

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA , ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2253 /DEL/2018
A.Y. 2011-12**

ACIT, Central Circle 15, New Delhi.	<u>Vs</u>	Universal Electronics & Communications P. Ltd., Pocket-1, Vasant Vihar, New Delhi-110055. PAN: AAACU0208M
APPELLANT		RESPONDENT
Assessee represented by	Shri V.K. Agarwal, AR & Ms. Sweta Bansal, CA	
Department represented by	Shri T. Jamesh Singson, CIT(DR)	
Date of hearing	19.09.2023	
Date of pronouncement	21.09.2023	

ORDER

PER ANUBHAV SHARMA, JM:

The Revenue has come in appeal challenging the orders dated 05.01.2018 passed by the Commissioner of Income Tax(Appeals)-XXVI, New Delhi (hereinafter referred as "learned First Appellate Authority" or in short "FAA"), in Appeal no. 10585/16-17, for the assessment year 2011-12, arising out of the assessment order dated 29.12.2016 u/s 153A/143(3) of the Income-tax Act, 1961

(hereinafter referred as the “Act”), passed by the Asstt. Commissioner of Income-tax, Central Circle-15, New Delhi (hereinafter referred in short as “Ld. AO”).

2. The brief facts of the case are that original return in this case was filed on 27/09/2011 declaring loss of Rs. 6,27,253/-. After search u/s 132 return u/s 153A was filed on 04/06/2016 at loss of Rs. 6,27,253/- and order u/s 53A/143(3) was completed on 29.12.2016 at an income of Rs. 2,43,72,750/-. Aggrieved by the above order the assessee filed an appeal before the CIT(A) and Ld. CIT(A) has allowed the appeal of the assessee and deleted the addition of Rs. 2,50,00,000/- made by the assessing officer on account of share application money received from investors. The Ld. CIT(A) has mentioned in his judgment that the requisite information & documents were furnished to the AO by the assessee. The Ld. CIT(A) has also mentioned that the addition made by the Assessing officer is unsustainable on the various legal grounds. Learned CIT(A) has allowed the appeal of the assessee by giving following relevant finding in **para 5** with sub-paras;

“5. Findings

5.1 *I have considered the submissions of the Ld. AR, assessment order and case laws cited in this regard. The AO invoked Sec 153A after search on appellant group on 28.03.2015 on receipt of appraisal report from the DI (Investigation) with the allegation that the appellant company has received unexplained credit in its books u/s 68 of the IT Act. All the grounds of appeal are dealt with together being of similar in nature:*

5.2 *Regarding the merits, as per ground no. 2, I have gone through the assessment order passed by the Ld. AO and verified the material placed on paper book and was part of the assessment records also. It is evident from the assessment order that all necessary Information/ documents requisitioned to verify the identity, genuineness of transaction and creditworthiness of the investors were duly submitted by the appellant for respective investors. The Ld. AR submitted following documents to prove*

identity, genuineness and creditworthiness of the investor:

- a) Confirmations from the investor*
- b) Statement of bank account of the investor showing payment towards share application money.*
- c) Copy of PAN card of the investor.*
- d) A copy of the acknowledgement of the Income tax return filed for A Y 2011-12 by the investor along with its audited financial results for the year ended 31st March 2011.*
- e) Memorandum d Articles of Association of the investor company clearly depicting their corporate identity number.*

5.3 The assessee has furnished the details of financials of the investing entities. After considering the identities, financials and creditworthiness of the investor companies and genuineness of transaction and source and availability of fund by investors, I am of the considered view that the AO has merely accepted the appraisal report of the Investigation Wing without meeting the touchstone tests of section 68 like — credit worthiness, identities and genuineness of transaction. Further the AO has made such addition stating that the income declared by the investors is lesser than the investment made by them which in my opinion has no criteria. It is only source and availability of funds which remain the factor to observe. Accordingly, the addition made by A.O. u/s 68 of the Act is deleted.

5.4 Ld AR also placed reliance on the judgments in CIT vs. Sophia finance Ltd. (1994] 205 ITR 9g (FB) (De'wh CIT vs. Nipuan Auto (P) Ltd. ((2014) 49 taxmann.com 13 (Del.) 361 ITR 155 (Del.), Commissioner of Income-tax vs Winstral Petrochemicals P. Ltd. 2011 330 ITR 603(Del.), CIT vs. Divine Leasing and Finance Ltd. (2008) 299 ITR 268 (Delhi), CIT v. Stellar Investments Ltd 192 ITR 287 (Del.) & CIT v. Stellar Investment Ltd. (2001) 251 ITR 263(SC)and contended that the appellant duly discharged the initial burden to establish the identity, creditworthiness and genuineness by submitting necessary documentary evidences in respect of the share application money. Reliance is also placed on the judgments in CIT v. Lovely Exports Pvt. Ltd. 319ITR(ST.)5(SC), CIT v. Divine Leasing & Finance Ltd 299 ITR 268 (Del.), [SLP rejected by Hon'ble SC vide order dated 21.01.2008), CT=It vs Five Vision Promoters Pvt. Ltd 65 taxmann.com 71 (Delhi HC), CIT v. Vrindavan Farms Pvt. Ltd. (ITA 71/2015)(DelhiHe),CIT Vs. Kamdhenu Steel &Alloys Ltd.[2004]361 ITR0220 (DelHC).

5.5 It is pertinent to refer to the recent judgment dated 0st August2017 in the case of Principal Commissioner of Income Tax, Delhi - 2 Vs Best Infrastructure India Pvt Ltd ITA No. 13/2017covers the case of the appellant on the facts. Relevant Para of the judgment is extracted below:-

31. In Principal Commissioner of Income Tax Central-2, New Delhi v. MeetaGutgutia (supra), this Court had considered the entire gamut of case law on the assumption of jurisdiction under Section 153A of the Act. In Principal Commissioner of Income Tax Central-2, New Delhi v. Meeta Gutgutia (supra) this Court had the occasion to extensively discuss the decision in Smt. Dayawanti Gupta v. CIT(supra) to point out why the said decision was distinguishable in its application to the facts of the former case. However, since the same argument have been advanced by the Revenue in the present case, the sold decision in Smt. Dayawanti Gupta v. CIT(supra) is being discussed herein.”

32. In Smt. Dayawanti Gupta v CIT (supra) the Assesseees were deeding in the business of pan masala, gutkha, etc. Firstly, the Assesseees therein were, by their own admission not maintaining regular books of account. Secondly, they also admitted that the papers recovered during the search contained “details of various transactions include purchase/sales/manufacturing trading of Gutkha, supari made in cash outside books of accounts” and they were “actually unaccounted transactions made” by two the firms of the Assesseees. Thirdly, the Court found as a matter of fact that the Assesseees were “habitually concealing into” and that they were “indulging in clandestine opetations” and that such persons can hardly be expected to maintain meticulous books or records for long.” As pointed out by this Court in Principal Commissioner of Income Tax Central-2, Delhi v. MeetaGutgulia (supra) the decision in Dayawanti Gupta v. CIT(supra), therefore, turned on its own facts and did not dilute the law explained in Commissioner of Income Tax (Central-III) v. Kabul Chawla(supra).

33. At this stage, it requires to be noticed that the decision of this Court in (Commissioner of Income Tax (Central-III) v. Kabul Chawla (supra) took note inter alia of the decision of the Bombay High Court in Commissioner of Income Tax v. Continental Warehousing Corporation (NhavaSheva) Ltd. [2015]

58taxmann.com76 (Bom), wherein it was held that if no incriminating material was found during the course of search, in respect of each issue, then no addition in respect of any such issue can be made to the assessment under Sections 153A and 153C of Act. The decisions of this Court in CIT v. Anil Kumar Bhatia (supra) and CIT v. Chetan Das LachmanDas [2012] 254CTO 392 (Del) were extensively discussed in Commissioner of Income Tax (Central-III) v. Kabul Chawla (supra). The e Court in Commissioner of Income Tax (Central-III) v. Kabul Chawla(supra) had also discussed and concurred with the decision of the Rajasthan High Court in Jai Steel (India), Jodhpur v. ACCT (2013) 36 taxman 523 (Raj.), which had held that the assessment in respect of each of the six assessment years, preceding the year of search is a separate and distinct assessment. "It was further held in the said decision that If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated."

34. *Before the learned CIT(A), the assessee has produced the copy of bank account of all the share applicant companies. The CIT(A) has admitted the same as additional evidence and has called for the remand report from the Assessing Officer. There is no cash deposit in the bank account of any of the share applicant before the issue of cheque for share application money to the group companies of the assessed. On the other hand, the credit is by way of transaction. During remand proceedings, the Assessing Officer has made necessary verification from the bank of the share applicant and no adverse finding is recorded by him in the remand report. Therefore, the facts on record are contrary to the allegation of the Revenue that the assesses gave cash to Shri Tarun Goyal and he, after depositing the same in the bank account of various companies, issued cheques for share application money. On these facts, the decision of Hon'ble Jurisdictional High Court in the case of Harjeev Aggarwal (supra) would be squarely applicable. Therefore, we hold that the statement of Shri Tarun Goyal cannot be used against the assesses because*

(i) his statement was recorded behind the back of the assessed and the

assesses was not allowed any opportunity to cross-examine him.

(ii) There is no corroborative evidence in support of the statement of Shi Tarun Goyal. On the other hand, the material found during the course of search and other evidences placed on record by the assessee are contrary to the allegation made by Shri Tarun Goyal in his statement.

— Conclusion —

44. Accordingly the question framed by the Court in ATA Nos. 11, 12 and 21 of 2017 by the order dated 21st March, 2017 is answered in the negative i.e. in favour of the Assessee and against the Revenue by holding that the additions made under Section 68 of the Act on account of the statements made by the Assessee's Directors in the course of search under Section 132 of the Act were rightly deleted by the ITAT. ”

5.6 Respectfully following the above judgment, which is on identical factual matrix, it can be reasonably inferred that since, no material was found during the search in respect of the equity share capital, it cannot lead to the conclusions drawn by the AO. No specific corroborative evidence has been brought on record by Assessing Officer to prove that the equity subscription is an accommodation entry. Besides, appellant has also discharged its onus and submitted all the documentary evidence in respect of the investment. The details submitted in this regard by the appellant have also been made part of order by Assessing officer. It is also undisputed fact that the director of the appellant companies have never made any statement regarding the share capital / share premium / share application money and no disclosure have been made with regard to share capital / share premium / share application money / unsecured loan. As such, the addition made by the Assessing officer is unsustainable on the various legal grounds and on facts of the case. The addition made in the case of the appellant is deleted. Therefore, ground no. 2 is allowed

5.7 Since appeal is allowed on merits, other grounds have become infructuous and therefore, they are not being adjudicated.

5.8 *Therefore, the appeal is allowed.”*

3. Revenue has come up in appeal with following grounds:

“1. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 2,50,00.000/- made by AO on account of unexplained Share Capital and Share Premium u/s 68 of the I. T. Act 1961.

2. On the facts & circumstances of the case the CIT(A) has erred in holding the source of share capital genuine when it was specifically established that investor companies are paper companies.

3. The CIT(A) has erred on facts and in law in observing that requisite details and evidences filed by the assessee were sufficient to prove the genuineness of the transaction related to share capital/ premium where as the assessee failed to discharge the primary onus cast upon it u/s 68 of the IT act 1961 of proving identity, satisfactory explaining the creditworthiness and genuineness of these transactions.

4. The Id. CIT(A) has erred on facts and in law in not even considering the statements of directors of the investing companies admitting that the investing companies in which they are directors, are actually paper companies meant for providing accommodation entries.

5. The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal.”

4. Heard and perused the record.

5. Learned DR submitted that learned CIT(A) has fallen in error in not appreciating the factual findings as done by Ld. AO and relied the order of Ld. AO.

6. Learned AR, however, submitted that the finding of learned CIT(A) are not only on the basis of facts but also on the question of law, wherein finding no

incriminating evidence in the relevant assessment order, the addition made u/s 68 has been deleted. He particularly relied on the judgment of Hon'ble Supreme Court in the case of **PCIT Vs. Abhisar Buildwell (P) Ltd. [2023] 454 ITR 212 (SC)** and submitted that the Hon'ble Supreme Court has approved the view taken by the Hon'ble Delhi High Court in the case of **CIT Vs. Kabul Chawla, ITA no. 707/2014 dated 28.08.2015**, which has been relied by the learned CIT(A). It was also submitted that in the group entity case of **Heritage Beverages Pvt. Ltd. ITA nos. 2258 to 2261/Del/2018**, for A.Y. 2011-12 to 2015-16, vide order dated 16.05.2023 the appeals of Revenue, which had arisen on similar set of facts and findings of learned CIT(A), have been dismissed.

7. The Bench has given thoughtful consideration to the material on record and what comes up is that original return of income for A.Y. 2011-12 was filed by the assessee on 27.09.2011 and the assessment was completed u/s 143(1) of the Act. A search took place in M.M. Aggarwal Group of cases on 28.03.2015 and notice u/s 153A in case of assessee was issued on 16.05.2016. The assessee filed return of income u/s 153A on 4.6.2016, declaring loss of Rs. 6,27,253/- and subsequently addition was made on account of share capital and share application money introduced in the assessee company. Learned AO had relied on the statement of Director. However, the same was not in the case of assessee company but other companies. Learned CIT(A) has appreciated both the question of fact and law and based upon the documentary evidence filed by the assessee with regard to identity, genuineness and creditworthiness of the investor considered the investment to be genuine.

8. It also comes up, admittedly no incriminating material allegedly found during the search was relied by learned AO. Learned CIT(A) has taken into consideration the judgment of **Hon'ble Delhi High Court in the case of Kabul**

Chawla (supra) to give conclusive finding that the assessment order is not sustainable on various legal grounds and facts of the case.

9. The Bench is of the considered view that on one hand the factual evidences have been duly appreciated by Ld. CIT(A) and on the other hand, after judgment of Hon'ble Supreme Court in the case of **PCIT Vs. Abhisar Buildwell (P) Ltd. (supra)**, nothing is left in the case of Revenue. Grounds have no substance. **The appeal of Revenue is dismissed.**

Order pronounced in open court on 21.09.2023.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**