IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACOUNTANT MEMBER

ITA No. 6099/Del/2013
Assessment Year: 2009-10

Income Tax Officer, Ward 15(2), Room No. 206-B, CR Building, IP Estate, New Delhi-02	vs.	M/s Rancure Investments Pvt Ltd. N-42, Budh Vihar, Pooth Kalan, Phase-I, Delhi-86 **(PAN: AAACR226-A]**
(APPELLANT)		**(RESPONDENT)**

Appellant by : Sh. F.R. Meena, Sr. DR
Respondent by : Sh. Raj Kumar, CA

ORDER

PER H.S. SIDHU, J.M.

01. This appeal is preferred by the Revenue against the order of the Ld. CIT(A)-XVIII, New Delhi vide order dated 16.8.2013 wherein he has deleted the addition of Rs. 5,20,00,000/- made by the AO to the returned income of the assessee by applying the provisions of Section 68 of the I.T. Act, 1961 for allotment of shares vide order dated 30.12.2011.

02. The Revenue has only raised the following two grounds both are with respect to the above subject matter which read as under:-

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made u/s. 68 of the Act amounting to Rs.

5,20,00,000/- without appreciating the fact that shares applicant companies did not possess financial capability and creditworthiness.

2. On the fact and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the findings of the AO coming out of enquiries conducted during the assessment proceedings regarding creditworthiness of the above share applicants.

03. The brief facts of the case are that the assessee is a Private Limited Company engaged in the business of providing finances. For the year under consideration, it filed its return of income on 29.9.2009 showing income of Rs. 14,58,068/-. During the course of assessment proceedings, it was found that Assessee has allotted shares to 17 share holders who were Private Limited Companies amounting to Rs. 5.20 crores divided between share capital of Rs. 1.30 crores and share premium of Rs. 3.90 crores. The total share allotted to the companies was equity share of Rs. 10/- each with a premium of Rs. 30 per share. During the course of assessment proceedings, assessee submitted confirmation of the Share Holders, their Bank Statements, the Income Tax Return of the Companies, Affidavit of the Companies and Form No. 2 being Return of Allotment filed with the Registrar of Companies for allotment of shares. Therefore, according to assessee, it has discharged initial onus cast upon him. However, the AO asked the assessee to produce the Directors of the Company which assessee did not responded. Therefore, the AO issued notice u/s. 133(6) to all 17

parties, which were replied by them to the AO by submitting confirmations, Income Tax Returns, Bank Statements, Balance Sheets and Certificate of Incorporation of those companies. However, the AO on scrutiny of the Bank accounts of the share holders noted that before the cheques issued for Share Application Money by the Companies, there is a deposit of cash in the bank account of the share holders and further the Annual Reports of these Companies was showing nominal income of Rs. 8,000/- to Rs. 10,000/- ranging up to few Lakhs of Rupees. Therefore, he doubted the creditworthiness of the Companies and genuineness of the transactions. The return of income was assessed u/s. 143(3) of the I.T. Act at Rs. 14,58,068/- to Rs. 5,34,58,068/- vide order dated 30.12.2011. The assessee challenged the order before the Ld. First Appellate Authority who deleted the addition and, therefore, the Revenue is in appeal before us.

04. Ld. DR submitted that the AO has made the addition as immediately before issuing of the cheques the money is deposited in the Bank Account of the shareholders and they are having very low income. He vehemently supported the order of the AO.

05. On the other hand, Ld. AR of the submitted that assessee received share capital + share premium of Rs. 5.20 crores during the year from 17 parties for which assessee furnished during assessment proceedings Bank statement of parties, Income tax returns of parties

, Confirmations , Form - 2 being Return of Allotment being filed to ROC and Affidavits of parties . He further submitted that AO issued notices u/s 133(6) to all 17 parties and notices stood served, positive replies received consisting of confirmation, ITR, Pan copy, Bank A/c statement, Balance Sheets, certificate of Incorporation, etc. he further submitted that as per the balance sheets, sufficient funds were available with the depositors. The AO called the bank statements of such third parties who had given the funds to such shareholders which funds were received by the assessee as share capital / premium. Such information was called for only in respect of six parties out of total 17 parties as per details on Pg. 4 of the AO, and that too in respect of part amount. From such bank statements, the AO held that cash was deposited in one bank account of some entity, then cheque was issued to second party, the said second party issued cheque to the shareholder and the shareholder issued the said amount to assessee as share capital / premium. ,. He referred to the Table on Pg. 4 of the Assessment order. He submitted that In appeal before CIT (A), additional evidences were given U/r 46A which included chart-showing availability of funds with such companies vis-a-vis investments and orders U/s 143(3) for such companies, thus showing the creditworthiness, which remained un-rebutted, by the AO during the course of remand proceedings. Hence, when notices U/s 133(6) stood served and were responded positively by the shareholders, wherein no discrepancy was pointed out, the onus of the assessee stands fully discharged. He therefore submitted that, on

the basis of enquiry done at asstt. stage as well as at appeal's stage, all the ingredients of sec. 68 stands fully satisfied. He further submitted that When there is no negative information on record, no notice U/s. 133 (6) received back un-served, all notices u/s. 133 (6) stood positively responded providing the requisite information(s), no discrepancy pointed out in such documents, the onus of the assessee stands discharged and there remains no cause for asking the assessee to produce the parties. Under these facts, non-production of director is at the Asstt. stage cannot be viewed adversely. He further submitted that The AO also never adventured, to directly call such parties. He further submitted that It is also not a case, where there is a finding or material to suggest that the money has come back to assessee. He further submitted that the information collected by the AO in respect of the source of the source is only for 6 parties out of total 17 parties and on the basis of 6 parties, claim for total 17 parties cannot be rejected. Further, the amount, as per the AO which was deposited in cash has been quantified by the AO only Rs.1,10,50,000/- while, the amount under consideration is Rs. 5,20,00,000/- The AO cannot take a adverse view for total Rs. 5,20,00,000/- . Hence, he submitted that There could not be any dispute that the source of the source of the 3rd 14th earlier stage cannot be examined and no adverse view for the same can be taken. *He further relied up on the decision of hon Delhi High court in CIT VS. VALUE CAPITAL SERVICES LTD. 307ITR 334 (DEL.) amongst other.*

06. We have carefully considered the rival contentions and also perused the orders of the revenue authorities. It is evident that assessee has submitted the confirmations, copies of Income Tax Returns, Bank Statements and Affidavit of all the parties, which are listed in Form No. 2, filed with the Registrar of Companies, before the AO, therefore, he has discharged initial burden cast upon the assessee, as per the provisions of Section 68 of the I.T. Act, 1961. As assessee has expressed its inability to produce the parties, the AO issued notice u/s. 133(6) to all the 17 shareholders who responded by confirming the transactions, therefore now it cannot be found fault with the assessee for non-production of the creditors. Ld. AO had two options of verifying the correctness of the claim of the assessee by exercising powers u/s 131 or 133(6) of the act and he has chosen provision of section 133(6) of the act, which is complied with by the creditors. The main reason for making the addition was that the shareholders have deposited cash in some other bank account , which have come to the depositors with banking channel, and then transferred to assessee. Therefore, the genuineness of the transactions was doubted. The assessee has produced before the Ld. CIT(A) a Chart showing the availability of funds with these companies and also these companies were assessed u/s. 143(3) of the I.T. Act. In view of this, Ld. CIT(A) has correctly held that merely because the cash was deposited in the bank account of the other parties/ shareholders date prior to the issue of cheque to the assessee company, it cannot be said that they are not creditworthy.

The creditworthiness neither gets enhanced nor gets reduced by the simple reason of depositing cash into the bank account before issue of cheques. In case of regular assesses who are assessed u/s. 143(3) of the I.T. Act, it is also not the case of the AO that cash was not available with these companies and, therefore, deposit made by these companies are not out of their own funds. In the absence of such finding backed with the evidence, we find no infirmity in the order of the Ld. CIT(A) with respect to his decision. Further, merely because those companies who are having income of Rs. 8,000/- to Rs. 10,000/- as per their returns of income and which goes up to few lacs of rupees, the AO had doubted the creditworthiness of these companies. However, when the assessee has submitted detailed Chart of funds available with these companies, it cannot be said not creditworthy merely because return of income shows small income. The creditworthiness is further governed by the amount of investments and the size of the balance sheets of those companies. In the present case, the assessee has shown that these companies were having capacity to deposit money with the appellant. In the present case, the AO has not pointed out any evidence which shows that amount invested by these companies were not owned by these companies and the money belong to the assessee. Needless to say that when the assessee has furnished the confirmations, Income Tax Returns, Bank Statements of Borrowers, it cannot be said, without brining into additional evidences which even remotely suggests that the transactions are ingenuine, ld. AO cannot

say that the amount invested by the depositors is income of the assessee under section 68 of the I.T. Act. Further, the LD DR could not point out before us and infirmity in the order of the ld CIT (A) in deleting the addition. Further, we also do not find any infirmity in the order of the Ld. CIT(A) in deleting the additions of Rs. 5.20 Crores with respect to 17 companies to whom the share were issued. In the result, both the grounds of appeal of the revenue are dismissed.

07. In the result, Appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 30/12/2016.

Sd/- **Sd/-**

(PRASHANT MAHARISHI) **(H.S. SIDHU)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 30/12/2016

SR BHATNAGAR

Copy forwarded to: -

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

TRUE COPY By Order,

ASSISTANT REGISTRAR