

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'D' NEW DELHI]**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 3126/Del/2017 (A.Y 2010-11)
(THROUGH VIDEO CONFERENCING)**

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| DCIT, Circle : 16 (2), New Delhi. (APPELLANT) | Vs. | M/s. Prakausali Investment India (Pvt.) Ltd., C - 41, Mayfair Garden, New Delhi - 110 005. PAN : AAACP3716F (RESPONDENT) |
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| Appellant by | Ms. Sushma Singh [CIT] - DR |
| Respondent by | Ms. Kanika Jain, Adv. |

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| Date of Hearing | 07.01.2021 |
| Date of Pronouncement | 11.01.2021 |

ORDER

PER SUCHITRA KAMBLE, JM :

This appeal is filed by the Revenue against the order dated 30.01.2017 of the Commissioner of Income Tax [Appeals]-7, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition of Rs. 1,56,10,00,000/- u/s 68 of the Income Tax Act 1961 (the Act) even when the assessee had failed to discharge its initial onus to prove the creditworthiness of the investors u/s 68 of the Act before Assessing Officer (the AO) as well before the Ld CIT(A)?
2. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition of Rs. 1,56,10,00,000/- u/s 68 of the Act by holding that creditworthiness of investors was proved by mere production of papers relating to identity of investors, copies of bank statement, use of banking channel, confirmations and KYC forms of some of the investors, proof of TDS by ignoring the

ratio decidendi as laid down by Hon'ble Delhi High Court on the issue in the cases of CIT vs. N.R. Portfolio (P) Ltd. (2014) 2 ITR-OL-68, CIT vs. Nipun Builders and Developers (P) Ltd. (2013) 350 ITR 407 and CIT vs. Navodaya Castles Pvt. Ltd. (2014) 367 ITR 306 on application of section 68 of the Act?

3. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition of Rs. 1,56,10,00,000/- u/s 68 of the Act without recording evidence and reasons for reaching a conclusion that the assessee had actually discharged its onus with regard to creditworthiness of 110 investors even after recording a fact that the assessee could file KYC forms of only 36 investors out of total 110 investors and a fact that 13 investors did not file confirmation and no evidence to prove creditworthiness of 110 investors was filed before the AO during remand proceedings?

4. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition of Rs. 1,56,10,00,000/- u/s 68 of the Act on the basis of paper work like KYC forms of a few investors, details of bank accounts, confirmation of some of the investors etc. without bringing any material or evidence on record that the investors had actually capacity to make such investment by not invoking his power u/s 250 (4) of the Act in contravention to the ratio decidendi as laid down by Hon'ble Jurisdictional High Court in case of CIT vs Jansampark Advertising and Marketing Pvt. Limited (2015) 375 ITR 373?

5. That the appellant craves leave to add, alter, amend or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal.”

3. The assessee filed its return of income on 29.09.2010 and declared total income of Rs.42,25,206/-. The Assessing Officer after taking into consideration the documents and replies filed by the assessee, assessed the total income at Rs.193,89,36,280/- thereby making an addition of Rs. 156,10,00,000/- and held that the funds introduced in the books of the assessee company in the shape of debenture investments re unexplained in view of the provisions of Section 68 of the Act.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT (Appeals). The CIT (Appeals) partly allowed the appeal of the assessee.

5. The Ld. Departmental Representative submitted that during the course of assessment proceedings, the assessee company filed details and submitted before the Assessing Officer that the assessee company raised funds of Rs.286.10 crores during the relevant previous year out of which amounts of Rs.90 crores and Rs.40 crores were received from Morgan Stanley India Capital

Pvt. Ltd., Mumbai and M/s. Birla Sunlife Asset Management Company Ltd., Mumbai. But, as far as the other 110 allottees are concerned who have allegedly invested an amount of Rs.156.10 crores, the assessee company has not submitted details as called for in respect of provisions of Section 68 of the Income Tax Act, 1961 (the Act). The Ld. DR further submitted that the assessee company submitted documents only to establish identity of some persons, but as far as explaining the genuineness of transactions, no information was submitted nor was any person produced. Merely filing of documents to know about the identity of few persons does not satisfy the requirement of proving genuineness, creditworthiness as per the provisions of Section 68 of the Act. The Ld. DR further submitted that the details filed before the CIT (Appeals) by the assessee and for which the CIT (Appeals) has called remand report from the Assessing Officer clearly reveals that from those 110 parties only the amount of Rs.138.01 was explained but the addition was in respect of Rs.156.10 crores. The Ld. DR, therefore, submitted that the difference of approximately Rs.18 crores was never explained by the assessee before the CIT (Appeals). Despite this, the CIT (Appeals) deleted the entire addition and set aside the order of the Assessing Officer. The Ld. DR specifically pointed out Annexure A, Annexure B and Annexure C to the remand report, which was available to the assessee as well and was very much before the CIT (Appeals). Thus, the Ld. DR submitted that the matter may be remanded back to the file of the Assessing Officer in respect of the evidences and the additions made by the Assessing Officer.

6. The Ld. AR submitted that all the details were given before the CIT (Appeals) as the Assessing Officer has not given the sufficient opportunity / time to the assessee, therefore, each and every party was not called upon during the assessment proceedings. The Ld. AR submitted that at the stage of appellate proceedings before the CIT (Appeals) the assessee has acquired all the details in person and in fact the confirmations were filed before the Assessing Officer as well. The Ld. AR submitted that the remand proceedings highlights

the genuineness and creditworthiness of those parties and, therefore, the CIT (Appeals) has rightly deleted the addition. The Ld. AR further submitted that these additions cannot be made under Section 68 of the Act.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT (Appeals) without going into the details of the Assessing Officer's remand report has simply deleted the entire addition despite there is a difference which appears prima facie proper in respect of approximately Rs.18 crores. Thus, the CIT (Appeals) has not at all properly verified the details given by the assessee during the appellant proceedings and the Ld. AR also could not point out how the difference has crept into. Merely, submitting the addresses, income tax particulars of debenture holders cannot be termed as sufficient evidence. In fact, the receipt of payment and repayment made through banking channels also reveals that the entire addition of Rs. 156.10 was not properly taken into account by the CIT(A) relating to the difference of Rs. 18 crores. Thus, it will be appropriate to remand back this issue to the file of the Assessing Officer for further investigation / verification of all the evidences produced by the assessee in respect of 110 parties and accordingly pass the appropriate order by following due process of law. Needless to say the assessee be given opportunity of hearing by following principles of natural justice. Thus, the appeal of the Revenue is partly allowed, for statistical purpose.

8. In the result, the appeal of the Revenue is partly allowed, for statistical purpose.

Order pronounced in the open court on this 11th Day of January, 2021.

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 11/01/2021.

MEHTA

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date on which the fair order is placed before the Dictating Member for pronouncement | 11.01.2021 |
| Date on which the fair order comes back to the Sr. PS/PS | 11.01.2021 |
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| Date on which the file goes to the Bench Clerk | 11.01.2021 |
| Date on which the file goes to the Head Clerk | |