

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
ITA No.4200/DEL/2018
[Assessment Year: 2014-15]

M/s NS Papers Limited, 8 th K.M. Stone, Meerut Road, Muzaffar Nagar,	Vs	Assistant Commissioner of Income Tax, Circle-2, Muzaffarnagar
PAN-AAACR7902B		
Assessee		Revenue

Assessee by	None
Revenue by	Ms. Rinku Singh, CIT-DR

Date of Hearing	24.08.2022
Date of Pronouncement	24.08.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(A), Muzaffarnagar, dated 23.03.2018 pertaining to Assessment Year 2014-15.

2. The grounds of appeal reads as under:-

“1. That assessment order passed u/s 143(3) by the Assessing officer is illegal, bad in law and without jurisdiction and the CIT(A) has also erred in upholding the same.

2. The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the assessee appellant has been wrongly and

illegally computed by the assessing officer Loss at Rs.(-) 24,13,05,392.00 as against declared Loss of Rs.(-) 58,32,74,436.00.

3. *That, in view of the facts and circumstances, the CIT(A) has erred in law and on facts in making the addition/disallowance of Rs.33,98,30,000.00 to the income of the appellant on account of Unexplained Cash Credit U/s 68 of the Income Tax Act, 1961, which purely illegal, bad in law, estimation and based on surmises and conjectures.*

4. *That, the CIT (A) has erred in observing the various observations on the presumption and without bringing any conclude evidence, while upheld the addition made by the assessing officer. Also CIT (A) has ignored the facts and circumstances and evidences brought on record by the assessee, which is highly arbitrary, unjust and bad in law.*

5. *The Assessing Officer has erred in making the estimated adhoc basis of Rs.20,00,000.00 on account of Unverifiable Expenses to the income of the assessee company without appreciating the fact. The CIT (A) has erred in upholding the same.*

6. *The Assessing Officer has erred in making the addition/ disallowance of Rs.16,376.00 on account of Penal Interest, which is debited to Profit & Loss Account to the income of the assessee company without appreciating the fact. The CIT (A) has erred in upholding the same.*

7. *The additions made and the observations made are unjust, unlawful and based on mere surmises and conjectures. The additions made cannot be justified by any material on record.*

8. *That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.*

9. *That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*

10. *That the interest u/s 234B 234C& 234D has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of*

Advance tax. The interest charged under various sections is also wrongly worked out.”

3. Brief facts of the case are that the Assessing Officer in this case has passed the order u/s 143(3) of the Act on 08.11.2016. The AO had made addition of Rs.33,98,30,000/- on account of unexplained share application money received during the year from four different entities with the details as under (which has been converted into share capital with share application money):-

(Face value of Rs.10/- for each share allotted along with share premium of Rs.40/- for each such share)

Sr. No.	Name (M/s)	Address	Amount of share capital along with share premium in Rs.
(i)	Raaa Steel Industries Ltd.	B-5, 1st Floor, Tagore Market, Kirti Nagar, New Delhi-15	7,67,80,000/-
(ii)	QMS Castings	4 th Km Stone, Meerut Road, Muzaffrnagar	2,97,50,000/-
(iii)	Radiant Agriculture Pvt. Ltd.	4 th Km Stone, Meerut Road, Muzaffrnagar	3,28,00,000/-
(iv)	QNS Steels & Power Ltd,	4 th Km Stone, Meerut Road, Muzaffrnagar	20,05,00,000/-
	Total		Rs.33,98,30.000/-

4. The AO during the assessment proceedings has required the appellant to furnish the relevant details to explain such share capital along with share premium received during the year by furnishing requisite documents. In compliance of the same, the appellant has-

furnished the details in the shape of copies of ITRs, copy of PAN card, confirmation, copy of share application form, copy of bank statement, details of registration with ROC, to explain the share capital/share premium received during the year. The AO has made enquiries u/s 133(6) of the Act in the case of these entities to verify the identity, creditworthiness and 'genuineness of such alleged share applicants. The letters sent u/s 133(6) of the Act through the Postal Authorities were received back as unserved with the postal remark 'No such concern at the given addresses'. At the insistence of the appellant the AO has even sent these letters on e-mail addresses of these entities. However, no compliance was made by these entities. The AO has confronted the appellant on these adverse findings vide order sheet entries dated 24-10-2016.

5. On field enquiries made by the Assessing Officer, it was found that no such company in the name of M/s QNS Steels, M/s QNS Casting Pvt. Ltd. and M/s Radiant Agriculture was found at the given addresses. The Assessing Officer has required the appellant to produce the Principal Officers of such entities to explain the share capital/share premium received during the year vide order sheet entry dated 24-10-2016. Failing with it was required to explain why the unexplained cash credits should not be assessed as income of the appellant. However, no compliance has been made. The Assessing Officer has analyzed the bank accounts of these share applicants and has found that RTGS of large amounts were being credited in these bank accounts before being

transferred to the account of the applicant leaving minimal balance. In view of the discussion made in the assessment order has come to the conclusion that the appellant has failed to prove the identity, creditworthiness and genuineness in respect of above cash credits and made the addition of Rs.33,98,30,000/- as unexplained sum u/s 68 of the Income Tax Act, 1961.

6. Upon assessee's appeal, the Ld. CIT(A) confirmed the same as under:-

11. The facts of the case along with the submission of the appellant have been gone through in details. The appellant has received share capital and share premium of Rs.33.98 crore by showing allotment of shares of face value of Rs.10 at share premium of Rs.40 each to different four entities with the detail as above. The AO has required the appellant to furnish necessary details along with supporting documentary evidence to explain such cash credit received during the year. On receipt of such basic details, the Assessing Officer has issued enquiry letters u/s 133(6) of the Act in the cases of above entries at the addresses made available by the appellant to verify their identity, credit worthiness and genuineness by calling certain details. It has been found from the assessment order that such notices sent by the AG have remained unserved with the postal remarks that 'no such concern; at the given address'. In view of these observations, the AO has required the appellant to produce principal officers of such entities to establish, their identity, creditworthiness and genuineness in respect of the cash credits received during the year and as introduced in the books of accounts. No compliance was made by appellant in this regard. On making field enquiry by the AO, it was found that these concerns were not found existing at the given address. In the circumstances, it is noted that the burden had been shifted by the AO on the appellant by making verification of the details furnished by the appellant and by confronting the appellant about adverse findings about non compliance/non existence of such entities at the given addresses. It is thus noticed that the AO has established the non existence of such entities and has reached to the conclusion on the basis of factual enquiry that such entities exist only on papers without having any real or

physical existence, Such entities thus have been found to be paper entities or shell compares. Thus identify of such entities has not been established in true sense

In order to find mi the genuineness and .creditworthiness of these alleged share applicants, the documents furnished by the appellant in their support have been gone through by the undersigned. A brief description regarding their financial details as gathered from the documents submitted by the appellant in the paper book during the appellate proceedings is as under:

(i) M/s QMS Steel & Power Ltd.:

It has made payment of Es.20.05 crore during the year to the appellant through its bank account maintained with Punjab National Bank, ft has filed its return of income for A.Y. 2012-13 at Nil income. Return for AY 2014-15 has not been furnished. In the balance sheet as on 31.03.2013, it has got reserve/surplus of Nil. During the year, it has increased its share capital from Rs.1 lac to Rs.2,01 Crore with share premium of Rs.1 8 crore. During the year, there is no business activity, It has got no fixed assets, in the bank account RIGS of large amounts were being credited in these bank accounts before being transferred to the account of the appellant leaving minimal balance showing no business rational.

(i) M/s Rana Steel Industries Limited

It has made payment of Rs.7.76 Crore during the year to the appellant through its bank account maintained with Punjab National Bank. It has filed its return of income for A.Y. 2013-14 at Nil income. No return for AY 201445 has been furnished. In the balance sheet as on 31.03.2013, it has got reserve/surplus of Rs.1.98 crore. During the year, it has increased its share capital from Rs.1.21 Crore to Rs.1.97 Crore. During the year, there is no business activity. In the bank account RTGS of large amounts were being credited in these bank accounts before being transferred to. the account of the appellant leaving minimal balance showing no business rational

(ii) M/s QMS Casting Pvt. Ltd.:

It has made payment of Rs.2.97 crore during the year to the appellant through its bank account maintained with Punjab National Bank. It has filed its return of income for A.Y. 2012-13 at Nil income. Return for AY 2014-15 has not been furnished. In the balance sheet as on 31.03.2012, it has got reserve/surplus of Rs.9.24 crore. During the financial year

2012-13, it has increased its share capital from Rs. 1.03 crore to 1.03 Crore along with Security Premium of Rs.7 Crore. During the year, there is no business activity.- It has got no fixed assets. However, balance sheet as on 31-03-2014 has not been furnished. In the bank account RTGS of large amounts were being credited in these bank accounts before being transferred to the account of the appellant leaving minimal balance showing no business rational

(iii) M/s Radiant Agriculture Pvt. Ltd:

It has made payment of Rs.3.28 crore during the year to the appellant through its lank account maintained with Punjab National Bank. It has filed its return of income for A.Y. 2013-14 at Nil income. Return for AY 2014-15 has not been furnished. In the balance sheet as on 31.03.2012, it has got reserve/surplus of Rs.15 crore. During the FY 2012-13 , it has increased its share capital from Rs.1.68 crore to Rs.2.22 Crore along with Security Premium of Rs.5 Crore. During the said year, there is no business activity. No balance sheet as on 31-03-2013 has been filed. It has got no fixed assets. In the bank account RTGS of large amounts were being credited in these bank accounts before being transferred to the account of the appellant leaving minimal balance showing no business rational.

(It is important to mention here that the details of share allotments as discussed above from the submissions made during the assessment/appellate proceedings do not reconcile with the particulars as per the audited balance sheet of the appellant as on 31-03-2014.)

From the above details, it is clearly noted that the above entities are not doing any worthwhile business activity rather no business- activity to justify the availability to such large funds at their disposal to make such large investment with the appellant. There is no justification evident from the details for availability of such large share capital/premium at the disposal of such entities without having any financial worth. No justification has been furnished to support Share Premium of Rs.40 per share charged by the appellant against face value of Rs. 10. It is relevant to mention here that the appellant has shown loss of Rs.58.23 crore during the year. Thus there is no visible justification for charging share premium of Rs.40/- on such financial results. From these facts it is difficult to imagine the genuineness and creditworthiness of the transactions from their profile of balance sheet /profit loss account/income, These companies in fact do not have any infrastructure or business to justify this kind of flow of funds. From these facts it can be safely concluded that though these

are companies registered with ROC, having PAN but infact these are just existing of papers. In feet a web of transactions has been created through banking channels to hide the real transactions. Therefore, the claim of the appellant that it has proved the identity, creditworthiness and genuineness of transaction in respect of sum of Rs.33.98 crore by furnishing copy of ITR, bank account, balance sheet, confirmations is not proved. Mere filing of ITR, PAN and transaction through banking channel is not enough to prove genuineness and creditworthiness of the cash credits. It is also important to note that these: alleged share applicants are corporate entities set up for earning of profits and it has been gathered that have not received any income from these transactions with the appellant in last many years. These observations lead to conclusion that this transaction is not genuine. The reliance of the AS, on the case laws referred above does not help its case as facts of tins case are entirely different from the referred cases.

In the circumstances, it is noted that the appellant has failed to explain/ prove the identity, creditworthiness and genuineness of the sum credited during the year satisfactorily by furnishing relevant documents. The appellant has felted to discharge the onus based upon it. The reliance of the appellant on the decision of the Hon'ble jurisdictional High Court in the case of Jaya Securities Ltd, vs. CIT (supra) is not applicable to the facts of this case. Hon'ble jurisdictional High Court in this case has relied upon the decision of Hon'ble Apex Court in the case of CIT vs. Stellar investment Ltd, However, it may be respectfully noted that the conclusion in the case of Stellar Investments Ltd was on facts where the Assessing Officer has not conducted any enquiry in the cases of alleged share holders whereas in the present case on verification it has been found that these entities are just paper companies not having any real identity. Moreover, the present case is to be seen in the light of provision of section 68 read with 1st proviso. It is noted in this case that the appellant has not provided any satisfactory document during the assessment proceedings as well as appellate proceedings to establish the identity and creditworthiness of the share applicants and genuineness of transaction. The submission of the appellant that the amounts have been received through banking , channel and information for the allotment of shares has been submitted to the ROC, Kanpur is not relevant to explain the transactions in the light of facts as discussed above.

12. It has been held by Hon'ble Delhi High Court in the case of Navodaya Castle Pvt. Ltd. in ITA No.320/2012 that certificate of incorporation, PAN etc, are relevant for the

purpose of identification but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor. The SLP against the ruling of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. Further, it has been held by Hon'ble Delhi High Court in the case of Youth Construction Pvt. Ltd. 357 ITR 197 (Delhi) that mere proof of identity without genuineness and creditworthiness is not enough for share application. Further, it has been held by the Hon'ble Delhi High Court in the case of N.R. Portfolio Pvt. Ltd. 87 DTR 0162 (Del.) that the onus to prove the three factum is on the assessee as the facts are within his knowledge. Mere furnishing names address and PAN particulars names address and PAN particulars or relying on entries in the ROC website is not enough. If upon verification or during the proceedings, there are further doubts in pursuit of such details, onus shifts back to the assessee to explain the same. The relevant part of the order of the Hon'ble Delhi High Court is reproduced as under:-

30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them.

31. The respondent herein is a Private Limited Company. It is not the case of the respondent that the Directors or persons behind the companies making the investment in their shares were related or known to them. It is highly implausible that an unknown person had made substantial investment in a private limited company to the tune of Rs.63,80,100/- and Rs.75,60,200/- in two consecutive assessment years 2002-03 and 2003-04 respectively without adequately protecting the investment and ensuring appropriate returns. Other than the

share application forms, no other agreement between the respondent and third companies had been placed on record. The persons behind these companies were not produced by the respondent. On the other hand respondent adopted prevaricate and non-cooperation attitude before the Assessing Officer once they came to know about the directed enquiry and the investigation being made. Evasive and transient approach before the Assessing Officer is limpid and perspicuous. Identity, creditworthiness or genuineness of the transaction is not established by merely showing that the transaction was through banking channels or by account payee instrument. It may, as in the present case required entail a deeper scrutiny. It would be incorrect to state that the onus to prove the genuineness of the transaction and creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Whether or not onus is discharged depends upon facts of each case. It depends on whether the two parties are related or known to each; the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment, whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are basically and primarily in knowledge of the assessee and it is difficult for revenue to prove and establish the negative. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The facts of the present case noticed above speak and are obvious. What is unmistakably visible and apparent, cannot be spurred by formal but unreliable pale evidence ignoring the patent and what is plain and writ large.

32. In view of the aforesaid discussion the substantial question of law framed in the two appeals is answered in favour of Appellant- Revenue and against the Respondent-

- (i) Titan Securities Ltd. (2013) 357 ITR 184 (Delhi)
- (ii) Empire Builtech Pvt. Ltd. 366 ITR i 10 (Delhi)

13. After going through the ratio of above decisions as referred above it is noted that on the facts of the present case, the appellant has failed to prove real identity,

creditworthiness and genuineness of transaction in respect of sum credited in the books of account for Rs.33.98 crore. Mere tiling of names, addresses, copies of ITRs, balance sheets, ROC record is not enough to establish the identity and creditworthiness and genuineness in respect of share applicants. This are paper documents which are prepared in each and every case of the corporate entity (real or paper entity) but are not adequate enough to show their actual creditworthiness and genuineness. During the appellate proceedings it was stated that the appellant is a public limited company therefore the onus in this case is limited on the appellant to establish the identity. However, it is noted that these share applications are in the nature of private placement as no public offer has been made by the appellant. Once it is proved that share capital/premium have not been explained then, there is no duty upon the AO to point out the source from which the money was received by the assessee, Reliance is put on the decision of the Hon'ble Apex Court in the case of A, Govindarajulu Mudaliar v. CIT (1951) 34 ITR 807. Thus the appellant has failed to prove the genuineness and creditworthiness in respect of share application money introduced in its books of account during the year as required u/s 68 read with proviso of the Act. The explanation furnished by the appellant has been found to be unsatisfactory.

14. After going through the ratio of above decisions as referred above and facts of the case, it is noted that the appellant has failed to prove identity, creditworthiness and genuineness of transactions in respect of share capital/ share premium for Rs.33.98 crore. The onus was on the appellant as required under section 68 of the Act read with proviso on this account. The appellant has failed to explain the nature and source of the same. In the circumstances after considering all the facts from record, it is held that the AO was justified to make addition of Rs.33,98,30,000/- on account of unexplained cash credit. Moreover, this addition is also covered u/s 56(2)(viii b) of the Act as it has received share premium in addition to the face value of shares from residents without any justification. The same is hereby confirmed. Grounds of appeal Nos.3 to 5 are dismissed.”

7. Against the above order, the assessee is in appeal before us.
8. We have heard the Ld. DR and perused the record. None appeared on behalf of the assessee despite issued notice. Upon careful

consideration, we find that the Ld. CIT(A) has passed a correct and well reasoned order which does not need any interference. The assessee apparently has indulged in bogus share transaction, thorough, non-existent/shell companies. The Ld. CIT(A) has examined all the aspect of lack of genuineness and lack of creditworthiness of the transactions. Hence, we uphold the same.

9. In the result, the appeal of the assessee stands dismissed.

Order pronounced in the open court on 24th August, 2022.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; 24.08.2022

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi