



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.303/LKW/2017
(Assessment Year: 2013-14)

Asstt Commissioner of Income Tax, Circle DCIT, Circle, Faizabad, Annexe Hotel Krishna Palace, Civil Lines, Faizabad-224001.	v.	M/s. Jeewani Fuels Pvt. Ltd 105, Mughalpura, Faizabad-224001.
		PAN:AABCJ2557K
(Appellant)		(Respondent)

Appellant by:	Shri Mahendra Kumar, C.A		
Respondent by:	Shri Manu Chaurasia, CIT(DR)		
Date of hearing:	05	11	2024
Date of pronouncement:	11	11	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This is an appeal preferred by the revenue against the impugned order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter as referred "CIT(A)], Faizabad dated 06/02/2017 for the assessment year 2013-14.

2. The grounds of appeal of the revenue are as under: -

"1. The Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.4,35,05,000/-.

2. The Ld. CIT(A) erred in accepting the plea of the assessee that identify, credit worthiness and genuineness of transactions within the meaning of section 68 of the I. T. Act, 1961 were satisfied.

3. The Ld. CIT(A) failed to acknowledge that we are now in the midst of organized crime where papers trails of identity and creditworthiness are created in an organized manner to cover trails of illegal money used for operations, from drugs, prostitution, arms dealings, human trafficking, bribery and terrorism etc, and he erred in placing reliance on old decision

of ITAT, High Courts and Supreme Court when such organized crimes were not so rampant.

4. The Ld. CIT(A) was apparently ignorant of organized crimes, and decisions of ITAT Bench, Kolkata in

ITA. No.1533-1537, 1541-1544, 1547-1575/Kol/2012 and C.O.Nos. 110-141/Kol/2012, Assessment years 2004-05 to 2009-10. Patangi Trade & holdings Pvt. Ltd.

ITA. No.1493/Kol/2013 for AY. 2008-09, Bisakha Sales Pvt. Ltd Vs. CIT-II, Kol.

5. The Ld. CIT(A) erred as a fact finding authority, in discharging his duties to understand that genuineness of the transactions (at an arm's length price) could not be proved for value of shares of the closely held company in coal trading without worthwhile tangible assets or sustainable sources of income in terms leases or long term trade agreements.

6. The Ld. CIT(A) could not be aware that the assessment for AY. 2012-13 has been set aside u/s 263.

7. The Ld. CIT(A) has erred on facts as well as in law in allowing the relief to the assessee by not appreciating the facts that the investor companies were paper companies existing solely for providing accommodation entries having negligible income and maintaining huge reserve and surplus.

8. The Ld. CIT(A) has erred on facts as well as in by not appreciating the facts that after elaborate enquires the existing of the companies were not found at given address consequently, genuineness of companies & creditworthiness was not established.

9. The Ld. CIT(Appeal) has erred on facts as well as in law by not appreciating the fact that MD of the assessee company who is also Director in investors companies failed to provide complete address of previous owners, share, certificates and share control register which must have been in his special knowledge.

10. The Ld. CIT(A) has erred in law by not allowing any opportunity of being heard to the department.

11. That the appellant also craves to modify, amend, change and revise the above grounds of appeal and add further grounds of appeal, if necessary."

3. The amended grounds of appeal of the revenue are as under: -

"1. The Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.4,35,05,000/- irrespective of the facts that the identity, genuineness and creditworthiness of the transaction could not be proved by the assessee within the meaning of section 68 of the I. T. Act.

2. The Ld. CIT(A) erred on facts as well as in law in allowing relief to the assessee by not appreciating the facts that the investor companies were paper companies not found at the given address and existing solely for providing accommodation entries having negligible income and maintaining huge reserve and surplus.

3. The Ld. CIT(A) has erred on facts as well as in law by not appreciating the fact that the MD of the assessee company who is also Director in investors companies failed to provide complete address of previous owners, share certificates and share control register despite the assessee company having acquired the shareholding in the three investor companies way back in F.Y. 2010-11 & 2011-12.

4. That the appellant also craves to modify, amend, change and revise the above grounds of appeal and add further grounds of appeal, if necessary.”

4. Vide Assessment Order (“AO”) dated 29/03/2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter “the Act”), the assessee’s total income was determined at Rs.4,93,94,980/- as against the returned income of Rs.58,89,980/-. The addition made in the assessment order included an amount of Rs.4,35,05,000/- on account of unexplained cash credit. Vide impugned appellate order dated 06/02/2017, the Ld. CIT(A) allowed the assessee’s appeal. The Ld. CIT(A) deleted the aforesaid addition amounting to Rs.4,35,05,000/-. The present appeal before us has been filed by revenue against the aforesaid impugned appellate order dated 06/02/2017 of the Ld. CIT(A).

5. At the time of hearing before us, the Assessee was represented by Shri Mahendra Kumar, Ld. Authorized Representative (AR); and Revenue was represented by Shri Manu Chauraisa, Ld. Departmental Representative (DR). The Ld. AR for the Assessee has relied upon the impugned order dated 06/02/2017 passed by the Ld. CIT(A). Reliance upon the order of the Ld. CIT(A)-Faizabad in the impugned order dated 06/02/2017. The extract of the order reproduced at page nos. 7 to 12 are as under:-

“4(4) I have examined the facts and circumstances of the case. I have considered the submissions of the appellant. I find that the appellant obtained share application money from three companies as under: -

S. No	Name	PAN	AMOUNT (in Rs.)
1	M/s. Accumen Commedeal P Ltd	AAGCA8214P	2,88,55,000/-
2	M/s. Blossom Vincom PLtd.	AADCB6797K	43,50,000/-
3	M/s. Galaxy Commosales P ltd	AADCG3728K	1,03,00,000
	Total		4,35,05,000/-

4(5). The impugned companies are assessed to tax vide PAN No. indicated above. In order to prove the identity, credit worthiness and genuineness of the transaction the appellant filed copies of income tax returns filed by the lender, audited financial statements and statements of bank accounts of the lender. The AO has made the impugned addition under section 68 of the Act, though no specific provision of the Act has been mentioned by the AO in the assessment order, for the reason that the Shri Pawan Kumar Jeewani, Managing Director of the appellant-company and his family members are also directors/share holders in the three companies from which the share application money was received. The observations of the AO in making the impugned addition of Rs. 4,35,05,000/- are -

The assessee neither furnished the complete addresses of the previous share holders of investor companies nor share control register, share certificates were filed.

In this backdrop, it is apparent that these companies are paper companies providing only the accommodation entries to the assessee company in the garb of share application money.

The possibility of manipulation gets more base especially when in assessee company & in all the three investor companies the governing bodies are none other but of a family as they can easily route the same.

Mere production of incorporation details, PAN number or balance sheet is not sufficient when surrounding and attending facts predicate a cover up.

As discussed in the above paras and visible by the above chart the Kolkata based investor companies were created with purpose to accumulate huge reserve and surplus before changing the hands to the present owners who have utilized such reserve & surplus in receiving share application money in the hands of assessee company.

Also it defies the common logic why the companies are investing solely & heavily in unquoted shares.

The AO has opined that investor companies are Paper Company existing solely for providing accommodation entries and mere production of incorporation details, PAN Number or balance sheet and confirmatory letters is not sufficient to prove the capacity of the said company when surrounding and attending fact predicate a cover up.

4(6) I find that in absence of any evidence, these observations of the A.O. is mere conjecture and therefore, no cognizance of the same can be taken. It is a trite law that suspicion, no matter how grave, cannot take place of evidence. In this case, there is even no case of suspicion, leave aside any evidence to the effect that the identity, credit worthiness and genuineness of investment made by investor companies in appellant company are proved. There is no evidence brought on record to prove the said allegation which appears to be a figment of imagination of the AO. When the assessee has filed confirmations of the cash creditors, copies of income tax returns filed by the lender, audited financial statements and statements of bank accounts of the lender the initial burden placed upon the assessee can be said to have been discharged. In "Sarogi Credit Corporation vs. CIT, 103 ITR 344 (Patna), it has been held that it is not for the assessee to explain further as to how the or in what circumstances the depositor obtained the money, or how he came to make an advance of the money as a loan to the assessee; that once such identity is established and the creditors, have pledged their oath that they have advanced the amounts in question to the assessee, the burden immediately shifts on to the department to show as to why the assessee's case cannot be accepted

and why such deposit to be assessed as the income from a suppressed source.

4(7) Examination of the transactions of the appellant company with the three investor companies shows that the parties had continuous transactions for a period of three year including the financial year 2012-2013 under consideration as well as immediately preceding financial year 2011-2012 and immediately succeeding financial year 2013-2014 and subsequent years. The balances in the accounts have fluctuated between debit balance and credit balance.

4(8)(i) The summarized details of the transactions in financial year 2011-2012 relevant assessment year 2012-2013 is as under: -

S. No	Name	Opening Balance	Debit	Credit	Closing balance
1	M/s. Accumen Commoddeal P Ltd	71,78,101	1,66,00,001	1,49,00,000	54,78,100 Cr
2	M/s. Blossom Vincom PLtd.	0	7,00,000	94,00,000	87,00,000 Cr
3	M/s. Galaxy Commosales P ltd	0	0	1,00,000	1,00,000 Cr

4(8)(ii).The summarized details of the transactions in financial year 2012-13 relevant to assessment year 2013-14 under consideration is as under:

S. No	Name	Opening Balance	Debit	Credit	Closing balance
1	M/s. Accumen Commoddeal P Ltd	54,78,100	82,50,000	3,71,05,000	3,43,33,100 Cr
2	M/s. Blossom Vincom PLtd.	87,00,000	57,00,000	1,00,50,000	1,30,50,000 Cr
3	M/s. Galaxy Commosales P ltd	1,00,000	37,00,000	1,40,00,000	1,04,00,000 Cr

4(8)(iii) The summarized details of the transactions in financial year 2013-14 relevant to assessment year 2014-2015 is as under: -

S. No	Name	Opening Balance	Debit	Credit	Closing balance
1	M/s. Accumen Commoddeal P Ltd	3,43,33,100	3,38,45,000	73,50,000	78,38,100 Cr
2	M/s. Blossom Vincom PLtd.	1,30,50,000	2,34,50,000	45,00,000	59,00,000 Cr
3	M/s. Galaxy Commosales P ltd	1,04,00,000	4,07,00,000	2,52,00,000	51,00,000 Cr

4(8)(iv) The summarized details of the transactions in financial year 2014-15 relevant to assessment year 2015-16 is as under: -

S. No	Name	Opening Balance	Debit	Credit	Closing balance
1	M/s. Accumen Commoddeal P Ltd	0	1,51,99,038	1,65,40,384	13,41,346 cr
2	M/s. Blossom Vincom PLtd.	30,92,624	46,17,156	18,80,313	3,55,781 Cr
3	M/s. Galaxy Commosales P ltd	3,63,32,986/-	4,96,62,811/-	1,63,04,052/-	29,74,227/- Cr

4(8)(v) The summarized details of the transactions in financial year 2015-16 relevant to assessment year 2016-17 is as under: -

S. No	Name	Opening Balance	Debit	Credit	Closing balance
1	M/s. Accumen Commoddeal P Ltd	0	1,51,99,038	1,65,40,384	13,41,346 cr
2	M/s. Blossom Vincom PLtd.	30,92,624	46,17,156	18,80,313	3,55,781 Cr
3	M/s. Galaxy Commosales P ltd	3,63,32,986/-	4,96,62,811/-	1,63,04,052/-	29,74,227/- Cr

4(9) The summarized transactions reveal continuous nature of dealing of the appellant company with the other three investor companies and money has not only been received by the appellant-company but also returned back by the appellant-company. The assessment proceedings in the case of the appellant-company were completed under section 143(3) of the Act for immediately preceding financial year 2011-2012 relevant to assessment year 2012-2013 and immediately succeeding financial year 2013-2014 relevant to assessment year 2014-2015 and the Assessing Officer has not drawn any negative conclusions based on the transactions of the appellant company with the three other companies from whom share

application money of Rs. 4,35,05,000/- has been received during the year under consideration. In case the three companies were found to be genuine in other assessment years and the identity, credit worthiness and genuineness was accepted by the AO in those assessment year 2012-2013 and assessment year 2014 2015 then it defies logic legally as to how the same companies have become paper companies in the assessment year under consideration as per the AO.

4(10) Further these investor companies are duly assessed to tax as per their territorial jurisdiction and return of income of these companies are regularly filed. Copies thereon have evidently been provided to the AO, The management of these companies are under the same management as that of the assessee company, and all these companies: are having same address at 306, 1st floor, Jyotish Rai Road, Kolkata. Companies under the same management cannot be termed as paper companies or not genuine as has been done by the AO. In one of these companies M/S Blossom Vincom (P) Ltd., Shri Shiv Kumar Jeewani brother of Shri Pawan kumar Jeewani managing director of the assessee company is also director. Further registered offices of these companies are situated in premises 306, Jyotish Rai Road, Kolkata which is owned by Shri Shiv Kumar Jeewani. Hence the findings of Assessing Officer that these companies are not in existence at their respective address provided by the assessee is factually incorrect. Notices under section 133(6) of the Act issued by the AO were complied with as stated by the authorized representative.

4(11)(i) In the case of CIT Vs Ranchhod Jivabhai Nakhava (21 taxmann.com 159), the Hon'ble Gujarat High Court laid down that once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, the Assessing Officer did not follow the principle laid down under Section 68 of the Act. Hon'ble Delhi High Court in the case of CIT vs. Orbital Communication (P) Ltd. [2010] 327 ITR 560 (Delhi) held that where substantial evidence was produced by the company to prove credit worthiness of creditor and genuineness of share application, failure to produce creditor is not material. Addition of share application money was deleted. Hon'ble Allahabad High Court in the case of Jaya Securities Ltd. vs. CIT [2008] 166 Taxman 7 (All) has also observed that no addition under section 68 can be made in the case of a company limited by shares in respect of investment in share capital of the company. Reliance is also placed on Hon'ble Supreme Court decision in the case of CIT vs. Lovely Exports (P.) Ltd. (2008) 216 CTR (SC) 195.

4(11)(ii) Hon'ble Delhi High Court in the case of CIT Vs Kamdhenu Steel and Alloys Ltd examined the ingredients of section 68 of the Act and laid down that in order to prove the identity if the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc. can be furnished. Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that shareholder. The Division Bench held that when the money is received by cheque and is transmitted through banking or other indisputable channels, genuineness of transaction would be proved. As far as creditworthiness or financial strength of the credit/subscriber is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. This judgment further holds that once these documents are

produced, the assessee would have satisfactorily discharge the onus cast upon him. Thereafter, it is for the AO to scrutinize the same and in case he nurtures any doubt about the veracity of these documents to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion.

4(12) Applying the principles laid down in the aforesaid decisions and after examination of the facts and circumstances of the present case | find that the appellant company which has received advances of Rs. 4,35,05,000/- from the three companies viz., M/S Accumen Commodeal (P) Ltd, M/S Blossom Vincom (P) Ltd and M/S Galaxy Commosales (P) Ltd has filed necessary documents in the form of copy of income tax returns, PAN Numbers, copy of Audited financial statements for year under consideration, Bank account of lender of relevant period and Ledger copy of assessee company in the books of lender with confirmation. These documents prove the ingredients of section 68 of the Act. In the present case, the appellant has successfully discharged his onus but the AO has not been able to gather any adequate material, to conclude that the entry in question represented the income of the assessee from suppressed source. In view thereof and relying on case authorities discussed supra the unsecured loan of Rs. 4,35,05,000/- is satisfactorily explained and therefore the addition of Rs. 4,35,05,000/- is deleted.

6. In the result, the appeal is allowed as discussed.”

6. On the other hand, the Ld. CIT-DR for Revenue relied on the aforesaid assessment order passed by the AO.

7. We have heard both the sides and perused the material available on record. We find that the assessee company has received advances of Rs.4,35,05,000/- from the three companies viz., (i) M/s. Accumen Commodeal (P) Ltd (ii) M/s. Blossom Vincom (P) Ltd and (iii) M/s. Galaxy Commosales (P) Ltd., has filed all necessary documents in the form of Income Tax Return (ITR), PAN numbers, Copy of Audited financial statements for year under consideration, Bank account of lender of relevant period and Ledger copy of assessee company in the books of lender with confirmation. In the present appeal, the assessee prove the discharged his onus but the AO has not been able to gather any adequate material to conclude that the entry in question represented the income of the assessee from suppressed source.

8. In the course of hearing before us, the Ld. CIT-DR for Revenue did not bring any material for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A). No mistake or error was pointed out in the order of the Ld. CIT(A). In view of the foregoing and in the specific facts and circumstances of the present appeal before us, we have no material to interfere with the impugned appellate order dated 06/02/2017 passed by the Ld. CIT(A). Accordingly, the impugned order of the Ld. CIT(A) dated 06/02/2017 is upheld and appeal filed by the revenue is dismissed.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open Court on 11/11/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED: 11/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

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By order

Assistant Registrar