

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH : BANGALORE**  
**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER**  
**AND**  
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA 147/Bang/2019</b>
<b>Assessment Year : 2015 – 16</b>

M/s. Marigold Logistics Pvt. Ltd., Site No. 17/1, 17/2, Kanekallu Village, Jadiganahalli Hobli, Hoskote, Bangalore – 562 114. <b>PAN NO : AAGCM 8037 Q</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 4(1) (3), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri. H. V. Gowthama, CA
Respondent by	:	Shri. Manjeet Singh, Addl. CIT

Date of Hearing	:	17-02-2020
Date of Pronouncement	:	06-03-2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 22/11/2018 passed by Ld. CIT(A) – 2, Bangalore for assessment year 2015 – 16 on following grounds of appeal:

1. *The learned Commissioner of Income Tax erred in confirming the order of the learned Assessing Officer adding sum of Rs.68,36,000/- Share*

*Application Money received from four allottees of shares as per provisions of section 68 of Income Tax Act.*

- 2. The learned Commissioner of Income tax ought to have considered the fact that all the four allottees of shares have given confirmation for investment in shares along with necessary documentary proof in respect of their source of investment.*
- 3. The Appellant submits that all the four allottees of shares have their independent source of income and have issued letter of confirmation of investment and therefore the learned Commissioner of Income Tax ought to have considered the same and deleted the additions made by learned Income Tax Officer.*
- 4. The Appellant further submits that if at all there is any addition to be made, it can only be in the hands of respective share holders and not in the hands of the company.*
- 5. For the above & any other grounds that may be advanced at the time of hearing, the Appellant prays that the Appeal be allowed.*

**2. Brief facts of the case are as under:**

Assessee is a company and filed its return of income for year under consideration on 21/09/2015 declaring loss of Rs.44,12,902/-. Ld. AO observed that, assessee is in the business of Logistics services. The case was selected for limited scrutiny to verify large expenses claimed in profit and loss account is a mismatching amount paid to related percent under section 40A(2)(b), reported in audit report and ITR. Subsequently, the case was converted to complete scrutiny and notice under section 143(2) was issued to assessee followed by notice under section 142(1) and questionnaire. In response to statutory notices, representative of assessee appeared before Ld. AO and filed requisite details as called for.

3. During assessment proceedings Ld. AO observed that, assessee is issued 30 lakhs equity shares of Rs.10 each to existing shareholders during year under consideration. Letters were issued to the shareholders bilayer Ld. AO to explain source of investment in shares capital. Upon receipt of confirmation from the shareholders, the investors were examined and Ld. AO observed that in some cases explanation furnished was not satisfactory.

4. Ld. AO thus invoked section 68 and made the investment in shares capital of assessee by following 4 persons to be unexplained credit in the books of assessee:

1	PG Thyagarajan	-	Rs.22,00,000/-
2	Susheela Thyagarajan	-	Rs. 5,50,000/-
3	Rajeshwari Swaminathan	-	Rs.22,86,000/-
4	Lucy Henry	-	<u>Rs.18,00,000/-</u>
	<b>Total</b>	<b>=</b>	<b><u>Rs.68,36,000/-</u></b>

Aggrieved by additions made by Ld. AO, assessee preferred appeal before Ld. CIT(A).

5. Ld. CIT(A) recorded that, though there is no direct evidence to prove that assessee had only rooted its undisclosed monies in the form of share application money by virtue of operation of deeming provision of section 68, addition made by Ld.AO is justified.

Aggrieved by order of Ld. CIT (A) assessee is in appeal before us now.

6. All grounds raised by assessee is on account of addition made under section 68 of the act towards the share application money received from 4 allottees by assessee. Ld.AR submitted

that, all payments received from shareholders were either by RTGS or by demand draft and that the statement filed by assessee that referred to the opening balance of loan account, total debit and credit in the loan account and the closing balance. Placing reliance upon villagers' statements placed at page 74-75, Ld.AR submitted that, in case of Shri.P.G.Thyagarajan, there is a running account maintained with assessee, and that share application money deposited by Smt.Susheela Thyagarajan is actually paid by Shri.P.G.Thyagarajan against which shares were allotted to her.

**7.** It has been submitted that, all relevant requirements fall purposes of verification under section 68 of the act has been submitted by assessee to Ld.AO against which no doubt has been casted. He also submitted that, all share applicants are regular income tax assessee and therefore the details filed by them was verifiable.

**8.** Placing reliance on decision of *Hon'ble Delhi High Court* in case of *DCIT vs. Soft Line Creations Private Limited reported in (2017) 81 Taxmann.com 269*, he submitted that, where assessee had provided sufficient information by way of permanent account numbers to highlight the identity of the share applicants as well as produced affidavits of directors and furthermore the bank details of share applicants to have been provided it was held that, assessee had established the identity of the share applicants, the genuineness of transaction and the creditworthiness and therefore addition made under section 68 is not justified.

**9.** On the contrary Ld. Sr. DR submitted that, in the present facts of the case assessee only provided Ledger account in case of Shri. P.G. Thyagarajan and Smt. Susheela Thyagarajan,

Pan No. of the 4 alleged share applicants, confirmation is from all for share applicants. He submitted that, these documents do not fulfil the requirement as specified under section 68 to satisfy the creditworthiness and genuineness of the transaction though identity stands established. He submitted that, in case of Rajeshwari Swaminathan and Lucy Henry, Ld.CIT (A) records that, no documents has been filed to establish creditworthiness of these share applicants. He thus supported the view taken by Ld.CIT(A) and submitted the addition to be confirmed.

We have perused submissions advanced by both sides in light of records placed before us.

**9.** It is observed as rightly pointed out by Ld. Sr. DR that, assessee has only established identity of alleged share applicants by providing pan numbers. However, creditworthiness and genuineness of the transaction has not been established at all in case of Rajeshwari Swaminathan and Lucy Henry. In case of Shri. P.G. Thyagarajan and Smt. Susheela Thyagarajan being directors of assessee and having running loan account with assessee would not establish the creditworthiness of the transaction. Though in their case it is noted that loan has been repaid in the form of shares being allotted to some extent.

**10.** In the interest of Justice to both sides we are of the opinion that Ld.AO should revisit the share application money received from these alleged share applicants. Assessee is accordingly directed to file all requisite details which could establish the creditworthiness and genuineness of the transaction. Ld.AO shall then verify the details filed by assessee and consider the claim, in accordance with law.

**Accordingly, grounds raised by assessee stands allowed for statistical purposes.**

**In the result, appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 6<sup>th</sup> March, 2020.

Sd/-  
(B. R. BASKARAN)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 6<sup>th</sup> March, 2020.  
/MK/

**Copy to:**

- |               |                        |
|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
Income Tax Appellate Tribunal.  
Bangalore.