

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 6533/Del/2015, A.Y. 2010-11

ITA No. 6534/Del/2015, A.Y. 2011-12

DCIT Circle 12(2), New Delhi	Vs.	M/s. INX News Pvt. Ltd. B-116, Ground Floor, Okhla Industrial Area, Phase-1, New Delhi PAN : AABCI6212J
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Assessee by	Sh. Pradeep Singh Rawat, Adv.
Revenue by	Ms. Sarita Kumar, CIT-DR

Date of hearing:	25.04.2023
Date of Pronouncement:	.05.2023

ORDER

Per Anubhav Sharma, JM :

Both appeals have been preferred by the Revenue against the order dated 13.08.2015 of CIT(A)-4, Mumbai (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. CIT(A)-4/Tr-64/Appeal(3)/ACIT.11(1)/2014-15&CIT(A)-4/Tr-341/Appeal(3)/ACIT.11(1)/2014-15 arising out of an appeal before it against the order dated 30.03.2013 & 31.03.2014 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT-11(1), Mumbai (hereinafter referred as the Ld. AO).

2. The facts in brief are that during the relevant year under consideration assessee company had received Rs. 79,33,75,000/- in AY-2010-11 and Rs. 78,70,00,000/- in A.Y. 2011-12 on account of share application money from M/s. Indi Media Company Pvt. Ltd. The Ld. AO was not satisfied with the creditworthiness identity and genuineness of M/s. Indi Media Company Pvt. Ltd. and made additions of the share application money u/s 68 of the Act which has been deleted by the Ld. CIT(A) and the Revenue is in appeal raising following grounds :-

“1. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the disallowance of Rs. 79,33,75,000/- (ITA No. 6533/Del/2015) and 78,70,00,000/- (ITA No. 6534/Del/2015) u/s 68 of the IT Act on account of share application money.

2. The CIT(A) erred by deleting the addition made u/s 68 of the Act in respect of share application money received from M/s. INDI Media company Ltd. when the assessee was unable to prove the creditworthiness and genuineness of the applicant.

3. The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time before or during the hering of appeal.”

3. Heard and perused the record. Ld. DR submitted that Ld CIT(A) has fallen in error in not considering all the suspicious circumstances examined by the Ld. AO while Ld. AR relied the order of Ld. CIT(A). He relied following judicial verdicts to submit that source of source of holding company can not be questioned :

1.PCIT vs. Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)

2. Bhag Chand Chhabra vs. PCIT [2022] 138 taxmann.com 33(SC)

3. Priya Blue Industries (P) Ltd. vs. ACIT [2022] 138 taxmann.com 69(SC)

4. Vishwatej Developers (P) Ltd. vs. ACIT Chennai [2021] 130 taxmann.com

5. Amar Jewellers Ltd. vs. ACIT [2022] 139 taxmann.com 198 (Gujarat)

6. *ITO vs. Sai Everest Building & Developers [2022] 142 taxmann.com 383 (Mum)*

7. *C.V. Ravi vs. ITO [2021] 129 taxmann.com 44(SC)*

8. *NDR Promoters (P) Ltd. vs. PCIT [2019] 109 taxmann.com 53 (SC)*

9. *Balbir Chand Virmani vs. CIT [2019] 112 taxmann.com 214 (P&H)*

10. *Par Excellence Leasing and Financial Services (P.) Ltd. vs. ACIT [2020] 115 taxmann.com 38 (Delhi-Trib)*

11. *CIT vs. Midas Golden Distilleries (P.) Ltd. [2021] 130 taxmann.com 206 (Madras)*

4. Appreciating the matter on record it can be observed that the ld. AO himself does not dispute the fact that investor company M/s. Indi Media Company Pvt. Ltd. is the holding company of the assessee company. Then it can be observed from the order of Ld. CIT(A) in the respective years that share application money was received through banking channel, confirmation was given by the investing company. Remand report was called including a direction to the Ld. AO to summon the Director of investing company but in spite of reasonable opportunities, Ld. AO failed to respond and file a remand report. This itself gives rise to presumption that information tendered by assessee before the Ld. CIT(A) was sufficient to establish the credibility of transaction. In fact, assessee has filed the copy of statement of Director of M/s. Indi Media Company Pvt. Ltd. Sh. Sumit Kumar recorded on 05.12.2013, during remand proceedings, wherein he provided all the necessary details like identity, creditworthiness and genuineness of the transaction. It appears primarily, the Ld. AO was carried away by the fact that M/s. Indi Medio company P. Ltd. was incorporated on 28.12.2008 and thus as investor it was supposed to explain the sources. Ld. AO was not justified to question the source of source of a holding company and merely rely, the inspector report to doubt the existence of holding company. Infact given a chance and having examined Director of M/s. Indi

Media Company Pvt. Ltd. Sh. Sumit Kumar, he failed to reinforce his opinion, by a remand report.

5. The Bench is of considered opinion that onus casted upon the assessee company u/s 68 of the Act was sufficiently discharged and merely on surmises the claim of assessee could not be set aside. The exhaustive appreciation of evidence and circumstances by the Id. CIT(A) require no interference.

6. In the light of aforesaid, there is no substance in the grounds, **Revenue's appeals are dismissed.**

Order pronounced in the open court on 23rd May, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:-23rd.05.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**