

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
&
AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.4500/DEL/2016
Assessment Year 2011-12

M/s. Waves Data Management Pvt. Ltd., 303-D, Apra Plaza, Plot No.28, Road No.44, Pitampura, New Delhi.	v.	ITO, Ward-27(2), New Delhi.
TAN/PAN: AAACW 6334J		
(Appellant)		(Respondent)

Appellant by:	Ms. Rano Jain, Adv.		
Respondent by:	Shri S.S. Rana, CIT-D.R..		
Date of hearing:	31	10	2019
Date of pronouncement:	27	01	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 28.06.2016 passed by Commissioner of Income Tax (Appeals)-IX, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2011-12. The effective grounds of appeal raised by the assessee read as under:-

“3. On the fact and circumstances of the case, Ld. AO has erred in making addition of Rs.90,00,000/- as income from other sources, without being properly going through the nature of

transaction and thus passed an order of assessment which in itself is incorrect.

4. (i) *On the facts and circumstances of the case, the learned CIT(A) erred both in eyes of law and facts in making addition of Rs. 1,50,00,000/- u/s 68 of the Income Tax Act, 1961.*

(ii) *On the facts and circumstances of the case, the learned CIT(A) erred both in eyes of law and facts in enhancing the addition to Rs.1,50,00,000/- from Rs.90,00,000/- as made by the Ld. AO.*

(iii) *That the above addition made by the Ld. CIT(A) after changing the head of addition of Rs.90,00,000/- made by the Ld. AO, from income from other sources to section 68 of the Act.*

(iv) *On the facts and circumstances of the case, the learned CIT(A) erred both in eyes of law and facts in making addition of Rs. 1,50,00,000/- u/s 68 of the Act ignoring the fact that the appellant has already discharged its onus casted upon it u/s.68 of the act and further the transaction is independently investigated by the ld. Assessing Officer by issuing notice u/s.133(6) of the Act.”*

2. The facts in brief are that the assessee company during the relevant year was not engaged in any kind of business activities. Ld. Assessing Officer during the course of assessment proceedings called for information u/s. 133(6) from different parties regarding transaction of share application money. In response to such inquiry, all parties filed their confirmation which were examined and verified by the Assessing Officer along with books of account. The

Assessing Officer further observed that assessee company had purchased land at Dariyapur Kalan, Delhi of Rs.2,27,45,833/-. In response to the show cause notice for giving details of cash payment for purchase of said land, the assessee submitted that he gave following payments as advance for the purchase of land:

“1. Rs.45,00,000/- vide cheque no.036356, Rs.7,00,000 Ch. No.036357 and vide ch. No.036360 Rs.7,00,000/-

Dated 20.10.2010

2. Rs.16,00,000/- vide cheque no.489201 dated 21.10.2010

3. Rs.50,00,000/- by cash on 31.1.2011

4. Rs.25,00,000/- by cash on 9.2.2011

5. Rs.15,00,000/- by cash on 14.2.2011”

3. However, the Id. Assessing Officer accepted the cheque amount but regarding cash payments, he held that assessee could not prove the source of the same and even the information called u/s.133(6) from various parties could not be received in time, were returned back, therefore, he added the entire cash payment of Rs.90 lacs.

4. Before the Ld. CIT (A), the assessee preferred an appeal on the addition of Rs.90 lac in respect of advance paid in cash for the purchase of land. It was submitted that the Assessing Officer has wrongly observed that the assessee company has deposited cash amount of Rs.90 lacs within 15 days between 31.01.2011 to 14.02.2011 stating that amount was lying in the house and deposited in different dates, but the fact of the case is that, assessee never deposited cash in the bank

account instead he has withdrawn the said cash from the bank account and immediately thereafter the cash was paid to the sellers and in this regard cash book, bank book and bank statement highlighting the transaction was also brought. To substantiate this fact, all the necessary documents and records were provided before the Assessing Officer. Ld. CIT (A) called for the remand report from the Assessing Officer. In response, Assessing Officer submitted his remand report, wherein instead of verifying the contention of the assessee that amount of Rs.90 lac was withdrawn from the bank account and same was given as cash payment to various persons as advance for purchase of land, he noted that in the bank statement of the assessee it transpired that assessee had received Rs.1.65 crore by two different transactions of:- i) Rs.15 lac on 17.1.2011; and ii) Rs.1.5 crore on 25th January, 2011, out of which Rs.90 lacs was withdrawn from the bank account of the assessee through cash by four different transactions. Ld. CIT (A) directed the Assessing Officer to give comments after making inquiry in this case and Assessing Officer asked for furnishing various information, like cash payment, transaction for purchase of land, bank statement and the payment in cash to the property owner and the source of amount deposited in the bank account. In response, assessee provided the bank statement and the copy of cash book showing that payment of Rs.90 lac was made after withdrawing from the same bank account. Regarding source of investment, he submitted that

amount of Rs.1.56 crore was received through Directors of the company, as under:

<i>S. No.</i>	<i>Name of Director</i>	<i>Amount</i>	<i>Date of transaction</i>
1.	<i>Renu Agarwal</i>	<i>Rs.15,00,000/-</i>	<i>17.01.2011</i>
2.	<i>Arun Agarwal</i>	<i>Rs.1,50,00,000</i>	<i>25.01.2011</i>

5. Accordingly, notice u/s. 133(6) were issued to both the Directors seeking information regarding source of transaction along with documents. In response, Shri Arun Agarwal submitted that Rs.1.50 crores was given by him as share application money and Smt. Renu Agarwal has made payment of Rs.15 lac as repayment of loan. The source of Rs.1.5 crore given by Shri Arun Agarwal was not found to be satisfactory by the Assessing Officer, because according to the Assessing Officer his annual income as per the ITR was only Rs.6,80,382/-.

6. The assessee before the Id. CIT (A) had submitted confirmation of Shri Arun Agarwal along with copy of his PAN, bank statement and also the source of deposit, etc. It was submitted that remand report was without any corroborative evidence and without any adverse information and all the payments were routed through banking channels. Id. CIT (A) after detailed discussion held that assessee could not prove the creditworthiness of Shri Arun Agarwal and made enhancement of Rs.60 lac after observing and holding as under:-

“4.3.7 So, in view of the above facts discussed and in view of the remand report the amount of Rs.1.5 crore treated as unexplained cash credit u/s 68 of the IT Act. The AO has made addition of Rs.90 lacs of cash payment amount as income from other sources Since the source of the investment deposited in the bank account by Sh. Arun Agarwal has been treated as unexplained u/s 68 of the IT Act. Therefore the addition made by the AO of cash payment of amounting to Rs.90 lacs is not required to be added separately. Considering the above facts it is clear that the amount of Rs.1 50 crores is unexplained cash credit u/s 68 of the IT Act. Hence the income is enhanced by Rs.60 lacs.”

7. Before us, ld. counsel, Ms. Rano Jain submitted that the only issue challenged before the Ld. CIT (A) was addition of Rs.90 lac on account of cash payment made to various parties for purchase of land. It was clearly brought on record before the Assessing Officer that these cash payments were made after withdrawing the cash from the bank account, and to substantiate the same, the assessee has filed copy of sale deed, copy of cash book, ledger account, copy of bank statement, copy of cash flow, etc. The Assessing Officer without ascertaining the correct facts and material on record has wrongly made the addition. It is not a case of cash deposit where cash was found lying in the house after withdrawing from the bank, albeit there was cash withdrawal from the bank which was immediately paid to the sellers, and therefore, the addition made by the Assessing Officer was unwarranted. The assessee during the course of assessment

proceedings has also explained the source of these money in detail among other documents and also filed the following documents for establishing identity, creditworthiness of Shri Arun Agarwal as well as genuineness of the transaction, viz., confirmation, copy of his bank account, PAN details, etc. He further submitted that Assessing Officer had issued notice u/s.133(6) to Shri Arun Agarwal which was duly responded by him, wherein he has confirmed the transaction and also filed copy of income tax return, copy of bank statement, etc. The Assessing Officer did not draw any adverse inference on these documents during the course of assessment proceedings. Thereafter, assessee went in appeal before the ld. CIT(A) and reiterated the same submissions and the Ld. CIT(A) did not made any adverse inference regarding addition of Rs.90 lac but has in fact made enhancement of Rs.1.50 crore u/s.68 on the ground that share application money received from Shri Arun Agarwal was remained unexplained. She submitted that such an enhancement was beyond the scope and power of Ld. CIT (A), because the subject matter of appeal before the Ld. CIT(A) is addition of Rs.90 lac made under the head 'income from other sources'. But Ld. CIT (A) had now taken the new source of income which is not permissible. In support, she relied upon the following judgments:-

1. Gurinder Mohan Singh Nindrajog vs. CIT, (2012) 348 ITR 170 (Del)

2. CIT vs. Rai Bahadur hardutroy Motilal Chamaria, (1967) 66 ITR 443 (SC)
3. CIT vs. Union Tyres, (1999) 240 ITR 556 (Del.)

8. On merits, she submitted that the assessee has filed all the necessary documents to prove the identity and creditworthiness of Shri Arun Agarwal, the Director of the Company and the genuineness of the transaction was duly established. Further, here the Director himself has accepted the transaction and given all the documentary evidences. Merely, the lender was shown less return of income that does not lead to any adverse inference when he has availability of funds, disclosed in the balance-sheet. In support, he relied upon the judgment of Hon'ble Delhi High Court in the case of **CIT vs. Vrindavan Farms (P) Ltd., ITA 71/2015, ITA 72/2015, ITA 84/2015 dated 12.08.2015 and PCIT vs. M/s. Goodview Trading Pvt. Ltd. dated 21st November, 2016.**

9. On the other hand, ld. DR relying upon order of the Ld. CIT(A) submitted that, first of all, issue before the Ld. CIT(A) was examining the source of cash withdrawal and the cash payment made by the assessee. During the course of such an examination, Ld. CIT (A) took note of the fact that the source of deposit in the bank statement was coming from the Director who was unable to explain the source properly as his creditworthiness could not be established. Thus, under these circumstances, Ld. CIT (A) was justified in making an

enhancement as there is no new source of income as this issue was considered and examined by the Assessing Officer and it is from the same examination of the transaction, the Ld. CIT (A) has made the enhancement. Thus, there is no infirmity in the enhancement made by the Ld. CIT (A). On merits, she submitted that the assessee has only tried to prove the genuineness of the share application money but not the creditworthiness and mere filing of income tax return does not prove the creditworthiness. Here, in this case, the return of income of the Director was only Rs.6,80,382/- and he was not in a position to prove the source of such amount and the burden of proof lied upon the assessee could not be discharged. Thus, there was a lack of evidence, proving the creditworthiness of the share applicant. She also relied upon the judgment of Hon'ble Delhi High Court in the case of **CIT vs. NR Portfolio Pvt. Ltd., (2014) 42 Taxmann.com 339.**

10. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. As stated above, the only addition made by the Assessing Officer was with regard to the amount of Rs.90 lac, on the ground that assessee could not prove the source of cash payments made to the various farmers. That addition *prima facie* was unsustainable in the wake of various material placed on record before the Ld. CIT (A) and also before the Assessing Officer that the amount of Rs.90 lac was withdrawn from the bank account and thereafter, it was immediately paid to the seller and this was

proved by way of sale deed, copy of bank statement, copy of cash book and ledger account. Even, the Ld. CIT (A) has finally not made any adverse inference, and in this manner such an addition stood deleted. Now, the issue before us is, the addition of Rs.1.5 crore made u/s.68 on account of share application money received from the Director of the assessee company, Shri Arun Agarwal. The addition was made on the back ground that while examining the bank statement and the source of withdrawal of Rs.90 lac, it was found that sum of Rs.1.5 crore have been deposited in the bank account of the assessee which was received by two Directors of the assessee company, namely Smt. Renu Agarwal who has repaid her loan back at Rs.15 lac and Shri Arun Agarwal who has given amount of Rs.1.50 lac as share application money. Before the Assessing Officer, the assessee was confronted with this fact and in response, assessee had filed the details of share application money received from various persons including the Director was filed not only during the assessment proceedings as well as before the Ld. CIT(A). The assessee has filed the confirmation from the Director, copy of his PAN and income tax return and bank statement from where he has given the payment to the assessee company. Further, notice u/s.133(6) was issued to Shri Arun Agarwal, in response to which he has submitted the copy of account of assessee company as shown in his books of account; confirmation of share application money, copy of bank statement with entire narration, etc. Thereafter, no further

inquiry or material was brought on record to prove that the documents furnished by the Director of the assessee company were deficient or could not substantiate the transaction. The entire case of the Revenue hinges upon the fact that in the return of income Shri Arun Agarwal has shown income of more than Rs.6 lac. Nowhere, the Assessing Officer or Ld. CIT(A) analyzed the bank statement of the Director, which reflect that there was huge availability of funds at the time of issuing cheques and there was no cash deposits on or before the date of issuance of cheque to the assessee company. This is evident from the bank statement appearing from pages 40 to 43. All the amounts have come through clearance. Ld. CIT(A) did not even asked to prove the source of such credit amount in his bank account if the creditor/share applicant who has furnished his bank statement and if the creditor is not confronted about the source, then assessee cannot be expected to prove the source of the source or explain the credit entries of the creditor, because same can only be proved by the creditor himself which in this case both Assessing Officer and Ld. CIT(A) have failed to do so and has simply gone by the fact that the income returned is less. The other material fact of availability of fund has not been inquired into, when Director of the assessee company was duly responding and complying with the notices and therefore, merely on such presumption, the addition cannot be made, because in so far as assessee is concerned it has not only established the identity and genuineness of the

transaction but also the creditworthiness by providing the entire bank statement and the source wherefrom the amount have been received. It is not a case of any information or material coming on record that the share application money has been received through any accommodation entry or by an entry provider or by any conduit manner. Therefore, such an addition of Rs.1.50 crore cannot be sustained and same is directed to be deleted.

11. Since, we have already deleted the addition on merit, therefore, all the legal issues of validity of enhancement made by the Ld. CIT(A) is rendered infructuous being academic.

12. Accordingly, the appeal of the assessee is allowed.

Order pronounced in the open Court on 27th January, 2020.

Sd/-

**[G.S. PANNU]
VICE PRESIDENT**

DATED: 27th January, 2020

PKK:

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**