

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No. 148/Bang/2014
Assessment year : 2005-06

M/s. Davanam Constructions (P) Ltd., # 148, Surveyors Street, Basavangudi, Bangalore – 560 04. PAN: AABCD 3880H	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Zain Khan, C.A.
Respondent by	:	Shri Farahat Hussain Qureshi, CIT-II(DR)

Date of hearing	:	16.03.2015
Date of Pronouncement	:	20.03.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 13.11.2013 of the CIT(Appeals)-VI, Bangalore relating to assessment year 2005-06.

2. The assessee is a company engaged in the business of property development. Consequent to search u/s. 132 of the Act carried out in the case of assessee on 2.9.2010, assessments were framed u/s. 153A of the Act for the period specified in section 153A of the Act. A.Y. 2005-06 was also an assessment year falling within the period specified u/s. 153A.

3. In the course of assessment proceedings u/s. 153A for the A.Y. 2005-06, the Assessing Officer noticed that the assessee had received share application money from the following persons:-

Kempanna	Rs. 10 lakh
Suresh Chandra	Rs.10 lakhs
Vijay Kumar Gowda	<u>Rs. 5 lakhs</u>
Total	<u>Rs.25 lakhs</u>

4. Shri D.V. Harish, director of assessee company was examined u/s. 131 of the Act by the AO on 19.11.10. He was called upon to furnish details of aforesaid 3 parties from whom share application money was received by the assessee. Mr. Harish in his statement took a plea that one D.K. Kempegowda gave the money on the three names referred to above and that he did not no further details. The AO thereupon issued a show cause notice dated 28.2.2013 calling upon the assessee to furnish the following details:-

- (a) Address of the above parties
- (b) PAN No. of the above parties
- (c) Mode of receipt and date of receipt
- (d) Whether shares have been allotted subsequently, if so, furnish details of date of allotment and No. of shares.
- (e) If refunded subsequently, furnish details of date of repayment and mode of repayment.

5. The assessee furnished reply before the AO as follows:-

“As per statement u/s. 131 dated 19.11.2010 with regard to share application money received, Mr. Harish, Managing Director has stated that “share application money received in the names of

Kamalesh Kumar, Kempanna and Vijaykumar was arranged by Shri D.K. Kempegowda and therefore the details of source of money received from them are not known to him.” Consequently the liabilities lying in the books of the Company were transferred to Sri D.K. Kempegowda as the same were taken over by him. For your reference we are herewith enclosing the copy of ledger account of Sri D.K. Kempegowda for having transferred this amount to his ledger account. In this context considering it to be unexplained credit does not arise.”

6. The AO, however, was of the view that assessee failed to explain the credit in the books of account in the form of share application money. A notice u/s. 133(6) dated 4.3.2013 was also issued and served on D.K. Kempegowda calling for details of share application money. There was no response from Kempegowda to the aforesaid notice. In the facts and circumstances, the AO came to the conclusion that assessee's explanation that funds were given by Kempegowda will not absolve the obligation of assessee to prove the three ingredients u/s. 68 of the Act viz., identity of the share applicants, their credit worthiness and genuineness of the transaction.

7. Before the CIT(Appeals), the assessee filed a confirmation letter from D.K. Kempegowda, which reads as follows:-

“This is to confirm that share application money received by Sri D.V. Harish, Managing Director of Davanam Constructions Private Limited in the names of Kamalesh Kumar, Kempanna and Vijay Kumar Gowda was arranged by me and this liability which was lying in the books of Company was transferred to me as the same were taken over by me. For any reference I enclose herewith copy of my ledger account for having transferred this

amount. I am assessed to tax by DCIT CC(1)(2) Bangalore vide Pan No: AAEHP7332N.”

8. The assessee also produced the ledger account of D.K. Kempegowda in the books of assessee, wherein the assessee has recognized the credit of Rs.25 lakhs in the names of three share applicants as money of Kempegowda. Based on the above documents, the assessee pleaded before the CIT(A) that addition made by the AO should be deleted.

9. The CIT(Appeals), however, did not agree with the submissions made by the assessee and she held as follows:-

“ Under the facts of the case, I find that the share application money as claimed has been raised by the appellant company in names of Sri Kempanna Rs.10,00,000, Sri Suresh Chandra Rs.10,00,000 and Sri Vijaykumar Gowda Rs.5,00,000. The amount has been received in cash. The appellant company is required to explain the genuineness of the transaction claimed. No confirmation from the said party or any evidence of the sources of the amount has been furnished either before the Assessing Officer or before me during the course of appeal. Merely stating that these were arranged by one Sri D K Kempegowda and that the liability has been transferred to Sri D K Kempegowda does not in any way explain the source of credit in the hands of the appellant company. The addition made by the Assessing Officer under such facts and circumstances is in order and is upheld.”

10. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal.

11. We have heard the submissions of the Id. counsel for the assessee, who submitted that as far as assessee is concerned, it had discharged its onus by filing confirmation of Kempegowda and since Kempegowda has owned the transaction, the addition made by the AO should be deleted.

12. We have considered the submissions on behalf of the assessee and are of the view that the same is not acceptable. Admittedly, the original entries in the books of account of the assessee showed that share application money had been received from three persons, whose names have been set out in the earlier part of this order. Application for allotment of shares is required to be made before accepting share application money. Such an application would contain all the details of the person applying for the shares. Since the assessee had made entries in the books of account recognizing the three persons as having applied for allotment of shares in the assessee company, the assessee ought to have received applications for allotment of shares from the aforesaid three persons. The assessee, instead of furnishing details of three persons, has relied upon a declaration by one Shri D.K. Kempegowda, who claims to have arranged the three names and that he is taking over liability of the assessee for the aforesaid three persons. There is no basis on which this claim is made by Kempegowda. The contents of declaration given by Kempegowda is only a self-serving statement. Without the identity of three persons whose name appears in books of account of the assessee as share applicants and without their confirmation, it is not possible to accept the claim of

Kempegowda in his confirmation letter. As rightly held by the Id. CIT(Appeals), claim of Kempegowda that the liability has been transferred to him will not explain the identity of share applicants, their creditworthiness and genuineness of the transactions. In our view, the assessee has failed to discharge his onus u/s. 68 of the Act. The addition was rightly made by the AO and confirmed by the CIT(Appeals).

13. We find no merit in this appeal by the assessee and accordingly the same is dismissed.

Pronounced in the open court on this 20th day of March, 2015.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 20th March, 2015.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar/
Senior Private Secretary
ITAT, Bangalore.