

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

I.T.A. No. 6897/DEL/2015		
A.Y. : 2011-12		
DCIT, CENTRAL CIRCLE 20, 1 ST FLOOR, ROOM NO. 104, E-2 ARA CENTRE, JHANDEWALAN NEW DELHI - 110 055	VS.	M/S SINCERE DEVELOPERS PVT. LTD. 3/16, WEST PATEL NAGAR, NEW DELHI (PAN: AABCE1738P)
(ASSEESSEE)		(RESPONDENT)

Revenue by : Ms. Nidhi Srivastava, CIT(DR)
Assessee by : Sh. Kapil Goel, Adv.

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 30.10.2015 of the Ld. CIT(A)-27, New Delhi relevant to assessment year 2011-12.

2. The grounds raised in the appeal read as under:-

1. That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.2,90,00,000/- made

u/s. 68 of the Act, without properly appreciating the facts and circumstances as the assessee has failed to prove the genuineness and creditworthiness of the investor.

2. That the Ld. CIT(A) erred in law and on facts in ignoring the fact that the companies from which share capital was introduced are not doing any genuine business activities but merely acting as conduit to conduit the funds a part of scheme of providing accommodation entries.

3. The brief facts of the case are that a search and seizure operation was carried out at the premises of the assessee on 18.12.2012. Assessee is a company filed its return of income at Rs. NIL on 23.12.2014. The AO made an addition of Rs. 2.90 crores as undisclosed income u/s. 68 of the Income Tax Act, 1961 (in short "Act") on account of receipt of share application money and passed order dated 31.03.2015 u/s. 143(3)/153A of the Act. Against the said assessment order dated 31.03.2015, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 30.10.2015 allowed the

appeal of the assessee by holding that the Assessee has produced and proved the identity, genuineness and creditworthiness of the investors and the assessee has discharged the onus lies on him, hence, he deleted the addition in dispute. Against the impugned order, Revenue is in appeal before the Tribunal.

4. At the time of hearing, Ld. CIT(DR) relied upon the order passed by the Assessing Officer and stated that it is quite evident that the assessee has received cheques of Rs. 2.90 crores as share application money from such, operators through transaction, where in fact no real transactions were took place. The genuineness and creditworthiness of the persons giving share application money to the assessee is not proved and the assessee failed to discharge its onus of proving the genuineness and creditworthiness of the person who claimed to be the share holder of the assessee company. The assessee has completely failed in discharging its onus of genuineness of the transactions and creditworthiness of the entities from where the credits have been appearing in the books of assessee. Hence, the AO has rightly made the

addition of Rs. 2.90 crores u/s. 68 of the Act as unexplained credits in the books of assessee. In view of above, she requested to allow the appeal of the Revenue.

5. On the contrary, Ld. Counsel for the assessee relied upon the impugned order passed by the Ld. CIT(A) and stated that Ld. CIT(A) has passed well reasoned order which does not need any interference.

6. We have heard both the parties and perused the orders passed by the revenue authorities. We note that the assessee has submitted all the desired information in respect of investor company before the lower authorities viz. Annual Report and Audited Balance sheet; Bank Statements- Indusind Bank and Development Commercial Bank; Bank Statement and Bank Ledger A/c of Appellant showing the transactions with Investor company; Books of accounts and ledger accounts of Bhagwati Dealers Pvt. Ltd. showing the transactions with Assessee company; Annexure D, H and Chart showing complete details of shareholders; amount invested and the source of source of fund; This contains all the applicable information as desired by AO; Share Application forms;

Confirmation letter; Affidavit for investment in Appellant company; Memorandum & Articles of Association of Investor company; Share Holder Register; Income Tax Return; Produced Director of the Company for personal deposition and confirmation for the investment in share Application of the Appellant Company; Evidences to prove source of source (source of Bhagwati Dealers Pvt. Ltd.) [BDPL]. The following documents were submitted in support:

- a. Share Allotment advice to BDPL Investors
- b. Share application form from BDPL Investors
- c. Bank statement of BDPL Investors
- d. ITR V of BDPL Investors
- e. MOA of BDPL Investors

6.1 We find that in the above cited information neither any anomaly was found by the Ld. CIT(A) nor pointed out by the AO. We note that the AO has made a general discussions in his assessment order describing what all a typical entry operator docs, without going into the facts of the assessee's case. The AO himself, while acknowledging the submissions of various

documents as proof of its identity, creditworthiness and genuineness of the transaction in his assessment order itself, has contradicted the same while making his grounds for making the additions. The contention of the assessee is that even the Director of the Investor company was produced by the assessee and his statement was recorded by him only. In the statement he could not extract anything from the Director that could prove that the investment made by his company is bogus investment in Assessee Company. On the contrary the Director produced all the evidences to prove his identity in the form of more than two identity proofs, audited balance sheets with high net worth, the various documents to support source of source and confirmation of his investments. Thus, the assessee has produced and proved the identity, genuineness and creditworthiness of the investors and Assessee has discharged the onus lies on him. In view of the above, it is established that assessee has discharged its onus and has proved Identity, creditworthiness and genuineness of the transactions and thus the addition of Rs 2,90,00,000/- as made by the A.O. u/s. 68 of the Income Tax Act 1961 was rightly deleted by the Ld. CIT(A), which does not need any

interference on our part, hence, we uphold the said action of the Ld. CIT(A) and reject the grounds raised by the Revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 16/12/2019.

Sd/-
[DR. B.R.R. KUMAR]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 16/12/2019

SRB

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches