



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA no.4836/Mum./2011  
(Assessment Year : 2007-08)

Income Tax Officer  
Ward-7(2)(1), Mumbai

..... Appellant

v/s

M/s. Realvalue Realtors Pvt. Ltd.  
C-8, Dadaji Dhakji Building  
56/58, Garibdas Street  
Vadgadi, Mumbai 400 003  
PAN - AADCR1004K

..... Respondent

Cross Objection no.26/Mum./2014  
(Arising out of ITA no.4836/Mum./2011)  
(Assessment Year : 2007-08)

M/s. Realvalue Realtors Pvt. Ltd.  
C-8, Dadaji Dhakji Building  
56/58, Garibdas Street  
Vadgadi, Mumbai 400 003  
PAN - AADCR1004K

..... Cross Objector  
(Original Respondent)

v/s

Income Tax Officer  
Ward-7(2)(1), Mumbai

..... Respondent  
(Original Appellant)

Revenue by : Shri B.S. Bisht  
Assessee by : Shri Mishir Naniwadekar

Date of Hearing - 30.05.2016

Date of Order - 30.06.2016

**ORDER****PER SAKTIJIT DEY, J.M.**

The aforesaid appeal at the instance of the assessee is directed against the order dated 21<sup>st</sup> January 2011, passed by the learned Commissioner (Appeals)-13, Mumbai, for the assessment year 2007-08.

**ITA no.4836/Mum./2011**

The only effective ground raised by the Department is as under:-

*"On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in deleting the addition of ₹ 8,12,44,700, made by the Assessing Officer under section 68 of the Income Tax Act, 1961 for unexplained cash credit."*

2. Brief facts are, the assessee a company is engaged in the business of dealing in property as well as trading of shares and stocks. For the assessment year under consideration, assessee filed its return of income on 1<sup>st</sup> November 2007, declaring total income of ₹ 1,15,778. During the assessment proceedings, it was noticed by the Assessing Officer that in the relevant previous year, assessee has received an amount of ₹ 8,12,44,700, from one Shri Mushtaq Ahmed Vakil, as share application money. He also found that out of the amount received as share application money, assessee has allotted 24,21,788

shares to the person concerned at a face value of ₹ 1, and shown the balance amount of ₹ 7,88,22,912, as share premium. Thus, Shri Vakil, became 23.02% shareholder of the assessee company. When the Assessing Officer called upon the assessee to prove the genuineness of the share transactions by furnishing complete identity and creditworthiness of the shareholder along with other details like assessment jurisdiction, nature of business of the shareholder. As alleged by the Assessing Officer, assessee only explained of having received share application money through banking channel. He neither furnished address proof, identity proof of the shareholder nor creditworthiness was established. The Assessing Officer, therefore, proposed to treat the amount shown as share application money as unexplained cash credit and accordingly, issued a show cause notice to the assessee. In reply to the said show cause notice, the assessee in its letter dated 16<sup>th</sup> December 2009, furnished the certificate issued by J&K Bank Ltd., wherein the shareholder was having a NRI/NRO account from which the investment in share application money came. The Assessing Officer, however, did not find merit in the submissions of the assessee. He observed, bank certificates furnished by the assessee only proved the fact that the transaction was through banking channel and no further. The Assessing Officer relying upon certain case laws ultimately held that as the assessee failed to discharge its onus of establishing the genuineness of the share

transactions and the creditworthiness of the shareholder the amount credited towards share application money has to be treated as unexplained cash credit under section 68 of the Act. Accordingly, he added back the amount of ₹ 8,12,44,700, as income from other sources. Being aggrieved with the additions so made, assessee preferred an appeal before the learned Commissioner (Appeals).

3. In the course of appeal hearing before the learned Commissioner (Appeals), it was submitted by the assessee that the amount received towards share application money was from genuine and identified source, hence, cannot be treated as unexplained cash credit. To prove the identity of the share applicant Shri Vakil, the assessee produced photocopy of his passport and a net worth certificate issued by a Chartered Accountant. It was submitted by the assessee that all the remittances were from the NRO account held by Shri Vakil with J&K Bank Ltd., Srinagar, which has been certified by the bank as genuine and Know Your Customer (KYC) compliant. The assessee submitted, the Assessing Officer without bringing any material on record to establish that the transactions in the NRO account maintained with J&K Bank Ltd., by Shri Vakil are not genuine or were from undisclosed source, cannot treat the share application money as unexplained cash credit. It was submitted, in any case of the matter, since the assessee has explained the source of money having come from NRO account of

Vakil, it cannot be called upon to explain the source from which Shri Vakil has obtained the money. Further, it was submitted by the assessee out of the total share application money of ₹ 8,12,44,700 an amount of ₹ 5,18,44,700, was received in financial year 2005-06, relevant to assessment year 2007-08. Hence, under no circumstances, such amount can be treated as unexplained cash credit for the impugned assessment year. The learned Commissioner (Appeals), after considering the submissions of the assessee and on verifying the documentary evidences furnished before him called for a remand report from the Assessing Officer and after perusing the remand report of the Assessing Officer observed that out of the total share application money of ₹ 8,12,44,700, an amount of ₹ 5,18,44,700 was received in the assessment year 2006-07, hence, cannot be added in the impugned assessment year. He, therefore, directed the Assessing Officer to take necessary action, if required, in the assessment year 2006-07. As far as balance amount of ₹ 2.94 crore is concerned, he found that this amount was paid from NRO account of Shri Vakil, held in J&K Bank Ltd., which has been certificated by the Bank to be genuine and KYC compliant. He also observed that the Assessing Officer has not brought any adverse material to prove that the transactions relating to investment in share application money is not genuine. He also observed that identity of Shri Vakil, has been proved by the assessee by submitting photocopy of his passport. Therefore,

on an analysis of the aforesaid facts and circumstances, the learned Commissioner (Appeals) held that the addition made in the impugned assessment year under section 68 cannot be sustained. Being aggrieved, the Department is in appeal before us.

4. Learned Departmental Representative, more or less, relying upon the observations of the Assessing Officer submitted, the assessee having not established the creditworthiness of the share applicant Shri Vakil, the amount credited towards share application money was rightly treated as unexplained cash credit under section 68 of the Act. He submitted, only because the share application money was received by the assessee through banking channel it does not prove the genuineness of the transaction and the creditworthiness of the creditor. Learned Departmental Representative referring to the newly inserted proviso to section 68 of the Act, submitted, as per the said proviso, the burden is on the assessee to prove that investment towards share application money / share capital / share premium is from genuine sources.

5. Learned Authorised Representative on the other hand submitted, out of the total share application money of ₹ 8,12,44,700, an amount of ₹ 5,18,44,700, admittedly was not received during the impugned assessment year, hence, under no circumstances, such amount can be added in the impugned assessment year. As far as the balance amount

of ₹ 2.94 crore is concerned, learned Authorised Representative submitted, the amount has come from NRO account held by Shri Vakil, with J&K Bank Ltd., which is certified by the concerned bank as genuine and KYC compliant account. He further submitted, to prove the identity and creditworthiness of Shri Vakil, assessee has also submitted copy of passport and his net worth certificate from a Chartered Accountant. Thus, it was submitted the assessee having discharged its onus of proving the genuineness of the share application money no addition is called for. As far as the contention of the Department regarding application of proviso to section 68, learned Authorised Representative referring to the said proviso under section 68 of the Act, submitted, it will not apply to a non-resident. Thus, it was submitted by the learned Authorised Representative, the learned Commissioner (Appeals) was justified in deleting the addition made.

6. We have considered the submissions of the parties and perused the material available on record. Undisputedly, the assessee during the relevant previous year has shown receipt of ₹ 8,12,44,700, as share application money from Shri Mushtaq Ahmed Vakil, a non-resident Indian. As could be seen from the facts on record, out of the aforesaid amount received by the assessee, an amount of ₹ 3,33,44,700, was received on 6<sup>th</sup> September 2005 and another amount of ₹ 1,85,00,000, was received on 25<sup>th</sup> December 2005. Thus, the aforesaid amounts

aggregating to ₹ 5,18,44,700, was received by the assessee in financial year 2005–06 relevant to assessment year 2006–07. In fact, the aforesaid factual position has been accepted by the Assessing Officer in his remand report dated 16<sup>th</sup> September 2010, a copy of which was placed on record. Therefore, the amount of ₹ 5,18,44,700, under no circumstances, can be treated as unexplained cash credit of the assessee for the impugned assessment year and added back to its income. Therefore, to that extent, we agree with the learned Commissioner (Appeals) in deleting the addition of ₹ 5,18,44,700. However, as far as the balance amount of ₹ 2.94 crore, received by the assessee from Shri Vakil on 29<sup>th</sup> June 2006, there is no dispute that it was received during the impugned assessment year. Therefore, the assessee has to discharge the initial burden of proving the identity of the creditors, his creditworthiness and genuineness of transaction. To prove the aforesaid ingredients, the assessee had submitted certificates issued by J&K Bank Ltd., Srinagar, stating that the NRO account held by Shri Vakil, is KYC compliant and money was received by the assessee from that account. The assessee has further submitted the net worth certificate issued by a Chartered Accountant in case of Shri Vakil, copy of bank statement. However, none of these documents conclusively prove either the creditworthiness of Shri Vakil, or the genuineness of the transaction. Though, it may be a fact that the assessee received the amount of ₹ 2.94 crore from NRO account of

Shri Vakil, however, that itself does not prove the genuineness of the investment in share application money by Shri Vakil. As could be seen, in course of assessment proceedings, the assessee did not furnish enough evidence to prove the creditworthiness of Shri Vakil, and genuineness of the transaction. Even during the remand proceeding, though, the Assessing Officer had called for the income tax and wealth tax return copies of Shri Vakil, to ascertain his creditworthiness and had also requested the assessee to produce Shri Vakil, the assessee had neither produced Shri Vakil, nor submitted income tax or wealth tax return copies. On a perusal of balance sheet of the assessee as on 31<sup>st</sup> March 2007, a copy of which is at Page-69 of the paper book, it is noticed that out of the total fund of ₹ 8,95,74,203, available with the assessee, the major part came from the investment in share application made by Shri Vakil. Therefore, a heavy burden is cast upon the assessee to prove all the ingredients of the credit appearing in the name of Shri Vakil, in the books of the assessee by establishing the identity of the creditor, his creditworthiness as well as genuineness of the transaction. Though, the assessee had established the identity of Shri Vakil, however, the assessee has not established either the creditworthiness of Shri Vakil or the genuineness of the transaction by producing clinching evidences. The learned Commissioner (Appeals) merely going by the fact that the money has come from a KYC compliant NRO account has treated the transaction as genuine. In our

view, merely because the investment of ₹ 2.94 crore has come from a KYC compliant NRO account is not enough to prove either the genuineness of the transaction or creditworthiness of Shri Vakil. In our view, it is not fair on the part of the first appellate authority to put the entire onus on the Assessing Officer to prove that the transaction is not genuine or Shri Vakil has no creditworthiness. When the Assessing Officer in his remand report has clearly stated that the assessee neither submitted the documentary evidence called for nor produced Shri Vakil for examination to ascertain his creditworthiness as well as genuineness of the transaction, the Assessing Officer could not have accepted the transaction as genuine in the absence of proper evidence. In the aforesaid view of the matter, we are inclined to set aside the impugned order of the learned Commissioner (Appeals) and restore the matter back to the file of the Assessing Officer to examine the issue relating to genuineness of the investment made of ₹ 2.94 crore by Shri Vakil, in share application money of the assessee company and decide the issue after providing adequate opportunity of hearing to the assessee. The assessee is at liberty to furnish necessary evidences either documentary or by producing Shri Vakil, to prove the genuineness of the investment made by him and also his creditworthiness. Ground raised by the Department is partly allowed for statistical purposes.

7. In the result, Department's appeal is partly allowed for statistical purposes.

Cross Objection no. 26/MUM./2014

8. Learned Authorised Representative appearing for the assessee submitted before us that he did not wish to press this cross objection. Consequently, cross objections are dismissed as not pressed.

9. In the result, Department's appeal is partly allowed for statistical purposes and assessee's cross objection is dismissed.

Order pronounced in the open Court on 30.06.2016

**Sd/-**  
**RAMIT KOCHAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 30.06.2016**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai