

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No:- 7089/Del/2018
(Assessment Year: 2014-15)**

The Income Tax Officer, Ward-26(1), New Delhi. PAN No: AACCT8994M	Vs.	M/s VS Broadcasting Pvt. Ltd., D-45, Basement, Panchsheel Enclave, Delhi-110017
APPELLANT		RESPONDENT

Assessee By :	None
Revenue By :	Shri Vivek Vardhan, Sr.DR
Date of Hearing :	06.11.2023
Date of Pronouncement :	04 .12.2023

ORDER

PER ASTHA CHANDRA, J.M.

The appeal filed by the Revenue is directed against the order dated 27.08.2018 of the Ld. Commissioner of Income Tax (Appeals) – 9, New Delhi [“CIT(A)”] pertaining to Assessment Year (“A.Y.”) 2014-15.

2. The Revenue has taken the following grounds:-

“1. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition u/s 68 amounting to Rs 5,18,00,000 (share capital of Rs 2,59,00,000/- and share premium of Rs 2,59,00,000/-) received from Sh Vinod Kumar Sharma (Director) without appreciating the reasons given by the AO.

2. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition u/s 68 amounting to Rs 5,18,00,000 (share capital of Rs 2,59,00,000/- and share premium of Rs 2,59,00,000/-) by holding that the assessee has discharged the onus of establishing identity and

creditworthiness of the creditor and genuineness of transaction without appreciating that No ITR for AY 2014-15 was filed by Sh Vinod Kumar Sharma (Director) and thus his sources were never examined by his AO.

3. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition u/s 68 amounting to Rs 5,18,00,000 (share capital of Rs 2,59,00,000/- and share premium of Rs 2,59,00,000/-) by holding that the assessee has discharged the onus of establishing identity and creditworthiness of the creditor and genuineness of transaction without appreciating that in the subsequent assessment year (AY-2015-16) a detailed inquiry was conducted in respect of M/s R B Buildworth Pvt Ltd and the claim of receipt of unsecured loan by Sh Vinod Kumar Sharma from the above company was not found to be genuine.

4. On the facts and circumstances of the case the order of the Ld CIT(A) is perverse.

5. That the appellant craves, leave or reserving the right to amend, modify, alter, add, or forge any grounds(s) of the appeal at any time before or during the hearing of this appeal.”

3. Brief facts are that the assessee company is incorporated on 24.07.2013 i.e. during the previous year relevant to A.Y. 2014-15 with the objective of doing business on broadcasting which required a minimum capital of Rs. 5,00,00,000/- to get license. It e-filed its return for A.Y. 2014-15 on 31.03.2015 declaring loss of Rs. 6,16,110/-. After initial processing under section 143 (1) of the Income Tax Act, 1961 (**the “Act”**) the case was selected for scrutiny through CASS. Notice under section 143(2) of the Act was issued and served. During the assessment proceedings the Ld. Assessing Officer (**“AO”**) found from the balance sheet that the assessee has received share capital of Rs. 2,60,00,000/- and share premium money of Rs. 2,59,00,000/- aggregating to Rs. 5,19,00,000/- during the year. On query, the assessee submitted that this share application money came from the Director Sh. Vinod Kumar Sharma who held 99.81 % share holding in the assessee company. Confirmation letter dated 05.11.2016 from Sh. Vinod Kumar Sharma was filed wherein he confirmed that he has invested Rs. 5,18,00,000/- as share application money through account payee cheque in the assessee company during the year.

4. The explanation offered by the assessee was not acceptable to the Ld. AO who observed that Sh. Vinod Kumar Sharma has not filed his ITR for A.Y. 2014-15. Further his bank statement showed that whenever he had given cheque to the assessee company for shares it was preceded by a credit entry of similar amount or almost similar amount. Relying on several decisions he held that the share application money received from Sh. Vinod Kumar Sharma amounting to Rs. 5,18,00,000/- remained unexplained which he added back to the income of the assessee under section 68 of the Act and completed the assessment on total income of Rs. 5,11,83,890/- on 27.12.2016 under section 143(3) of The Act.

5. The Ld. CIT (A) on appeal filed by the assessee held that the assessee has discharged its initial onus of identity, creditworthiness and genuineness of transaction of Rs. 5,18,00,000/- and deleted the addition observing and recording his finding in para 5.4 to 5.8 of his appellate order as under:-

“ 5.4 I have considered the facts of ground no 1 and contention of the AR of the appellant The Assessing Officer added Rs. 5,18,00,000/- under section of 68 as unexplained share application money from Mr. Vinod Kumar Sharma on the ground that the assessee failed to prove identity, creditworthiness and genuineness of transaction of Shri Vinod Kumar Sharma As per AO, show cause notice dated 21.12.2016 was issued to the appellant asking as to why share capital & share premium received of Rs. 5,18,00,000/- be added back to the income under sec 68 of the act as the assessee has failed to prove identity creditworthiness and genuineness of such transaction.

The contention of the appellant is that the AO chose to ignore the submission and also did not record submission of the assessee in his note sheet. He produced the copy of submissions made to ITO where in following information's were submitted-

- *Copy of state of affairs of Mr. Vinod Kumar Sharma showing net worth of Rs. 13,41,59,300/-.*
- *The assessee had also disclosed Canara Bank sanction letter of term loan of Rs. 4.12 crores and loan.*
- *Confirmation of Rs. 5,20,00,000/- from RB Build Worth Pvt. Ltd. as on 31/03/2014 to our Vinod Kumar Sharma*

- *The Assesses had also furnished copy of its bank statement and also bank statement of share applicant Mr. Vinod Kumar Sharma wherein all the transactions had been made through account payee cheque only.*
- *The Assesses also had submitted to ITO copy of income tax return of Mr. Vinod Kumar Sharma for A.Y. 2012-13, 2013-14 & 2015-16. Regarding non filing of return for A.Y. 2014-15. Copy of communication computation of income and income tax challan of Rs. 4,68,820/- of Mr. Vinod Kumar Sharma were also submitted to ITO in support of identity of the share applicant Mr. Vinod Kumar Sharma.*

5.5 In the instant case, the AO having admitted submission of the income tax returns, bank statement of the share applicant Mr. Vinod Kumar Sharma, also admitted that all the transactions were made through bank account only. He has added Rs. 5,18,00,000/- only on the ground that in the bank statement of Mr. Vinod Kumar Sharma shows that whenever he issued cheque to assesses company it was preceded by a credit entry of similar amount or almost similar amount. Though confirmation of Loan of Rs. 5,20,00,000/- from RB Builders Pvt. Ltd. was submitted but he totally ignored the same.

5.6 It is not the case of the AO that an enquiry either through notice u/s 133(6) or through notice u/s 131 of the Act was conducted and the Appellant was controverted with findings of enquiry and that the Appellant failed to controvert the said findings by way of production of evidences as required. In the present case, the Appellant is found to have adduced due evidence so as to satisfy the rigors of provisions of S. 68 of the Act. Importantly, Sh. Vinod Kumar Sharma is happened to be the director of the Appellant Company whose all relevant details were filed to the AO and who has been assessed independently in the Ward 44(4) Delhi Statement of affairs of Sh. Vinod Kumar Sharma wherein his net worth at Rs.13.41 crores conforms his creditworthiness. He is also found to have availed a loan facility of Rs. 4.12 crores from Canara Bank. It is also noticed that Sh. Vinod Kumar Sharma has received a loan of Rs. 5.20 crore from M/s R.B Builders Pvt. Ltd. during the year.

5.7 Issue of cheques preceded by similar credit entry in the books/share applicant account does not make the transaction doubtful ipso facto unless it is proved that preceding credit entries are basically either bogus or non existent entries. However, this is not the case here. Rather, the appellant is found to have adduced cogent evidence in the form of confirmation from M/s R. B Builders to have advanced loan to Vinod Kumar Sharma who in turn has issued cheque to the Appellant Company.

5.8 The issue of initial burden of proof of identity, credit worthiness, genuineness of transaction through payment made by account payee cheques has been decided by Hon'ble Delhi High Court in case of Mod Creations (P) Ltd. Vs. ITO (2011)13 Taxmann.com 114, (2013) 354 ITR 282 (Delhi) wherein it held thus:

"Section 68 of the income tax act cash credit A.Y. 2002-2003 during relevant assessment year. The company had raised unsecured loans from 5 persons who were its directors and shareholders payments were made through banking channels. During assessment proceedings assesses furnished income tax returns and bank statements of said creditors along with their affidavits stating therein source of funds which were used in lending amounts to assesses.

Assessing Officer however held that both genuineness of transactions as also creditworthiness of creditors remained unexplained and added amounts of above said credits to assesses income-whether on facts, assesses had discharged initial onus places and revenue still had a doubt with regard to genuineness on transactions in issue or as regards creditworthiness of creditors, it would had to discharge onus which had shifted on to it –Held yes whether no such exercise having been undertaken by revenue authorities, addition under section 68 in hands of assesseees justified –Held No. (in favour of assesses)"

- In the case of PCIT vs. Aquatic Remedies Pvt. Ltd., it was held by Hon'ble Bombay High Court that*

"If copies of share application forms share allotment register, bank statement and its all shareholders have filed affidavit declaring fact that they are investing in the assesses company accounts, the assesses has fulfilled the requirement of genuineness of the transactions, identity of share holders/investors, addition cannot be made under section 68."

6. Dissatisfied, the Revenue is in appeal before the Tribunal and all the grounds relate thereto.

7. None appeared for the assessee on 25.10.2021, 11.05.2022, 03.08.2022, 09.01.2023, 23.03.2023, 18.05.2023, 03.08.2023, and on 06.11.2023. Therefore, we proceeded to decide the appeal after hearing the Ld. Sr. DR.

8. The Ld. Sr. DR relied on the order of the Ld. AO. He argued that in the absence of ITR for AY 2014-15 of Sh. Vinod Kumar Sharma, Director, his sources were never examined by his AO. He also pointed out that enquiry conducted in AY 2015-16 in M/s RB Builders Pvt. Ltd., the claim of receipt of

unsecured loan by Sh. Vinod Kumar Sharma from that company was not found to be genuine.

9. We have considered the submissions of the Ld. Sr. DR and perused the records. It is not in dispute that the assessee company was incorporated and started his broadcasting business during the year. It was the assessee company's first year of business. In such a fact scenario, in our humble opinion, if addition at all was to be made, it should have been made in the hands of the promoter; it cannot be made in the hands of the assessee company.

10. Coming to the merits of the impugned addition, during the course of appellate proceedings the assessee gave a list of 8 documents in support of his explanation as to the nature and source of credit entries appearing in the books of the assessee company. It was asserted that all the payments from Sh. Vinod Kumar Sharma came through banking channels into the bank account of the assessee company; that the creditor is Income Tax payee and has adequate financial resources and that his identity and creditworthiness has been fully established. It was urged that on these facts, impugned addition is not warranted.

11. It is revealed from the appellate order that the assessee had also inspected his assessment records and pointed out to the Ld. CIT(A) that vide letter dated 19.12.2016 to the Ld. AO, the assessee had submitted copy of statement of affairs of Sh. Vinod Kumar Sharma for F.Y. 2013-14 and copy of letter explaining the source of funds of Sh. Vinod Kumar Sharma for F.Y. 2013-14 which the Ld. AO did not record in his note sheet, though the letter is available in the assessment records. Despite this, the Ld. AO questioned the source of funds of Sh. Vinod Kumar Sharma ignoring the above evidence. Then vide letter dated 21.12.2016 the assessee submitted to the Ld. AO - (a) copy of

Bank Ledger in the books of Sh. Vinod Kumar Sharma for F.Y. 2013-14; (b) copy of Loan Agreement with Canara Bank of Sh. Vinod Kumar Sharma for F.Y. 2013-14 and (c) copy of daily balance of Bank Ledger showing the Overdraft Account (credit balance) in the books. The Ld. AO reportedly did not record the above pieces of evidence in his note sheet but kept them in the assessment records. It was also pointed out to the Ld. CIT(A) that the assessee submitted the confirmation of loan of Rs. 5,20,00,000/- by M/s RB Build Worth Pvt. Ltd. to Sh. Vinod Kumar Sharma before the Ld. AO which he neither considered nor made entry in the note sheet.

12. It was thus submitted before the Ld. CIT(A) that the assessee discharged the onus of proving the nature and source of the credit entries appearing in the books of the assessee company and the impugned addition under section 68 of the Act cannot be made in the light of the decision of Hon'ble Delhi High Court in MOD Creation (P) Ltd. vs. ITO (2011) 13 taxmann.com 114.

13. Perusal of the Ld. CIT's order shows that he has dealt with all the points raised by the Ld. A.O in support of the impugned addition negating them all. We do not find any legal substance in the arguments of the Ld. Sr. DR. The appeal of the Revenue is bereft of any merit. It is dismissed.

14. In the result appeal of the Revenue is dismissed.

Order pronounced in the open court on 04/12/2023

sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 04/12/2023
(Pooja)

sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT 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	