

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

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

ITA No. 1859/Del/2016
(Assessment Year : 2012-13)

DCIT Circle – 1, New Delhi PAN No. AACCI 4694 K (APPELLANT)	Vs.	Intuitent Online Venture Pvt. Ltd., Villa No.4400, Achievers Villa Kalandi Hills, Sector – 49, Faridabad (RESPONDENT)
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Assessee by	-None-
Revenue by	Shri Abhishek Kumar, Sr. D.R.

Date of hearing:	03.10.2022
Date of Pronouncement:	25.10.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 29.01.2016 passed by the Commissioner of Income Tax (Appeals), Faridabad relating to Assessment Year 2012-13.

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 whole sale trading of footwear, apparels, jewellery and handbags etc. Assessee electronically filed its return of income for

A.Y. 2012-13 on 29.09.2012 declaring loss of Rs.1,00,12,996/-. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 27.01.2015 and the total income was determined at Rs.1,08,47,910/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 29.01.2016 in Appeal No.63/14-15 granted partial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before Tribunal and has raised the following grounds:

- “1. Whether on the facts and in the circumstances of the case, the Ld CIT(A) was right in law in deleting the additions of Rs.2 crore on account of disallowance of investment made in the company as Share Capital u/s 68 of the IT Act 1961.*
- 2. The appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.”*

5. The case file reveals that the appeal was listed for hearing on 05.03.2019, 24.04.2019, 16.07.2019, 23.09.2019, 28.11.2019, 21.01.2020, 04.03.2020, 30.04.2020, 21.07.2020, 30.09.2020, 10.12.2020, 24.02.2021, 06.05.2021, 09.08.2021, 28.10.2021, 11.01.2022, 04.04.2022, 22.06.2022 and 03.10.2022. On all the occasions, the assessee did not appear before the Tribunal despite notices issued through RPAD nor any application was filed seeking for adjournment. Further, the notice issued by the Registry through RPAD on the address i.e. Villa No.4400, Achievers villa, Kalandi Hills, Sector 49, Faridabad was returned unserved with the postal remarks “as no such concern

was situated/available on that address". Considering the aforesaid facts, we have no option except to dispose of the appeal on merits, after hearing the Ld. D.R.

6. During the course of assessment proceedings, AO noticed that assessee had raised share application money of Rs.2 crore which was pending for allotment as on 31.03.2012. AO noted that share application was received from 3 parties which are listed at para 3 of his order, of which 02 parties are based in Mauritius. A.O. was of the view that since Foreign Direct Investment was involved, the assessee was required to furnish the details about the compliance with the relevant guidelines. Assessee *inter alia* submitted that it was a start-up company which has already established a name on the internet by the name "DONEBYONE". It was submitted that for increasing the sale and requirement of funds, the company had approached the investors for the money and they in turn had transferred the money through normal banking channel as per RBI Rules. The submissions of the assessee was not found acceptable to AO. According to AO, assessee did not furnish the copy of the share application form and also failed to justify as to how the investors came to know about the assessee company. AO noted that assessee had failed to report about the receipt of money within the 30 days to the Foreign Exchange Department of RBI and it also failed to comply with the guidelines issued by FEMA as well as RBI with respect to reporting of RBI about the allotment of shares. AO also noted that financial position of the investor showed huge loss of USD

20,75,586 but had invested in a company at a high premium whose turnover only of Rs.6,89,035/- and accumulated loss of Rs.1,00,62,858/-. With respect to the investment made by Seedfund 2 India, he noted that as per ITR for A.Y. 2012-13 it had declared loss amounting to Rs.13,35,302/- but had made investments of Rs.6,88,766/- which was also not reflected in the bank statement of the assessee company. AO therefore, held whole of the investment of Rs.2 crore to be a bogus claim and accordingly treated it as income of the assessee from unexplained sources and made its addition u/s 68 of the Act. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after considering the submissions of the assessee deleting the addition made by AO by observing as under:

*“12. Having examined the submissions of the appellant and the arguments of the AO as reproduced above, I am of the considered opinion that the AO has been unable to justify the addition made by him u/s 68 in the assessment order. The identity of the share applicants (venture funds) is not in doubt. The creditworthiness of these is well established and the genuineness of the transaction has not been disproved by the AO. The AO has made the addition u/s 68 based on his unsubstantiated beliefs and has not brought out any argument to counter the plethora of documentary evidence furnished by the appellant. Under these circumstances I hold that the addition deserves to be deleted **and these grounds of the appellant are allowed.**”*

7. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

8. Before us, Learned DR supported the order of AO.

9. We have heard the Ld. D.R. and perused the material available on record. We find that CIT(A) while deleting the addition has given a categorical finding that during the course of assessment proceedings assessee had filed various documents to point out the receipt of application money which clearly proved that money was invested by 2 investors based in Mauritius which are the companies registered under Companies Act and also registered Securities and Exchange Board of India ("SEBI") under SEBI (Venture Capital Fund) Regulation 1996 ("SEBI VC REGS"). He has further given a finding that Seedfund 2 International is a trust registered under the SEBI (Venture Capital Fund) Regulation and it files its tax return in India. He has further given a finding that the identity of the share application was not in doubt, the creditworthiness was well established and the genuineness of the transaction was not disputed by the AO. He has further given a finding that AO has not brought any argument to account the plethora of documentary evidence submitted by assessee. Before us, Revenue has not pointed any fallacy in the findings of CIT(A) and, therefore, we find no reason to interfere with the order of Ld. CIT(A) and thus, the **Ground of Revenue is dismissed.**

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

Order pronounced in the open court on 25.10.2022

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 25.10.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI