

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 1179/MUM/2019 : **A.Y : 2009-10**

Income Tax Officer – 15(3)(2),
Mumbai. (Appellant) Vs. Vishwakarma Structure Pvt. Ltd.,
325, Vardhman Market, Sector 17,
Vashi, Navi Mumbai 400 705.
PAN : AAACV8443P (Respondent)

Appellant by : **Shri Neelkhant Khandelwal**

Respondent by : **Ms. Usha Gaikwad**

Date of Hearing : **12/01/2021**

Date of Pronouncement : **21/01/2021**

ORDER

PER RAJESH KUMAR, AM :

This appeal by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals) - 24, Mumbai (in short 'the CIT(A)') pertaining to Assessment Year 2009-10.

2. The only issue raised by the Revenue in its grounds of appeal is against the deletion of Rs.1,90,00,000/- as made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 (in short 'the Act') towards unexplained share application money received by the assessee.

3. The facts in brief are that the assessee filed its return of income on 30.09.2009 declaring total income of Rs.36,970/- which was processed under

Section 143(3) of the Act. Thereafter, the case of assessee was reopened after the Assessing Officer received information from the Investigation wing of the Income Tax Department vide letter no. DGIT (Inv.)/Information/PJ/2013-14 dated 07.03.2014 that following a search conducted on Shri Pravin Kumar Jain and related entities on 01.10.2013 it has come to light that assessee has availed bogus share application entries from various parties. A list of such entries is provided in page 2 of the assessment order which shows that assessee has taken entries by way of share application money from four parties aggregating to Rs.2,40,00,000/-. During the course of assessment proceedings, the Assessing Officer noted that assessee has received Rs.1,90,00,000/- from the said parties related to Shri Pravin Kumar Jain and not Rs.2,40,00,000/-. On the basis of the addresses and details provided by the assessee, the Assessing Officer issued notice under Section 133(6) of the Act to the said parties. The notice issued to Nakshatra Business P. Ltd. (Hema Trading Co. P. Ltd.) was received back unserved. However, the details called upon from this party were filed before the Assessing Officer in tapal to prove the genuineness and creditworthiness of the share subscribers. However, no details were provided in respect of the remaining three shareholders. Thereafter, the Assessing Officer discussed the *modus operandi* through which Shri Pravin Kumar Jain and related entities used to operate and accept money from various parties and used to issue accommodation entries in the form of share capital, share application money, long term capital gain and unsecured loans. Finally, the Assessing Officer was not satisfied with the contentions and submissions of the assessee and came to the conclusion that assessee has failed to prove the identity, creditworthiness of the lenders and genuineness of the transaction as the nature and source of money was not explained and consequently added Rs.1,90,00,000/- under Section 68 of the Act comprising of

Rs.55,00,000/- from Alka Diamond India Pvt. Ltd., Rs.45,00,000/- from Kush Hindustan Ent. Ltd., Rs.40,00,000/- from Nakshatra Business P. Ltd. and Rs.50,00,000/- from Triangular Infocom by framing assessment under Section 143(3) r.w.s. 147 of the Act vide order dated 30.03.2016.

4. In the appellate proceedings, the learned CIT(A) while deleting the disallowance noted that the assessee has submitted all the papers, documents, evidences to establish the identities and creditworthiness of the investors and also proved the genuineness of the transactions. The learned CIT(A) noted that during the course of assessment proceedings, assessee has filed various evidences comprising of confirmations from concerned parties, acknowledgement of income tax returns of the investors, annual accounts of the share applicants and copies of bank statements evidencing payments through banking channels. The learned CIT(A) also noted in para 2.4.2.4 that Shri Pravin Kumar Jain has retracted his statement made during the course of search and, therefore, no cognizance of the same can be taken and therefore addition cannot be made under Section 68 of the Act based upon such a statement. The learned CIT(A) in para 2.4.2.8 has noted that the Assessing Officer has only referred to the *modus operandi* in general by Shri Pravin Kumar Jain and related entities and nowhere it is alleged that the assessee has been provided with accommodation entries and accordingly, he held that the Assessing Officer is not justified in placing reliance on the statement of Shri Pravin Kumar Jain, which has been retracted subsequently. In para 2.4.2.9, the learned CIT(A) noted that even the Assessing Officer could not establish the money trail to show that assessee has given his own money and accepted accommodation entries in the form of share capital and on that count also, the learned CIT(A) dismissed the observations/conclusions made by the Assessing

Officer in making addition of Rs.1,90,00,000/- as the same was made on the basis of suspicion and surmises. He finally relied on various decisions referred to in the appellate order such as *Green Infra Ltd. vs Income Tax Officer, [2013] 145 ITD 240 (Bombay)*, *CIT vs Gagandeep Infrastructure P. Ltd., 394 ITR 680 (Bombay)* and *CIT vs Daulat Rawatmull, 87 ITR 349 (SC)* and decided the appeal in favour of the assessee by holding that assessee has provided all the evidences to the Assessing Officer and thus discharged the onus of proving the genuineness of the transactions and identity and creditworthiness of the investors, however, the Assessing Officer has failed to bring any corroborative evidences on record to prove to the contrary and accordingly deleted the addition of Rs.1,90,00,000/- made under Section 68 of the Act.

5. After hearing the rival submissions and perusing the material on record, we find that undisputedly assessee has taken share application money from four parties aggregating to Rs.1,90,00,000/-. During the course of assessment proceedings, assessee has filed various evidences such as confirmations from these parties, income tax returns, annual accounts and bank statements to prove the genuineness of the transactions and identity and creditworthiness of the investors, however, the Assessing Officer has not conducted any further inquiry to bring on record evidences to the contrary or to disprove the evidences as filed by the assessee. We note that though the Assessing Officer has issued show cause notices under Section 133(6) of the Act, which was returned unserved, the assessee has filed confirmations along with evidences of three of the investors before the Assessing Officer. We have perused the order of the learned CIT(A) carefully and find that the learned CIT(A) has dealt with each and every relevant aspect of the matter in detail and as such the learned CIT(A) has rightly deleted the addition on the ground that the

Assessing Officer has relied upon the statement of Shri Pravin Kumar Jain which has been retracted later and, therefore, the same cannot be the basis for addition under Section 68 of the Act. Considering the facts and circumstance of the matter and the various case laws as relied by the learned CIT(A), which has also been relied by the learned counsel for the assessee during the course of hearing before us, we are inclined to uphold the order of learned CIT(A). Accordingly, the appeal of the Revenue is dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 21st January, 2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai, Date : 21st January, 2021

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai