

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI MANJUNATHA G., ACCOUNTANT MEMBER  
&  
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

आ.अपी.सं / ITA TP No.1031/Hyd/2012  
(निर्धारण वर्ष / Assessment Year: 2007-08)

Asst.Commissioner of Income Tax Vs. M/s DNA Biotech Limited  
(Central Circle-2) Hyderabad  
Hyderabad [PAN :AACCD2850L]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: None

राजस्व द्वारा/Revenue by: Shri D.Praveen, DR

सुनवाई की तारीख/Date of hearing: 11/09/2024

घोषणा की तारीख/Pronouncement on: 20/09/2024

आदेश / ORDER

**PER PRAKASH CHAND YADAV, J.M:**

Present appeal of the Revenue is arising from order of the learned Commissioner of Income Tax (Appeals) ["Ld.CIT(A)] in ITA Nos.0477 & 0478/CIT(A)/GNT/09-10 dated 28/02/2012. Revenue has raised the following grounds of appeal :

1. The order of the CIT(A) is erroneous both on facts and in law.
2. The CIT(A) has erred in deleting the addition made towards unexplained cash credit u/s 68 of the I.T.Act.
3. The CIT(A) is not correct in law in admitting additional evidence in the form of confirmations said to have been filed

by Mr.Vijay and Mr.Ramaswamy without affording an opportunity to the AO to verify the evidence thereby violating Rule 42A of the I.T.Rules.

4. The CIT(A) is perverse in coming to the conclusion that Mr.Vijay and Mr.Ramaswamy said to be NRIs are assessed to tax without there being anything on record to suggest the same as no confirmation letters, PAN or addresses are available on record to come to such conclusion.
5. The CIT(A) is not correct to conclude that the investments made by the shareholders stands explained as the persons investing were not 'shareholders' and thus the CIT(A) had not correctly appreciated their transactions with the company.
6. The CIT(A) erred in deleting the addition as there was no evidence on record to show that the money received by the company was towards share application money as the certificate filed by Sri.Vimal Kavuri shows that his advance was towards investment for the purpose of acquiring land for procuring certain equipment.
7. Any other ground that may be urged at the time of hearing.

2. The solitary issue involved in the above grounds is that whether the Ld.CIT(A) has erred in law in deleting the addition of Rs.2.83 crores made by the Assessing Officer under section 68 of the Income tax Act, 1961 ("the Act"), 1961 The other contention of the Revenue is that the Ld.CIT(A) has accepted certain additional evidences filed by the assessee during the appellate proceedings. The Ld.CIT(A) has not called for any remand report from the Assessing Officer and decided the appeal of the assessee.

3. Facts leading to filing of the present appeal are that a search and seizure action has been conducted at the business premises of the assessee on 09/10/2007. Thereafter, notice u/s 153A of the Act was issued to the assessee on 26/06/2008, calling the assessee to file its return of income. Accordingly, the assessee filed its return of income for the impugned assessment year declaring Nil income. During the course of assessment

proceedings, it has been observed by the Assessing Officer(AO) that the assessee has received share application money to the tune of Rs.4,90,42,941/- from three persons namely.

Ramachandra Reddy (assessee)	Rs.2,07,24,383
Vimal Kumar and his Associates	Rs.1,53,18,558
Murghai	Rs.1,30,00,000
Total	Rs.4,90,42,941

4. Accordingly, the AO asked the assessee about the details of share application money received from the above persons. However, the assessee could not file the details and hence, the Assessing Officer made the addition of Rs.2,83,18,560/- u/s 68 of the Act. Learned AO further observed that the assessee has not disclosed the receipt of share application money from Mr.Murghai in its balance sheet

5. Aggrieved by the order of the AO, the assessee filed an appeal before Ld.CIT(A) and contended that the AO has not framed the assessment in a judicious manner. The assessee has also filed certain additional evidences before Ld.CIT(A), on which the Ld.CIT(A) asked for the remand report from the Assessing Officer. It is relevant to observe here that the additional evidences were in fact the confirmation letters from the share subscribers who have applied for the shares of the assessee company. After considering the submissions of the assessee, evidences filed by the assessee and remand report, the Ld.CIT(A) has allowed the appeal of the assessee and observed as under:

*“4.5. I have gone through these four comments made by the Assessing Officer and called an explanation from the Ld.AR in this regard. It transpires that initially the share application money was sent by an NRI namely Mr.Vimal Kavuri and associates. Later, the confirmations were filed by Mr.Vimal Kavuri, Mr.Vijay and Mr.Ramaswamy, who are all NRIs. The contributions were through banking channels and all of them are assessed to tax. Another point raised by the Assessing Officer in remand report is investment made*

*by Shri Murughai and as far as his investments are concerned, they were made by his companies namely, Malind Projects Pvt. Ltd and MVS Developers Pvt. Ltd. Thus, in light of what has been discussed herein above, in my considered opinion, the investments by the shareholders stands explained and as such no addition on this aspect is necessary and the Assessing Officer is directed accordingly for both the assessment years under challenge.”*

6. Before us, the Ld. DR has argued at length that the Ld.CIT(A) has allowed the appeal of the assessee without following the mandatory procedure of Rule 46A and hence he prayed that at least, the matter may kindly be restored to the file of the Ld.CIT(A) for adjudicating afresh.

7. No one has appeared from the side of the assessee despite proper service of notice of hearing. After considering the submissions of the Ld. DR and perusing the material on record, we observe that the assessee company has received an amount of Rs.4,90,42,941/- as share application money during the year under consideration, out of which an amount of Rs.2,07,24,383/- has been received from the director of the assessee company and Rs.1,53,18,558/- has been received from Mr.Vimal Kumar and his Associates and the balance i.e.Rs.1,30,00,000/- has been received from Mr.Murghai. So far as the receipt of share application money from the Director, Mr.Ramachandra Reddy is concerned the Ld AO has accepted it as genuine, the learned AO has doubted the transactions of share application money received from Mr.Vimal Kumar and his Associations and Mr.Murghai. We observe that all these transactions were routed via banking channels and during the appellate proceedings before CIT(A), the assessee has filed confirmation letters from all the share subscribers. We further observe that the Ld.CIT(A) has duly called for remand report from the Assessing Officer vis-à-vis additional evidences filed by the assessee. Therefore, the contention of the Ld.DR that the Ld.CIT(A) has passed the order without calling for the remand report is factually incorrect. Be that as it may be, we observe that so far as the receipt of payment from Mr.Murghai, it has not been reflected by the assessee in the balance sheet, fact of the matter as noted by the CIT(A) is that the assessee that the

assessee company has refunded the amount vide pay order No.274802 dated 15/12/2010 and hence could not disclose this amount in its return of income. Although the CIT(A) has accepted the submission of the assessee in respect of the application money received from Mr. Murgahai but he failed to reconcile this factum, which happened in A.Y 2011-12, with the observations of the AO, that assessee failed to show this amount in its balance sheet of the impugned year i.e. AY 2007-08. These facts need verification at the end of AO. Therefore, the observation of the AO that the assessee could not show this amount in its balance sheet remained unanswered. Similarly the DR also failed to rebut the observations of the CIT(A) with any material. Therefore, Considering the totality of the facts and circumstances, we principally agree with the order of the Ld. CIT(A). However, remit the matter to the file of the Assessing Officer for verification of the reversal of entries with Mr. Murghai by the assessee and to decide the issue in accordance with law.

8. In the result, appeal of the Revenue is allowed for statistical purpose in above terms.

Order pronounced in the open court on this the 20<sup>th</sup> day of September, 2024.

Sd/-  
**(MANJUNATHA G.)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PRAKASH CHAND YADAV)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 20/09/2024  
*L.Rama, SPS*

Copy forwarded to:

1. The Assistant Commissioner of Income Tax, Central Circle-2, Hyderabad
2. M/s DNA Biotech Ltd., Plot No.107, Road No.10, Banjara Hills, Hyderabad
3. The Pr.CIT, Hyderabad
4. The DR, ITAT, Hyderabad
5. Guard File

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD