

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SH. N. K. SAINI, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 2446/Del/2015
(Assessment Year: 2004-05)**

Pert Consultants Pvt. Ltd. A-12, Lajpat Nagar-II, New Delhi	Vs.	ITO, Ward- 14(2), New Delhi
PAN : AAACP5416E		
(Appellant)		(Respondent)

Appellant by : Ms.Sushil Wadhwa, CA
Respondent by : Sh. Rajesh Kumar, Sr.DR

Date of hearing : 18.05.2017
Date of pronouncement : 22.05.2017

ORDER

PER BEENA A. PILLAI, J.M :

1. The present appeal has been filed by assessee against order dated 18.02.2014 passed by Ld. CIT(A)-XVII, New Delhi for assessment year 2004-05 on following grounds of appeal:

1. *That having regards to the facts and circumstances of the case. Ld. CIT(A) has erred in law and on facts in confirming the action of Ld A.O in considering Rs 5,00,515/- credit in the appellant hooks as Share Application Moncv as "unexplained" and adding the same to the taxable income u/s. 68 of the Income Tax Act on account of lack of explanation.*
2. *That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in considering Rs 1,251/-*

(0.25% of 5,00,515/- as commission on receiving alleged accommodation entry) as "unexplained" and adding the same to the taxable income u/s 68 of the Income Tax Act

3. That the appellant craves the leave to add- modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

2. Brief facts of the case are as under:

Notice under 148 was issued by assessing officer on 28.03.2011 to assessee for the year under consideration at last address known as per records. Notice was sent by speed post and was also served upon the assessee. Before Ld. AO there was no compliance of notice under section 148 by assessee within prescribed time period. Accordingly Ld. AO passed order under section 144 read with section 147 by making addition on account of commission expenditure in the hands of assessee.

3. Aggrieved by order of Ld. AO, assessee preferred appeal before Ld. CIT(A).

4. Ld. CIT(A) observed that assessing officer had obtained information from State Bank of Bikaner & Jaipur in respect of M/s. S. J. Capital Ltd., for the period 01.04.2003 to 30.03.2004. The details from the bank revealed that assessee had received Rs. 5,00,515/- from M/s. S. J. Capital, on 14.07.2003. As no explanation about deposits into account of assessee was received by assessing officer. He, therefore, treated said amount as unexplained under section 68 of the

Act. During appellate proceedings assessee submitted that assessee had not received the said amount from M/s. S. J. Capital but had received Rs. 5 lakhs from M/s B.T. Technet Ltd. It was submitted that amount was paid by M/s. S. J Capital and on behalf of M/s B. T. Technet Ltd. In the light of above submission Ld. CIT(A) called for a report from Ld. AO and observed as under:

4.6. The report received from the AO was sent to the appellant for giving a reply. The appellant did not furnish a reply to the remand report. The appellant gave no further submissions. No reasons were given as to why M/s S. J. Capital Ltd., paid money to the appellant on behalf of M/s B.T. Technet Ltd. In fact no details have been given of the share holding of M/s B. T. Technet Ltd. No confirmations copies of bank amount, share allotment details etc were given.

4.7. The fact is that there was a credit in the account of the appellant. The amount was received from M/s. S.J. Capital Services Ltd. It may have been on behalf of some one else. The appellant was required to explain the source of deposit No explanation was given by the appellant about the nature and source of the deposit.*

4. Ld. CIT(A) by relying upon various jurisdictional High Court and Hon'ble Supreme Court decision, confirmed addition made by Ld. AO, as credit entries stood unexplained by assessee, thereby holding that assessee had not discharged initial onus, cast upon assessee by section 68 of proving identity, creditworthiness and most importantly genuineness of transaction.

5. Aggrieved by said order of Ld. CIT(A) assessee is in appeal before us now.

6. Ld. AR and Ld. Sr. DR has agreed for setting aside this issue to file of Ld. AO for *de novo* verification. We are accordingly setting aside this matter with direction to Ld. AO to examine credit entry in the bank account of assessee. Ld. AO shall first grant opportunity to assessee to discharge its initial onus by proving identity, creditworthiness and most importantly genuineness of transaction as per section 68 of the Act. After discharge of initial onus by assessee, Ld. AO may conduct any enquiry that he may deem fit and proper to inquire about veracity of evidences/information submitted by assessee in respect of credit entry. Ld. AO may take all necessary steps, in order to identify, examine creditors and decide issue on merits. Needless to say that, adequate opportunity may be granted to assessee to support its case. Accordingly, ground no. 1 & 2 raised by assessee stands allowed for statistical purposes.

7. Ground No. 3 is general in nature and therefore, does not require any interference.

In the result appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 22nd May, 2017.

Sd/-
(N. K. SAINI)
ACCOUNTANT MEMBER
Date: 22.05.2017
@m!t

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER