

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 6695/DEL/2017 [A.Y. 2012-13]

The Income-tax Officer
Ward - 6(2)
New Delhi

Vs. M/s Cinflex Infotech Pvt Ltd
305, 3rd Floor, Bhanot Centre
Pamposh Enclave, Greater Kailash,
New Delhi

PAN: AABCCC 5448 C

(Applicant)

(Respondent)

Assessee By : Shri M.P. Rastogi, Adv
Shri Manish Kumar Jha, Adv

Department By : Shri T. James Singson, CIT- DR

Date of Hearing : 13.07.2023

Date of Pronouncement : 19.07.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 2, New Delhi dated 30.06.2017 pertaining to Assessment
Year 2012-13.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs.10.89 crores made by the Assessing Officer u/s 68 of the Income-tax Act, 1961 [the Act, for short]

3. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

4. Briefly stated, the facts of the case are that while scrutinizing the return of income for the year under consideration, the Assessing Officer found that the assessee has received share application money amounting to Rs.10.89 crores from 19 share applicants as under:

Sr. No.	Name of the Share Applicant	Amount
1	Suktara Tradelink Pvt.	50,00,000
2	Lotus Dealmark Pvt. Ltd.	30,00,000
3	Zoom Building Material & Products	75,00,000
4	Zayat Construction Pvt.	75,00,000
5	Megatech Realtors Pvt.	40,00,000
6	Jagdhatri Dealcom Pvt. Lt	1,40,00,000
7	AMS Powertronic Pvt.	50,00,000
8	Motorex Finance Pvt.	50,00,000
9	Assemble Construction	90,00,000
10	Safari Tredex Pvt. Ltd.	25,00,000
11	Freak Buildcon Pvt. Ltd.	44,00,000
12	Maa Ambey Tradex Pvt.	50,00,000

13	Maa Vaishnavi Vanijya	25,00,000
14	Chokhani Developers	50,00,000
15	Apex Goods Pvt. Ltd.	50,00,000
16	Zarf Infra Development	15,00,000
17	Skylight Distributors Pvt.	1,60,00,000
18	Accord Sales & Tradex	60,00,000
19	Evergreen Realcon Pvtl	10,00,000
Total		10,89,00,000

5. The Assessing Officer found that the shares have not been allotted by the assessee. The assessee was asked to submit the details in respect of share applicants. The assessee submitted confirmations of share application money alongwith tax particulars and respective bank statements. The Assessing Officer issued notice under section 133(6) of the Act at the addresses provided by the assessee and out of 19, 5 notices were received unserved with the remarks as under:

1.	MIs Meqatech Realtors Pvt. Ltd	Left
2.	MIs Lotus Dealmark Pvt. Ltd	Not known
3.	MIs Zoom Building Material & Products Pvt. Ltd	Firm closed returned to sender
4.	MIs AMS Powertronic Pvt. Ltd	No such firm at such
5.	MIs Assemble Construction Pvt. Ltd	Insufficient address

6. The Assessing Officer deputed an Income tax Inspector to make field enquiry about share applicants situated at Delhi. The inspector submitted his report as under:

S.No.	Name of the share applicants	Remarks
1.	M/s Evergreen Realcon Pvt. Ltd, 210, Karkardooma, Delhi-94	No such company in existence at given address
2.	M/s Zarf Infra Development Pvt. 17, Ground Floor, Gurunanak Pura, Laxmi Nagar Delhi-92	DO
3.	M/s Freak Buildcon Pvt. Ltd. Ground Floor, Gurunanak Pura, Nagar, Delhi-92	Do
4.	M/s Megatech Realtech Ltd, 0- Mandawali, Delhi-92	Do

7. Copy of the report was provided to the assessee. The assessee was asked to furnish current addresses. The assessee filed a letter alongwith details of current addresses of the 7 share applicants. On the basis of new addresses provided by the assessee, again, an Inspector was deputed to make field enquiries and the Inspector submitted a report that no such companies are situated at the given addresses.

8. On the basis of this report, the Assessing Officer formed a belief that these companies were operated by a single person and these were not in existence, but operated by some entry provider, who issued cheques in favour of the beneficiaries in lieu of cash.

9. The Assessing Officer further observed that though the alleged money was received through banking channel, but did not reflect the credit worthiness of the share applicants. Even their respective bank accounts do not reflect their credit worthiness or genuineness of the transactions.

10. The Assessing Officer finally drew the following conclusion on his appraisal of the facts:

"I it is clearly evident from the above discussion that none of these companies/persons were engaged in any worthwhile business activity. Even the enquiries conducted by the inspector have confirmed that no business is being carried out by these companies.

II. Examination of bank accounts of these share applicants clearly evidence that these share applicants were acting as conduit to transfer funds from one entity to another in the garb of share application money/capital and share premium. The

astounding volume of transactions reflected in these bank accounts, as well as, the recurring pattern of credit of funds into these accounts from some source followed by its immediate transfer to some other entity forms clear proof that these bank accounts were utilized just to confer semblance of genuineness to credit introduced in the books of the assessee.

I. These share applicants, which the assessee has claimed to have received such huge transactions, do not any functional business activity, their annual income as declared in their ITRs is very nominal, and the annual turnover declared by these companies/persons in their P&L account is in no way commensurate with the voluminous financial transactions routed through their bank accounts. Therefore, it is clearly evident that none of these share applicants have any financial worth of their own.

IV. All the share applicants were applied for allotment of shares with the assessee company between 15.09.2011 to 19.09,2011, whereas the assessee company had not made any publication for share capital, how it can possible that all the share applicants were transferred the fund in the accounts of the assessee company, whereas no IPO was issued by the assessee company.

At the time of initial hearing the assessee has provided name and addresses of all the share applicants, on basis of information notices u/s 133(6) of IT Act have been issued to the share applicants, but a few notices returned back by the postal authorities. Thereafter the AR of the assessee company was asked to furnish current addresses of these companies (mentioned as above), In response to the query the assessee has filed current addresses of the share applicants and inspector of this was deployed for conduct inquiries about share applicants situated at Delhi. In his report, he has stated that no such companies are existing at the addresses provided by the assessee company,

VI. Notices u/s 133(6) issued to the share applicants belongs to Kolkata, but out of 11 only 02 share applicants furnished the required details and notice issued to M/s Assemble Construction Pvt. Ltd. was returned back by the postal authority with remarks "insufficient address",

VII. A further examination of details has revealed that a few of the companies were correlated and managed by same set of people in which directors and auditors are common.

The cumulative effect of all the factors narrated above unequivocally points out the real intention behind these transactions and leads to a logical conclusion that these persons/companies were paper entities which have acted as name share applicants so as to confer semblance of

legitimacy to that credit introduced into the books of the assessee."

11. After referring to various judicial decisions, the Assessing Officer finally made addition of Rs.10.89 under section 68 of the Act.

12. The assessee carried the matter before the Id. CIT(A) and vehemently submitted that at the addresses given by the assessee, some of the notices issued under section 133(6) of the Act returned unserved and the Income tax Inspector reported that no such companies existed on the given addresses.

13. But at the addresses when the assessee issued notices through speed post, they were duly served as confirmed by the delivery status by India Post portal. It was strongly contended that the assessee has proved the identity by suo moto taking action by sending letters to the same addresses at which notices under section 133(6) of the Act were issued by the Assessing Officer.

14. After considering the facts and submissions, the CITA was convinced that the assessee has successfully discharged the initial onus cast upon it by provisions of section 68 of the Act and deleted the impugned addition.

15. Before us, the ld. DR strongly supported the findings of the Assessing Officer and read the relevant part of the assessment order. It is the say of the ld. DR that the ld. CIT(A) has accepted the submissions of the assessee without making any enquiry.

16. Per contra, the ld AR reiterated what has been stated before the lower authorities.

17. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the letter sent by the assessee at the same addresses at which notices under section 133(6) of the Act were issued by the Assessing Officer were served, evidenced by deliveries thereof by submitting copies of printouts taken out from the website indiapost.gov.in, which are placed in the paper book.

18. It is also not in dispute that the assessee has also proved the identity of some of the investing companies by obtaining information under the Right to Information Act, 2005. Confirmations and copies of relevant bank accounts along with copies of income, tax, return, acknowledgement, annual accounts, memorandum and articles of association of the share applicant companies were provided.

19. A perusal of the bank statement shows that share applicant companies had sufficient funds available with them before making the impugned share application. In so far as the production of the directors of the share applicant companies is concerned, we find that the Assessing Officer issued notices on 26.03.2015, asking the assessee to produce the directors of the company, for which the assessee sought time till 30.03.2015, as most of the directors of the said applicant companies were outside Delhi.

20. We find that the Assessing Officer framed the assessment order on 30.03.2015. The allegation of the Assessing Officer that the assessee failed to produce any of the directors is hit by the principles of natural justice for want of sufficient time and opportunity.

21. As mentioned elsewhere, shares were not allotted to share applicant companies and ultimately share application money was returned to all the companies. Repayment schedule is available in the paper book at pages 7 to 20. This in itself shows that the assessee was not a beneficiary, as the amount has been repaid by the assessee in subsequent years.

22. A perusal of the factual matrix on record shows that the transactions have been made through banking channel, entries are duly reflected in the bank accounts of both the parties. Share applicant companies have furnished complete Income tax details alongwith their respective bank statements and it is not the case of the Assessing Officer that the assessee has purchased cheque by paying cash, nor there is any allegation or suspicion on the documentary evidences furnished by the assessee.

23. We are of the considered view that for discharging the initial onus cast by section 68 of the Act, the assessee has to establish (1) identity, (2) credit, worthiness and (3) genuineness of the transaction. Once the assessee proves all these three things, his onus is discharged.

Facts on records show that the assessee has successfully discharged the initial onus cast upon it.

24. Considering the facts of the case in hand in totality, we do not find any merit in the additions made by the Assessing Officer and do not find any reason to interfere with the findings of the ld. CIT(A).

25. In the result the appeal of the Revenue in ITA No. 6695/DEL/2017 is dismissed.

The order is pronounced in the open court on 19.07.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 19th JULY, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	