

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER,
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 5217/Del/2017
निर्धारणवर्ष/Assessment Year: 2012-13.

Income Tax Officer, Ward : 1 (3) New Delhi.	<u>बनाम</u> Vs.	M/s. Adception Infotech (P.) Ltd., F-5, Manish Plaza, Ajanta Market, I. P. Extension, New Delhi - 110 092.
		PAN No. AAICA7785P
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	N o n e.
राजस्वकीओरसे / Department by :	Shri Kanv Bali, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	26/09/2023
उद्घोषणाकीतारीख/Pronouncement on :	19/12/2023

आदेश / O R D E R

PER C.N. PRASAD, J.M. :

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-1 [hereinafter

referred to CIT (Appeals)] New Delhi dated 11.05.2017 for assessment year 2012-13 in deleting the addition of Rs.1,33,32,875/-

2. In spite of issue of notice none appeared on behalf of the assessee nor an adjournment was moved. It is also noticed from the record that the notice sent to the assessee fixing the date of hearing on 28.03.2022 along with acknowledgement returned un-served with the remarks of the Postal authorities "Left". Several notices were issued on several dates. However, none appeared on behalf of the assessee. Therefore, we proceed to dispose of the appeal on hearing the ld. DR.

3. Perusal of the assessment order shows that the Assessing Officer while computing the assessment made addition of Rs.1,33,32,875/- under section 68 of the Income Tax Act, 1961 (the Act) being the share capital/share premium and also disallowed expenses of Rs.53,36,782/- claimed in the profit and loss account, while making the best judgement assessment under section 144 of the Act as the assessee neither appeared nor furnished any information/replies to the notices issued by the Assessing Officer.

4. Assessee preferred appeal before the ld. CIT (Appeals) and filed additional evidences in respect of the addition made under section 68 of the Act and also on the disallowance of expenses. The ld. CIT (Appeals) admitted the additional evidences and called for remand report, which was furnished by the Assessing Officer.

5. The Id. CIT (Appeals) after considering the rejoinder filed by the assessee to the remand report of the Assessing Officer deleted the addition made under section 68 of the Act and also the entire expenses disallowed by the Assessing Officer observing as under:-

“ Decision

I have considered the submission of the appellant, observation of the Assessing Officer made in the assessment order on the issue. It is seen that appellant company has received share application money of Rs.1,32,32.875/- during the year from the following parties:

Sr. No.	Name of the Shareholder	Amount (In Rs.)
1.	Kaushal N. Mehta	24,98 958.00/-
2.	Ajay Kumar Gupta	17,49 271.00/-
3.	Saurabh Mathur	6,84,037.00/-
4.	Atim Kabra	21,81,383.00/-
5.	Prashant Kothari & Sujata Vithalrao Cowlagi	21,81,382.00/-
6.	Eight Finance Private Limited	30,04,000 00/-
7.	Shivek Ranjan	2,00,000.00/-
8.	Lokesh Kumar	7,33,844.00/-
	Total	1,32,32,875.00/-

The Assessing Officer added the said share application money on the ground that identity, capacity of the share applicant and genuineness of the transaction was not established, therefore, the same was added u/s 68 of the I.T. Act.

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During the course of appellate proceedings, appellant has submitted that it has received share application money from the above mentioned share applicants and in support of its contention, it has filed confirmation of the share applicants, copy of address proof of the share applicant, Form No.2, copy of PAN Card, copy of bank statement of share applicant and copy of share application form. In one case, the appellant has also filed copy of the balance sheet of the company from where the share application money was received. These evidences were forwarded to the AO for conducting enquiries. The Assessing Officer after conducting enquiries has submitted a remand report and along with the evidences collected by him. The Assessing Officer called for following information by issuing notice u/s 133(6) to all the share applicants:

1. "Nature of transactions with M/s. Adception Infotech Pvt. Ltd for F. Y. 2011-12.
2. Confirmed Copy of Ledger Account of the assessee along with supporting evidence.
3. Copy of Complete ITR along with annexures for A.Y. 2012-13 and immediate preceding two years.
4. List of Bank Account(s) maintained during the relevant period including closed accounts.
5. Complete Statement of all the Bank Account(s) for F.Y. 2011-12 and immediate preceding two years.
6. Details of Share Application/Premium money pa paid to the assessee, Reason for Investing at such a high premium in the very first year of it's birth.
7. Detailed Note on the sources of funds.
8. Present status of investment.
9. Information in the following format alongwith Complete statement of Bank Account(s):

Sl. No.	Date and Mode of Payment/	Amount	Account No. and Branch Address of the Account from which payment was made.	Cheque No. & date, if applicable.

The replies received in the remand proceedings in response to notice u/s 133(6) from the share applicants is being analyzed hereunder one by one:

Sh. Atim Kabra:

He has invested Rs.24,98,958/- as share application money in the appellant's company towards equity share. The money has been transferred from NRE Axis Bank Marine Line, Mumbai Branch on 07.12.2011 through RTGS. Sh. Atim Kabra is a non-resident for several years and has sufficient funds for making investment. He has also filed his return of income for the AY 2012-13 in India declaring his income Rs.5,37,975/-. In the AY 2011-12 he has declared income of Rs. 16,74,913/-. He has also filed copy of the bank statement of the Axis Bank, wherein he has got deposit of Rs.1,50,90,257/- as on 01.12.2011 which proves that he has sufficient fund in his account for making investment. He has confirmed the investment in response to notice issued under section 133(6) of the Income Tax Act, 1961 vide his letter dated 20.02.2017. Therefore, identity, creditworthiness and genuineness of the transaction with reference to the share application money received from Sh. Atim Kabra is established.

Sh. Ajay Kumar Gupta:

He has invested Rs.17,49,271/- as share application money in the appellant company for 336 shares. During the appellate proceedings, notice u/s 133(6) of the I.T. Act was issued to him which was successfully delivered to him through mail and post. However, no response was received. The appellant has filed copy of the Permanent Account Number card and bank statement of Sh. Ajay Kumar Gupta maintained with Standard Chartered Bank. The money has been received from Standard Chartered Bank on 7th December, 2011. Since, he is assessed to tax and has filed copy of Permanent Account Number, share application form, copy of bank account and confirmation, therefore, in this case identity and creditworthiness has been established.

Sh. Prashant Kothari

He has invested Rs.21,81,382/- as share application money in the appellant company during FY 2011-12. During the appellate

proceedings, the appellant company has filed confirmation, Share Application Form, Permanent Account Number, copy of his Passport and Visa in Paper Book from page 122 to 142. The AO issued notice u/s 133(6) vide letter dated 9.2.2017. He has confirmed the transaction with the appellant company vide his letter dated 15.2.2017 and has stated that he has invested Rs.21,81,382/- through his bank accounts maintained with HDFC Bank NRE and NRO. He has filed copy of Share Subscription Agreement with the appellant company, Deed of Adherence, Confirmation, Share Application Form, copies of Share Certificates, copy of the Return of Income for AY 2011-12 and 2012-13 and copy of the bank statement wherefrom money has been transferred to appellant company's account on 28.12.2011. It is seen from bank account of Sh. Prashant Kothari and Smt. Sujata Vithalrao that they have got sufficient funds in their bank accounts. Therefore, in this case identity, creditworthiness and genuineness of the transaction has been established.

Sh. Shivek Ranjan:

He has invested Rs.6,06,000/- as share application money in the appellant company during FY 2011-12. During the appellate proceedings, the appellant company has filed copy of Share Application Form, receipt of e-filing return and copy of bank statement. In the remand proceedings, AO had issued notice u/s 133(6) of the I.T. Act which was received back as unclaimed. However, reply to the notice was received via e-mail wherein copy of the intimation u/s 143(1) of the I.T. Act issued by CPC, Bangalore was sent. He has declared an income of Rs.32,93,323/- during the FY 2011-12 relevant to AY 2012-13. He has also sent the salary certificate issued by SCHLUMBERGER ASIA SERVICES LTD. He has confirmed the transaction with appellant company. Therefore, in this case identity, creditworthiness and genuineness of the transaction has been established.

Sh. K.N. Mehta:

He has invested Rs.24,98,958/- as share application money in the appellant company during FY 2011-12. During the appellate proceedings, the appellant company has filed Confirmation, Share Application Form, copy of Permanent Account Number, copy of Bank Statement in support of its contention. The AO issued notice u/s 133(6) of the I.T. Act vide letter dated 9.2.2017. He has

confirmed the transaction with the appellant company vide his letter dated 26.2.2017 and has stated that he has invested Rs.24,98,958/- through his bank accounts maintained with ICICI Bank and HSBC Bank. He has filed copy of bank statement and return of income for AY 2012-13 and 2013-14. In the AY 2012-13 he has declared an income of Rs.44,08,308/-. Similarly in the AY 2013-14 he has declared an income of Rs. 42,97,910/-, Sh. Ketan Mehta is working outside India as entrepreneur and has transferred fund from USA. He has also filed copy of balance sheet showing investment in the shares of the appellant company and other company. Therefore, in this case identity, creditworthiness and genuineness of the transaction has been established.

Sh. Saurabh Mathur.

He has invested Rs.6,84,037/- as share application money in the appellant company during FY 2011-12. During the appellate proceedings, the appellant company has filed copy of share application form, copy of Election Card, copy of Permanent Account Number, copy of bank statement in support of its contention.

The AO issued notice u/s 133(6) of the I.T. Act vide letter dated 9.2.2017. He has confirmed the transaction with the appellant company vide his letter dated 17.2.2017 and has stated that he has invested Rs. 6,84,037/- through bank accounts maintained with HDFC Bank and State Bank of India. He has stated that he is working with Google as a Software Engineer in USA and funds have been transferred from his bank account maintained with CITI Bank in USA. He has also filed copy of US Individual return in form 2009 in support of his income wherein he has declared salary income as US \$116239. Therefore, in this case identity, creditworthiness and genuineness of the transaction has been established.

Mis Eight Finance Pvt. Ltd.

It has invested Rs.30,04,000/- as share application money in the appellant company during FY 2011-12. During the appellate proceedings, the appellant company has filed copy of Share Application Form, copy of Permanent Account Number, Company Master Data and Balance Sheet showing investment in the appellant company in support of its contention. The AO issued notice u/s

133(6) of the I.T. Act vide letter dated 9.2.2017. In response to said notice, the said company has confirmed the transaction of investment in the appellant company. The said company has filed copy of Share Subscription Agreement, details of shareholders of the investor company, copy of Share Certificates, copy of the Return of Income filed for AY 2012-13 showing income of Rs. 18,44,479/- and copy of the balance sheet of the said company wherein investment in the appellant company is reflected. The said company has also filed copy of the bank statement maintained with HDFC Bank, Nariman Point, Mumbai wherefrom DD of Rs. 30,00,000/- was issued in favour of the appellant company on 23.11.2011. Therefore, in this case identity, creditworthiness and genuineness of the transaction has been established.

Sh. Lokesh Kumar.

He has invested Rs.7,33,844/- as share application money in the appellant company during FY 2011-12. During the appellate proceedings, the appellant company has filed confirmation, Share Application Form, copy of Permanent Account Number, copy of Bank Statement and copy of Passport in support of its contention The AO issued notice u/s 133(6) of the I.T. Act vide letter dated 9.2.2017. However, no reply has been received in response to said notice. He has shown his address as 301, Summit Avee Apartment, 501, Seattle WA. He has also given copy of his bank statement maintained with Chase JP Morgan Bank. He has transferred US\$15000 from Chase Bank to ICICI Bank of the appellant company maintained in India on 1 November, 2011 and 4th November, 2011 Therefore, in this case identity. creditworthiness and genuineness of the transaction has been established.

In view of the facts stated above, it is held that appellant company had received share application money from the persons mentioned above which was from the duly explained sources. The investors of the share application money have confirmed with sufficient evidences and in the case of investors their identity. creditworthiness and genuineness of the transactions has been established. Therefore, the addition of Rs. 1,32,32,875/- on account of share application money received is deleted. As regards the addition of Rs.1,00,000/- on account of share application money, it is seen that this money was received from the Director of the appellant company at the time of its incorporation and the

same is reflected in the Balance Sheet of the appellant company as on 31 March, 2011. Therefore, this share application money received in earlier year cannot be added in the AY 2012-13. Hence, the same is deleted.

The AO has also disallowed expenses of Rs.53,36,782/- claimed in the Profit & Loss Account during the year as no details of the same were filed during the course of assessment proceedings. During the course of appellate proceedings, the appellant has filed details of these expenses in the form of ledger accounts. The same were forwarded to the AO for examination. However, Assessing Officer has not given any comment on this issue. It is seen that these expenses were incurred on advertisement, electricity charges, salary of the employees, telephone expenses, computer repair and maintenance, bank charges etc. All these expenses have been done through ICICI Bank and IndusInd Bank and majority of the expenses are on account of salary of Rs.32,69,570/- paid to 46 employees during the year. The appellant has filed details of the employees and payment made to them during the year at page 254 of the paper book. All the salary payments have been done through account payee cheques / NEFT. The appellant has incurred Rs.2,51,164/- on electricity during the year. In support of its contention, appellant has filed copy of ledger account of the expenses wherein the payments have been made by way of cash as well as cheque. The appellant has incurred Rs. 3,29,775/- on advertisement. These payments have been made to Google Edward and Times of India and all these payments have been made through cheque / NEFT. The appellant has also claimed Rs.4,56,500/- as rent paid during the year for the premises hired during the year. All these payments have been made by way of account payee cheques from the appellant company's bank account and TDS have been deducted. The appellant has given details of all expenses in the form of ledger account. It is, therefore, held that all these expenses were incurred by the appellant wholly and exclusively for business purposes of the appellant company and same are held to be allowable. Therefore, the disallowance made by the AO of Rs.53,36,782/- is deleted. In the result, ground no. 3(a) and (b) are allowed."

6. On careful perusal of the findings of the Id. CIT (Appeals) we observe that the assessee discharged its initial burden by filing

various evidences in the form of confirmations, bank statements, share application forms, addresses, PAN numbers to prove the identity, genuineness and creditworthiness of the share holders. The Id. CIT (Appeals) considering all the evidences on record and the remand report and the rejoinder concluded that the share holders are genuine and assessee has proved the identity, genuineness and creditworthiness of the share holders and accordingly the addition made under section 68 of the Act has been deleted. We further observe that the entire expenses which were debited to profit and loss account and was disallowed by the Assessing Officer were deleted by the Id. CIT (Appeals) on appreciation of evidences furnished before him and it is the finding of the Id. CIT (Appeals) that majority of expenses are towards salary paid and they were through banking channels . It was also observed that the expenses on advertisement, electricity, telephone, computer repair and maintenance, bank charges etc. were all paid through ICICI Bank and IndusInd Bank. All the above findings of the Id. CIT (Appeals) have not been rebutted by the Revenue. We see no infirmity in the order passed by the Id. CIT (Appeals) in deleting the above additions/disallowances.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on : 19/12/2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 19/12/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee.
2. राजस्व / Revenue.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	12.12.2023
Date on which the typed draft is placed before the dictating Member	14.12.2023
Date on which the typed draft is placed before the Other Member	19.12.2023
Date on which the approved draft comes to the Sr. PS/PS	19.12.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	19.12.2023
Date on which the fair order comes back to the Sr. PS/PS	19.12.2023
Date on which the final order is uploaded on the website of ITAT	19.12.2023

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Date on which the file goes to the Bench Clerk	19.12.2023
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	