

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.3050/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2012-13)

| | | |
|---|--------------------------------|--|
| JCIT (OSD)-9(3)(1) 215, 2 nd Floor, Aayakar Bhavan, M.K. Marg, Mumbai-400020. | बनाम/ Vs. | M/s. Dilip Pajwani Developers 8/66, Varma Nagar, Off, Azad Road, Andheri (E), Mumbai-400069. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCD1949E | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Revenue by: | Shri Drop Singh Meena (Sr. AR) | |
| Assessee by: | Shri Paresh Shaparia | |

सुनवाई की तारीख / Date of Hearing: 14/11/2019

घोषणा की तारीख /Date of Pronouncement: 29/01/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 23.02.2018 passed by the Commissioner of Income Tax (Appeals) -16, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2012-13.

2. The revenue has raised the following grounds: -

- "1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.3,75,00,000/- made u/s 68 of the Act by not appreciating the fact that the assessee has failed to discharge the burden to substantiate the creditworthiness of the share investors and genuineness of the transactions.



2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition by relying upon the comments of the assessee in respect of the remand report of the AO overlooking the findings of the AO in the course of remand proceedings.*

The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the JCIT(OSD) 9(3)(1) be restored.

The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

3. The brief facts of the case are that the assessee filed its return of income on 25.09.2012 declaring total income to the tune of Rs.89,39,309/- for the A.Y.2012-13. The return was processed u/s 143(1) of the Act. Thereafter, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee was engaged in the business of builders and developers. During the year under consideration, the assessee has shown the revenue from operation at Rs.5,03,68,750/- and other income at Rs.3,97,562/- and net profit has been computed at Rs.87,68,154/-. The assessee has received the share application money amounting to Rs.3,75,00,000/- from 12 parties. The discussion of the 12 parties are hereby mentioned below.: -

| S. No | Name of the applicant | PAN | Address | No. of share | Amount of application | Face value | Premium |
|-------|---------------------------|------------|---|--------------|-----------------------|------------|---------|
| 1 | Khushi Industries Ltd. | AAACJ1457F | 4A, 2 nd Floor, Bombay Hospital Trust Building, 134, Meadows Street, Fort, Mumbai-400001 | 1100 | 110000 | 100 | 5390000 |
| 2 | Hoatzin Diamond Pvt. Ltd. | AACCH7389E | D-50, Shop No.10, Om Palace, Mira | 500 | 50000 | 100 | 2450000 |



| | | | Road (east) | | | | |
|----|--|------------|---|------|--------|-----|---------|
| 3 | Heena Textiles Ltd. | AACCH0454N | 555-559 Plumber Hosue No.13, JSS Road, Chira Bazar, Kalbadevi Mumbai-400002 | 500 | 50000 | 100 | 2450000 |
| 4 | Zeme Realtech Pvt. Ltd. | AAACZ4928R | 4/A, 2 nd Floor, Birla mansion, 134, Nagindas Master Road, Fort, Mumbai-400023 | 400 | 40000 | 100 | 1960000 |
| 5 | Vanquish Investments & Leasing Pvt. Ltd. | AAACV2355C | A/104, Rajumang, 8, Shiv Vallabh Cross Road 3, Dahisar (E), Mumbai-400068 | 600 | 60000 | 100 | 2940000 |
| 6 | Golden Agro Products Pvt. Ltd. | AACC09127D | -DO- | 500 | 50000 | 100 | 2450000 |
| 7 | Induja Traders Pvt. Ltd. | AAAC18509D | 203, Sidat Mansion, Building No.17/17A, 2 nd Marine Street, Mumbai-400002 | 500 | 50000 | 100 | 2450000 |
| 8 | Kotson Impex Pvt. Ltd. | AACCK9104C | 23, Shirin Mansion, 14, Kolsa Cross Lane, Pydhonie, Mumbai 400003 | 500 | 50000 | 100 | 2450000 |
| 9 | Nissim Traders Pvt. Ltd. | AABCN3760G | 203-E, Guruprasad Lokhandwala, Andheri (W), Mumbai | 1000 | 100000 | 100 | 4900000 |
| 10 | Dibankar Steel Pvt. Ltd | AADCD8268M | Off. No.14/15, 1 st Floor, Bhar Bazar Naranatha Street, Masjid Bunder, | 500 | 50000 | 100 | 2450000 |



| | | | Mumbai 100-400009100 | | | | |
|----|----------------------------|------------|--|------|--------|-----|----------|
| 11 | Rishi Automation Pvt. Td. | AAACR8467K | G-9800, Shop No.9, 7500 Janata CHS Ltd, Jesal Park, Bhayander (E), Thane | 600 | 60000 | 100 | 2940000 |
| 12 | Crown Crops Sci. Pvt. Ltd. | AADCC3551E | C-9, Shop No9 Janata CHS Ltd, Jesal Park, Bhayander (E), Thane. | 800 | 80000 | 100 | 3920000 |
| | | | Total | 7500 | 750000 | | 36750000 |

Thereafter, the AO issued the notice u/s 133(6) of the Act to all the parties to verify the claim and did not found satisfactory. The AO rejected the claim of the assessee in sum of Rs.3,75,00,000/- and raised the addition in the income of the assessee u/s 68 of the Act. The total income of the assessee was assessed to the tune of Rs.4,64,39,310/- and book profit u/s 115JB of the Act to the tune of Rs.87,68,154/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

4. All the issues are in connection with the deletion of addition of Rs.3,75,00,000/- raised u/s 68 of the Act. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee specifically in the circumstances when the assessee failed to discharge the burden to substantiate the creditworthiness of the share investor and genuineness of the transactions, therefore, the finding of the CIT(A) is not justifiable and is liable to be set aside. It is also argued that the CIT(A) has wrongly relied upon the remand report generated by AO, therefore, the finding of the CIT(A) is not justifiable. However, on the other



hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

"7.1.1 Vide this ground, appellant has agitated against the addition of Rs.3,75,00,000/- received from 12 parties as unexplained cash credit u/s 68 of the Act. During the course of assessment proceedings, the AO had called for the details of applicants including the PAN Numbers, Bank statements, Annual Accounts, ROC records. During the course of the assessment proceeding initially the appellant was not able to provide the relevant documents as the records were not readily available apart from the information namely In case of all 12 applicants, sufficient own funds were available in the form of share capital and reserves. In the course of appellate proceedings appellant was asked to state whether the applicants have sold their shares, in response to which appellant has stated that the applicant continue to be the shareholders till date and to substantiate its contention has also filed copies of Annual ROC Returns filed for FY 2014-2015, 2015-16 & 2016-17 which depict all the 12 applicants are shareholders of the appellant.

7.1.4 A investor - wise analysis of the same is as under:

a. Khushi Industries Limited had invested Rs.55,00,000/-. The total investment has been added by the AO u/s 68. Khushi Industries Limited is assessed to tax under PAN:AAACJ1457F and is filing its regular income tax returns. The applicant's RIGS no Vysahi 2087710901 dated 27.03.2012 of Rs. 30,00,000/- and RIGS no Vysah12088714155 dated 28.03.2012 of Rs. 25,00,000/- are reflected in investor's batik statement as well as in the appellant's bank statement. All the investment made are also reflected in the Annual Accounts of the investor. From the Annual Accounts it can be seen that the said investor has its own share capital and reserves of Rs.24,54,13,760/-. Further from the bank statements it can be observed that there are no cash deposits in the investor's bank account before issue of subscription money to the appellant. None of these facts have been disputed by the AO nor it has been found by AO in his enquires that this company is a fraudulent company.

b. Hoatzin Diamonds Pvt Ltd had invested Rs.25,00,000/-. The total investment has been added by the AO u/s 68. Hoatzin Diamonds Pvt Ltd is assessed to tax under PAN: AACCI17389E and is filing its regular income tax returns. The investor's RIGS no I-IDFCI-112088421017 dated 28.03.2012 of Rs.25,00,000/- is reflected in investor's bank statement as



well as in the appellant's bank statement. All the investment made are also reflected in the Annual Accounts of the investor. From the Annual Accounts, it is observed that the said investor has its own share capital and reserves of Rs.26,72,500/-. Further from the bank statements it can be observed that there are no cash deposits in the investor bank account before issue of subscription money to the appellant. None of these facts have been disputed by the AO nor it has been found by AO in his enquires that this company is a fraudulent company.

c. Henna Textiles Limited had invested Rs.25,00,000/-. The total investment has been added by the AO u/s 68. This company is assessed to tax under PAN: AACCI-10454N and is filing its regular income tax returns. The investor's RTGS no VYA5H12084701 1645 dated 24.03.2012 of Rs.25,00,000/- is reflected in investor's bank statement as well as in the appellant's bank statement. All the investment made are also reflected in the Annual Accounts of the investor. From the Annual Accounts, it is observed that the said investor has its own share its land reserves of Rs.12,35,32,559/-. Thus the investor had sufficient funds own to subscribe. Further from the bank statements it can be observed that there are no cash deposits in the investor bank account before issue of subscription money to the appellant. None of these facts have been disputed by the AO nor it has been found by AO in his enquires that this company is a fraudulent company.

g. Induja Traders Pvt Ltd had invested Rs.25,00,000/-. The total investment has been added by the AO u/s 68. This company is assessed to tax under PAN:AAAC18509D and is filing its regular income tax returns. The investor's cheque no 228406 dated 31.03.2012 of Rs. 25,00,000/- is reflected in investor's bank statement as well as in the appellant's bank statement. All the investment made are also reflected in the Annual Accounts of the investor. From the Annual Accounts, it is observed that the said investor has its own share capital and reserves of Rs. 4,31,63,573/-. Thus the investor had sufficient-funds of its own to subscribe. Further from the bank statements it can be observed that there are no cash deposits in the investor bank account before issue of subscription money to the appellant. None of these facts have been disputed by the AO nor it has been found by AO in his enquires that this company is a fraudulent company.

h. kotsons Impex Pvt Ltd had invested Rs.25,00,000/-. The total investment has been added by the AO u/s 68. This company is assessed to tax under PAN: AACCK9104C and is filing its regular income tax returns. The investor's cheque no 717164 dated 31.03.2012 of Rs.25,00,000/- is reflected in investor's bank statement as well as in the



appellant's bank statement. Further from the bank statements it can be observed that there are no cash deposits in the investor's bank account before issue of subscription money to the appellant. None of these facts have been disputed by the AO nor it has been found by AO in his enquires that this company is a fraudulent company.

i. Nissim Traders Pvt. Ltd. had invested Rs.50,00,000/-. The total investment has been added by the AO u/s 68. This company is assessed to tax under PAN:AA13CN37600 and is filing its regular income tax returns. The investor's cheque no 078258 dated 31.03.2012 of Rs.25,00,000/- and investor's cheque no 078259 dated 31.03.2012 of Rs.25,00,000/- are reflected in investor's bank statement as well as in the appellant's bank statement. All the investment made are also reflected in the Annual Accounts of Eh(investor. From the Annual Accounts, it is observed that the said investor has its own share capital and reserves of Rs. 1,77,70,478/-. Thus the investor's had sufficient funds of its own to subscribe. Further from the bank statements it can be observed that there are no cash deposits in the investor bank account before issue of subscription money to the appellant. None of these facts have been disputed by the AO nor it has been found by AO in his enquires that this company is a fraudulent company.

j. Dipankar Steel Private Limited had invested Rs.25,00,000/-.The total investment has bedn added by the AO u/s 68. This company is assessed to tax under PAN:AADCD8268M and is filing its regular income tax returns. The investor's RTGS dated 27.03.2012 of Rs.25,00,000/- is reflected in investor's bank statement as well as in the appellant's bank statement. All the investment made also reflected in the Annual Accounts of the investor. From the Annual Ahnints, it is observed that the said investor has its own share capital and reserves of Rs.6,00,71,776/-.Thus the investor had sufficient funds of its own to subscribe. Further from the bank statements it can be observed that there are no channels. It was seen that the share application money was received through ' account payee cheques, detail of which had been filed by the assessee by filing the copy of the bank account of the share applicants. Thus where the return of income was filed by the creditors of the assessee and was accepted by the AO and payments were through account payee cheques the genuineness of the transaction cannot be doubted. The revenue could not prove that the money received by the appellant in the form uf shore application has come from its own sources. No evidences regarding this have been brought on record by the AO.

b. CIT vs. Divine Leasing & Finance Ltd. 299 ITR 268



Hon'ble Delhi High Court held that burden of proof can seldom be discharged to the hilt by the assessee. If the AO harbours doubts of the legitimacy of any subscription he is empowered, rather duty-bound, to carry out thorough investigations. But if the A.O. fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company. If relevant details of address and identity of the subscribers are furnished to the department along with copies of the shareholders register, share application forms, share transfer register etc. it would constitute acceptable proof or explanation by the assessee.

c. In Hindustan Inks & Resins Ltd. vs. Dy. C.I.T. 60 DTR 0018 (2011) the Hon'ble Gujarat High Court has held as under:

From the concurrent findings worded by the authorities below, it is apparent that none of the parties have recorded any findings to the effect that the identity of the depositors had not been established by the assessee. The case of the respondent is that the assessee has failed to explain the source of such cash as well as creditworthiness of the deposits. It is not the case of the revenue that the subscribers are bogus, the case of the revenue is that the source of such cash as well as creditworthiness of the depositors has not been explained. In the circumstances, the department is free to proceed to reopen the individual assessments of the deposits named by the assessee, however, under no circumstances, can the amount of share capital be regarded as the undisclosed - income of the assessee.

d. In CIT vs. X.C. Fibres Ltd. in IT Appeal No.701 01 2009 the Hon'ble Delhi High Court held that in so far as assessing company is concerned, it is not disputed that money was paid to it, towards the aforesaid share application money, by means of cheques. It is not for the assessing company to probe as to the source from where the assessee collected the aforesaid money. It was for the AC, in these circumstances to inquire into the affairs of DP which is an independent company in as much as no finding is arrived at by the AO that the two companies are- umbrella companies or have any relationship with each other.

e. In CIT vs. STL Extrusion (P) Ltd. 333 ITR 269 the Hon'ble Madhya Pradesh High Court held that though it is the duty of the assessee to establish the genuineness of the credits but in the present case the assessee has duly established the identity and source of credits, The Tribunal has also held that once the identity and source of the subscribers of the shares is established no.



7.1.7 Recently the jurisdictional Bombay High Court in the case of CIT vs. Gangadeep Infrastructure Pvt. Ltd. vide its order dated 20.03.2017 has held as under:

"The proviso to s.68 (which creates an obligation on the issuing Co. to explain the source of share capital and premium) has been introduced by the Finance Act 2012 with effect from 01.04.2013 and does not have retrospective effect. Prior thereto, as per Lovely Exports 377 ITR 218 (SC), if the AO regards the share premium as bogus, he has to assess the shareholders but cannot assess the sum as the issuing company's unexplained cash credit."

7.1.8 From the details filed, the appellant had not only proved the genuineness of transaction and identity of the shareholders but it has also proved the creditworthiness of shareholders. The learned A.O had not controverted any of the submission made by appellant. Even during remand proceeding, all the share subscribers have responded to the notice issued u/s 133(6). In view of these facts and respectfully following various judgements of Hon'ble ITAT and Hon'ble Courts as discussed in paras above, appeal of the appellant is allowed and addition of Rs.3,75,00,000/- made by the AO u/s.68 of the Act is deleted."

5. We observed that the AO declined the claim of the assessee on the basis of this fact that the assessee failed to prove the identity, creditworthiness and genuineness of the claim. The AO issued the notice u/s 133(6) of the Act to all the 12 parties which were not served. The books of accounts produced by the assessee was nowhere found sufficient to prove the claim of the assessee. At the time of hearing before the CIT(A), the assessee furnished the PAN Card of the share applicants, income tax acknowledgment for the A.Y. 2012-13, annual accounts of share applicant for A.Y. 2012-13, bank statements for AY 2012-13 depicting the payments made by the share applicants through banking channel, ROC records of the share applicant for AY2012-13 & Memorandum of Association and Articles of Association. The CIT(A) called the remand report from the AO. The AO submitted the remand report dated 07.11.2017 basically the CIT(A) relied upon the remand report and same more additional evidence,



the CIT(A) analyses the record of each investor which has been mentioned in the order. There is no need to repeat the same because relevant record from each and every investor has been mentioned by CIT(A) in his order. No doubt, deficiency if any is liable to be looked into even at the time of remand proceeding also. Each and every share-holder responded to the notice u/s 133(6) of the Act and submitted necessary details. The facts are not distinguishable at this stage. After the examination of each and every details by the CIT(A), the CIT(A) was of the view that the assessee has proved the identity, genuineness and creditworthiness of the share-holder. Which facts have wrongly considered by the CIT(A) is not apparent on record. Therefore, taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

13. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 29/01/2020.

Sd/-

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29/01/2020

Vijay/Sr. PS

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 3050/M/2018
A.Y.2012-13

आदेश की 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**