

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "1-2, SMC": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1214/Del/2019
(Assessment Year: 2008-09)

Thar Properties Pvt. Ltd, M-5A Magnum House-2, Karampura Comm. Complex, New Delhi PAN: AACCT3981A (Appellant)	Vs.	ITO, Ward-25(2), Delhi (Respondent)
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ITA No. 1215/Del/2019
(Assessment Year: 2009-10)

Thar Automobiles Pvt. Ltd, M-5A Magnum House-2, Karampura Comm. Complex, New Delhi PAN: AACCT8899F (Appellant)	Vs.	ITO, Ward-25(2), Delhi (Respondent)
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Assessee by :	None
Revenue by:	Shri Pradeep Singh Gautam, Sr. DR
Date of Hearing	03/03/2020
Date of pronouncement	20/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the two appeals of the two different assessee of same group having common address and common grounds of appeal involving identical facts; therefore both these appeals are disposed of by this common order. In both these appeals there is a common addition u/s 68 of the income tax Act on account of share capital issued to various companies allegedly managed by the accommodation entry provider Mr. Praveen Jain confirmed by the Id CIT (A).
2. ITA No 1214/ Del/ 2019 for AY 2008-09 is filed by Thar properties Pvt Ltd against the order of the Id CIT (A)-9, New Delhi dated 20.12.2018,

wherein, the appeal filed by the assessee was dismissed confirming the action of reopening of the assessment as well as the addition of Rs. 15 lakhs as income of the assessee from undisclosed source u/s 68 of the Act.

3. Brief facts of the case shows that the assessee is a company. It filed its return of income on 30.09.2008 at Rs. 433/-. The Additional Director of Income Tax, New Delhi on 10.03.2014 forwarded a letter sharing of information of beneficiaries of accommodation entries provided by Shri Praveen Kumar Jain. Therefore, after obtaining necessary permission notice u/s 148 was issued on 18.09.2014. The assessee on 16.10.2014 requested that original return filed may be accepted. The copies of the reasons were also supplied to the assessee on 16.10.2014.
4. The Id AO noticed that the assessee has obtained share application money of Rs. 5 lakhs from Alka Diamond Industries Ltd and Rs. 10 lakhs from Kush Hindustan Entertainment Ltd. The Id AO asked the assessee to prove the necessary ingredients such as Identity, creditworthiness and genuineness of the transaction. In response to that the assessee submitted that Mr. Praveen Kumar Jain who has given the statement based on which the case of the assessee is reopened has already retracted the said statement as per affidavit dated 25.04.2014, therefore earlier statement is no longer valid. The Id AO noted that these are the companies managed by Mr. Praveen Kumar Jain. Perusal of the bank statement of these companies did not show any actual business transactions. Therefore, the Id AO asked the assessee to show the identity and creditworthiness of these parties. The assessee was also asked to produce the directors of that company. The assessee submitted that on 09.03.2016 the director of share applicant company has sought an adjournment and they have assured the assessee that they will depose before the Id AO, if proper time is given. However, none appeared till the date of passing order (from 9.3.2016 to 14.03.2016). consequently on 14.03.2016, the Id AO made an addition of Rs. 15 lacs u/s 68 by passing an order u/s 147 read with section 143(3) of the Act. The assessee preferred appeal before the Id CIT (A) who also dismissed it

upholding the action u/s 147 of the act. on merits, He held that on the basis of information submitted by the assessee the creditworthiness and genuineness of the parties were not proved. Now the assessee has filed this appeal.

5. At the time of hearing the assessee submitted an adjournment letter through its Chartered Accountant that he was continuously in outstation for professional assignment and therefore he could not prepare, Therefore, matter may be adjourned for 20 days.
6. The Id DR submitted the details of several judicial precedents stating that addition has rightly been made. It was submitted that issue is squarely covered now by decision of Honourable supreme court in case of NRA Iron & Steel.
7. We have carefully considered request of assessee for adjournment. In this case addition has been made solely on the basis of the fact that the assessee on 09.03.2016 could not present the directors of the applicant companies. The assessee was called to produce them by letter of AO dated 04.03.2016 asking the assessee to produce them on 09.03.2016 and the Id AO passed an order on 14.03.2016. Even the directors of the share applicant company has stated by the assessee himself are ready to depose before the Id AO but they wanted some time. The Id CIT (A) did not deal with this aspect of the matter. Even before the Id CIT (A) there is no opportunity given to the assessee to produce the directors. Even the Id CIT (A) did not comment on this issue. The whole proceedings before the Id CIT (A) were only on the several judicial precedents for and against the assessee. In fact assessee was asked to produce the directors of the applicant companies only on 4/3/2016 to present them on 9/3/2016. The assessee is seeking further time to produce them, but there is now whisper on order about that. If the only issue of the revenue is that assessee failed to produce the directors of the applicant company, it is stated by the assessee that directors of applicant company has agreed to depose before Id AO but not on 9/3/2016 , as some time is requested. In view of this we therefore, reject the adjournment application of the assessee and in the interest of justice, we give one more opportunity to

the assessee to produce the directors of the share applicants company before the Id AO as promised by the assessee himself as per letter dated 09.03.2016. Hence, we set aside the whole issue back to the file of the Id AO with a direction to the assessee to produce the directors of the share applicant company along with necessary evidence to justify the identity, creditworthiness and genuineness of the transactions of share application money of Rs. 15 lakhs. The Id AO may consider the evidence produce before him along with examination of the directors of the share applicants company and decided the issue afresh.

8. Accordingly, the appeal of the assessee is allowed for statistical purposes.

Thar Automobiles Pvt Ltd

1215/Del/2019

A Y 2009-10

9. This appeal also involves the identical issue of addition of share capital with respect to the accommodation entries of Mr. Praveen Kumar Jain group. The assessee filed its return of income on 28.09.2009 declaring Nil income and carried forward losses of Rs. 1277822/-. As per the information from the Investigation Wing it was found that assessee has received accommodation entries from Mr. Praveen Kumar Jain of Rs. 43 lakhs from five different companies on 16.10.2014. The assessee submitted a letter requesting that original return filed on 28.09.2009 may be considered as return of income filed in respect of notice u/s 148 dated 18.09.2014. The reasons recorded were also provided to the assessee on the same date. The identical facts are reported in the present case as dealt with in ITA No. 1214/Del/2019 in case of Thar Properties Pvt. Ltd. Consequently, the Id AO made u/s 68 of the Act of Rs. 43 lakhs by order dated 14.03.2016. The assessee challenged the same before the Id CIT (A) and also given the similar reasons as in the appeal of Thar Properties confirmed the addition. Thus, for Assessment Year 2009-10 the assessee in appeal before us.
10. The assessee sought adjournment for the similar reasons. However as the issue involved in this appeal is identical to issue involved in the appeal of Thar Properties Pvt Ltd where the Id AO asked the assessee to produce

the directors of the applicant company but same were not produced. As this issue has already been decided by us on similar facts in case of Thar Properties Ltd, for the similar reasons, we set aside the whole issue back to the file of the Id AO with a direction to the assessee to produce the director of the share applicant company and to substantiate further by the production of other evidences of the identity, creditworthiness and genuineness of the transaction, if assessee wishes to. The Id AO is directed to carry out examination of the evidences and decide the issue afresh.

11. Accordingly, appeal of the assessee is allowed with above direction.
Order pronounced in the open court on 20/05/2020.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/05/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi