

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.805/MUM/2020 (A.Y: 2009-10)

M/s. Direct Logistics India Pvt. Ltd., 2102 B-Wing, Oberoi Park View Thakur Village, Kandivali (E) Mumbai - 400101 PAN: AAACD8774D	v.	Income Tax Officer – 9(3)(3) Room No. 471 Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Ravi Sawana & Shri Dinesh Kukreja
Department by	:	Smt Mahita Nair
Date of Hearing	:	21.09.2022
Date of Pronouncement	:	16.12.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)–16, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.11.2019 for the A.Y. 2009-10.

2. Brief facts of the case are, assessee filed its return of income on 30.09.2009 declaring total income of ₹. Nil. The return of income was

processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The Assessing Officer received information from Investigation Wing that assessee has taken various accommodation entries under the garb of share application money from benami concerns operated by Shri Pravin Kumar Jain (PKJ). The information so received of transactions of share application money on ₹.50 lakhs in the name of the one of the company controlled by PKJ namely M/s. Olive Overseas Pvt Ltd., (earlier name M/s.Realgold Trading Co. Pvt Ltd) and the same company has provided accommodation entries to the assessee.

3. Based on the above information on record Assessing Officer had reason to believe that income has escaped the assessment within the meaning of Section 147 of the Act. Accordingly, notice u/s. 148 of the Act dated 30.03.2016 was issued and served on the assessee. In response assessee filed original return of income in response to the above said notice. Accordingly, notices u/s. 143(2) and 142(1) were issued and served on the assessee. Assessing Officer intimated the reasons recorded for reopening of the assessment u/s. 147 of the Act vide letter dated 04.07.2016.

4. Assessing Officer observed that assessee has received share application money of ₹.50 lakhs from benami concerns namely M/s.Olive Overseas Pvt Ltd., operated by PKJ. A notice u/s. 133(6) was issued to the Principle Officer of M/s. Olive Overseas Pvt Ltd.,. However, they have submitted part details in response to the said notice but when the summons was issued u/s. 131 none appeared before the Assessing Officer. Considering the above facts on records a show cause notice was issued to assessee why the amount of ₹.50 lakhs received from M/s. Olive Overseas Pvt Ltd., should not be added to the income of the assessee u/s. 68 of the Act. In response, assessee submitted its submissions vide letter dated 27.12.2016. The Assessing Officer after considering the reply filed by the assessee rejected the same by reference to the statement recorded from PKJ and in one of the question (Q.No.10) in which the names of the concern operated by PKJ are listed in which the name of the M/s. Olive Overseas Pvt Ltd., in the concerns disclosed by him is mentioned. The Assessing Officer reviewed the statement of PKJ and relying on various case laws, came to the following conclusion: -

"3.13 After carefully going through the submissions of the assessee as well as the data / details / documents available on record, it becomes crystal clear that;

(a) The primary onus is on the assessee to establish the genuineness of the transactions recorded by it in its books of account;

(b) Since the primary facts are in the knowledge of the assessee, it is the duty of the assessee to provide the correct details with regard to the impugned transactions;

(c) If the investigation done by the Department leads to doubt regarding the genuineness of the transactions, it is incumbent on the assessee to produce the parties along with the necessary documents to establish the genuineness of the transaction; and

(d) Payment by account payee cheque is not sacrosanct.

In view of the above discussion, it is evident that the identity and creditworthiness of Olive Overseas Private Limited, which is one of the benami concerns of Shri Praveen Kumar Jain, are not proved nor the genuineness of the transaction in the form of share application money raised by the assessee company. The entire gamut of transactions shows that the funds of Rs.50,00,000/- have been brought in by way of share application money in the name of Olive Overseas Private Limited, whose very existence could not be established by the assessee company nor the source of these funds. Therefore, the purported share application money of Rs.50,00,000/- is hereby treated as a 'cash credit' in the books of the assessee company, whose nature and source is not explained and, therefore, deemed to be the assessee's income as envisaged in Section 68 of the Income Tax Act, 1961. Penalty proceedings u/s.271(1)(c) of the Act are hereby initiated."

5. Aggrieved, assessee preferred an appeal before the Ld.CIT(A), in appeal assessee has raised grounds against the reopening of assessment and objected to relying on the third party statement without granting copy of the same, also without giving opportunity of cross-examining the third party and making addition u/s. 68 of the Act. Ld.CIT(A) rejected the issue of reopening of assessment and not dealt with the issue of relying on third party statement without giving cross

examination to the assessee and also sustained the additions made by the Assessing Officer.

6. Aggrieved, assessee is in appeal before us raising following grounds in its appeal: -

"GROUND 1: DISALLOWANCE OF SHARE APPLICATION MONEY AMOUNTING TO Rs. 50,00,000/- U/S 68 OF THE INCOME TAX ACT, 1961 ("the Act") AS UNEXPLAINED CASH CREDIT ON THE GROUND THAT ASSESSEE HAS NEITHER BEEN ABLE TO PROVE THE GENUINENESS OF THE TRANSACTION NOR BEEN ABLE TO PROVE IDENTITY AND CREDIT WORTHYNESS OF COMPANY WHICH GAVE SHARE APPLICATION MONEY

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance made by the Assessing Officer, Range 6(3)(3), Mumbai ("the AO") of share application money amounting to Rs. 50,00,000/- received from Olive Overseas Pvt Ltd u/s 68 of the income tax act, 1961 ("the act") as unexplained cash credit on the ground that assessee has neither been able to prove the genuineness of the transaction nor been able to prove identity and credit worthiness of Olive Overseas Private Limited (Earlier known as Realgold Trading Company Private Limited) which gave share application money.

2. The learned CIT(A) erred in confirming the addition of Rs.50,00,000/- without considering the fact that the appellant was neither granted the copy of the statement nor granted opportunity to cross examine the third party based on which the additions are made.

3. The learned CIT(A) erred in confirming the addition of Rs.50,00,000/- without appreciating the fact that the third party on whose statement addition was made has already retracted the statement made before the income tax authority.

4. The Appellant prays that the addition of share application money amounting to Rs 50,00,000 received made u/s 68 as unexplained cash credit be deleted.

GROUND II: GENERAL

1. The Appellant craves leave to add to, amend, alter or delete any of the above grounds of appeal."

7. Assessee has filed additional ground and after considering the cross objections of the Ld.DR the additional ground raised by the assessee is dismissed.

8. At the time of hearing , Ld. AR of the assessee submitted that the return of income of the assessee is processed u/s. 143(1) of the Act. However, he submitted that the reopening of assessment was made after the expiry of four years from the end of the assessment year. Further, Ld. AR submitted that reopening notice u/s. 148 of the Act was issued on 30.03.2016 and reasons recorded were requested by the assessee vide letter dated 04.04.2016 which is placed at Page No. 90 of the Paper Book and Assessing Officer has supplied the same on 04.07.2016 which is placed on record at Page No. 91 of the Paper Book. Assessee has filed reply and objection on reasons recorded for reopening of assessment on vide letter dated 26.12.2016 which is placed at Page No. 145 of the Paper Book. Ld. AR of the assessee submitted that Assessing Officer has not disposed off the above said objections in the Assessment Order. He brought to our notice Page No. 2 of the Assessment Order where Assessing Officer has not discussed any issue relating to objection raised by the assessee. He also brought to our notice Page No. 3 of the appellate order wherein assessee has brought

to the notice of the Ld.CIT(A) in the written submissions made before him and he also brought to our notice Page No. 12 of the appellate order where Ld.CIT(A) has given a finding and he also not dealt with this issue in his order.

9. Further, he submitted that even on merit, assessee has proved the genuineness of the transaction and he submitted that in the case of Income Tax Officer *v.* Smt. Pratima Ashar [2019] 107 taxmann.com 135 (Mumbai Tribunal)] the ITAT has dealt with the same scrip of M/s. Olive Overseas Pvt Ltd., and held in favour of the assessee. (Copy placed at Page No. 83 of the Paper Book).

10. Further, he brought to our notice submissions made by the assessee before the Ld.CIT(A) specifically Para No. 2 to Para No. 9 of the submissions which is placed on record at Page No. 174 and 175 of the Paper Book and submitted that based on the above facts on record the assessee has refunded the application money received. Therefore there is no shares were allotted with the above said receipt. Therefore, he also brought to our notice Page No. 33 of the Paper Book wherein no shares were allotted during this year and also there is no pending share

application money at the end of the Financial Year 31.03.2009. He prayed that the addition may be deleted.

11. On the other hand, Ld.DR relied on the orders passed by the lower authorities.

12. Considered the rival submissions and material placed on record, we observe from the record that assessee has received share application money from one of the company controlled by PKJ namely M/s. Olive Overseas Pvt Ltd., an entity alleged as provider accommodation entries. It is brought to our notice that assessee has entered into an agreement with SIDBI Venture Capital Limited and they have agreed to invest in the assessee company over a period of time in phase manner through SME Growth Fund . Accordingly, SME Growth Fund invested an amount of ₹.5 Crores as first tranche of investment by applying for 2,50,000 zero coupon convertible preference shares of face value ₹.100/- each and 2,50,000 optionally convertible debentures of face value ₹.100 each. The convertible preference shares were converted into equity shares as per the terms of the conversion in the Financial Year 2006-07 at premium. Further, it was submitted that in Financial Year 2007-08 SIDBI Venture Capital Limited made further investment of ₹. 10 crores

by applying for 10,00,000 zero coupon optionally convertible preference shares of ₹. 100 each. In the Financial Year 2008-09 the assessee company was seeking further investment from SME Growth Fund but terms were not reached finality. Therefore assessee was looking for potential investors, accordingly, M/s.Realgold Trading Co. Pvt Ltd shown keen interest in making investment in the assessee company and released cheque of ₹.50 Lac towards making the investment. Subsequently SIDBI Venture Capital Limited vide letter dated 30.09.2008 objected to the said acceptance of the application money from M/s.Realgold Trading Co. Pvt Ltd with reference to the various clause of subscription cum shareholding agreement dated 22.05.2006 and 25.10.2007 entered with them. Upon receipt of the objection letter from SIDBI Venture Capital Limited the assessee has refunded back the application money and accordingly, no shares were issued to M/s.Realgold Trading Co. Pvt Ltd. It is also brought to our notice assessee has no pending share application money at the end of the Financial Year under consideration.

13. Therefore it is fact on record that no doubt assessee has received share application money from the alleged company operated by PKJ. However, the same was refunded back within the same Financial Year.

the Assessing Officer merely initiated the proceedings because assessee has received some funds from the company operated by the alleged operator from PKJ and made the addition u/s. 68 of the Act. It is fact on record that assessee has submitted relevant details to prove the identity, creditworthiness and by refunding the share application money assessee has also proved the genuineness of the transaction Therefore the addition made by the Assessing Officer u/s. 68 of the Act is not proper. Therefore, we are inclined to delete the additions made by the Assessing Officer without going into the technical aspects of the submissions made by the assessee. Accordingly, Ground No. 1 is allowed and Ground No. 2 and 3 are kept open.

14. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 16th December, 2022

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER
Mumbai /Dated 16.12.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER

(Asstt. Registrar)

ITAT, Mum