

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 6269/Del/2015  
(for Assessment Year : 2010-11)

ITO Ward – 1(5), Ghaziabad  PAN No. AAFCA 4158 D <b>(APPELLANT)</b>	Vs.	Aaina Media Pvt. Ltd., E-223, Kavi Nagar, Ghaziabad  <b>(RESPONDENT)</b>
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Assessee by	Shri K.K. Tiwari, Adv. and Shri J. Parmar, C.A.
Revenue by	Shri Sanjay Kr., Sr. D.R.

Date of hearing:	04.04.2022
Date of Pronouncement:	09.05.2022

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the Revenue is directed against the order dated 10.09.2015 passed by the Commissioner of Income Tax (Appeals) – Muzaffarnagar relating to Assessment Year 2010-11.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of News Channel and Print Media. Assessee electronically filed its return of income for A.Y. 2010-11 on 07.10.2010 declaring income of Rs.69,820/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 30.03.2013 determining the total income at Rs.3,17,08,710/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 10.09.2015 in Appeal No.57/2013-14/GZB granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue filed appeal before the Tribunal. Tribunal in ITA No.6269/Del/2015 vide order dated 05.02.2016 dismissed the appeal of the Revenue on account of low tax effect. Thereafter, a Miscellaneous Application was filed by the Revenue wherein it was contented that the actual tax effect was more than the monetary limit prescribed for filing the appeal. After considering the submissions of the Revenue, vide MA No.235/Del/2016 order dated 15.06.2018, the initial order passed on 05.02.2016 wherein the appeal of Revenue was dismissed was recalled. Accordingly, the present appeal is before us and grounds raised by Revenue are as under:

1. *“The Ld. CIT(A) has erred in law in deleting the addition of Rs.6,67,420/- made by the AO on account of disallowance under the head distribution expenses and labour and wages expenses ignoring the fact that the assessee could not substantiate these expenses with documentary evidence.*
2. *That ld CIT(A) has erred in law as well as on facts in deleting the addition of Rs.3 Cr. made by the AO u/s 68 of I.T. Act, 1961 on*

*account of unexplained creditors as the assessee failed to prove the genuineness of transaction where the AO established the creditors as bogus and only paper entities supported by report of ITI and DDIT (Inv.), Kolkata.*

3. *The Ld. CIT(A) has erred in law in ignoring the decision of Hon'ble Supreme Court in the case Unneeri Kutty vs. CIT (SLP (Civil) No.4789 of 1993) 201 ITR 23 (st.) where the Hon'ble Apex Court has clearly opined while dealing with the onus of the assessee to establish (a) proof of identity on his creditors (b) capacity of creditors to advance money and (c) genuineness of the transaction.*
4. *Therefore, the order of Ld. CIT(A) may be set aside and the order of the AO by restored."*

4. **First Ground** is with respect to deletion of addition of Rs.6,67,420/- made on account of disallowance under the head distribution expenses.

5. AO on perusing the details of expenses noticed that assessee had shown distribution expenses of Rs.1,84,660/- and labour and wages expenses amounting to Rs.4,82,760/-. He further noticed that the corresponding expenditure in the preceding assessment year was Nil. He noted that since assessee could not furnish any satisfactory reply with supporting evidence of the aforesaid expenses he disallowed the distribution expenditure of Rs.1,84,660/- and labour and wages expenses of Rs.4,82,760/- and thus made the total disallowance of Rs.6,67,420/-.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who after considering the submissions of the assessee, remand the report of the AO and assessee's reply to the remand report and for the reasons stated in his order directed the deletion of addition made by AO. Aggrieved by the order of CIT(A), Revenue is now before us.

7. Before us, Learned DR took us to the findings of AO and supported the order of AO.

8. Learned AR on the other hand reiterated the submissions made before the AO/CIT(A) and supported the order of CIT(A).

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the deleting the addition of Rs.6,67,420/-. We find that AO made the addition of Rs.6,67,420/- on the ground that the expenses debited in the corresponding previous assessment year was Nil. We find that CIT(A) after considering the assessee's submissions, remand report of the AO and assessee's submissions to the remand report has given a finding that the expenditure was grouped by the auditors and in fact the corresponding expenditure in the immediate preceding assessment year was more than the aggregate expenditure incurred by the assessee in the year under consideration. He has

further given a finding that in the remand report, the AO had not rebutted any of the submissions made by the assessee. He thereafter concluded that the AO was legally and factually incorrect in making the addition. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the Ground of Revenue is dismissed.**

10. **Ground No. 2 & 3** are interconnected and are with respect to the deleting the addition of Rs. 3 crores made u/s 68 of the Act.

11. During the course of assessment proceedings and on perusing the Balance Sheet of the assessee, AO noticed that assessee had received share capital of Rs.30,00,000/- and share premium of Rs.2,70,00,000/- aggregating to Rs.3 crores from four concerns namely Vasudev Enterprises (P.) Ltd., M/s. Delhi Tradecom P. Ltd., M/s. Guru Udyog Pvt. Ltd. and M/s. Skand International P. Ltd. The assessee was asked to justify the premium charged and to prove the identity, creditworthiness as well as genuineness of the transactions. Assessee made the submissions which were not found acceptable to AO. AO noted that the income tax returns of the four investors filed by the assessee showed their returned incomes did not commensurate with the investments made. He also issued notices u/s 133(6) of

the Act to the four concerns and has noted that the notices in the case of Skand International P. Ltd. and Vasudev Enterprises (P.) Ltd. were returned back by the postal authorities with remarks that no such company exists at the given address. With respect to Guru Udyog Pvt. Ltd. and Delhi Tradecom P. Ltd., he noticed that on enquiries, it was found that no such company was operating from those premises. With respect to the confirmation furnished by the assessee, he noted that there was some internal inconsistencies. He also noted that the copy of the bank statement of the four concerns revealed that there are huge and hectic movement of funds and on perusing the Balance Sheet downloaded from ROC website in respect of all the four concerns, he noted that the investments had reduced from that of previous years. He also noted that Deputy Director of Income Tax (Investigation), Kolkata had informed that there were no such companies at the given addresses. He thereafter relying on the decisions cited in the order concluded that the identity, creditworthiness and the genuineness of the transactions of the four investor companies was not proved by the assessee and that there they were entry provider companies. He therefore considered the aggregate amount of Rs.3 crores as unexplained cash credit and accordingly made its addition u/s 68 of the Act.

12. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after considering the submissions made by the assessee, remand report received from the AO and the

rejoinder received from the assessee on the remand report deleted the additions. Aggrieved by the order of CIT(A), Revenue is now before us.

13. Before us, Learned DR took us to the findings of AO and submitted that assessee had not discharged its primary onus of proving the identity, creditworthiness and genuineness of transaction and the AO after making detailed enquiry and investigations had made the additions. He further submitted that CIT(A) while passing the order had ignored all the crucial facts and deleted the addition only on the basis that the copy of the income tax return, PAN numbers, bank account details and that the transactions were through banking channels and thereby assessee has discharged its onus. Learned DR thus placing reliance on the various decisions cited in the written submissions, submitted that the AO was fully justified in making the addition and the order of CIT(A) be set aside.

14. Learned AR on the other hand reiterated the submissions made before the CIT(A) and pointed to the submissions made before the CIT(A). He further submitted that adequate evidence was submitted before the AO whereby the assessee has discharged the onus of proving the identity, creditworthiness and genuineness of the investor and further submitted that all the four companies are 'Active' as per ROC websites and their ROC

return reflect their substantial net worth and those companies being active is true is borne by the fact that AO himself had downloaded the details about the directors of the investors companies and their Balance Sheet from ROC website. He further submitted that no evidence has been brought on record to prove that the investors company has deposited cash in their accounts. It was further submitted that capacity of investors depends upon the availability of the funds and not on the basis of the tax paid. He further submitted that the assessee had furnished its reply to the remand report and no adverse comment of the assessee's submission has been brought on record by the Revenue. He further submitted that proviso Section 68 was inserted from 01.04.2013 i.e. A.Y 2013-14 and the year under consideration being 2010-11, no addition could have been made in the hands of the assessee on account of share capital and premium. He thus supported the order of CIT(A).

15. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the addition made by AO u/s 68 of the Act but deleted by CIT(A). CIT(A) while deleting the addition has given a finding that he has examined the bank account of the share subscribers and on its examination he did not find any cash deposits in the account of the subscriber prior to the issue of cheque for share capital to the assessee. He has further given a finding that the perusal of the bank account of the assessee

reveals that the amount received from the subscriber towards share capital and share premium was not withdrawn in cash but was straight away used to give advance to the property owners. He has further given a finding that with respect to the share holders that could not be traced with old address, assessee had furnished their new address as obtained from the Ministry of Corporate Affairs and all those addresses were filed before the AO and the AO was requested to take the same on record. He has noted that AO despite such information AO drew adverse inference against the assessee. He has further given a finding that AO had failed to appreciate the various documentary evidences filed by the assessee to prove the identity, creditworthiness and genuineness of the transaction and the additions has been made by the AO only on the basis of suspicion. He has further noted that AO has not brought any material on record to demonstrate that the money received by the assessee from the share holders actually belonged to the assessee or it had flown from the coffers of the assessee. CIT(A) after examination of the Balance Sheet of the investors company has also given a finding that the investor company has sufficient funds to invest the money. CIT(A) has further given a finding that the report of DDIT(Investigation) reveals that it was a mere general information connected with its parties including the assessee where it is not very clear as to which the companies was examined by them with reference to the assessee. He has further noted that in the remand report, AO had contended that the report of DDIT (Investigation), Kolkata was

confronted to the assessee vide letter dated 22.03.2013. CIT(A) on considering the remand report along with the order sheet entry has given a finding that order sheet entry reveals that assessee had filed letter dated 13.03.2013 after which the case was adjourned on 15.03.2013 for filing certain information and after entry dated 13.03.2013 there is no further entry either on 15.03.2013 or 22.03.2013 indicating of any proceedings being conducted after 13.03.2013. He has further noted that though in assessment order AO has referred to the notice dated 22.03.2013 but the order sheet record does not prove the service of the notice to the assessee. He has thus accepted the contention of the assessee that the report of the DDIT (Investigation), Kolkata was never confronted to the assessee. He has further given a finding that assessee had furnished certain details before the AO vide letter dated 11.03.2013 & 13.03.2013 but AO has not rebutted the contention of the assessee. He has further given a finding that the evidences furnished by the assessee not been rebutted by the AO even during the course of remand proceedings. Considering the totality of the aforesaid facts, we find the CIT(A) after considering the material on record has deleted the addition. In the absence of any fallacy in the findings of CIT(A), we find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

**16. In the result, appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 09.05.2022**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 09.05.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI