

IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH : DEHRADUN

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.25/DDN/2017
Assessment Year: 2007-08

ITO,
Ward-2(5),
13A, Subhash Road,
Dehradun.

Vs Unison Developers Pvt. Ltd.,
C/o Virendra Kalra & Co., CAs,
75/7, Rajpur Road,
Dehradun.

PAN: AAACU7259C

(Applicant)

(Respondent)

Assessee by	:	Shri Virendra Kalra, CA
Revenue by	:	Smt. Poonam Sharma, Addl. CIT
Date of Hearing	:	24.04.2023
Date of Pronouncement	:	03.05.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.25/DDN/2017 for AY 2007-08 arises out of the order of the Id. Commissioner of Income Tax (Appeals), Dehradun in appeal No.584/CIT(A)/DDN/2015-16 dated 28.10.2016 [hereinafter referred to as 'Id. CIT(A)', in short] against the order of assessment passed u/s 143(3)/148 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2016 by the Id. Income-tax Officer, Ward-2(5), Dehradun (hereinafter referred to as 'Id. AO').

2. The Revenue has raised the following grounds:-

“1. The Ld. CIT(A), Dehradun has erred in law and on facts in quashing the issue of notice u/s 148 rendering the entire proceedings as void-ab-initio.

2. The Ld. CIT(A) has erred in law and on the facts of the case in deleting the addition made in the hands of the company on account of share application money which had alrighly been assessed as unaccounted income of the assessee company u/s 68 of I.T. Act, 1961.

3. The order of Ld. CIT (A) be set-a-side being erroneous in law and on facts and that of AO may be restored.”

3. We have heard the rival submissions and perused the material available on record. An information was received from the Investigation Wing, New Delhi, communicating that a search operation u/s 132 of the Act was carried out at the premises of an entry operator, Shri Surendra Kumar Jain on 14.09.2010 and it was found that accommodation entry amounting to Rs.2,35,00,000/- was provided to the assessee during the financial year 2007-08 relevant to AY 2008-09. The Id. AO observed that the assessee has received share application money amounting to Rs.2,15,00,000/- during the year under consideration from the following parties:-

Name & Address of the Applicant	Share application money received	No. of shares allotted.	Date of allotment
Shri Ravinder Singh Bhartari, 179/2/2, Rajpur Road, Dehradun (PAN AFPPB7713M)	1,00,00,000/-	25,000	07.02.2008
Shri Birender Singh Bhartari, 179/2/2, Rajpur, Road, Dehradun (PAN ALMPB1012G)	1,00,00,000/-	25,000	07.02.2008
Smt Renu Puri, Vill. Sinola, Dehradun (PAN AAJPP1180B)	15,00,000/-	3.750	07.02.2008

4. The Id. AO observed that to the aforesaid three parties, shares were allotted at a premium of Rs.390 per share, which was considered to be abnormal. The copy of share allotment register and share transfer register were duly furnished by the assessee to the Ld. AO. From the perusal of the same, it revealed that shares allotted on 07.02.2008 to Shri Ravinder Singh Bhartari and Shri Birender Singh Bhartari were bought back by the Directors of the assessee company on 10.10.2008 at Rs.10/- per share. The Id. AO held that the assessee had rotated its own income to the extent of Rs.2,15,00,000/- and accordingly concluded that he had reason to believe that income of the assessee to the extent of Rs.2,15,00,000/- had escaped assessment warranting reopening of the assessment u/s 147 of the Act. The assessment was ultimately completed by the AO u/s 143(3) r.w.s.147 of the Act on 31.03.2016 wherein the share application money received from the aforesaid three parties amounting to Rs.2,15,00,000/- was treated as undisclosed income of the assessee u/s 68 of the Act.

5. Before the Id.CIT(A), the assessee challenged the validity of reopening as well as the addition on merits. The Id.CIT(A) adjudicated the issue both on assumption of jurisdiction u/s 147 of the Act as well as on merits. The Id.CIT(A) quashed the reassessment proceedings initiated u/s 147 of the Act on the ground that the information received from the Investigation Wing, New Delhi, does not pertain to the year under consideration. Apart from that, the Id.CIT(A) also deleted the addition on merits by giving his independent findings that the assessee had duly proved all the three ingredients of section 68 of the Act in the instant case.

6. We find the Id.CIT(A) had quashed the reassessment proceedings by observing as under:-

“23. On examination of the said reasons, certain things become apparent. The first is that the Investigation Wing of New Delhi had passed on information that the assessee company had received accommodation entries from the S.K.Jain Group in the assessment year 2008-08 amounting to Rs. 2.35 crores. There was no allegation that any adjustment entries had been received in the AY 2007-08 or that the share application money received in that year was from persons who had any connection with, the S.K. Jain Group. The reference to the S.K. Jain Group in the “Reasons to Believe”, indicates that this has either been assumed by the AO in respect of this year also or that it has been assumed that because the Assessee received adjustment entries in AY 2006-09, therefore it must also have received adjustment entries in this assessment year. Both assumptions are not backed up with any concrete material or facts. It appears that such an assumption has been concluded because the assessee company had not done any business in the past that could, in the opinion of the Assessing Officer, justify the issuance of shares at a premium, the buy back of these shares at face value by the Directors of the company and the fact that Directors of the company were issued advances from the money received on account of these shares as also the fact that the Bhartaris did not comply with the notices issued to them in AY 2008-09. Such circumstances, while they may give grounds to suspect, cannot give reason to believe that any income had escaped assessment in the hands of the assessee company on account of rotation of its own funds as no evidence to this effect has been brought on record. Neither has it been shown that the share applicants did not have the wherewithal to advance the money nor is there any evidence on record of the company paying any money for the receipt of share application money. Moreover, the bonafides of the share applicants are not tainted by any association with the S.K.Jain group and there was no reference to the share application money received from them in the report of the Investigation Wing. The mere failure of the share applicants to respond to a notice in another assessment year, cannot itself be a reason to assume that they lacked creditworthiness. Thus from a perusal of the reasons to believe as recorded by the Assessing Officer and the facts available before him, it cannot be concluded that there were any genuine reasons to believe that any income had escaped assessment in the hands of the assessee for this assessment year. The notice under section 148 has therefore been issued on the basis of surmises and conjectures. It is therefore fit to be quashed rendering the assessment, void ab initio.”

7. It is the categorical finding recorded by the Id.CIT(A) that no information was received by the Id. AO pertaining to the year under consideration which would enable the Id. AO to form a reasonable belief that income of the assessee had escaped assessment for AY 2007-08. We are unable to persuade ourselves to accept the contention of the Id. DR that the assessee had anyway received share application money in both assessment years 2007-08 as well as in AY 2008-09 and since in AY 2008-09 the said share application money was found to be received from an accommodation entry provider, the share application money received during the year under consideration also should be given the same treatment. Factually, we find that share application money of Rs.2.15 crore was received by the assessee from the Director's son and brother who are non-resident Indians and the assessee had also proved the source of source in their hands. Factually, it is also brought on record by the Id.CIT(A) that these three parties are not at all connected in any manner whatsoever with S.K. Jain group. All the shareholders had appeared before the Id.AO and had given statements on oath duly confirming the fact of making investments in the assessee company. The assessee had also produced the income-tax returns, bank accounts, source of funds, share application forms, shareholders' register, share transfer register to prove all the three ingredients of section 68 of the Act, viz., identity of the investors, creditworthiness of the investors and genuineness of transactions. It is not in dispute that all the monies were received through regular banking channels. We find that the Id.CIT(A) had also given a categorical finding that all the three ingredients of Section 68 of the Act were proved in the

instant case. None of these factual findings were sought to be rebutted by the Revenue before us. Hence, we have no hesitation in confirming the order of the Id.CIT(A) quashing the reassessment proceedings for invalid assumption of jurisdiction and also deleting the addition on merits. Accordingly, the grounds raised by the Revenue are dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 03.05.2023.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 03rd May, 2023.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi