IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE,

DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.5114/Del/2015
(ASSESSMENT YEAR 2011-12)

DCIT Circle-26(2) New Delhi	Vs.	M/s Vrindavan Tubes Ltd. 2888, 2nd Floor Bazar Sirkiwalan Hauzkhas, Delhi-110 006 PAN-AACCV 2294C
(Appellant)		**(Respondent)**

C.O. No. 163/Del/2018 (in ITA No. 5114/Del/2018)
(ASSESSMENT YEAR 2011-12)

M/s Vrindavan Tubes Ltd. 2888, 2nd Floor Bazar Sirkiwalan Hauzkhas, Delhi-110 006 PAN-AACCV 2294C	Vs.	DCIT Circle-26(2) New Delhi
(Appellant)		**(Respondent)**

Appellant by	Mr. Anuj Garg, Sr.DR
Respondent by	Mr. Premjit K. Kashyap, CA

Date of Hearing	15/09/2023
Date of Pronouncement	19/09/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi ["Ld. CIT(A)", for short], dated 30/03/2015 for Assessment Year 2011-12 as well as the assessee has also filed Cross Objections. Grounds of appeal of the Revenue are as under:

"1 The Ld. CIT(A) has erred in deleting addition of Rs.1,71,00,000/- made by AO on account of treating share application money from undisclosed sources u/s 68 of the I.T. Act, 1961.

2. The appellant craves leave for reserving the right to amend, modify, alter or add any ground(s) of appeal at any time before or during the hearing of this appeal."

Grounds in Cross Objection filed by the assessee.

" That on the facts of the case and under the law, Ld. CIT(A) had erred in sustaining the addition/disallowance of Rs. 6,95,086/- being the provision of Excise Duty on finished goods."

3. Brief facts of the case are that, the assessee filed return of the Assessment Year 2011-12 declaring an income of Rs. 34,40,837/- and the same was processed u/s 143(1) of the Act. Subsequently, an assessment order came to be passed u/s 143(3) of the Act on 31/03/2014 by making an addition of Rs. 1,71,00,000/- on account of share application money/share capital, Rs. 6,95,086/- disallowance on account of provision of excise duty, disallowance on the set off of brought forward losses of Rs. 34,40,838/- and also made addition on account of service tax payable of Rs. 15,06,665/-.

4. As against the assessment order dated 31/03/2014, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) partly allowed the Appeal, wherein sustained the addition/disallowance of Rs. 6,95,086/- being the provision of excise duty on finished goods and further deleted the addition of Rs. 1,71,00,000/- made by the A.O. on account of treating share application money from undisclosed sources u/s 68 of the Act. Aggrieved by the above deletion of Rs. 1,71,00,000/- by the CIT(A), the Department of Revenue preferred the present Appeal in ITA No. 5114/Del/2015 and as against sustaining the disallowance of Rs. 6,95,086/- being the provision of excise duty

on finished goods, the assessee preferred the C.O. No. 63/Del/2018 on the grounds mentioned above.

5. The Ld. Departmental Representative vehemently submitted that the order of the CIT(A) in deleting the addition of Rs. 1,71,00,000/- is erroneous and deserves to be set aside. Further submitted that, on perusal of the balance sheet of contributors, there are no fixed assets and there are negligible office expenses, no P & L Account has been enclosed in the paper book by the assessee and there are very normal income reflected in most of the investors companies, as per the bank account of the contributors except in the case of Intelligence Clearing Agency Pvt. Ltd., in all other companies, there were deposit in the bank accounts which were immediately transferred out living a very low balance in the account on the given day, which proves that the bank account has been used only to proved the money and source of fund as per balance sheet of the contributors are share capital and the same have been applied in share/investments and there is no other activities conducted by the Companies, therefore submitted that the CIT(A) has committed grave error in allowing the Appeal.

6. Per contra, the Ld. Assessee's Representative submitted that all the 17 entities' proved the confirmation of the transaction and the assessee has produced copy of the ITR, PAN Applications, copy of the Bank Statements, Copy of the Financial Statement of the Investors. Thus, the assessee has duly

discharged the burden casted upon him u/s 68 of the Act. The notice issued u/s 133(6) of the Act were duly complied wherever the notices were sent to the correct address. Therefore, relying on the order of the CIT(A) sought for dismissal of the Appeal filed by the Revenue.

7. We have heard the parties and perused the material available on record. As per balance sheet of the assessee, the assessee had received the sum of Rs.1,71,00,000/- share application from following parties:

Sr. No.	***Name***	***Amount (Rs.)***
1.	*M/s Intelligence Clearing Agency Private Limited*	*8,00,000/-*
2.	*M/s HYMN Advertising and Marketing Private Limited*	*7,00,000/-*
3.	*M/s Interior Soft Solutions Private Limited*	*7,00,000/-*
4.	*M/s Freshtex Technologies Private Limited*	*9,00,000/-*
5.	*M/s Performers Buildwell Private Limited*	*8,00,000/-*
6.	*M/s Auxin Impex Private Limited*	*10,00,000/-*
7.	*M/s Lancer Construction Private Limited*	*12,00,000/-*
8.	*M/s Tushar India Private Limited*	*9,00,000/-*
9.	*M/s Vishwanidhi Chemicals Private Limited*	*10,00,000/-*
10.	*M/s Amson Apparels Private Limited*	*20,00,000/-*
11.	*Mr. Dharmender Kumar Jain*	*9,00,000/-*
12	*Mrs. Neeru Jain*	*10,00,000/-*
13	*M/s Ankush Agriculture Private Limited*	*5,00,000/-*
14	*M/s Alishan Estates Private Limited*	*5,00,000/-*
15.	*M/s Eastend Realtors Private Limited*	*25,00,000/-*
16	*M/s SLG Agriculture Private Limited*	*7,00,000/-*
17.	*Mr. Tarun Kumar Goel*	*10,00,000/-*
Total		***1,71,00,000/-***

8. The assessee during the assessment proceedings called upon to furnish documents to prove creditworthiness of the parties and also to prove genuineness of the investment as required u/s 68 of the Act and ultimately the addition has been made by the AO in following manners:

> *"There is no dispute that the amount was received by the assessee was through banking channel. What is disputed is that was it really invested by genuine lender. This raises the question whether the apparent can be considered as the real. It is surprising to note that the assessee who is able to receive huge loan and has been able to receive the Confirmations and along with income-tax acknowledgement of the alleged applicant but could not produce such entities for verification. It is also surprising to note that the entity who can oblige the assessee by lending such huge sum would make itself unavailable for verification of such fact. Thus it is to be held that everything is not well either with the assessee or with the alleged lender. Mere filing of certain papers do not prove the genuineness of a transaction particularly when the Assessing Officer requires the presence of the party to the transaction. No circumstances are demonstrated as to why the alleged lender could be made available for verification or examination by the Assessing Officer. In such circumstances, apart from the ingredients to prove genuine cash credit, something more is required to be demonstrated to justify such receipts. As laid down by the courts that the apparent must be considered the real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. It is apt to note that a man may lie but the circumstances do not". No meters are available for examining the truth and correctness of statement made but the surrounding circumstances and the relevant fact will throw light on the genuineness or otherwise of any transaction. In such circumstances when the money landing in account of the assessee is nothing but the cash deposited in one of the account of some non-existent entity, which is supposedly a share applicant, the faculties of human rationalities infer that it is nothing but assessee's own money. It is very clear that the person who owned the unaccounted money is reaping the benefit of the same after having utilized the services of the said entry operator who act in form of physically non-existent paper entities and help in laundering of the money.*

Section 6 has to be proved on facts, therefore demonstration by assessee in such rebuttal presupposes not relying upon various decisions or orders but demonstrate by way of facts try producing such persons Production of such persons was a farfetched requirement, the assessee did not even give a justification for non-production of such entities

In view of the above, the assessee has failed to discharge its onus of proving the identity & creditworthiness of concerned party, and genuineness of transactions in terms of provisions of Sec 68 of the Act. The amount of Rs. 1,71,00,000/- received from the above entry operator represents the credit entry whose nature and source could not be satisfactorily proved by the assessee and hence it is covered within the mischief of Section 68 of the IT Act Considering the facts discussed above, I am satisfied that initiation of penalty proceedings u/s 271(1)(c) is warranted in this case.

Further the Assessee has failed to place on record any documentary evidence by way of Form-2 (which is required to be filed with the Registrar of the Companies as per the provisions of the Companies Act, 1956) to prove the facts that the Share has been allotted to various parties during the year under assessment.

The provisions of Section 66 of the Income Tax Act, 1961 reads as under:

> *"61 Where any sum is found credited in the hooks of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing Officer, suthfactory, the sum 10 credited may be charged to income tax us the income of the assessee of that previous year."*

Further the assessee has faded to produce all the parties for examination From the perusal of the documents filed by the assessee it is evident that the assessee has tried to establish the identity of the parties by filing the confirmation letter, income tax return and registers of companies record. The midtrial placed by the assessee is not sufficient to prove the creditworthiness of the share applicants and genuineness of the transactions In the case of CIT V/S Youth Construction Pvt. Ltd [2013] 357 ITR 197 (Delhi) is has been held by the Hon'ble Delhi High Court that section 68 of the income tax act, 1961 applies equally to share application monies And the burden is on the assessee to prove the nature and source

thereof, to the satisfaction of the assessing officer. In view of the above observation, settled law the share application monies credited by the assessee in his Books of Accounts during the previous year Rs.1.71,00,000/- is being treated as income from undisclosed sources and is being assessed to tax.

(Addition- Rs.1,71,00,000/-)"

9. In the appeal, the above said addition have been deleted by the Ld. CIT(A) by observing as under:

"3.3 The submissions of the appellant and the facts have been carefully considered In the assessment order, the AO. has observed that these persons did not appear in response to the summons u/s 131. The A.O. also observed that in certain cases, the details filed did not relate to the assessment year under consideration The AO observed that the bank statements in certain cases shows that payments were made immediately after deposits received. In its submissions, the appellant has pointed out that this is not a case where there is any allegation that enquiries by the Investigating Wing resulted in information that these were bogus accommodation entries received from entry operators. The appellant argued that since this was not a case of bogus accommodation entries unearthed by the investigation wing, it has considering the evidence filed, discharged its burden of proof and there is nothing in the asstt. order to rebut its claim. The appellant stated that it has filed voluminous evidence including confirmations, bank statements, and copy of income tax returns and balance sheet etc., and in certain cases these persons have also appeared before the AO in compliance of summons u/s 131 and had confirmed the investment claimed by the appellant.

3.4 The appellant stated that the notices u/s 133(6) had returned undelivered because of change in the address of these persons and all the persons had subsequently confirmed the investment. The appellant stated that in certain cases, these persons could not appear before the AO in compliance of summons u/s 131 because the date fixed for compliance by the A.O was a Saturday and a holiday. The appellant stated that in these cases, the representatives of all these persons had met the AO, and as directed by the AO, had filed reply on the next working day. The appellant stated that in certain cases, the AO had wrongly observed that copy of document filed such as income tax return, balance sheet did not relate to the assessment order under consideration. The appellant stated that the AO's observations in this regard were factually

incorrect and it had filed documents relevant to the asstt. year under consideration The appellant observed that in certain cases, the AO's observations that investment was not shown in the balance sheet were factually incorrect because in such cases, shares had been allotted and these were duly confirmed by that investor.

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3.10 It is apparent from the above discussion that the appellant has clearly discharged its burden of proof. In the asstt. order, there is no allegation of any inquiries by the Investigation Wing regarding receipt of bogus accommodation entries in this case. If this was a case of bogus accommodation entries unearthed through enquiries by the Investigation Wing, then the appellant could be expected to furnish a higher degree of proof, but when no such allegation is made in the assessment order, the appellant has clearly discharged its burden of proof by filing the confirmation, affidavit, and copy of income tax return and bank statement of the concerned persons The appellant has explained why these persons could not appear before the A.O within the limited time allowed. In any case, the courts have repeatedly held that it is for the A.O. to enforce attendance if he so requires. These persons had also furnished written replies to the AO. The AO has observed that the bank account shows that investments have been made out of amounts received on the same day but this observation is hardly sufficient to make an addition of this amount, particularly considering the evidence filed by the appellant. In view of the evidence filed by the appellant, the onus had clearly shifted to the AO however The AO has not brought any material on record to controvert the evidence filed by the appellant Such an addition is not legally sustainable on the basis of general observations The share investors have unequivocally confirmed the investment made by them and the appellant has submitted substantial evidence during asstt proceedings. Considering these facts, if the AO still had any doubts about the source from which these persons had made investments in share capital of the appellant, then this information could have been passed to the A.O. of the investors, and he could have considered taking necessary action in their cases, and conveyed his findings to the appellant's A.O. for necessary action, if any Considering the facts and judicial decisions on this subject, the appellant has clearly discharged its burden of proving the identity and capacity of the creditors and the genuineness of the transactions. In the asstt. order, the AO has not brought any material on record to controvert the evidence and explanation furnished by the appellant. Considering the facts and judicial decisions on this subject, the addition made by the AO is not sustainable in law and is deleted. The Ground is allowed."

10. Considering the fact that the assessee had discharged its burden as per Section 68 of the Act, by filing confirmation, affidavit, copy of the income tax return and bank statement of the parties and considering the fact that the parties have furnished written reply to the A.O. confirming the investments made by them, in the absence of any material on record to controvert the evidence and explanation furnished by the assessee and also considering the facts and judicial decisions on the subject, we find no error in the order of the CIT(A) in deleting the addition made by the A.O. accordingly, we find no merit in the grounds of Appeal of the Revenue.

11. In the result, Appeal of the Revenue in ITA No.5114/Del/2015 is dismissed.

C.O No. 163/Del/2018

12. Brief facts of the case are that the assessee is a public limited company engaged in manufacturing of ERW & GI Pipes which follows mercantile system of accounting and has followed the provision of Section 145A of the Act, the assessee Company claimed deduction of Rs. 6,95,086/- on account of provision of excise duty on finished goods. The A.O. while making addition observed that the assessee has not furnished any document to prove its contention that the amount of 'provision of excise duty on finished goods' is excluded in the valuation of closing stock, the assessee further observed that the assessee company has also not furnished any document as to how the amount of

provision of excise duty was arrived. Accordingly, disallowed the provision of excise duty on finished goods of Rs. 6,95,086/-, the said disallowance has been confirmed by the CIT(A).

13. The Ld. Counsel for the assessee submitted that the CIT(A) erred in sustaining the addition/disallowance of Rs. 6,95,086/- being the provision of excise duty, further made following submissions:-

> *"a. That the liability to pay excise duty on finished goods is payable on removal of goods from the factory premises as per excise law.*
>
> *b. That it is a revenue neutral item as provision for excise duty is debited in accounts as an expense and the same amount is included along with the value of closings stocks. (Pg no 29 of PB).*
>
> *c. The Ld A.O has disallowed the provision for excise duty and confirmed by Ld CIT(A) which amounts to taxing the same income twice, once by disallowing the deduction for provision of excise duty on finished goods and on the other side by addition of excise duty along with the value of closing stock.*
>
> *d. That deduction for tax, duty or cess is not allowed as deduction u/s 43B if the due taxes which is payable is not paid till the due date of filing of income tax return. In the present case this amount was not payable as at 31.03.2011 as the excise duty is due to be paid on removal of goods from the factory premises. In the case of assessee by following the provisions of sec 145A the value of excise duty was included in the value of closing stocks and on the other side it has been debited in profit and loss account as a provision of excise duty on finished goods.*
> *e. In the case of CIT Vs Loknete Balasaheb Desai S.S.K Ltd in appeal No 4297 of 2009 The Hon'ble Bombay High court on identical issue has upheld the decision of ITAT deleting the addition of excise duty which was considered in the case of Lakshmi Sugar Mills Co case as quoted by Ld CIT (A). The facts of the assessee are different from the case of Lakshmi Sugar Mills Co in which it was held that MODVAT credit cannot be reduced from value of opening or closing stock. In this case it was held that in respect of unsold sugar lying in stock, central excise liability was not incurred and consequently the*

addition of excise duty made by the assessing officer to the value of the excisable goods was liable to be deleted."

14. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

15. We have heard both the parties and perused the material available on record. In the present case, the addition was made on the ground that the provision made in P & L Account towards the excess duty which is relating to closing stock shown in the manufacturing, trading account. In our opinion, if this provision of excise duty was included in the value of the such finished stock shown in the manufacturing and trading account for the year ending 31/03/2011, consequently the said component of excise duty to be considered as provisions as claimed by the assessee. Both the parties before us have not able to demonstrate inclusion of excise duty in the value of impugned stock of finished goods. The A.O. ought to have verified the valuation of closing stock of finished goods to see whether the said excuse duty component was taken into consideration while valuing the finished goods of closing stock. If the said component of excise duty not include in closing stock of finished goods, then the assessee cannot make provision for excise duty in P & L Account which amount to artificial claiming of deductions, hence we remit this issue to the file of the A.O. to decide the same, in the light of above observation. Accordingly, the Ground of C.O of the assessee is partly allowed for statistical purpose.

16. In the result, the C.O. filed by the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 19th September, 2023

Sd/-	Sd/-
(DR. B.R.R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 19/09/2023
Pk/R.N Sr ps
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI