

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 5221/DEL/2017 (A.Y 2012-13)
(THROUGH VIDEO CONFERENCING)**

ITO Ward-7(3) Room NO. 400-B, C. R. Building New Delhi (APPELLANT)	Vs	Direct Mercantile Company Pvt. Ltd. C-103 GF, Right Side Kh No. 115, Panchsheel Vihar, Khirki New Delhi PAN: AADCD9171F (RESPONDENT)
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Appellant by	Sh. Jagdish Singh, Sr. DR
Respondent by	Sh. Ved Jain, Adv & Sh. Ashish Goel, CA

Date of Hearing	10.02.2021
Date of Pronouncement	19.03.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 05.05.2017 passed by CIT(A)-3, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

“1.Ld. Commissioner of Income Tax (Appeal) erred in law and on facts of the case in deleting the addition of Rs. 3,14,16,000/- made by the A.O on account of unexplained share capital & share premium and Rs. 2,10,00,000/- on account of unexplained investment”

3. During the year under consideration, the assessee has shown income from handling charges and apart from business income no other source of

income was admitted by the assessee. Return declaring of income Rs. 1,11,507/- was filed on 30/09/2012 which was processed u/s 143(1) and subsequently selected for scrutiny under CASS. In the year under consideration, the assessee has shown to have received share premium to the tune of Rs. 2,76,76,553/-. The assessee contended that issue of shares at premium is a commercial decision and does not require any justification and explained that share premium was raised by complying the provisions of Companies Act, 1956. During the course of assessment proceedings information u/s 133(6) have been called for from the share holders who have paid share premium to the assessee company. The details of which is as under:-

- a) M/s Saras Developers Pvt. Ltd.
- b) M/s Direct Trading Company Pvt. Ltd.
- c) M/s Domain Enterprises Pvt. Ltd.
- d) M/s Ram Rahim Trading Co. Pvt. Ltd.
- e) M/s Raj Trading Co. Pvt. Ltd.
- f) M/s Legacy Mercantile Co. Pvt. Ltd.
- f) M/s Kabir Enterprises Pvt. Ltd.
- g) M/s Nachiketa Agrotech Pvt. Ltd.

The Assessing Officer made an addition of Rs. 3,14,16,000/- on account of share capital and share premium u/s 68 of the Act and addition of Rs. 2,10,00,000/- on account of investment out of books.

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

5. The Ld. DR submitted that the Assessing Office has taken into account, the evidences filed by the assessee and from the perusal of such evidence the assessing Officer came to the conclusion that some of the party details were not proper and, therefore, made the additions under the caption share capital and share premium u/s 68 of the Act and addition on account of investment

out of books. The CIT(A) though has taken cognizance of additional evidence before him has failed to take into account that there are certain parties for which no details/insufficient details were filed. Thus, the Ld. DR submitted that the additions on both accounts should be sustained. The Ld. DR relied upon the decision of CIT Vs. M/s Jansampark Advertising (ITA No. 525/2014 order dated 11/3/2015 Delhi High Court).

6. The Ld. AR relied upon the order of the CIT(A) and submitted that all the details were before the Assessing Officer as well as before the CIT(A). The confirmations of the parties and the details of share capital and share premium as well as investments were before the CIT(A) as well as Assessing Officer. Thus, the CIT(A) has properly adjudicated the appeal of the assessee. The Ld. AR further submitted that this is the case of Normal scrutiny assessment under section 143(3) of the Income Tax Act. There is no information received by the Assessing Officer from the third party or investigation cell of the department against the share applicants. There is no allegation of cash deposits in the bank account of investors. All the transactions have been made through banking channels and are recorded in the books of accounts of the assessee. The assessee has discharged his onus and filed all the documents before the Assessing Officer. No defect has been pointed out by the Assessing Officer in respect of the documents filed by the assessee. The Assessing Officer has made the independent enquiry by issuing notices under section 133(6) which have been duly served upon the investors. Investors have replied to the notices issued and filed their confirmations, ITRs and bank statements during the assessment proceedings. The Assessing Officer did not make any further investigation in support of his allegations that these investor companies are entry providers. All the directors of the investor company were produced before CIT(A) in response to the notices sent by CIT(A) by exercising his powers in view of Section 250(4) of the Income Tax Act. The Ld. AR relied upon the following decisions:

- Delhi High Court CIT Vs. Rakam Money Matters Pvt. Ltd. in ITA No. 778 of 2015 dated 13/10/2015
- Bombay High Court in the case of CIT(A) Vs. Creative World Telefilms Ltd. [2011]333 ITR 100
- Delhi Tribunal in the case of ITO Vs. Softline Creations P. Ltd. in ITA No. 744/Del/2012 dated 10/02/2016
- Delhi ITAT in the case of Prayag Polytech Pvt. Ltd. Vs. Addl. CIT, ITA No. 6015/Del/2017, order dated 18.06.2019
- Delhi ITAT in the case of Ito Vs. Computer Home Information Plus Pvt. Ltd. ITA No. 680/del/2016, order dated 24/05/2019.
- Delhi High Court in the case of PCIT Vs. Goodview Trading Pvt. Ltd. ITA No. 377/2016, order dated 21.11.2016
- Delhi High Court in the case of CIT Vs. Vrindavan Farms Pvt. Ltd etc, ITA No. 71 of 2015 dated 12th August, 2015(Del).
- Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram Vs. CIT Bihar and Orissa (1959) 37 ITR 288 (SC)
- Hon'ble Supreme Court Judgment in Dhadeshwari Cotton Mills Ltd. Vs. CIT (1955) 27 ITR 126 (SC)

7. We have heard both the parties and perused all the relevant material available on record. From Page 108 to 110 of the paper book, it can be seen that Alfa Associates and Ram Rahim, these two entities confirmations were not mentioning any details thereof. In-fact, the CIT(A) has not taken properly sufficient evidences on account and simplicitor deleted the additions. We find that the treatment given by the CIT(A) in certain share premium companies was not at all sufficient for deleting the additions. It requires further

application of mind. The Hon'ble Delhi High Court in case of CIT Vs. M/s Jansampark Advertising (ITA No. 525/2014 order dated 11.03.2015) held as under:

“37. Thus, when the AO sets about seeking explanation for the unaccounted credit entries in the books of accounts of the assessee in terms of Section 68, it is legitimately expected that the exercise would be taken to the logical end, in all fairness taking into account the material submitted by the assessee in support of his assertion that the person making the payment is real, and not non-existent, and that such other person was actually the source of the money forming the subject matter of the transaction as indeed that the transaction is real and genuine, same as it is represented to be. Having embarked upon such exercise, the AO is not expected to short-shrift the inquiry or ignore the material submitted by the assessee.”

Para 40 to 42 reads as under:-

“40. The CIT (Appeals), as also the ITAT, in the case at hand, in our view, unjustifiably criticized the AO for not having confronted the assessee with the facts regarding return of some of the summons under Section 131 or not having given opportunity for the identity of all the share applicants to be properly established. The order sheet entries taken note of in the order of CIT (Appeals) seem to indicate otherwise. The order of CIT (Appeals), which was confirmed by ITAT in the second appeal, does not demonstrate as to on the basis of which material it had been concluded that the genuineness of the transactions had been duly established. There is virtually no discussion in the said orders on such score, except for vague description of the material submitted by the assessee at the appellate stage. Whilst it does appear that the time given to the assessee for proving the identity of the third party was too short, and further that it is probably not always possible for the assessee placed in such situation to be able to enforce the physical attendance of such third party (who, in the case of share applicants vis- a-vis a company, would

be individuals at large and may not be even in direct or personal contact), the curtains on such exercise at verification may not be drawn and adverse inferences reached only on the basis of returning undelivered of the summonses under Section 131. Conversely, with doubts as to the genuineness of some of the parties persisting on account of non- delivery of the processes, the initial burden on the assessee to adduce proof of identity cannot be treated as discharged.

41. *We are inclined to agree with the CIT (Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.*

42. *The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.*

Thus, from the perusal of the assessment order and the evidence produced before us by the assessee, we find that the evidence is inadequate to support assessee's contentions that the assessee has placed all the details of the parties who have paid share capital and share premium. Though the Ld. AR also relied upon the decisions as mentioned in para 6 hereinabove, but the facts in all the cases are somewhat different from the present assessee's case as in the present case, the assessee has given inadequate evidence which does not fully demonstrate that the transaction relating to share capital and share premium is genuine. Similar is the case as regarding investments outside the books of account. Hence, we remand back this issue to the file of the CIT(A) for taking proper cognizance of the evidence which has to be produced by the assessee before him. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

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

Order pronounced in the Open Court on this 19th Day of March, 2021.

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 19/03/2021
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

