

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

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.04/Lkw/2020
Assessment Year: 2016-17

MKC Traders Pvt. Ltd., 117/274, L-Block Naven Nagar, Kanpur-208025 PAN:AAHCM1004E (Appellant)	Vs.	Dy.C.I.T.-6, Kanpur. (Respondent)
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Appellant by	None
Respondent by	Shri Amit Kumar, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) This appeal vide I.T.A. No.04/Lkw/2020 has been filed by the assessee pertaining to assessment year 2016-17 against impugned appellate order dated 04/11/2019 passed by learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) The facts of the case, in brief, are that the assessee filed its return of income on 17/10/2016 declaring total income at Rs.34,24,839/-. The Assessing Officer completed the assessment and passed assessment order under section 143(3) on 17/12/2018 and determined the total income of the assessee at Rs.70,26,830/- by making addition of Rs.36,01,990/- on account

of disallowance of share application money. Being aggrieved, the assessee went in appeal before the learned CIT(A), who has dismissed the appeal of the assessee by observing as under:

5.3 Undersigned has carefully considered the assessment order and written submission as well as verbal arguments of the Ld. AR of the appellant. It is seen that appellant has received share application money amounting for Rs.36,01,990/- during this relevant A.Y. 2016-17. Various share applicants Shri Manoj Kumar Gupta, Shri Kishan Chand Gupta, Meera Devi, Shri Maneesh Kumar Gupta and Minakshi Gupta, are closed relatives of the directors of the applicant company. AO has conducted in depth enquiries regarding source of credit from the creditor share applicant. It was seen that source of credit of share application money was cash deposited in their bank Account and commission received by creditor from a entity M/s Innovative lighting Design Ltd. (ILDC). AO has recorded the sworn statements of all the share applicant which is reproduced by AO in body of the assessment order. It is evident from the sworn statement & bank account statement of the creditor that neither commission income nor cash deposits in the bank could be substantiated or explained by the share applicants. AO has recorded the finding of facts that no commission income was earned by the creditor prior or post this relevant A.Y. 2016-17. Also, creditor had no knowledge of business to substantiate the commission income. Further, cash amounts were deposited in the bank account of the creditor before the debit entry of share capitals, which stands unexplained. All these facts, only strengthens the observation of the AO that the credits in the form of share capital stand unexplained and unsubstantiated. Ld. AR of the appellant could not bring on record any cogent documentary evidence to controvert the findings recorded by the AO. Case laws cited by the LR. AR of the appellant is on their own footings and are distinguishable with the present facts of the case. Hence, it is concluded that action of the AO to treat the share capital as unexplained is perfectly justified.

5.4 It is a settled preposition of law u/s. 68 of the IT Act that the initial burden of proof rest upon the appellant to establish the identity, credit capacity of the creditor and to establish the genuineness of transaction. For the sake of clarity provision of section 68 of the Act as amended read as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation⁹¹ about the nature and source thereof or the explanation offered by him is not, in the opinion of the ⁹²[Assessing] Officer, satisfactory, the sum so credited may⁴ be charged to income-tax as the income of the assessee of that previous year:

⁹³[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory :

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]"

The present facts of the case are squarely covered by the provisions of law mentioned here-in-above, wherein it was imperative for the appellant to simultaneously prove the identity and creditworthiness of the creditors along with the genuineness of transaction. In the instant facts of the case, appellant has miserably failed to prove genuineness of the transaction and creditworthiness of the creditors. Hence, addition made by Assessing Officer is perfectly justified.

5.5 It is also an established law that mere filing of confirmation letter and the ITR copies are not enough to prove the credit capacity of the creditor. Hon'ble Kolkata High Court in the case of CIT Vs Korlav Trading Company Ltd.(Cal) 232 ITR 280 and CIT Vs Precision Finance P. Ltd. (Cal) 208 ITR 465 have observed and held that mere filing of confirmation and transaction through the banking channel is not enough to prove the genuineness of cash credit and it can be assessed. Further, Hon'ble Apex Court in the case of Shri Roshan D. Hattivi CIT (SC) 107 ITR 938 held that in the case of credits in the name of third party, it is the duty of the appellant to prove the identity or credit capacity of the creditors to advance money and genuineness of transaction. Further, Hon'ble Delhi High Court in the case of Sanraj Engineering Pvt. Ltd. Vs. CIT in ITA

79/2016 has held that, "addition made u/s 68 of the Act on account of unsecured loans was not justified, where initial onus of proving the creditworthiness of the lenders were not discharged by the assessee." Also, Hon'ble Gujrat High Court in the case of Pawan Kumar Sanghvi [2018] 90 taxmann.com 290 has held that, "where assessee received loan from two companies, in view of fact that on date of advancing loan to assessee there were credit entries of almost similar amounts and balance after these transactions was a small amount and moreover assessee failed to produce these lenders for verification, impugned amount was rightly brought to tax under section 68." Hon'ble Delhi High Court in the case of Seema Jain Vs ACIT [2018] 96 taxmann.com 307 (Delhi) has held that, "where AO made addition to assessee's income in respect of loan availed, in view of fact that lender company did not have tangible or intangible fixed assets and, moreover, it had declared a meager income and, thus, it was not in a position to give such a huge loan to assessee, impugned addition was to be confirmed." Further, Hon'ble Delhi High Court in the case of CIT Vs Ultra Modern Exports (P.) Ltd [2013] 40 taxmann.com 458 (Delhi)/[2014] 220 Taxman 165 (Delhi)(MAG.) has held that, "where in order to ascertain genuineness of assessee's claim relating to receipt of share application money, Assessing Officer sent notices to share applicants which returned unserved, however, assessee still managed to secure documents such as their income tax returns as well as bank account particulars, in such circumstances, Assessing Officer was justified in drawing adverse inference and adding amount in question to assessee's taxable income under section 68." Also, Hon'ble Calcutta High Court in the case of CIT Vs Maithan International 56 [2015] 375 ITR 123 (Calcutta) has held that, "Assessing Officer could not accept genuineness of loan taken by assessee from various creditors merely on basis of their bank statements and letter of confirmations as he was required to examine creditworthiness of said creditors as well." Hon'ble Madras High Court

in the case of B.R. Petrochem (P.) Ltd. Vs ITO [2017] 81 taxmann.com 424 (Madras) has observed and held that, "where assessee received share capital from various contributors, in view of fact that those contributors were persons of insignificant means and their creditworthiness to have made contributions had not been established, impugned addition made by authorities below in respect of amount in question under section 68 was to be confirmed." Further, Hon'ble Supreme Court while dismissing the SLP of the assessee in the case of Rick Lunsford Trade & Investment Ltd Vs CIT 2016-TIOL-207-SC-IT has held that, "it is open to the Revenue Department to make addition on account of alleged share capital u/s 68, where the assessee company has failed to show genuineness of its shareholders." Also, Hon'ble Apex Court in the case of Navodaya Castle Pvt. Ltd. Vs CIT [2015] 230 Taxman 268 (SC) observed during dismissal of SLP of the appellant that, "High Court ruling that certificate of incorporation, PAN etc., are not sufficient for purpose of identification of subscriber company when there is material to show that subscriber was a paper company and not a genuine investor." In the instant case, the undersigned is of the view that the credit capacity of the creditor and genuineness of the transaction is not proved by the appellant company.

5.6 Further, Hon'ble Delhi High Court in the case of PCIT Vs Vikram Singh (2017)85 taxmann.com 104 has observed and held that "even if transaction of loan is made through cheque, it cannot be presumed to be genuine in absence of any agreement, security and interest payment. Mere submission of the PAN and bank statements of the creditor does not establish the authenticity and genuineness of huge loan transaction particularly when the ITR of the lender does not inspire such confidence. Mere submission of ID proof and the fact that the loan transaction were through banking channel does not establish the authenticity of transaction. The loan entries are generally masked to pump the black money into the banking channel and such practices continued to plague

Indian Economy." Further, in the case of CIT Vs. N.R. Portfolio Pvt. Ltd. (ITA No. 1018, 1019/2100 dated 22.11.2013) Hon'ble Delhi High Court has observed and held that

"mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive companies no doubt are artificial or juristic person but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the person behind the company who take the decisions, controls and manage them."

The cases relied upon by the Ld. AR are on their own footings and distinguishable on facts and are not applicable to the present case. Further, Hon'ble Calcutta High Court has observed and held in the case of Pragati Financial Management Pvt. Ltd. Vs. CIT in C.A. 887 & 998 of 2016 and others dated 07.03.2017, that, "AO is entitled to make enquiry u/s. 68 of the Act regarding genuineness of the transaction. Further, it is held that, in the following judicial pronouncements of the Hon'ble High Courts that, share capital/premium/loans received from the entities involved in providing accommodation entries are liable to be taxed u/s 68 of the Act."

- i) CIT vs. Nova Promoters & Finlese (P) Ltd. 342 ITR 169 [Delhi] 2013.
- ii) CIT vs. D.K. Garg [2017] 84 taxmann.com 257 [Delhi]

5.7 Further, undersigned finds the ratio laid down by Hon'ble Delhi High Court in the case of M/s. NDR Promoters Pvt. Ltd. Vs. PCITITA No. 49/2018 dated 17.01.2019 very relevant. Para-13 & 14 of the said judgement is reproduced here-in-under:

"13. As we perceive, there are two sets of judgments and cases, but these judgments and cases proceed on their own facts. In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholders, bank account from which payment was made, the fact that payments were received thorough banking channels, filed necessary affidavits of the shareholders or confirmations of the directors of the shareholder companies, but thereafter no further inquiries were

conducted. The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The assessing officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances. The primary requirements, which should be satisfied in such cases is, identification of the creditors/shareholder, creditworthiness of creditors/shareholder and genuineness of the transaction. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct.

14. Certificate of incorporation, PAN number etc. are relevant for purchase of identification, but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor. It is in this context, the Supreme Court in *CIT Vs. Durga Prasad More* [1971] 82 ITR 540 (SC) had observed:-

"Now we shall proceed to examine the validity of those grounds that appealed to the learned judges. It is true that the apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

Further, Hon'ble Supreme Court in its latest landmark judgement in the case of *PCIT (Central)-1 Vs. NRA Iron Steel Pvt. Ltd. SLP (Civil) No. 29855 of 2018* dated 05.03.2019 has held the similar view. The relevant observation in para 11 to 14 is reproduced here in under:-

11. *The principles which emerge where sums of money are credited as Share Capital/Premium are :*

i. *The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to*

make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/ subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.

12. In the present case, the A.O. had conducted detailed enquiry which revealed that :

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee.

For example:

a. The companies Hema Trading Co. Pvt. Ltd. and Eternity Multi Trade Pvt. Ltd. at Mumbai, were found to be non-existent at the address given, and the premises was owned by some other person.

b. The companies at Kolkatta did not appear before the A.O., nor did they produce their bank statements to substantiate the source of the funds from which the alleged investments were made.

c. The two companies at Guwahati viz. Ispat Sheet Ltd. and Novelty Traders Ltd., were found to be nonexistent at the address provided. The genuineness of the transaction was found to be completely doubtful,

ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90,00,000/- to Rs. 95,00,000 in the Assessment Year 2009-10, for purchase of shares at such a high premium.

For example:

NehaCassetes Pvt. Ltd. - Kolkatta had disclosed a taxable income of Rs. 9,744/- for A.Y. 2009-10, but had purchased Shares worth Rs. 90,00,000 in the Assessee Company.

Similarly Warner Multimedia Ltd. - Kolkatta filed a NIL return, but had purchased Shares worth Rs. 95,00,000/- in the Assessee Company - Respondent.

Another example is of Ganga Builders Ltd. - Kolkatta which had filed a return for Rs. 5,850 but invested in shares to the tune of Rs. 90,00,000 in the Assessee Company - Respondent, etc.

iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10/- per share.

iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.

v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under Section 68 of the Act.

13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company - Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.

The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.

14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee."

In the instant facts of the case ratio laid down by Hon'ble Supreme Court in its latest landmark judgement in the case of PCIT (Central)-1 Vs. NRA Iron Steel Pvt. Ltd. SLP (Civil) No. 29855 of 2018 dated 05.03.2019 and Hon'ble Delhi High Court in the case of M/s. NDR Promoters Pvt. Ltd. Vs. PCIT are squarely applicable.

5.8 In view of the above detailed discussion of the factual matrix of the case and considering the enumerated judicial pronouncements, it is concluded that appellant company has miserably failed to prove the vital ingredients of creditworthiness of the creditors and genuineness of the transaction in relation to share capital. Therefore, undersigned find no reason to interfere with the addition made by Assessing Officer, u/s 68 of the Act. The same is therefore, confirmed and grounds of appeal of the appellant are dismissed.

6. Result:

In the result, for statistical purposes, this appeal is dismissed.

(C) During the course of hearing, none was present on behalf of the assessee. In the past also the appeal was fixed for hearing on 06/06/2022, 19/07/2022, 09/05/2023, 04/07/2023, 05/10/2023, 30/04/2024, 30/08/2024, 01/04/2025, 11/06/2025, 30/09/2025, 19/11/2025 and 08/01/2026 on which dates either the hearing was adjourned on the request of the assessee or there was no representation from the assessee's side. On 08/01/2026 also, when the hearing was last fixed, none was present on behalf of assessee. In the absence of any representation from the side of the assessee, learned Departmental Representative for Revenue was heard, who relied on the orders of the authorities below. On careful perusal of the impugned order of the learned CIT(A), and other materials on record, no infirmity is found in it. No material has been presented from either side to persuade us to make any interference with or modification of the impugned order of learned CIT(A). Therefore, the impugned order of learned CIT(A) is upheld and the appeal is dismissed.

(C.1) In any case, the defect pointed out by the registry vide defect memo dated 21/04/2025 has not been removed by the assessee. Therefore, on

this point also, the appeal of the assessee deserves to be dismissed in limine. The defect pointed out by Registry in the appeal filed by the assessee, is, that appeal fee has not been paid in correct head.

(D) In the result, the appeal of the assessee is dismissed.

(Order pronounced in the open court on 13/01/2026)

Sd/.
(KUL BHARAT)
Vice President

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:13/01/2026
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. D.R. ITAT