

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 6176/DEL/2018 [A.Y 2010-11]

The A.C.I.T
Central Circle - 19
New Delhi

Vs.

M/s Murli Projects Pvt. Ltd
304, Roots Tower,
Distt. Centre. Laxmi Nagar
New Delhi

PAN: AAFCM 1686 A

**CO No. 213/DEL/2018
(A/o ITA No. 6176/DEL/2018 [A.Y 2010-11])**

M/s Murli Projects Pvt. Ltd
304, Roots Tower,
Distt. Centre, Laxmi Nagar
New Delhi

Vs.

The A.C.I.T
Central Circle - 19
New Delhi

PAN: AAFCM 1686 A

ITA No. 6177/DEL/2018 [A.Y 2010-11]

The A.C.I.T
Central Circle - 19
New Delhi

Vs.

M/s K.R. Pulp & Papers Ltd
304, Roots Tower,
Distt. Centre. Laxmi Nagar
New Delhi

PAN: AAACK 5861 C

CO No. 214/DEL/20180
(A/o ITA No. 6177/DEL/2018 [A.Y 2010-11])

M/s K.R. Pulp & Papers Ltd
304, Roots Tower,
Distt. Centre. Laxmi Nagar
New Delhi

Vs.

The A.C.I.T
Central Circle - 19
New Delhi

PAN: AAACK 5861 C

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv
Ms. Monika Agarwal, Adv

Department By : Shri H.K. Chaudhary, CIT-DR

Date of Hearing : 16.12.2021
Date of Pronouncement : 11.01.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two captioned separate appeals by the Revenue and cross objections by different assesseees are preferred against the separate orders of the Commissioner of Income Tax [Appeals] - 27, New Delhi dated 12.07.2018 pertaining to Assessment Year 2010-11. Since the appeals and cross objections were heard together and the underlying

facts in issues are identical, all these are being disposed off by this common order for the sake of convenience and brevity.

2. The representatives of both the sides agreed that the underlying facts in issues in the captioned appeals and cross objections were identical. Therefore, on such concession, we heard both the representatives on the facts of ITA No. 6176/DEL/2018 and CO No. 213/DEL/2018.

3. Briefly stated, the facts of the case are that search & seizure and survey operations u/s 132/133A of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] were conducted on 08.07.2015 and subsequent date in the case of the captioned assesseees.

4. During the course of search and seizure operations, various incriminating documents were found and seized which alleged that M/s K.R. Pulp and Papers Ltd and its group companies received bogus share capital and share premium from non-descript companies based in Kolkata and Delhi. It was alleged that the shares were originally issued at very

high premium rates which were repurchased by family member of director/promoter and/or group company from the non-descript share holder at very nominal rate.

5. During the course of search and seizure operations, statement of one Shri Gopal Agarwal was recorded on 08.07.2017 and 09.07.2017 wherein he was confronted with the facts about the share capital /high share premium received from Kolkata based company, in response to which, he failed to provide any justification for high share premium received non-descript company.

6. During post search enquiry, statement of one Shri Madho Gopal Agarwal was recorded. Following is the list of persons from whom share application and share premium were received:

Sl. No.	Name of the Share Holder	Address & Occupation	No. of Share	Share capital	Share Premium
1	VIKRAM FINANCIAL SERVICES LTD	STEPHEN HOUSE, 1ST FLOOR, ROOM NO.03,4, B.B.D BAG EAST, KOLKATA-700001	12,500	12,5000	2,375,000
2	VIKRAM FINANCIAL SERVICES LTD	STEPHEN HOUSE, 1ST FLOOR, ROOM NO.03,4, B.B.D BAG EAST, KOLKATA-700001	12,500	12,5000	2,375,000
3	VIKRAM FINANCIAL SERVICES LTD	STEPHEN HOUSE, 1ST FLOOR, ROOM NO.03,4, B.B.D BAG EAST, KOLKATA-700001	5,000	5,0000	950,000
4	VIKRAM FINANCIAL SERVICES LTD	STEPHEN HOUSE, 1ST FLOOR, ROOM NO.03,4, B.B.D BAG EAST, KOLKATA-700001	12,500	12,5000	2,375,000
5	VIKRAM FINANCIAL SERVICES LTD	STEPHEN HOUSE, 1ST FLOOR, ROOM NO.03,4, B.B.D BAG EAST, KOLKATA-700001	7,500	7,5000	1,425,000
6	BADAL COMMOTRADE PRIVATE LIMITED	18 A, RAMKANTA BOSE STREET, KOLKATA, WEST BANGAL-700003	10,000	10,0000	1,900,000
7	CONTSHIP COMMODITIES PVT. LTD.	85 N.S.ROAD, KOLKATA -01	15,000	15,0000	2,850,000
8	GILTEDGE VINCOM PRIVATE LIMITED	85 N.S.ROAD, KOLKATA -01	12,500	12,5000	2,375,000
9	DAISY ABHRA PRIVATE LIMITED	18 A, RAMKANTA BOSE STREET, KOLKATA, WEST BANGAL-700003	12,500	12,5000	2,375,000
10	PUNYA LEATHER PVT LTD	85 N.S.ROAD, KOLKATA -01	15,000	15,0000	2,850,000
11	VANRAJ MERCHANTS PRIVATE LIMITED	18 A, RAMKANTA BOSE STREET, KOLKATA, WEST BANGAL-700003	15,000	15,0000	2,850,000
12	TRAMMEL TRADING PVT LTD	85 N.S.ROAD, KOLKATA -01	12,500	12,5000	2,375,000
13	MAPLE MERCANTILE PRIVATE LIMITED	18 A, RAMKANTA BOSE STREET, KOLKATA, WEST BANGAL-700003	10,000	10,0000	1,900,000
14	DIAMENTION MERCANTILE PRIVATE LIMITED	85 N.S.ROAD, KOLKATA -01	10,000	10,0000	1,900,000
15	CRITCARE MARKETING PRIVATE LIMITED	18 A, RAMKANTA BOSE STREET, KOLKATA, WEST BANGAL-700003	12,500	12,5000	2,375,000
16	PUNYA LEATHER PVT LTD	85 N.S.ROAD, KOLKATA -01	12,500	12,5000	2,375,000

17	TRAMMEL TRADING PVT LTD	85 N.S.ROAD, KOLKATA -01	12,500	12,5000	2,375,000
18	CONTSHIP COMMODITIES PVT.	85 N.S.ROAD, KOLKATA -01	12,500	12,5000	2,375,000
19	MAPLE MERCANTILE PRIVATE LIMITED	18 A. RAMKANTA BOSE STREET. KOLKATA, WEST BANGAL-700003	12,500	12,5000	2,375,000
20	KONARK COMMERCE	10-A, HOSPITAL STREET, KOLKATA-72	40,000	40,0000	7,600,000
21	JAY AAR COMMERCIAL PRIVATE LIMITED	10-A, HOSPITAL STREET, KOLKATA-72	25,000	25,0000	4,750,000
22	LECTODRYER MARKETING PRIVATE	3. DISMBER JAIN TEMPLE ROAD,2ND FLOOR, KOLKATA-7	20,000	20,0000	3,800,000
23	CAPLIN DELCOMM PRIVATE LIMITED	9/12 LAL BAZAR ST. MERCANTILE BUILDING. BLOCK-C. KOLKATA- 700001	20,000	20,0000	3,800,000
24	PABLA LEASING 85 FINANCE PRIVATE	9/12 LAL BAZAR ST. MERCANTILE BUILDING. BLOCK-C. KOLKATA- 700001	20,000	20,0000	3,800,000
25	BALASARLA HOLDING PRIVATE LIMITED	3. DISMBER JAIN TEMPLE ROAD,2ND FLOOR, KOLKATA-7	25,000	25,0000	4,750,000
26	MILLENNIUM INNOVATIONS	HMP HOUSE.4. FAIRLIE PLACE, 6TH FLOOR. ROOM NO.607. KOLKATA, WEST BENGAL-700001	12,500	12,5000	2,375,000
27	TIEUP TRADING PVT. LTD.	WANDLALYUS HOUSE. 25 SWALLOW LANE 4TH FLOOR, HARE ST KOLKATA WEST	10,000	10,0000	1,900,000
28	DOLPHIN MERCHANDISE	HMP HOUSE.4. FAIRLIE PLACE, 6TH FLOOR. ROOM NO.607. KOLKATA, WEST BENGAL-700001	25,000	25,0000	4,750,000
29	PICASONA RAIL ENGINE ERS 85	9, LAL BAZAR STREET NO. 10, 1ST FLOOR, KOLKATA,	25,000	25,0000	4,750,000
	Total		447500	44,75,000	8,50,25,000

7. After considering the afore-mentioned list, the Assessing Officer referred to the action taken in the course of assessment proceedings of Assessment Year 2009-10 wherein the statement of one Shri Jivendra Mishra was recorded by the Investigation Wing, Kolkata wherein Shri Jivendra Mishra admitted that these companies were shell/paper companies formed and used by him for the purpose of giving entry to different beneficiaries for commission.

8. Drawing support from the statement of Shri Gopal Agarwal, Shri Madho Agarwal and Shri Jivendra Mishra, the Assessing Officer concluded by holding that the assessee being the beneficiary and recipient of fund in the garb of share capital and share premium, an amount of Rs. 8.95 crores is treated as unexplained cash credit, met out of undisclosed source and to be taxed as unexplained credit u/s 68 of the Act and, accordingly, made addition of Rs. 8.95 crores.

9. The assessee carried the matter before the Id. CIT(A) and vehemently contended that as the search was conducted on 08.07.2015, the Assessment Year under consideration, can be framed u/s 153A of the Act only when some incriminating material is found for the year under consideration.

10. After considering the facts on record and after considering the seized material, the Id. CIT(A) was convinced that the assessment order framed u/s 153A of the Act is devoid of any incriminating evidence found and drawing support from the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 380 ITR 573, the Id. CIT(A) directed the Assessing Officer to delete the impugned addition.

11. Before us, the ld. DR vehemently stated that the entries in the books of account are also incriminating material if unsubstantiated during search proceedings. It is the say of the ld. DR that the list of transfer of shares, which could not be explained properly, is incriminating material for the year under consideration. Therefore, the decision relied upon by the ld. CIT(A) is factually different from the facts of the case in hand.

12. We have given thoughtful consideration to the contention of the ld. DR. There may be some force in the contention of the ld. DR. But the same is not acceptable on the facts of case in hand. List of transfer of shares, which according to the ld. DR. is an incriminating material and which is exhibited at page 9 of the paper book title of which reads as “List of Transfer of Shares since 10.04.2010 till 31.03.2011”. This nomenclature itself shows that the so-called incriminating material relates to F.Y. 2010-11 relevant to Assessment Year 2011-12 whereas the appeal before us is for Assessment Year 2010-11. Therefore, we do not find any merit in the submissions of the ld. DR.

13. Coming to the facts of the case, we find that there is no reference of any incriminating evidence found at the time of search which makes the ratio laid down by the Hon'ble Delhi High Court in the case of Kabul Chawla [supra] and Meeta Gutgutia 395 ITR 526 squarely apply.

14. We have also the benefit of the decision of this Tribunal in the case of Madho Gopal Agarwal ITA No. 6180/DEL/2018 dated 13.01.2020 wherein this Tribunal has deleted similar addition on the basis of same seized document alleged as incriminating. Since the addition made by the Assessing Officer is not based on any incriminating material found as a result of search on the assessee, respectfully following the findings of the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla and Meeta Gutgutia [supra], we do not find any error or infirmity in the findings of the Id. CIT(A).

15. Cross objections filed by the assessee have not been pressed. The same are dismissed as not pressed.

16. As mentioned elsewhere, the underlying facts in issue in ITA No. 6177/DEL/2018 are identical. Therefore, the same is also dismissed.

17. Cross Objection in CO No. 213/DEL/2018 was not pressed and the same are dismissed as not pressed.

18. In the result appeals of the revenue in ITA Nos. 6176 & 6177/DEL/2018 as well as the Cross objections of the assessee in CO Nos. 213 & 214/DEL/2018 are dismissed.

The order is pronounced in the open court on 11.01.2022 in the presence of both the representatives.

Sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 11th January 2022.

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	
The date on which the file goes to the Assistant Registrar for signature on the order	
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