

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

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6038/Del/2019 : Asstt. Year : 2015-16

DCIT, Circle-20(1), New Delhi-110002	Vs	M/s Priyatam Plaschem Pvt. Ltd., X-53, Okhla Industrial Area, Phase-II, New Delhi-110020
(APPELLANT)		(RESPONDENT)
PAN No. AABCP4629G		

Assessee by : Sh. Gautam Jain, Adv.

Revenue by : Ms. Meenakshi Dohore, Addl. CIT

Date of Hearing: 03.01.2023

Date of Pronouncement: 16.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-38, New Delhi dated 25.05.2019.

2. Following grounds have been raised by the Revenue:

"1. Whether the Id. CIT(A) has erred in law and on facts in circumstances of the case, in deleting the addition of Rs.3,00,00,000/- made by the Assessing Officer on account of unexplained credits in the form of share capital and share premium from M/s Mekasstar Finlease Pvt. Ltd. which in turn is one of the concerns belonging to SK Jain Group (Entry provider) and the assessee was not able to establish the creditworthiness of the creditor and genuineness of transaction as required under section 68 of the Act?

2. Whether the Id. CIT(A) has erred in law and on facts and in circumstances of the case, in deleting the addition of Rs.6,00,000/- made by the Assessing Officer u/s 69C of the Income Tax Act, 1961 on

account of undisclosed expenditure in the form of commission paid for taking bogus accommodation entries from SK Jain Group (Entry provider)?”

3. The assessee company filed return of income on 25.09.2015 declaring an income of Rs.90,64,160/-. The assessee company is engaged in the business of rental income. The assessee filed copy of balance sheet and profit and loss account and other details which were examined during the course of assessment proceedings.

4. During the year, the AO observed that the assessee received Rs.3,00,00,000/- on account of share capital against the allotment of 1,00,000 shares from one entity namely, M/s Mekastar Finlease Ltd. The AO issued notice u/s 133(6) of the Income Tax Act, 1961 to the company and summons u/s 131 to the Director, however no compliance has been received leading to addition of these amounts in the hands of the assessee u/s 68 of the Income Tax Act, 1961.

5. Aggrieved, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) deleted the addition based on the judgment of the Co-ordinate Bench of ITAT in assessee's own case for the A.Y. 2014-15 in ITA No. 2534/Del/2018 dated 10.08.2018. The relevant part of the said order is reproduced below:

"10. Considering the facts of the case, in the light of material on record and the above decisions, it is clear that assessee produced sufficient documentary evidence before A.O. at the assessment as well as appellate stage to prove ingredients of Section 68 of the I.T. Act. The A.O. however, did not make any further enquiry on the documents filed by the assessee. Thus,

the A.O. failed to conduct scrutiny of the documents at assessment stage and merely suspected the transactions in question on the irrelevant reasons. The A.O. did not make any enquiry from the Banker of the Investor and Income Tax record of the Investor Company. The valuation report filed by the assessee support explanation of assessee that shares were issued at premium which were below the fair market value per share of Rs.1221/- (PB 204 and 205). The assessee, thus, proved the identity of the Investor, its creditworthiness and genuineness of the transaction in the matter. No material has been produced before us to rebut the explanation of assessee. We, therefore, did not find any justification to sustain the addition. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs.6 crores. There is no material available on record to justify if assessee paid any amount of Rs.12 lakhs as alleged commission to obtain any accommodation entry. Orders of the authorities below were not justified in making addition of Rs.12 lakhs. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs.12 lakhs."

6. Further, the above order of the Tribunal has been affirmed by the Hon'ble Delhi High Court in ITA No. 71/2019 dated 28.01.2019. For the sake of ready reference, the entire order of the Hon'ble High Court is reproduced below:

IN THE HIGH COURT OF DELHI AT NEW DELHI
ITA 71/2019
PRINCIPAL COMMISSIONER OF
INCOME TAX-7, CCIT(OSD) *..... Appellant*
Through: Mr. Sanjay Kumar, Advocate

versus

PRIYATAM PLASCHEM PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

28.01.2019

"1. The Revenue claims to be aggrieved by the order of the ITAT contending that the addition of ₹6 crores made by the lower Revenue authorities is justified.

2. The assessee had reported the receipt of ₹6 crores as share application money on account of issue of fresh capital on premium. The share value at face value of ₹10 were issued at a premium of ₹1,190/-. A Notice was issued to the investor M/s Mekastar Finlease Pvt. Ltd. under Section 133(6). The share applicant confirmed the transaction together with its ITR and other relevant documents such as bank statements etc. to the AO. The AO was of the opinion that the investor had received money from M/s SKPJ and one Bilberry which belong to S.K. Jain Group and the latter was known as accommodation entry providers. On this ground the AO disallowed the share application money and brought it to tax under Section 68. The assessee appealed to CIT(A), which dismissed the appeal, concurring with the view, and was of the opinion that the shares were not offered at fair market value and additionally brought to tax under Section 69C. The ITAT in its impugned order set aside the findings of the lower tax authorities, essentially on the ground that the AO did not make any inquiry from the banker of the investor and no notice was issued under Section 131, to the investor or the banker. It relied upon several decisions of the Court including that of

this Court in Commissioner of Income Tax-II vs. M/s. Jansampark Advertising & Marketing (P) Ltd., [(2015) 375 ITR 373]. Further decisions in Commissioner of Income Tax vs. Nova Promoters & Finlease Pvt. Ltd. [(2012) 342 ITR 169]; Pr. CIT vs. Bikram Singh [(2017) 399 ITR 362 (Del.)] were relied upon.

3. The principle applicable to decide whether the amount can be brought to tax under Section 68 of the Income Tax Act are identity of the investor/ creditor, its credit worthiness and genuineness of the transactions. The initial burden of discharging this is upon the assessee [Commissioner of Income Tax vs. Lovely Exports Pvt. Ltd. [(2008) 216 CTR 195] : (2010) 14 SCC 761, by which the Division Bench judgment of this Court in Commissioner of Income Tax v. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 was affirmed.

4. In this case, the assessee had provided the details of the investor; a survey enquiry pursuant to Section 133(6) was carried out. That the investor M/s Mekastar Finlease Pvt. Ltd. was genuine stood established; it had resources to the tune of ₹300 crores. The only ground on which the genuineness of the transactions was doubted was that the M/s Mekastar Finlease Pvt. Ltd. also received some amounts from dubious sources. It is now established that the investor's duty is to satisfy the Revenue about the trinity of tests indicated in the said judgment, which itself is an authority for the proposition that the assessee is not under a duty to enquire or satisfy the Revenue about the source of the source. On a fair application of that decision of this Court, as affirmed by the Supreme Court, this Court is satisfied that no case is made out for interference. No substantial question of law arises. The appeal is accordingly dismissed."

S. RAVINDRA BHAT, J
PRATEEK JALAN, J

JANUARY 28, 2019

7. Further, the amount involved of Rs.3,00,00,000/- during the year is not fresh issue of share capital and it was also been a part of the amount of share application money received of Rs.6,00,00,000/- in the earlier year. Hence, we decline to interfere with the order of the Id. CIT(A) in deleting the addition.

8. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 16/03/2023.

Sd/-

(C. N. Prasad)
Judicial Member

Dated: 16/03/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR