

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1433 OF 2014

The Commissioner of Income Tax-8 ... Appellant
V/s.
M/s. Orchid Industries Pvt. Ltd. ... Respondent

- Mr.Arvind Pinto for the Appellant.
- Dr.K. Shivram, Senior Counse, a/w. Ms.Neelam C. Jadhav for the Respondent.

**CORAM : S.V. GANGAPURWALA AND
A.M. BADAR, JJ.**

DATE : 5th JULY, 2017.

PER COURT :

1] The Revenue has filed the appeal on following questions;

6.3 *Whether on the facts and in the circumstances of the case and in law, orders of the Tribunal was perverse in deleting the addition of Rs.95,00,000/- made u/s. 68 of the Act, relying only on the documentary evidence produced by the Respondent Company while ignoring the key factor that these entities were not traceable at their given addresses.*

6.4 *Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in not appreciating the observations made by the Delhi High Court in*

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Nova Promoters and Finlease Pvt. Ltd. 18 Taxman.com 217 wherein the Court has observed that cases of this type cannot be decided only on the basis of documentary evidences above and there is need to take into account the surrounding circumstances.

6.5 The Tribunal ought to have taken note of the fact that the assessee was not able to produce even a single party before the AO despite agreeing before the CIT(A) that it will produce all parties before the AO during remand proceedings.”

2] Mr.Pinto, the learned counsel for the Assessee submits that the Assessing Officer upon considering all the facts had added Rs.95 lakhs as income under Section 68 of the Income Tax Act. It needs to be considered that the Assessee had not discharged its onus to establish that the amount was received by the Assessee from the share holders as share application money. The Assessee could not prove the identity of the creditors, their credit worthiness and the genuineness of the transactions. The party from whom the Assessee had received the share amount never responded to the summons issued by the Assessing Officer. The Assessing Officer has considered the said aspect and thereafter has added the amount under Section 68 of the Income Tax Act. According to the learned counsel, the

Tribunal only on the basis that documents are available has accepted the case of the Assessee. The Tribunal has failed to consider the circumstances and the facts which are relevant.

3] The learned counsel for the Assessee supports the order and submits that the Assessee had discharged its onus. The Assessee had produced the PAN of all the creditors along with the confirmation, Bank Statement showing payment of share application money and relevant record is produced with regard to the allotment of shares to those parties. The share application form, allotment letter, share certificate are also produced. Even the balance-sheet, profit and loss account, the books of account of these creditors were produced on record showing that they had sufficient funds for investing in the shares of the Assessee. The learned counsel relies on the judgment of the Division Bench of this Court in case of *Commissioner of Income Tax vs. Gagandeep Infrastructure (P.) Ltd., reported in [2017] 80 Taxmann 272 (Bombay)* and the order of the Apex Court in case of *Commissioner of Income Tax vs. Lovely Exports (P.) Ltd., reported in [2008] 216 CTR 195 (SC)*.

4] We have considered the submissions.

5] The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

6] The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these

