

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

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

ITA No. 5388/DEL/2019 [A.Y. 2012-13]
ITA No. 2353/DEL/2018 [A.Y. 2013-14]

The I.T.O
Ward - 15(4)
New Delhi

Vs.

M/s Love Kush Securities Pvt Ltd
House No. 4, Ground Floor
Khasra No. 765, Sant Nagar
Burari, New Delhi

PAN: AAACL 0424 E

ITA No. 4779/DEL/2019 [A.Y. 2012-13]
ITA No. 1906/DEL/2018 [A.Y. 2013-14]

M/s Love Kush Securities Pvt Ltd
House No. 4, Ground Floor
Khasra No. 765, Sant Nagar
Burari, New Delhi

Vs.

The I.T.O
Ward - 15(4)
New Delhi

PAN: AAACL 0424 E

(Applicant)

(Respondent)

Assessee By : Shri Kapil Goel, Adv
Department By : Shri Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing : 23.11.2023
Date of Pronouncement : 28.11.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the Revenue and 2 separate cross appeals by the assessee are preferred against two separate orders of the Id. CIT(A) - 5, New Delhi dated 27.03.2019 and 29.01.2018 pertaining to Assessment Years 2012-13 and 2013-14 respectively.

2. Since the underlying facts in the captioned cross appeals by the assessee are same, they are disposed of by this common order for the sake of convenience and brevity.

3. Representatives of both the sides agreed to address the appeals on the facts of A.Y 2012-13. On such concession, representatives were heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that the assessee company was incorporated on 22.01.1996 and is engaged in the business to advance money, either with or without security and give credit upon terms and conditions of the company according to loan

policy and carrying on the business as investment company and to acquire and hold and otherwise dealing in shares/securities.

5. During the year under consideration, the main source of revenue was from interest income on advances/loans. While scrutinizing the return for A.Y 2012-13, the Assessing Officer came to know that the assessee has received share application money from various applicants as the company issued 1,45,190 equity shares having face value of Rs. 10/- to 36 share holders at a premium of Rs. 990/- per share.

6. The Assessing Officer received information from the ADIT, (Inv), Unit - III, New Delhi that a search and seizure operation was carried on 24.01.2013 on the Samyak Group. It was informed that during the course of post search proceedings, Samyak Projects Pvt Ltd otherwise was required to furnish details in respect of the sources of funds received by it for investment purpose.

7. One of such applicant was the assessee under consideration. To examine the source of the assessee, the Assessing Officer issued notice u/s 133(6) of the Act to the parties from whom the assessee has received share premium amount of Rs. 14.51 crores.

8. The assessee filed confirmations from the parties from whom share application money has been received alongwith copy of bank details.

9. The Assessing Officer was of the opinion that the applicants had no credit worthiness and notices sent u/s 133(6) of the Act were returned with the remark “No such company”.

10. Invoking the provisions of section 68 of the Act, the Assessing Officer was convinced that the assessee has failed to discharge the onus cast upon it and made addition of Rs. 14,01,90,000/- and further added Rs. 3,21,85,000/- as share application money pending allotment.

11. The assessee strongly agitated the matter before the ld. CIT(A).

12. It was brought to the notice of the ld. CIT(A) that out of 36 parties, the Assessing Officer has issued notice to 23 parties out of which, 21 parties responded and only notices sent to 2 parties were returned unserved.

13. On such fact, the Id. CIT(A) asked the Assessing Officer to submit remand report.

14. In his remand report, the Assessing Officer stated that his predecessor had issued notice u/s 133(6) of the Act to various parties from whom share capital was received, out of which some notices were received back unserved.

15. It was further mentioned in the remand report that the, the then Assessing Officer relied upon the investigation report and made addition u/s 68 of the Act.

16. The Id. CIT(A) examined the submissions thoroughly and found that each share applicant had sufficient net worth which is evident from the following charts:

Annexure - 'A'

Details of addition on account of share capital during the A.Y. 2012-13

Name of the investor	PAN	Amount of Receipt of Share Application Money during the year	Documents submitted by assessee company during assessment on 08.01.2015 and 19.03.2015 vide letter dated 06.01.2015 and 19.03.2015	Net Worth of Share Applicant Co. on the basis of B/s as on 31.03.2012
Active Suppliers Pvt. Ltd.	AAFCA5861K	10,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	4,04,31,895
Alexey Tradelinks Pvt. Ltd.	AAHCA6988M	35,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	4,80,89,811
Anamika Dealmark Pvt. Ltd.	AAJCA6415F	15,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	21,00,76,662
Boron Tradecom Pvt. Ltd.	AADCB5245J	40,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	9,36,15,884
Capstone Traders Pvt. Ltd.	AACCC7630H	25,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	3,76,37,304
Dhanlabh Tie Up Pvt. Ltd.	AADCD1440M	40,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	7,68,25,943
F5 Foods and Beverages Pvt. Ltd. (New Name RBN Equity Consultant Pvt. Ltd.)	AABCF3961D	37,00,000	Confirmation , Bank Statement, ITR with copy of PAN, Audited B/s and P & L A/c	12,70,81,084
Festino Agencies Pvt. Ltd.	AAACF4796M	45,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	2,82,94,098
Fector Vintrade Pvt. Ltd.	AABCF2583P	15,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	9,87,53,002
Gajanand Agrotech Pvt. Ltd.	AABCG2880Q	30,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	7,81,90,818
Jackpot Vintrade Pvt. Ltd.	AACCI1982F	15,00,000	Confirmation , Bank Statement, ITR with copy of PAN, Audited B/s and P & L A/c	
Kushalfintech Pvt. Ltd.	AACCK2927R	35,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	4,47,41,466
Lemon Grass Investment Co. Pvt. Ltd.	AABCL9229N	50,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	50,66,34,581
MahadhanVyappar Pvt. Ltd.	AADCM3387J	10,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	
Monalisa Commercial Pvt. Ltd.	AACCM3144N	14,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	3,74,24,813
Mukul Mills Pvt. Ltd.	AACCM3145P	30,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	2,22,23,313
MupnarTrexim Pvt. Ltd.	AACCM0569R	11,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	2,62,70,750
Navplast Traders (P) Ltd.	AADCN0455C	20,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	5,06,41,827
Ostrich commodities Pvt. Ltd.	AABCO1295K	25,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	6,33,77,198
Parma Jyoti Tradelinks Pvt. Ltd.	AAGCP2758K	25,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	28,48,01,660
Pigeon Building Solution (P) Ltd. (New Name M R Telecare Pvt. Ltd.)	AAFCP6436R	30,00,000	Confirmation , Bank Statement, ITR with copy of PAN, Audited B/s and P & L A/c	10,97,16,655
Quittech Commotrade Pvt. Ltd.	AAACQ1799H	20,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	9,91,50,652
Silver Vincom Pvt. Ltd.	AAPCS3312P	40,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	19,09,89,479
Abhiruchi Mineral Suppliers Pvt. Ltd	AAICA9759K	25,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	60,11,40,443
Alert Portfolio Pvt. Ltd.	AAJCA1324K	20,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	14,75,68,427

5	Anugrah Sales Pvt. Ltd.	AAHCA6987E	45,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	4,73,57,821
7	Counterstone Business Pvt Ltd	AAECC2197H	1,10,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	75,34,44,992
8	Destinity Vanija Pvt Ltd	AACCD7245F	50,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	4,99,34,539
9	G D Seemless Special Steel Pvt. Ltd	AABCG6212G	1,07,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	71,50,000
0	Gditi Township Ltd.	AACCG9920A	92,40,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	1,07,48,000
1	Linkup Vintrade Pvt. Ltd.	AABCL8020H	50,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	31,91,03,635
2	Parag Dealtrade Pvt. Ltd.	AAFCP7567B	50,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	2,00,83,787
3	Regal Tie Up Pvt. Ltd.	AAECR0775J	1,00,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	6,52,11,616
4	Rover Dealcom Pvt Ltd (new name Kalki Commedeal Pvt Ltd)	AAECR2092L	10,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	5,49,12,235
35	White feathers Realty Private Limited	AABCW0378F	1,25,50,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	75,34,39,416
	Total		14,01,90,000		

Detail of Un-allotted Shares against share application money received during the A.Y. 2012-13

36	Omnipresent Credits Pvt. Ltd.	AAACO1229Q	1,85,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	27,44,65,345
37	Khushi Conbuild Pvt. Ltd.	AADCK1436G	3,00,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	16,61,50,268
38	Swatul Estate Pvt. Ltd.	AALCS6656A	20,00,000	Confirmation , Bank Statement, ITR, Audited B/s and P & L A/c	5,81,47,454
	Total		3,21,85,000		

17. Since no confirmations were received from the two companies, namely, M/s Mahadhan Vyapar Pvt Ltd for Rs. 10 lakhs and Jackpot Vintrade Pvt Ltd for Rs. 15 lakhs, the ld. CIT(A) confirmed the addition to the extent of Rs. 25 lakhs and having satisfied himself with the claim of the assessee that it has successfully discharged the initial onus cast upon it by provisions of section 68, deleted Rs. 16,98,75,000/-.

18. We have carefully perused the relevant material on record. There is no dispute that out of 38 parties, the Assessing Officer issued notice only to 23 parties and it is also not in dispute that notices to only 2 parties returned unserved. Credit worthiness /net worth of the applicants are explained in the chart mentioned elsewhere. These facts have not been controverted by the ld. DR. Therefore, we do not find any reason to interfere with the findings of the ld. CIT(A).

19. Appeal filed by the Revenue is dismissed and since transaction with the two parties remained unconfirmed, we also decline to interfere with the findings of the ld. CIT(A).

20. Appeal of the assessee is dismissed.

21. As mentioned elsewhere, facts and basis of findings of the Id. CIT(A) for A.Y 2013-14 are similar, which can be understood from the following uncontroverted factual findings:

<i>Sr.</i>	<i>Name of the share applicants</i>	<i>Amount</i>	<i>Net worth of the</i>
01	<i>Billet Procon (P) Ltd. New Delhi</i>	<i>50,000</i>	<i>3,52,00,325</i>
02	<i>Navbharat Commo Traders (P) Ltd., New</i>	<i>32,00,000</i>	<i>11,04,36,968</i>
03	<i>Nortal Vanuya (P) Ltd. New Delhi</i>	<i>16,00,000</i>	<i>3,14,19,714</i>
04	<i>Shiv Vani Oil & Gas & Exploration Services Ltd., New Delhi</i>	<i>60,00,000</i>	<i>1026,36,09,517</i>
05	<i>Siddheshwari Commotrade (P) Ltd., Kolkatta</i>	<i>1,34,00,000</i>	<i>60,71,41,675</i>
06	<i>Standard Apparels (P) Ltd., New Delhi</i>	<i>9,00,000</i>	<i>4,3073,497</i>
o,r	<i>FSrjajia Iftikar, Delhi</i>	<i>10,00,000</i>	<i>NA</i>
08	<i>Corolla Procon (P) Ltd., Delhi</i>	<i>3,00,000</i>	<i>43,07,389</i>
09	<i>Financial World India (P) Ltd. New Delhi</i>	<i>2,46,50,000</i>	<i>35,53,42,153</i>
10	<i>Omnipresent Credits (P) Ltd., Delhi</i>	<i>41,00,000</i>	<i>33,72,35,^88</i>
11	<i>Lemon Grass Investment (P) Ltd., Kolkata</i>	<i>8,00,000</i>	<i>50,66,25,300</i>
12	<i>Krishnav Infrastructure Developers (P) Ltd., (Formerly known as Zillion Reaktirs (P) Ltd., Kolkata</i>	<i>15,00,000</i>	<i>15,65,586</i>
Total		5,75,00,00	

22. Therefore, for reasons given hereinabove in A.Y 2013-14 also, appeal by the Revenue and assessee are both dismissed.

23. To sum up, In the result, the appeals of the Revenue in :

ITA No. 5388/DEL/2019 [A.Y. 2012-13] - Dismissed
ITA No. 2353/DEL/2018 [A.Y. 2013-14] - Dismissed

whereas the cross appeals of the assessee in :

ITA No. 4779/DEL/2019 [A.Y. 2012-13] - Dismissed
ITA No. 1906/DEL/2018 [A.Y. 2013-14] - Dismissed

The order is pronounced in the open court on 28.11.2023 in the presence of both the rival representatives.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

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

Dated: 28th NOVEMBER, 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	