amount received including premium
1.	M/s Ram Alloys Casting Pvt. Ltd.	65000	6500000
2.	M/s Auxin Impex Pvt. Ltd.	57000	5700000
3.	M/s Vibgyor Contractors Pvt. Ltd.	33000	3300000
4.	M/s Swami Advertising Pvt. Ltd.	15000	1500000
5.	M/s B.G. Freight Shoppe India Pvt. Ltd.	30000	3000000
6.	M/s All Time Buildtech Pvt. Ltd.	30000	3000000
7.	M/s All Time Softech Pvt. Ltd.	70000	7000000
	Total	300000	30000000

6. The assessee filed photo copies of share application form, photo copies of other documents like income-tax return acknowledgement, bank statement, PAN card, etc. However, no confirmation in original or photo copy form was filed. In order to verify the identity, genuineness and credit worthiness of the said transaction as well as that of alleged investors, the Assessing Officer issued notice u/s 133(6) in the address given on the said documents. He noted that in some of the cases, the notices were returned unserved by the Postal Authorities with the remarks 'left' or 'wrong address.' In certain cases, there was no response from the investor companies. The Assessing Officer, therefore, asked the assessee to produce the above entities with proper evidence. However, due to non-compliance from the side of the assessee to

substantiate with evidence to his satisfaction regarding the identity and credit worthiness of the investor companies and the genuineness of the transactions, the Assessing Officer, relying on various decisions made addition of Rs.3 crores to the total income of the assessee u/s 68 of the Act.

7. Before the CIT(A), the assessee filed an application under Rule 46A of the IT Act for admission of certain additional evidences such as acknowledgement of ITR for the year under consideration, copy of PAN card, jurisdiction of the Assessing Officer under the IT Department, copy of the master data available at the Registrar of Companies, confirmations of share applicants, photo copy of certificate of share as obtained from the Share Applicant, Board Resolution of the share applicant along with confirmation, Memorandum & Articles of Association of the Share Applicant Company and Balance Sheet & Profit & Loss Account of the Share Applicant company.

8. The Id.CIT(A) admitted the additional evidences and called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and rejoinder of the assessee to such remand report, the Id.CIT(A) confirmed the addition made by the Assessing Officer u/s 68 of the Act in respect of the share application money and share premium.

9. Aggrieved with such order of the CIT(A), the assessee is in appeal.

10. The ld. counsel for the assessee, at the outset, submitted that the assessee has discharged the onus cast on it by producing all the relevant documents before the lower authorities. He submitted that all the share applicant companies have in their balance sheet sufficient funds in shape of share capital and free reserves. Therefore, merely because the income of these concerns are very low, the same cannot be a ground to disbelieve the investments made by them especially when the assessee has discharged its onus by producing the relevant material to substantiate the identity and credit worthiness of the investor companies and the genuineness of the transactions. Referring to the provisions of section 68, he submitted that the onus on the assessee to prove the source of the source is only after the amendment. However, since the impugned assessment year is 2012-13, therefore, the amendment of the provisions of section 68 is not applicable and the onus lies with the Assessing Officer to disprove the ingredients of section 68 when the assessee has filed all the necessary details substantiating the identity and credit worthiness of the investor companies and genuineness of the transaction. He submitted that in the case of the assessee all the investor companies are Delhi based companies and these are not Kolkata based companies or entry providing companies.

10.1 Relying on the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. Goodview Trading (P) Ltd.*, reported in 77 taxman.com 204, he submitted that the Hon'ble High Court in the said decision has held that where the CIT(A), after analyzing the net worth of the share applicant companies has noticed that they

possessed substantial amounts to invest in assessee company, no addition could be made u/s 68 of the Act.

10.2 Referring to the decision of the Delhi Bench of the Tribunal in the case of *ITO vs. Computer Home Information Plus Pvt. Ltd*, vide *ITA No.5680/Del/2016*, order dated 24th May, 2019, he submitted that the Tribunal in the said decision has held that when the transactions are done through proper banking channel and the source of funds are clearly established from the bank statement of the lender companies, merely because their income is meager cannot be a ground to make the addition u/s 68 of the Act.

10.3 Referring to various pages of the paper book, he submitted that since the assessee, in the instant case, has filed all the relevant details substantiating the identity and credit worthiness of the investor companies and the genuineness of the transaction, therefore, in view of the decisions cited above and in the light of the decision of the Hon'ble Supreme Court in the case of *Lovely Exports*, reported in 319 ITR 005, the addition made by the Assessing Officer and sustained by the CIT(A) is not justified.

11. In his alternate contention, the ld. counsel, referring to the decision of this Bench of the Tribunal in the case of *Mannat Hospitality (P) Ltd. vs. ITO*, vide *ITA No.7348/Del/2018*, order dated 7th June, 2019, for assessment year 2009-10, submitted that under identical circumstances, the Tribunal has restored the issue to the file of the Assessing Officer with a direction to decide the issue afresh in the light of

the decision of the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron and Steel Pvt. Ltd, order dated 05.03.2019* and the decision of the Hon'ble Delhi High Court in the case *PCIT vs. NDR Promoters Pvt. Ltd, 2019-TIOL-172-HC-DEL-IT*. Referring to the Standard Operating Procedure issued by the CBDT, for deciding issues involving addition u/s 68, he submitted that the said Standard Operating Procedure was issued by the CBDT after the order of the CIT(A). He accordingly submitted that the issue may be restored to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and credit worthiness of the investor companies and the genuineness of the transaction.

12. The Id. DR, on the other hand, strongly supported the order of the Assessing Officer and the CIT(A) and submitted that the addition made by the Assessing Officer and sustained by the CIT(A) should be upheld and the matter need not be restored to the file of the Assessing Officer. She submitted that the assessee was given ample opportunities by the Assessing Officer as well as by the CIT(A). The Id.CIT(A) has called for three remand reports from the Assessing Officer. So far as the argument of the Id. counsel for the assessee regarding the Standard Operating Procedure is concerned, she submitted that none of the actions of the Assessing Officer can be said to be inconsistent with that of the Standard Operating Procedure. She submitted that a perusal of the income-tax returns filed by the investor companies show that they have returned very meager income. The notices issued u/s 133(6) by the Assessing Officer

were returned unserved by the Postal authorities with the remarks: 'wrong address' or 'left' or 'insufficient address' speak volumes. The Inspector who was deputed to visit some of the investor companies has reported that these are merely paper companies. Therefore, this matter should be decided here itself and there is no need for restoring the matter to the lower authorities. Referring to the following decisions, she submitted that when the onus to establish the identity and credit worthiness of the investor companies and genuineness of the transactions is on the assessee and the assessee has miserably failed to prove the same, the addition made by the Assessing Officer and sustained by the CIT(A) should be upheld:-

- i) PCIT vs. NRA Iron & Steel Pvt. Ltd. (SC) dated 05.03.2019;
- ii) PCIT vs. NDR Promoters Pvt. Ltd. (2019-TIOL-172-HC-DEL-IT);
- iii) CIT vs. MAF Academy (P) Ltd., 361 ITR 258;
- iv) CIT vs. Navodaya Castle Pvt. Ltd. (2014) 367 ITR 306 (Del);
- v) Navodaya Castle Pvt. Ltd. vs. CIT (2015-TIOL-314-SC-IT);
- vi) Konark Structural Engineering (P) Ltd. vs. DCIT (2018) 96 Taxmann.com 255 (SC);
- vii) Konark Structural Engineering (P) Ltd. vs. DCIT (2018) 90 taxmann.com 56 (Bombay);
- viii) Pratham Telecom India Pvt. Ltd. vs. DCIT (2018-TIOL-1983-HC-MUM-IT)
- ix) CIT vs. Nipun Builders & Developers (P) Ltd., 30 taxmann.com 292;
- x) CIT vs. Nova Promoters & Finlease (P) Ltd., 18 taxmann.com 217;
- xi) CIT vs. NR Portfolio Pvt. Ltd. (2014) 42 taxmann.com 339 (Delhi);

xii) CIT vs. Empire Builtech (P) Ltd., 366 ITR 110;

xiii) PCIT vs. Bikram Singh (2017) 85 taxmann.com 104 (Del); &

xiv) ITO (E) vs. M/s Synergy Finlease Pvt. Ltd., ITA No.4778/Del/2013, order dated 08.03.2019.

13. She also relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Titan Securities Ltd., vide ITA 263/2012, order dated 28th February, 2013.

13.1 We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer, in the instant case, made addition of Rs.3 crores u/s 68 of the IT Act being the amount received by the assessee on account of issue of 3 lakhs share of Rs.10/- each at a premium of Rs.90/- on the ground that the assessee could not fulfill the ingredients of section u/s 68 of the IT Act, 1961 by proving the identity and the credit worthiness of the investor companies and the genuineness of the transaction. We find the Id.CIT(A), after considering the three remand reports from the Assessing Officer and the rejoinder of the assessee to such remand report, confirmed the addition made by the Assessing Officer u/s 68 of the Act. It is the submission of the Id. counsel that the assessee has proved the identity and credit worthiness of the investor companies and the genuineness of the transaction by providing all the relevant data. It is his submission that merely because the investor companies are showing meager income in their return of income, the same cannot be a ground for making the addition u/s 68 of the Act so long as the investor companies possessed sufficient funds in their

balance sheet. It is also his alternate contention that the matter may be restored to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate his case with evidence to his satisfaction in the light of the recent decision of the Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (supra) and the decision of the Hon'ble Delhi High Court in the case of NDR Promoters Pvt. Ltd. (supra).

14. We find, subsequent to the order of the CIT(A) decision on the issues of bogus share capital and share premium were decided by the Hon'ble Delhi High Court in the case of CIT vs. NDR Promoters and by the Hon'ble Supreme Court in the case of CIT vs. NRA Iron & Steel Pvt. Ltd. Neither the assessee nor the Assessing Officer or the CIT(A) had the benefit of the various observations of the Hon'ble apex court and the Hon'ble Delhi High Court in the cases cited (supra) regarding taxability of such share capital and share premium received in the hands of the assessee. Further, it is also an admitted fact that the assessee was not provided with any adverse material which has been used by the Assessing Officer while framing the assessment a statement made by the ld. counsel for the assessee and not controverted by the ld. DR. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate with evidence to his satisfaction regarding the identity and credit worthiness of the share applicants and the genuineness of the transactions. The Assessing Officer, if feels necessary, may summon the directors of the investor companies or ask the assessee to produce the directors of the investor

companies. The Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. Further, while doing so, the Assessing Officer shall keep in mind the decision of the Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (supra) and the decision of the Hon'ble Delhi High Court in the case of NDR Promoters Pvt. Ltd. The ground of appeal No.1 raised by the assessee is accordingly allowed for statistical purposes.

15. So far as ground No.3 is concerned, the same relates to the order of the CIT(A) in sustaining the addition of Rs.2,83,160/- alleged to be interest income for this year.

16. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed from ITS details that the assessee company has earned interest income of Rs.3,03,754/-. However, in the Profit & Loss Account, interest income of Rs.20,594/- was declared. On being asked by the Assessing Officer, it was submitted that the said extra income was booked in the subsequent year. However, in absence of any evidence furnished to this effect and considering the fact that in the 26AS form the said interest income has been credited in the account of the assessee in this fiscal year, the Assessing Officer made addition of Rs.2,83,160/- being the difference between the amount reflected in the 26AS and the amount declared by the assessee. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer on the ground that the assessee could not substantiate the same by producing

necessary evidence and co-relating the same with the method of accounting followed by it i.e., cash or mercantile.

17. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

18. The ld. counsel for the assessee submitted that the assessee has declared the income on receipt basis and in the subsequent year the same income has been offered to tax. He submitted that the same income cannot be taxed twice i.e., once in this year and again in the subsequent year and, therefore, necessary set off should be given and in case the interest income is added during this year, the same should be directed to be deleted in the subsequent year when the assessee has offered the same.

19. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

20. We have considered the rival arguments made by both the sides and perused the relevant material on record. We find the Assessing Officer made addition of Rs.2,83,160/- being the difference between the interest income as per 26AS and the interest income declared by the assessee. The CIT(A) upheld the action of the Assessing Officer on the ground that the assessee could not substantiate by producing necessary evidence that the balance interest has been offered to tax in the subsequent year after the same was credited in the bank account of the assessee. It is the submission of the ld. counsel for the assessee that the interest income has been shown on receipt basis and since the assessee has offered the same to tax in the subsequent year, no addition is called for during this year. We find some force in the argument of

the Id. counsel that an income cannot be taxed twice. However, it is a matter of record that the assessee has not substantiated by producing necessary evidence either before the Assessing Officer or before the CIT(A) that the balance interest has been offered to tax in the subsequent year. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate its case and decide the issue as per fact and law. We hold and direct accordingly. Ground No.3 is accordingly allowed for statistical purposes.

ITA No.7644/Del/2018

21. The assessee in its grounds of appeal has challenged the order of the CIT(A) in confirming the penalty of Rs.98,34,200/- levied by the Assessing Officer u/s 271(1)(c) of the IT Act.

22. After hearing both the sides, we find the quantum appeal has been restored to the file of the Assessing Officer for fresh adjudication. Therefore, the penalty so levied by the Assessing Officer and upheld by the CIT(A) has no legs to stand. Accordingly, the penalty levied by the Assessing Officer and sustained by the CIT(A) is cancelled. However, the Assessing Officer is at liberty to initiate fresh penalty proceedings and levy penalty u/s 271(1)(c) of the IT Act, if so required, after completion of the assessment. The grounds raised by the assessee are accordingly allowed.

23. In the result, the appeal in ITA No.3456/Del/2017 is partly allowed for statistical purposes and ITA No.7644/Del/2018 is allowed.

The decision was pronounced in the open court on 25.11.2019.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 25th November, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi