

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

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial member

ITA No. 4773/Del/2018 : Asstt. Year: 2008-09

ITA No. 4774/Del/2018 : Asstt. Year: 2009-10

Income Tax Officer, Ward-19(2), New Delhi	Vs	P & R Engineering Services Pvt. Ltd. 89, Lok Nayak Apartments, Sector-9 Rohini, New Delhi-110085
(APPELLANT)		(RESPONDENT)
PAN No. AACCP0484E		

Assessee by : Sh. V. K. Agarwal, AR &

Ms. Shweta Bansal, CA

Revenue by : Sh. Vivek Vardhan, Sr. DR

Date of Hearing: 29.08.2023

Date of Pronouncement: 09.11.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by Revenue against the orders of Id. CIT(A)-38, New Delhi dated 24.11.2017.

2. Since, the issue involved in both the appeals are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 4773/Del/2018, following grounds have been raised by the Revenue:

"1. On the facts and under the circumstances of the case, the Id. CIT(A) has erred in law and facts in deleting the addition of Rs.2,29,00,000/- made by the Assessing Officer u/s 68 of the Income Tax Act, 1961 without

appreciating the facts produced by the Assessing Officer."

4. The revenue has challenged the deletion of the addition Rs. 2,29,00,000/- made by the AO on account of share application money received from M/s Sopan Merchants Pvt. Ltd. The revenue alleged that the monies received in the form of share capital is nothing but the assessee's own income from undisclosed sources.

5. The submission of the assessee filed before the Id. CIT(A) which have been reiterated before us are as under:

"26. Detailed findings have been given by the ITAT in the present cases after a thorough examination of the records. The Court finds no reason to differ from the decision of the ITAT in its rejection of the very same contentions urged before the Court by the Revenue. In particular, the Court concurs with the ITAT that the mere fact that some of the investors have a common address is not a valid basis to doubt their identity or genuineness.

26. Also, the fact that the shares of the Assesseees were subsequently sold at a reduced price is indeed not germane to the question of the genuineness of the investment in the share capital of the Assesseees.....

31. When the impugned order of the ITAT is examined in the light of the law governing Section 68 of the Act, the Court finds that the ITAT was fully justified in coming to the conclusion that there exists no evidence to establish that there was any re-routing of the money collected by the Respondent- Companies. None of the shareholders denied having contributed to their share capital. The Revenue has not been able to show why the decision of the Supreme Court in CIT

v. Lovely Exports (P) Ltd. (supra) does not apply to the facts and circumstances of the case.

Allegation of accommodation entry

14. The Ld. AO has referred to the statement of Sh. Pankaj Aggarwal, who is controlling M/s Sopan Merchants Pvt. Ltd. This statement was not recorded by the investigation wing in the case of the appellant. Even this statement has been obtained from the database of the IT deptt. Mr. Pankaj Aggarwal has nowhere mentioned the name of the appellant as the beneficiary. Copy of the statement was never provided to the appellant depriving it from the opportunity of cross examining him. No statement was recorded during assessment proceedings. Under the circumstances, the Ld. AO could not rely on the impugned statement to draw any adverse inference against the appellant as decided by the Hon hie Supreme Court as under:-

i) Kishmichand Chella Ram vs. CIT 125 ITR 713 (SC)

"It will, therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of the Punjab National Bank Ltd. to the ITO, no reliance could be placed upon it, since it was not shown to the assessee until at the stage of the preparation of the supplemental statement of the case and no opportunity to cross - examine the manager of the bank could in the circumstances be sought or availed of by the assessee. It is true that the proceeding under the income-tax law is not governed by the strict rules of evidence and, therefore, it might be taken into account as evidence. But before the IT authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statement contained in it by asking for an opportunity to cross - examine the manager of the bank with reference to the statements made by him."

ii) *Pr. CIT vs. M/s Rakam Money Matters Pvt. Ltd., 2015-TIOL-2521-HC-DEL*

"a perusal of the order of the AO shows that its foundation is the report of the DIT (Investigation). Admittedly, the Assessee was not confronted with that material in the course of the reassessment proceedings. The Assessee was also not confronted with the statements recorded in the course of the investigation. Once that material is kept aside then the scope of enquiry can only be whether the Assessee has produced documents to discharge the initial onus of proving the genuineness and creditworthiness of the companies who were stated to have subscribed to the Asses see's shares. It is not in dispute that extensive material was produced by the Assessee in the present case to prove the identity, genuineness and creditworthiness of the companies who had subscribed to its shares. Among the materials produced were the Income Tax Returns and the PAN card details of the eight companies. Even if the Directors of these companies did not respond to the summons issued by the AO, it was not impossible for the AO to make proper enquiries to ascertain the genuineness of these entities and satisfy himself of their creditworthiness. As pointed out by CIT(A), AO failed to make any effort in that direction. He did not take to the logical end the half-hearted attempt at getting the Directors to appear before him. He did not even seek the assistance of the AOs of the concerned companies whose ITRs and PAN card copies had been produced. The view taken by the CIT(A) that the AO failed to come up with the material to disprove what had been produced by the Assessee is certainly a plausible view in the facts and circumstances of the case. Likewise, the view taken by the ITAT concurring with the CIT(A) on facts cannot be said to be perverse. The decisions cited by Mr. Sahni turn on their own facts. As far as the broad principles governing the law under Section 68 of the Act is concerned, the Court is satisfied that the order of the CIT(A) as confirmed by the ITAT suffers from

no legal infirmity. No substantial question of law arises. The appeal is dismissed."

iii) CIT vs. A.L. Lalpuria Construction (P.) Ltd. [2013] 32 taxmann.com 384 (Rajasthan)

"Section 68, read with section 143, of the Income-tax Act, 1961 - Cash credit [Accommodation entry] - Whether oral statement of third party recorded by search authorities which was never placed to be confronted by assessee and no documentary evidence was supplied to assessee, could not be considered in making addition on account of alleged accommodation entries - Held, yes [Paras 3 & 4]"

iv) Reliance can also be placed on the following case laws:

- *Sona Electric Co. vs. CIT, 152 ITR 507 (DEL)*
- *Amar Singh vs ITO 53 TTJ (DEL) 692*
- *Virendra Kumar Saklechavs DCIT. 59 TTJ (Ind) 785 UdeyrajaGoliya (HUF) vs. ACIT, 64 ITD (Bom) 21 (TM)*

15. Hon'ble Delhi High Court in its various judgments on accommodation entries, has clearly held that if confirmation, PAN, IT Return, Bank account etc. are filed, the addition could not be sustained."

6. The Id. DR strongly supported the order of the Assessing Officer.

7. Heard the arguments of both the parties and perused the material available on record.

8. We have examined the reasoning given by the Id. CIT(A) and adjudication thereof of the Id. CIT(A). The Id. CIT(A) relied on the documents filed by the assessee viz.,

- a. Form 2 filed before ROC
- b. Statements of bank account of the investor company showing payments towards share application money.
- c. Confirmation from M/s Sopan Merchant Pvt. Ltd.
- d. Share Application form duly filled by the investor company.
- e. Confirmation in respect of allotment of equity shares to the investor.
- f. Copy of PAN card of the investor company.
- g. Memorandum & Articles of Association of the investor company clearly depicting their corporate identity number.
- h. Copies of share certificates issued by the assessee company.
- i. A copy of the acknowledgement of the Income tax return filed for AY 2008-09 by the investor company along with its audited financial results for the year ended 31st March 2008.

9. The Id. CIT(A) held that identity of the investor is established by the name, address, PAN. PAN is enough to prove the identity, genuineness and creditworthiness of the contributing party. The Id. CIT(A) further held that genuineness of the transactions is also fully established by the fact that the transaction is duly confirmed by the investor, the amount is duly reflected in the balance sheet of the investor as investment in the appellant company. The Id. CIT(A) relied on the following case laws:-

- *CIT vs. Ganeshwari Metals Pvt. Ltd., 2013-TIOL-96-HC-DEL-IT*
- *CIT vs. Kamdhenu Steel & Alloys Ltd., 2012-TIOL-236-HC-DEL-IT*
- *CIT vs. Oasis Hospitalities Pvt. Ltd., 2011-TIOL-69-HC-DEL-IT*

10. The Id. CIT(A) held that the most important being that of Kamdhenu Steels where SLP of the department was dismissed. Therefore, the contention of the AO that identity, genuineness and creditworthiness of the investors is not proved by assessee is not correct. The Id. CIT(A) also held that subsequent sale of share does not hold the impugned share capital as unexplained by relying on the decision of Delhi High Court in the case of CIT Vs SVP Builders (India) Ltd.

11. With regard to the statement of Sh. Pankaj Agarwal, who is controlling M/s Sopan Merchants Pvt. Ltd. The entry operator has been investigated by Investigation Wing, Kolkata and has admitted on oath that he is in the business of providing accommodation entries to various beneficiaries in the form of share capital or unsecured loans. It was held that the statement was not recorded by the investigation wing in the case of the appellant. Mr. Pankaj Aggarwal has nowhere mentioned the name of the appellant as the beneficiary. Copy of the statement was never provided to the appellant depriving it from the opportunity of cross examining him. Therefore, this statement has -to be excluded from the assessment proceedings.

12. The Id. CIT(A) held that the addition cannot be made without making any further verification or enquiries about the details and explanation filed by the assessee and simply relied on the information of the Investigation Wing and accepted the same as gospel truth for making impugned addition u/s 68 of the Act.

13. After duly considering the assessment order, documents/information provided by the assessee during appellate proceedings as well as in view of the facts and law as discussed above, the addition of Rs. 2,29,00,000/- made by the AO u/s 68 of the IT Act, 1961, we hold that no infraction of the Income Tax Act could be attributed to the order of the Id. CIT(A).

14. In the result, both the appeals of the Revenue are dismissed.

Order Pronounced in the Open Court on 09/11/2023.

Sd/-

(Astha Chandra)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 09/11/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR