

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA Nos.3429, 4709, 3424/Del/2013
Assessment Years : 2006-07 to 2008-09

ITA No.3423/Del/2013
Assessment Year : 2009-10

ITA No.4206/Del/2014
Assessment Year : 2010-11

DCIT,
Central Circle-13,
New Delhi.

Vs. K.G. Finvests Pvt. Ltd.,
10, 3rd Floor, Satya Niketan,
New Delhi.

PAN: AAACK4032H

ITA Nos.999/Del/2014, 2684, 4437 & 4500/Del/2013
Assessment Years : 2005-06 to 2008-09

ITA No.3980/Del/2013
Assessment Year : 2009-10

K.G. Finvests Pvt. Ltd.,
10, 3rd Floor, Satya Niketan,
New Delhi.

Vs. ACIT,
Central Circle-13,
New Delhi.

PAN: AAACK4032H

Assessee By : Shri Salil Kapoor,
Shri Sumit Lalchandani &
Ms Ananya Kapoor, Advocates
Deptt. By : Shri Naveen Chandra, CIT, DR

Date of Hearing : 25.04.2017
Date of Pronouncement : 28.04.2017

ORDER

PER BENCH:

These 10 appeals, some of which are also cross appeals, relate to the assessment years 2005-06 to 2010-11. Since some of the issues raised in these appeals are common, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

Assessment Years : 2005-06 to 2008-09

2. For the A.Y. 2005-06, only the assessee is in appeal and for the A.Ys. 2006-07 to 2008-09 the assessee and the Revenue both have filed cross appeals against the orders of the CIT(A).

3. The assessee, in all of its appeals, has challenged the assumption of jurisdiction by the Assessing Officer to initiate

proceedings u/s 153A. The Revenue has filed cross appeals challenging the orders of the CIT(A) deleting certain additions on merits.

4. Firstly, we are taking up the legal issue raised in the appeals of the assessee, challenging the jurisdiction of the AO in issuing notices u/s 153A and the consequential framing of assessments.

5. We have heard the parties and perused the relevant material on record. Similar issue was raised by the assessee in its appeal for the assessment year 2004-05 also. Such appeal also came to be heard simultaneously with the instant appeals. Both the sides have chosen not to make any separate arguments but adopted their respective arguments made on this issue for the said earlier assessment year 2004-05. We have passed a separate order for the A.Y. 2004-05 (ITA Nos.6759 & 6662/Del/2013), holding that the Assessing Officer wrongly assumed jurisdiction u/s 153A of the Act without there being

any initiation of search on the assessee u/s 132 of the Act.

Resultantly, all the proceedings flowing from such invalid notice u/s 153A, including the passing of the assessment order, have been quashed. As the facts and the legal position in appeals for the instant years are admittedly similar to those for the A.Y. 2004-05, following the view taken in our order for the earlier year, we hold that the assumption of jurisdiction u/s 153A for the years under consideration is not valid. The assessments framed for these years are also resultantly quashed.

6. In view of our decision on the legal issue raised by the assessee, there remains no need to deal with the merits of the appeals.

7. In the result, the appeals of the Revenue are dismissed and those of the assessee are allowed.

Assessment Year : 2009-10

8. Both the assessee as well as the Revenue are in appeal against the order passed by the CIT(A) for this year on 19.03.2013.

9. Briefly stated, the facts of the case are that the assessee showed to have received share capital and share premium from four parties as under:-

S.No.	Name	Share Capital (Rs.)	Securities Premium (Rs.)	Total Amount (Rs.)
1.	Acumen Paper & Binders Pvt. Ltd.	2,00,000/-	18,00,000/-	20,00,000/-
2.	Lion Auto Components Pvt. Ltd.	2,50,000/-	22,50,000/-	25,00,000/-
3.	Sapphire Commercial Pvt. Ltd.	1,50,000/-	13,50,000/-	15,00,000/-
4.	Startrans Logistics Pvt. Ltd.	1,50,000/-	13,50,000/-	15,00,000/-
	Total	7,50,000/-	67,50,000/-	75,00,000/-

10. The assessee was called upon to furnish the details of the amount received and evidence in support of the identity

and credit worthiness of the lenders and also the genuineness of the transactions. In response, the assessee submitted certain details, which indicated the position as under:-

S.No.	Name	Assessment Year	Income returned	Comments
1.	Acumen Paper & Binders Pvt. Ltd.	2009-10	Rs.64,116/-	
2.	Lion Auto Components Pvt. Ltd.	-	-	No details filed
3.	Sapphire Commercial Pvt. Ltd.	2006-07 and 2007-08	Nil for both the years	
4.	Startrans Logistics Pvt. Ltd.	2009-10	Rs.54,955/-	

11. The Assessing Officer observed that the investor companies had shown only a nominal income as compared to investments made by them; no details were submitted in the case of Lion Auto Components Pvt. Ltd. to prove the credit worthiness of the investor; and no evidence was filed to prove that M/s Sapphire Commercial Pvt. Ltd. had income/capital to make investment during the financial year. On going through

the assessee's balance sheet, it was noticed that the money received as share capital was passed on to other unlisted and non-descript companies. The AO found that the assessee was facilitating introduction of unaccounted money through its books of account. The modus operandi was noted, being, an entry operator operating a number of accounts in the same bank/branch or in different branches in the name of companies/firms and individuals. He found that there was an elaborate network of transactions involved in the entry racket. These accounts, in the opinion of the Assessing Officer, were used for routing the money for providing accommodation entries. Coming to the facts of the case, the Assessing Officer observed that no reasonable person would invest an amount equal to 'twice its annual earning in an unknown company without getting any benefit in return.' Taking into consideration the human probabilities and the judgments of the Hon'ble Supreme Court in *CIT vs. Durga Prasad More (1971)*

82 ITR 540 (SC) and Sumati Dayal vs. CIT (1995) 214 ITR 801

(SC), the Assessing Officer came to the conclusion that the assessee brought in its own unaccounted funds into the books through the medium of share capital and share premium to the tune of Rs.75 lac. The same was treated as unexplained and added to the assessee's total income u/s 68 of the Act.

12. During the course of first appellate proceedings, the assessee filed application under rule 46A enclosing certain additional documents to substantiate that the amounts credited in its books of account were genuine. The ld. CIT(A) issued directions to the Assessing Officer for making necessary inquiries in the matter. The AO submitted a report dated 05.12.2012 indicating the result of inquiry conducted by him as under:-

S. No.	Name	Result of enquiry by the A.O.	Share Capital (Rs.)	Securities Premium (Rs.)	Total Amount (Rs.)
1.	Acumen Paper & Binders Pvt.	Letter returned with remark 'No	2,00,000/-	18,00,000/-	20,00,000/-

	Ltd.	such firm at such address'			
2.	Lion Auto Components Pvt. Ltd.	Letter returned with remark 'No such firm at such address'	2,50,000/-	22,50,000/-	25,00,000/-
3.	Sapphire Commercial Pvt. Ltd.	Letter returned with remark 'No such firm at such address'	1,50,000/-	13,50,000/-	15,00,000/-
4.	Startrans Logistics Pvt. Ltd.	No reply received till date	1,50,000/-	13,50,000/-	15,00,000/-
	Total		7,50,000/-	67,50,000/-	75,00,000/-

13. The assessee responded to the remand report by furnishing its explanation which has been recorded on pages 4-6 of the impugned order. Considering all these material, the ld. CIT(A) held that a sum of Rs.15 lac was genuinely received from M/s Startrans Logistics Pvt. Ltd. As regards the other two amounts, namely, Rs.25 lac and Rs.35 lac, the ld. CIT(A) directed the Assessing Officer to verify if these two investors genuinely made the investment. Both the sides have come up

in appeal before us. Whereas, the assessee is aggrieved against the restoration of the issue by the Id. CIT(A) of the addition on account of share capital and share premium to the extent of Rs.60 lac rather than deleting it, the Revenue is aggrieved against the deletion of addition to the tune of Rs.15 lac and also restoration by the Id. CIT(A). The case of the Department is that the Id. first appellate authority could not have restored the addition for a fresh adjudication.

14. We have heard the rival submissions and perused the relevant material on record. We agree in principle with the Id. DR that the Id. CIT(A) cannot send the matter back to the AO for a fresh decision. Section 251 lists the powers of the CIT(A) in disposing an appeal. Sub-section (1)(a) of sec. 251 provides that the Commissioner (Appeals), in an appeal against an order of assessment, may confirm, reduce, enhance or annul the assessment. Thus, the power of restoration to the AO is no more available to the Id. CIT(A). He has to take a decision at

his own end. In that view of the matter, the decision of the Id. CIT(A) in restoring the issue to the AO for a fresh decision cannot be upheld.

15. It is noticed from the assessment order for this year as well as the earlier years that the assessee is showing to have received share capital with a huge share premium and simultaneously passing it on to other unlisted companies. The Id. DR submitted that such total amount allegedly received by the assessee and then passed on to other non-descript companies during the years under consideration is more than Rs.2.50 crore. It can be seen from the total amount shown to have been received by the assessee during the year at Rs.75 lac that share capital is only to the tune of Rs.7.50 and share premium is Rs.67.50 lac. Such a huge premium has been shown in the background of the total income returned by the assessee at Rs.59,041 for the current year. Almost similar position is obtaining for the others years. The assessee did not

furnish complete details to the Assessing Officer for proving the genuineness of the transactions and credit worthiness of the parties. Certain sketchy details were filed which did not convince the Assessing Officer. An attempt was made before the Id. CIT(A) to furnish further details. During the remand proceedings, all efforts made by the Assessing Officer went in vain as the letter sent to the three companies, namely, Acumen Paper & Binders Pvt. Ltd., Lion Auto Components Pvt. Ltd., and Sapphire Commercial Pvt. Ltd. were returned with the postal remarks 'No such firm at such address' and for the last company, namely, Startrans Logistics Pvt. Ltd., no reply was received till the sending of the remand report. Mere fact that the assessee placed on record bank statements, confirmations, certificates of incorporation, memorandums of association, etc. of the companies who allegedly invested in the assessee's shares at a huge premium, does not in itself justify the genuineness of the transaction. Apart from the paper trail, the

assessee is supposed to satisfy the Assessing Officer about the genuineness of the transaction. It can be seen that the Id. CIT(A) has deleted the addition to the tune of Rs.15 lac being the amount received as share capital with share premium for M/s Startrans Logistics Pvt. Ltd., simply on the ground that the letter sent to this party was not returned by Postal Department. This, in our considered opinion, is hardly sufficient enough to prove the necessary ingredients u/s 68 of the Act. The impugned order cannot be countenanced. Considering the totality of facts and circumstances of the instant case, we are of the considered opinion that the ends of justice would meet adequately if the impugned order is set aside and the addition of Rs.75 lac is restored to the file of Assessing Officer for a fresh adjudication. The Id. AR, in all fairness, candidly accepted the course of restoration to the AO for a fresh decision as per law.

16. In the result, both the appeals are allowed for statistical purposes.

Assessment Year 2010-11

17. The only issue raised by the Revenue in its appeal is against the deletion of addition of Rs.40 lac made by the Assessing Officer on account of the alleged receipt of unexplained share capital along with share premium. The facts of the case are that, like earlier years, the assessee showed to have received share capital (including share premium) of Rs.20 lac from M/s Wizard International Ltd. and Rs.20 lac from M/s CRM Systems Pvt. Ltd.). On being called upon to furnish the details of the amount received and evidence in support of identity and credit worthiness of the lender and also the genuineness of the transactions, the assessee simply furnished a reply which has been summarized by the Assessing Officer by way of a table on page 5 of the assessment order, reproduced below:-

S.No.	Name	Assessment Year	Income returned
1	M/s Wizard International Ltd.	2010-11	Not submitted
2	M/s CRM Systems Pvt. Ltd.	2010-11	Rs.36,192/-

18. On the basis of the details filed by the assessee, the Assessing Officer observed that the investor companies had shown only a nominal income as compared to investments made by them; no details were submitted in the case of Wizarad International Ltd. to prove the credit worthiness of the investor. On going through the assessee's balance sheet, it was noticed that the money received as share capital was passed on to other unlisted and non-descript companies. The AO found that the assessee was facilitating introduction by unaccounted money through its books of account. The modus operandi was noted, being, an entry operator operating a number of accounts in the same bank/branch or in different

branches in the name of companies/firms and individuals. He found that there was an elaborate network of transactions involved in the entry racket. These accounts, in the opinion of the Assessing Officer, were used for routing the money for providing accommodation entries. Coming to the facts of the case, the Assessing Officer observed that no reasonable person would invest an amount equal to 'twice its annual earning in an unknown company without getting any benefit in return.' Taking into consideration the human probabilities and the judgments of the Hon'ble Supreme Court in *CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)* and *Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)*, the Assessing Officer came to the conclusion that the assessee brought in its own unaccounted funds into the books through the medium of share capital and share premium to the tune of Rs.40 lac. The same was treated as unexplained and added to the assessee's total

income u/s 68 of the Act. However, the Id. CIT(A) deleted this addition, against which the Revenue has come up before us.

19. We have heard the rival submissions and perused the relevant material on record. It is observed that the Id. CIT(A) considered certain details as filed before the Assessing Officer and also certain fresh documents filed before him, which fact emerges from para 'B. Supporting Documents' on page 16 of the impugned order. The addition was deleted by noticing that no independent enquiry was conducted by the Assessing Officer despite the relevant details filed by the assessee. We are not convinced with the view canvassed by the Id. CIT(A) for the reason that he has himself recorded on page 16 of the impugned order that: 'However, certain other documents are also enclosed which form part of the departmental records or public documents.' We are unable to find any logic in the impugned order deleting the addition on the ground that no independent enquiry was conducted by the Assessing Officer,

when the Id. CIT(A) has himself recorded that certain fresh documents were also filed before him which were not there before the AO.

20. We have noticed above that the assessee was showing to have received share capital with a huge share premium and simultaneously passing it on to other unlisted companies. This practice is not confined only to the year under consideration, but can be seen in all the years argued before us starting from the A.Y. 2004-05. The Id. CIT(A) was swayed by certain documents filed by the assessee and deleted the addition. At the cost of repetition, we state that escape from section 68 can be made not only by showing the identity but also by simultaneously proving the capacity of the depositor and also the genuineness of transaction. All the three ingredients need to be simultaneously satisfied. Merely because a proper paper work has been done, it will not discharge the onus on the assessee under section 68 from further establishing the

genuineness of transaction. In this regard, the Id. DR has rightly relied on the judgment of the Hon'ble Delhi High Court in *CIT vs. Youth Construction Pvt. Ltd. (2013) 357 ITR 197 (Del)*, in which it has been held that the sole fact that share applicants had established their identity by filing confirmation letters and copies of their income-tax returns is not sufficient for the purpose of discharging credit worthiness of share applicants and genuineness of transactions. Similar view has been taken by the Hon'ble jurisdictional High Court in *CIT vs. Ultra Modern Exports Pvt. Ltd. (2013) 40 taxmann.com 458 (Del)*. In this case also, the Assessing Officer noticed that the assessee received share application money from nine applicants. Upon enquiry, five out of nine notices issued to share applicants u/s 133 (6) were returned unserved. Further material indicated that applicants had very meager income. The Assessing Officer invoked section 68 and made addition. The Tribunal, relying on documentary evidence such as PAN,

particulars of addresses, accounts and bank statements of share applicants, etc., came to hold that credit worthiness of share applicants was proved and resultantly, the addition was deleted. Setting aside the Tribunal order, the Hon'ble High Court held that the Tribunal fell into error in holding that the Assessing Officer could not have added back the amount u/s 68 of the Act. Similar view has been taken by the Hon'ble Delhi High Court in *Onassis Axles (P) Ltd. vs. (2014) 44 taxmann.com 408 (Del)*. Again, in *CIT vs. N R Portfolio Pvt. Ltd. (2013) 263 CTR 456 (Del)*, the assessee received share application money for which addition was made u/s 68. The addition was deleted on the ground of documentary evidence. Setting aside the Tribunal order, the Hon'ble High Court restored the addition. A detailed discussion has been made in this judgment laying down the duty of the assessee in establishing the genuineness of transaction. It has been laid down that mere furnishing the name, address, PAN and entries

in the Registrar of Companies, etc., do not lead to the discharge of onus u/s 68. The Hon'ble Delhi High court in *CIT vs. Jansampark Advertising and Marketing Pvt. Ltd. (2015) 375 ITR 373 (Del)* did not agree with the routing of transaction through banking channel as necessarily proving the credit worthiness of the parties or the genuineness of the transactions. This judgment clearly proves that the very fact that the transactions are routed through banking channel would not *per se* lend genuineness to the transaction. It has been further laid down in this case that if the Assessing Officer has not conducted proper enquiry, the addition cannot be deleted simply on the ground that the Assessing Officer failed to conduct enquiry. In such circumstances, a duty has been cast upon the appellate authorities to consider the evidence as to whether the addition was rightly called for or not. For similar proposition, the Id. DR has relied on certain other judgments in which the genuineness of transactions has not been accepted

merely on the basis of documents furnished by the assessee, whose reference is being skipped for avoiding repetition.

21. The Id. AR contended that all the necessary material was before the AO and if he failed to conduct proper inquiry, then no fault can be found with the Id. CIT(A) in deleting the addition. For this proposition, he relied on the judgment of the Hon'ble Delhi High Court in *CIT vs. Gangeshwari Metal (2014) 361 ITR 10 (Del)*. In our considered opinion, this judgment does not fully support the factual position obtaining in the instant case. We have noticed above that the assessee did not furnish complete information before the Assessing Officer. The Id. CIT(A) has categorically recorded this fact on page 16 of the impugned order. When complete information was not admittedly submitted before the Assessing Officer, how he could have proceeded to examine the genuineness of the depositors, is anybody's guess. In our considered opinion, the impugned order deleting the addition cannot be affirmed.

Considering the totality of facts and circumstances of the instant case, we are of the considered opinion that the ends of justice would meet adequately if the impugned order is set aside and the matter is restored to the file of Assessing Officer. We order accordingly and direct the *de novo* consideration of the issue at the Assessing Officer's end in respect of receipt of share capital and share premium amounting to Rs.40 lac.

22. In the result, the appeal is allowed for statistical purposes.

Order Pronounced in the open Court on 28.04.2017.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 28th April, 2017.

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ITA Nos.3429, 4709, 3424,3423, 2684, 4437,
4500&3980/Del/2013
ITA Nos.4206 & 999/Del/2014

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

NEW DELHI.