

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI

BEFORE SH.SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.5925/Del/2016

Assessment Year: 2012-13

JCIT Special Range-03, New Delhi	Vs	Dalmia Homejeanie Pvt. Ltd. B-109, Sector-5, Noida PAN No. AAECR7287H
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. S. N.Meena, Sr. DR
Respondent by	Sh. V. K. Bindal, CA Ms. Sweety Kothari, CA

Date of hearing:	08/11/2019
Date of Pronouncement:	06/02/2020

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by the Joint Commissioner Of Income Tax, Special Range – 03, New Delhi (The Learned Assessing Officer) in ITA number 5925 Del 2016 for assessment year 2012-13 against the order of The Commissioner Of Income Tax (Appeals) – 3, New Delhi dated 21/8/2016 wherein the addition of ₹ 18900000/- made by the Learned Assessing Officer under section 68 of the Income Tax Act has been deleted by the learned CIT – A. This is the only grievance of the revenue.
2. The revenue has raised the following grounds of appeal:-
  1. *“Ld. Commissioner of Income Tax (A) erred in law and on facts of the case in deleting the addition made by the AO amounting to Rs. 1,89,00,000/- u/s 68 of the I.T. Act, 1961.”*
  2. *“Ld. Commissioner of Income Tax (A) erred in law and on facts of the case in not conducting or not directing the AO to conduct the enquiry if he observed that the AO failed to conduct proper enquiry, as held by Hon’ble Delhi High Court in CIT Vs M/s Jansampark Advertising & Marketing (P) Ltd. (ITA No.*

525/2014).”

3. *“The appellant craves leave, modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*
3. The brief facts of the case shows that the assessee filed its return of income on 28/9/2012 declaring total income of ₹ 5 213589/- and subsequently it was revised on 28/3/2013 declaring the loss of ₹ 5 218589/-. Assessee is engaged in the business of maintenance services for homes, household goods and small and medium enterprises at one place. The learned assessing officer found during the course of assessment proceedings that assessee company has raised the share capital of ₹ 2362500/- and share premium of rupees to 16537500/- from 13 entities. On appraisal of the information submitted by the assessee it was noted that the financial worth of the assessee does not justify share premium of ₹ 16537500/- at the rate of ₹ 70 per share of the face value of ₹ 10. The assessee has shown nil income and has claimed a loss of ₹ 5218589 during the assessment year 2012-13. This is the only second year of the assessee’s operation after incorporation and there are no actual elected profits in his reserves and surplus account. The AO asked the assessee to furnish the complete details of the share capital and said application money received. It was also asked to prove the identity of the persons, genuineness of the transaction and creditworthiness of those persons. In response to the above, the assessee submitted the copies of the financial statements of these shareholder companies. The AO noted that prime of AC all the companies appear not to be genuine parties and the genuineness of the transaction entered into them is also doubtful. The revenue operations are negligible but they have raised you share capital and share premium. The funds of these companies claim to have been further invested in other companies is share capital. Therefore, he noted that these facts strengthen the doubt of assessee having taken credit entries of ₹ 1.89 crores from these credit companies. It was further noted that the genuineness and creditworthiness of these 13

creditor companies has not been discharged by the assessee. Thus the learned assessing officer made an addition of ₹ 1 8900000 under section 68 of the income tax act. Accordingly the total income of the assessee was assessed at ₹ 13681441/- Vide order passed under section 143 (3) of The Income Tax Act on 27/03/2015.

4. The assessee preferred an appeal before the learned CIT – A vide para number three of the order deleted the addition. He noted that the copies of the documentary evidences filed during the assessment proceedings were submitted during the appellate proceedings with respect to the share capital of ₹ 1.36 crores is not received during the year but in the earlier year and whereas the share capital of ₹ 53 lakhs has been received from one company for the year ending on 31 March 2012 which is a group company. Of the company which is invested ₹ 53 lakhs during the year the learned CIT(A) noted that it has a paid-up capital of ₹ 1.64 crores and the company has 82 crore is available with it in the balance-sheet. He further noted that the share capital is subscribed out of the advance of more than ₹ 205 crores received from Golden reality and infrastructure Limited for the development of land in a joint-venture. In view of this he noted that the entire details regarding the investments have been furnished to the assessing officer and the assessing officer has not made any enquiry to discredit the claim of the assessee in this is respect. He therefore relying upon the several judicial precedents of the Hon'ble Delhi High Court deleted the addition. Thus revenue aggrieved with the order of the learned CIT(A) and is in appeal before us.
5. The learned departmental representative vehemently contested the ground number one of the appeal and stated that the learned CIT(A) has wrongly deleted the addition of ₹ 18900000/- under section 68 of the income tax act and further if the learned assessing officer has not conducted any enquiry it should be the duty of the learned CIT(A) to conduct the enquiry in view of the decision of the Hon'ble Delhi High Court in CIT Vs. Jansampark advertising and marketing private limited in ITA number 525/2014.

6. The learned authorised representative submitted the 2 volumes of the paper book giving information about all the companies. He also referred to the confirmation, annual accounts of all these companies as well as the details of sums received from these companies. He referred to the chart and submitted that a sum of ₹ 1.36 crores have been received from 12 companies in the financial year ending on 31<sup>st</sup> of March 2011. He therefore pressed upon to submit that as there is no credit received by the assessee from these companies during the year in the books of accounts, the provisions of section 68 of the income tax act does not apply. For this reason the learned CIT(A) deleted the addition to that extent. With respect to the further credit of ₹ 53 lakhs which has been received by the assessee from WGA financial services Ltd during the year he submitted that the annual accounts of the above company are placed at page number 46 to 441 of the paper book the bank statement of that company is also placed at page Nos. 442 to 448 of the paper book and photo copy of the assessment order of that company dated 10 March 2015 passed under section 143 (three) of the act for assessment year 2012-13 is also placed at page number 449 to 452 of the paper book. He further referred to the paragraph number two of the assessment order where the learned assessing officer of that company has categorically recorded a finding that that company is engaged in the business of financing and investing and also trades in shares and commodities. Merely because that company has declared a loss of Rs. 4748725/- which is been accepted by the learned assessing officer of that company it cannot be stated that this company does not have any creditworthiness. He referred to the balance-sheet of that company for the year ended on 31<sup>st</sup> of March 2012 and submitted that it has received a long-term borrowings from the various companies of ₹ 2056086101/- and also invested in advances as it is engaged in the financing activities. He submitted that the sum of ₹ 205 crores received from golden reality and infrastructure Limited has been accepted in the hands of that company which is the main source of investment of ₹ 53 lakhs only in the assessee

company hence, its creditworthiness cannot be doubted. He therefore submitted that the learned CIT(A) has correctly deleted the addition and he supported his order.

7. We have carefully considered the rival contention and perused the orders of the lower authorities. On perusal of page No. 464 of the paper book it is apparent that a sum of ₹ 1.36 crore has not been received during the year by the assessee company but has been received in earlier year that is the year ended on 31<sup>st</sup> of March 2011 i.e. assessment year 2011-12. As the money has not been received during this year in the books of accounts of the assessee company, we find no infirmity in the order of the learned CIT(A) in deleting the addition to that extent. With respect to the addition of ₹ 53 lakhs in the hands of the assessee under section 68 of the income tax act with respect to the sum received from WGA Financial Services Ltd, the assessee has clearly established the identity of that company, with respect to the creditworthiness of that company, the assessee has shown that deposit and has received ₹ 205 crores from another company which has been accepted in the assessment of the depositors. Further on perusal of notes on account of the depositor company it is apparent that it has paid to Mrs India Bulls financial services Ltd as advances amounting to ₹ 1145710000. Further this company has transferred 1,50,000 equity shares to be assessed Birla Global Finance Co Ltd for pledge on behalf of its associate companies. On looking at the bank statement of that company it is apparent that the funds have been received from one of the companies of ₹ 205 crores have been diverted to the extent of ₹ 53 lakhs in the hands of the assessee company. The learned assessing officer has not carried out any enquiry to show that all these affairs presented by the assessee before him were not genuine. Thus, assessee has already discharged its initial onus by proving the identity of the company who deposited ₹ 53 lakhs, also shown the creditworthiness of that company stating that it has received ₹ 20 5 crores by the lender out of which only ₹ 53 lakhs has been received by the assessee, the lender is assessed under section 143 (3) of the act. There

is nothing brought on record by the learned assessing officer to show that the transaction entered into by that company with the assessee is not genuine. In view of this, we confirmed the order of the learned CIT(A) who has correctly deleted the addition of ₹ 1.89 crores in the hands of the assessee which was made by the learned assessing officer under section 68 of the income tax act. Accordingly both the grounds of appeal raised by the learned assessing officer are devoid of any merit and hence are dismissed.

8. In the result appeal of the learned AO is dismissed.

Order pronounced in the open court on 06/02/2020.

-Sd/-  
(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Date: 06/02/2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI