

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI S. RIFAUR RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 996/MUM/2017
Assessment Year: 2008-09**

M/s Creation Publicity Pvt. Ltd., First Floor, Parekh Vora Chambers, 66, Nagindas Master Road, Fort, Mumbai - 400001 PAN: AABCC2192B	Vs.	The ACIT, Circl-2(1)(1), Mumbai
(Appellant)		(Respondent)

Assessee by : None

Revenue by : Shri Abdul Hakeem M. (DR)

Date of Hearing: 16/09/2019
Date of Pronouncement: 31/10/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 09.12.2016 passed by the Commissioner of Income Tax (Appeals)-3 (for short 'the CIT(A), Mumbai, for the assessment year 2008-09, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in the business of outdoor advertising filed its return of income for the assessment year under consideration declaring total income of Rs. 1,09,37,203/- The return was processed u/s 143(1) of the Act. Subsequently, search and seizure action was carried out in the case of Mahasagar Securities Pvt. Ltd., which revealed that the said company had been engaged in providing bogus/accommodation entries in order to enable the clients to claim speculative profit/loss, short term

capital gain and long term capital gain and the assessee company is one of the beneficiaries of such accommodation entries during the year relevant to the assessment year under consideration. On the basis of the said information the AO reopened the case u/s 147 of the Act after issuing notice u/s 148 of the Act. In response to notice u/s 143(2) and 142(1) of the Act, the authorized representative of the assessee appeared before the AO and presented the assessee's case. Since the assessee had purchased shares of M/s Koshal Soft through Alliance Intermediaries, one of the group companies of Mahasagar Securities Pvt. Ltd., for a sum of Rs. 1,13,354/- the assessee was asked to furnish the details. However, the assessee contended that it had never purchased shares of M/s Koshal Soft. Since, the name of the assessee company was appearing in the list of beneficiary companies, and since the assessee failed to explain as to how its name is appearing in the list, the AO rejecting the contention of the assessee made addition of the said amount to the income of the assessee.

3. It was further noticed that the assessee had treated a sum of Rs. 16,21,900/- as charge on income by the overriding title. The assessee has claimed to have paid the said amount to Tulsi Foundation Trust as per the Memorandum of Association and Article of Association. The AO rejecting the contention of the assessee made addition of the said amount to the income of the assessee and determined the total income of the assessee at Rs. 1,26,72,450/-. The assessee challenged the assessment order before the Ld. CIT(A), who after hearing the assessee dismissed the appeal and confirmed the additions made by the AO. The assessee is in appeal against the said findings of the Ld. CIT(A).

4 The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. *“Addition with regard to Unexplained investments*

1.1 *On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming addition of Rs. 1,13,354/- to the income of the assessee on the basis of*

wrong averment by Shri Mukesh Choksi though the assessee have had no transactions with Shri Mukesh Choksi and/or M/s Kushal Soft and /or M/s Mahasagar Securities.

2. *Addition with regard to Diversion of income from source by overriding title*

On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming addition of Rs. 16,21,900/- to the income of the assessee and failing to appreciate that as there had been diversion of the said sum of Rs. 16,21,900/- was not received by the assessee as the income of the assessee.”

5. This case was fixed for hearing on 16.09.2019. However, on the said date, when the case was called out for hearing, none appeared on behalf of the assessee. From the record, we observed that the assessee had not appeared on the last so many dates of hearing and even no application for adjournment was moved. From the conduct of the appellant/assessee we are convinced that the assessee is not interested in pursuing its appeal. Accordingly, we decided to dispose of the appeal on the basis of material on record after hearing the departmental representative (DR). Accordingly, we asked the Ld. DR to argue the case on behalf of the Revenue.

6. The Ld DR, relying on the concurrent findings of the authorities below, submitted that since the assessee failed to rebut the evidence collected by the AO during the assessment proceedings or during the appellate proceedings, the Ld. CIT(A) has rightly confirmed the addition of Rs,1,13,345/- made by the AO. Similarly, since the assessee has failed to justify the payment of Rs. 16,21,900/- allegedly made to Tulsi Foundation Trust, before the authorities below, the Ld. CIT(A) has rightly, confirmed the addition of the said amount to the income of the assessee.

7. We have perused the material on record in the light of the grounds of appeal raised by the assessee and the submissions made by the Ld DR. The Ld.

CIT(A) has confirmed the addition of Rs,1,13,345/- made by the AO mainly on the ground that the assessee has failed to rebut the evidence collect by the AO including the documents seized and statements of witnesses recorded during search and seizure action. Since, the assessee has failed to rebut the incriminating evidence that it had purchased shares of M/s Koshal Soft through one of the group companies of Mahasagar Securities Pvt. Ltd, which were indulged in providing accommodation entries, in our considered view, the Ld. CIT(A) has rightly confirmed the addition made by the AO. Hence, we do not find any reason to interfere with the concurrent findings of the authorities below. We, accordingly, upheld the findings of the Ld. CIT(A) and dismiss this ground of appeal of the assessee.

8. So far as the addition of Rs. 16,21,900/- is concerned, the Ld. CIT(A) has confirmed the addition, holding that section 4 and 5 of the Income Tax Act clarify the determination of total income of any previous year and to charge income tax on the total income of the previous year and any clause in article of association does not entitle the appellant to debited an amount in the name of trust as disallowance cannot override the provisions of the Income Tax Act. The findings of the Ld. CIT(A) are as under:

“7.4 plain reading of the sections clarified the determination of total income of any previous year and to charge income tax on the total income of the previous year. The provisions of Articles of Association do not have overriding effect over the provisions of the IT Act passed by the Parliament. The taxable income is computed after allowing the expenses incurred by the appellant to the said income. The amount of Rs. 16,21,900/- which was debited to P & L A/c as a charge on income diverted at source by the overriding title. This is definitely an income of the appellant and subject to income tax. Since the charge treated as per the charter incorporation document of the company is not a charge of income and does not have any overriding effect on the income arising in India. It is the Parliament, which is competent to tax any income arising in India and to decide the rate of tax to be charged on such income.

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9. Since, the assessee has failed to justify its claim by adducing cogent and convincing evidence before the authorities below, we do not find any reason to interfere with the findings of the Ld. CIT(A). Hence, we uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2008-2009 is dismissed.

Order pronounced in the open court on 31st.October, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 31/10/2019

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai