

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No. 7507/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>M/s Daga Infocom Pvt. Ltd.</b> 106, Sagar Shopping Centre J. P. Road, Andheri West, Mumbai-400 058	<b>बनाम/</b> Vs.	<b>DCIT CC – 3(4)</b> 1915, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AABCD-9604-P</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Vishnu Agarwal, Ld. AR
<b>Revenue by</b>	:	Shri Bharat Andhle, Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	12/08/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	01/09/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aggrieved by confirmation of certain addition u/s 68 for Rs.67 Lacs in AY 2009-10, the assessee is in further appeal before us. The assessment was framed by Ld. Assessing Officer u/s 143(3) r.w.s. on 147 on 30/06/2016 wherein impugned order was passed by learned Commissioner of Income-Tax (Appeals)-51, Mumbai [CIT(A)] on 26/10/2018. The assessee being resident corporate assessee is stated

to be engaged as franchisee of Reliance web store and dealing in Reliance phones and accessories.

2. Having heard rival submissions and after due consideration of material on record, our adjudication to the subject matter of appeal would be as under.

3.1 The original return filed by the assessee was processed u/s 143(1). However, during survey u/s 133A on 21/11/2013, it transpired that the assessee issued shares at high premium to Kolkata & Mumbai based entities without any justification. Accordingly, the case was reopened as per due process of law and notice u/s 148 was issued on 15/02/2016.

3.2 During assessment proceedings, the assessee was directed to substantiate these transactions. It transpired that the assessee received share capital and share premium money from as many as 17 entities as detailed in para-5 of the assessment order. The shares having face value of Rs.10/- each were issued at premium of Rs.90/- per share. The assessee furnished names, addresses and PAN of the share applicants. However, Ld. AO alleged that the financials of the assessee do not justify receipt of any premium and the share applicants had meager income. Going by the findings of investigation wing with respect to Kolkata based entities, Ld. AO alleged that share application money of Rs.67 Lacs received from 4 entities viz. M/s Blueview Tradecom Pvt. Ltd., M/s Astha Tradelink Pvt. Ltd., M/s Concord Vintrade Pvt. Ltd. & M/s Bottomline Distributors Private Ltd. was not genuine. Therefore, relying upon various judicial pronouncements as enumerated in the assessment order, these amounts were added to the income of the assessee as unexplained cash credit u/s 68.

4. During appellate proceedings, the assessee assailed the addition by submitting that it had duly discharged the onus to prove the genuineness of the share application money received by the assessee during the year. It had furnished name, addresses, PAN, relevant bank statements, financial statements, Income Tax return copies of the share applicants, their respective confirmations, copy of Form No.2 filed with ROC towards allotment of shares etc. The charging or premium would be the prerogative of the board of directors. Therefore, under these circumstances, the additions could not be made by Ld. AO, inter-alia, in terms of decision of Hon'ble Bombay High Court in **CIT V/s Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequent decision in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. However, Ld. CIT(A) chose to confirm the addition. Aggrieved, the assessee is in further appeal before us.

#### **Our findings and Adjudication**

5. So far as the legal position is concerned, we find that as per the provisions of Section 68 of the Income Tax Act, 1961, where any sum is found credited in the assessee's books and assessee offers no explanation about the nature and source thereof or the explanation furnished is found to be unsatisfactory, the sum so credited may be charged to Income-Tax as the income of the assessee of that previous year. A proviso has been inserted to the said section by Finance Act, 2012 w.e.f. 01/04/2013 to provide that where the assessee is a company and the sum so credited consists of share application money, share capital, share premium etc., the explanation furnished by the assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded also offers an explanation about nature and

source of sum so credited and such explanation is found to be satisfactory. However, this proviso is applicable only from AY 2013-14 and the same is not retrospective in nature as held by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]**. The said position has also been reiterated by Hon'ble Bombay High Court in its subsequent decision tilted as **Gaurav Triyugi Singh V/s ITO (ITA No.1750 of 207, dated 22/01/2020)** which also consider its earlier decision of **Pr.CIT V/s Veedhata Towers Pvt. Ltd. (2018 403 ITR 415)**.

6. It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders / investors to advance such monies and genuineness of the transactions. Once these three ingredients are shown to be fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of **Lovely Exports P. Ltd. [319 ITR 5]**, dismissing revenue's appeal, observed as under: -

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of

**CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequently in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. The Hon'ble Delhi High Court followed the said decision in **Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84]** against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in **Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72]** against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in **Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47]** against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the decision of Hon'ble Bombay High Court in **Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020]** which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as **Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161]**.

7. Proceeding further, it is trite law that no additions could be made on the basis of mere doubts, conjectures or surmises. Once the primary onus to substantiate the transactions is discharged by the assessee, it would be incumbent upon revenue to dislodge the assessee's claim and substantiate the allegations with corroborative evidences. Until & unless this exercise is undertaken, the additions would not be sustainable in the eyes of law.

8. Applying the aforesaid principals to the facts of the case, it could be seen that the assessee has duly discharged the primary onus of establishing the identity of the investor entities, proving their respective creditworthiness and to establish the genuineness of the transactions. The same stem from the fact that the assessee had furnished name, addresses, PAN, relevant bank statements, financial statements, Income Tax return copies of the share applicants, their respective confirmations, copy of Form No.2 filed with ROC towards allotment of shares etc. It is the findings of Ld. CIT(A) that the investments were sourced from transfer entries and there was no immediate cash deposit in the account of the investor entities. Therefore, the onus was on revenue to rebut these evidences by bringing on record cogent material to dislodge assessee's evidences. However, except for relying upon the investigation findings, no independent enquiries or verifications have been done by Ld. AO. The sole basis of addition is the third party statements given by the directors of these entities. We find that these were merely third party statements which, on standalone basis, could not form the basis of making additions in the hands of the assessee. The allegations are not supported by any corroborative evidences. Once the initial onus was discharged by the assessee, it was incumbent upon revenue to carry out further investigation to support the allegation that the credits were unexplained. However, nothing of that sort has been shown to have been carried out. It is trite law that no additions could be based merely on doubts, conjectures or surmises. Therefore, the additions as made by Ld. AO, in our considered opinion, are not sustainable in the eyes of law. The settled legal position as enumerated by us in the preceding paragraphs duly support the said conclusion.

Therefore, we delete the impugned additions as sustained by Ld. CIT(A). The grounds, thus raised, stand allowed. The legal grounds have not been urged by Ld. AR during the course of hearing and therefore, the same stands dismissed.

9. The appeal stands partly allowed in terms of our above order.

*Order pronounced on 1<sup>st</sup> September, 2021*

**Sd/-**

**(Mahavir Singh)**

उपाध्यक्ष / Vice President

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01/09/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**