

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 3876/DEL/2016  
[Assessment Year: 2012-13]

The A.C.I.T  
Circle 14(2)  
New Delhi

Vs.

M/s KMG Rolling Pvt Ltd  
375, Main Road, Ghazipur  
New Delhi

PAN: AADCK 8087 D

[Appellant]

[Respondent]

Date of Hearing : 15.07.2020  
Date of Pronouncement : 16.07.2020

Assessee by : Shri Suresh Gupta, CA

Revenue by : Shri Saras Kumar, DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the Revenue is preferred against the order of the  
CIT(A) - 5, Delhi dated 05.04.2016 pertaining to A.Y 2012-13.

2. At the very outset, the ld. counsel for the assessee drew our attention to the application made u/r 27 of the ITAT Rules and pointed out that the assessee is challenging a pure legal ground and its adjudication does not require intense investigation and relevant facts are explicitly available on record.

3. With this application, the assessee has challenged the impugned addition of Rs. 2,01,50,000/- being share application money, which, according to the Assessing Officer, accepted during the year under consideration and subjected to tax u/s 69C of the Income-tax Act, 1961 [hereinafter referred to as 'The Act']. The assessee contends that such unexplained credits are outside the ambit of section 69C of the Act. Reliance has been placed on several judicial decisions.

4. We have carefully perused the assessment order. Right from his query till the framing of the assessment order, the Assessing Officer has proceeded to examine the credits of share application money in light of section 68 of the Act. The assessee itself, in all its replies, has made submission in light of section 68 of the Act. It appears that inadvertently, while making addition, the Assessing Officer has mentioned section 69C of the Act.

5. In our considered opinion, wrong mention of section would not vitiate the entire assessment. Moreover, the first appellate authority, at para 4.3 of his order, has also acknowledged this inadvertent error. Therefore, we do not find any merit in this application moved by the assessee. Accordingly, the same stands rejected.

6. Coming to the merits of the Revenue's appeal, the solitary grievance is in relation to deletion of addition of Rs. 2,01,50,000/-.

7. Representatives of both the sides have been heard at length. Case records carefully perused and relevant documentary evidences have been considered in light of Rule 18(6) of the ITAT Rules.

8. Facts on record show that while scrutinizing the return of income, the Assessing Officer noticed that the assessee has shown share application money received from five parties amounting to Rs. 2,01,50,000/-. The assessee was asked to furnish the details with names and addresses of the parties from whom share application money has been received, amount and assessment particulars. The

assessee filed confirmations from all the parties, alongwith bank statements and copies of I.T. Returns.

9. The Assessing Officer observed that the assessee has filed bank statements only of the month in which transaction took place. The Assessing Officer further observed that the I.T. Returns filed by the parties for Assessment Year 2012-13 show income between 2 to 3 lakhs. To examine the credit worthiness of the share applicants, the Assessing Officer issued summons u/s 131 of the Act but no one attended the proceedings and again confirmations were filed. Taking an adverse view, the Assessing Officer formed a belief that the credits are unexplained and, accordingly, made addition of Rs. 2,01,50,000/-.

10. The assessee carried the matter before the Id. CIT(A) and strongly contended that the Assessing Officer never asked the assessee to furnish complete bank details and, therefore, the assessee filed bank details of the share applicants only for the month in which transaction took place. In support, the assessee filed complete bank statements alongwith the source of availability of funds with the share applicants.

11. After considering the facts and submissions, the ld. CIT(A) admitted the additional evidences. The ld. CIT(A) found that in so far as the amount of Rs. 6,50,000/- is concerned, it is brought forward balance from preceding Assessment Years from Pawan Goyal and Sons, HUF. Being an opening balance, no addition could be made u/s 68 of the Act and accordingly, the same was deleted.

12. In respect of other share applicants, the ld. CIT(A), after admitting additional evidences, called for remand report from the Assessing Officer who submitted his remand report dated 08.02.2015.

13. After considering the observations of the Assessing Officer in his remand report, the ld. CIT(A) observed as under:

"4.5. Perusal of the additional evidences shows that in addition to the confirmations, bank statement of the relevant transaction and ITRs, which the appellant produced before the AO, bank statement for the complete financial year, confirmation of the source of source (Amit Industries Pvt. Ltd., Shri. Sumit Aggarwal and Sh. Amit Aggarwal) and the bank statements of the above mentioned parties have been filed. It is understood that Smt. Megha Aggarwal is the

daughter-in-law of the Director of the company Sh. Pawan Goel and Neeru Aggarwal, Amit Aggarwal and Sumit Aggarwal are her siblings. These persons are directors in M/s Amit Industries Pvt. Ltd., which has filed return for assessment year 2012-13 showing an income of Rs.11,04,117/-. The sources of share application money by the share applicants has been explained by way of fund transfer from Amit Industries Pvt. Ltd., Amit Aggarwal, Sumit Aggarwal and Shashi Gupta. Smt. Shashi Gupta is also assessed to tax with the ITO, Ward 25(1) and has returned income of Rs.3,03,072/- for A.Y. 2012-13. Keeping in view the evidences filed in the form of complete bank statements, ITRs, confirmations of sources from which funds have been transferred and their income tax returns, it is held that the genuineness, creditworthiness and identity of the share applicants has been proved beyond doubt and hence no addition can be made u/s 68. In this view of the matter **ground no. 2 & 3 are allowed."**

14. Aggrieved by this, the revenue is before us.

15. It is true that the Assessing Officer did not proceed further after serving the summons u/s 131 of the Act. In our considered opinion, if the summons were served and share applicants being family members, the Assessing Officer had all powers to enforce their attendance.

16. Before the first appellate authority, the assessee furnished complete bank statements alongwith source of availability of funds with share applicants, but the same has been discussed summarily by the Id. CIT(A) and also by the Assessing Officer in his remand report. In our considered opinion, when the income of the share applicants does not justify the share application money, then the burden is heavier on the assessee to prove the credit worthiness of the share applicants.

17. Though the assessee did file documentary evidences, it appears that the same have not been thoroughly examined by the authorities below. Therefore, in the interest of justice and fair play, we deem it fit to restore the entire assessment to the file of the Assessing Officer. The assessee is directed to furnish documentary evidences to show the availability of funds with share applicants and the Assessing Officer is directed to examine thoroughly and decide the issue afresh after giving reasonable and sufficient opportunity of being heard to the assessee.

18. In so far as the addition on account of share application money from Pawan Goyal & Sons, HUF is concerned, there is no dispute that this was opening balance brought forward from the preceding

Assessment Years and, therefore, it is outside the ambit of section 68 of the Act. To this extent, we do not find any error or infirmity in the findings of the ld. CIT(A). Addition of Rs. 6,50,000/- stands deleted.

19. In the result, the appeal of the revenue in ITA No. 3876/DEL/2016 is allowed in part for statistical purposes.

**The order is pronounced in the open court on 16.07.2020.**

**Sd/-**

**(KULDIP SINGH)  
JUDICIAL MEMBER**

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Dated: 16<sup>th</sup> July, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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