

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 5637/Del/2013
(Assessment Year: 2004-05)**

Rajat Exports Import (India) Pvt. Ltd., A-134, Arjun Nagar, Kotla Mubarakpur, New Delhi. AAACR0366B	vs	ITO Ward 15(2), New Delhi
APPELLANT		RESPONDENT

Assessee by	Sh. P.C. Yadav, Adv.
Revenue by	Sh. Surender Pal, Sr. DR

Date of Hearing	12.09.2018
Date of Pronouncement	01.10.2018

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(A)-XVIII, New Delhi dated 02.09.2013 for A.Y. 2004-05.

2. We have heard Ld. Representatives of both the parties and perused the material on record.

3. Ld. Counsel for the assessee did not press ground nos. 1 & 2 of the appeal, the same are dismissed as not pressed.

4. On ground nos. 3 & 4, assessee challenged the addition of Rs. 35 lakhs as income from undisclosed sources u/s 68 of the Income Tax Act, 1961 and on ground no. 5 challenged the addition of Rs. 1,04,156/- on account of disallowance of expenses.

5. It may be noted here that earlier appeal of the assessee was dismissed for default which is restored by allowing miscellaneous application of the assessee.

6. The AO noted that as per the details filed by the assessee and as per information received from DIT(Inv.) the assessee had received following sum from the following companies on account of share application money: -

- i. Hopewin Admark & Consultancy Services P. Ltd. = Rs. 4,00,000/-
- ii. Shivam Softech Ltd. = Rs. 3,00,000/-

6.1 As per information received from DIT(Inv.) that the DIT(Inv.) during the course of investigation in the case of Mukesh Gupta group along with its close confidants Shri Rajan Jassal and Shri

Surinder Pal Singh found that the group had operated multiple accounts in various branches to plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc. in the form of gifts, share application money, loans, etc. The investigation discovered that the assessee who has unaccounted money wants to take the same in his books of accounts without paying tax through entry operator on commission. It was also noticed during assessment proceedings, the assessee had received share application money from other companies that are also mentioned in the said report as entry providers/conduits as under:

1. Durable Sales Pvt. Ltd.	Rs. 3,00,000/-
2. Maa Shakumbari Stone Crushers Pvt. Ltd.	Rs. 4,00,000/-
3. Suvan Agro Enterprise P. Ltd.	Rs. 3,00,000/-
4. Suma Finance & Investment Ltd.	Rs. 15,00,000/-
5. Topchem (India) P. Ltd.	Rs. 3,00,000/-

7. In order to prove the genuineness of the credit of Rs. 35 lakhs as share application money, assessee was required to produce the Directors of these Companies from whom share application money was received. The assessee filed copy of

application for allotment of shares, copy of confirmation mentioning the details of cheque through which payment was made, copy of the return filed in support of share application money received. However, the assessee did not produce the Directors of these Companies. Further, the assessee asked for copies of the seized material/documents which were relied on and also sought an opportunity to cross-examine Shri Mukesh Gupta, Shri Rajan Jassal and Shri Surinder Pal Singh for rebuttal of the allegation that the said parties have provided accommodation entries to the assessee company. The assessee was provided with the copies of the statement recorded before DIT(Inv.) of Shri Vishal Aggarwal and Ms. Manju Aggarwal who apparently are also Directors of the Companies from whom assessee has received share application money. The assessee relied upon decision of Delhi High Court in the case of CIT vs. Dwarkadhish Investment (P) Ltd. 194 Taxman 43 and sought their cross examination. The AO noted that the investigation wing made inquiries from the person from whom assessee has received the amounts and it was found that they are engaged in providing accommodation entries. AO also noted that cash was deposited in the accounts of related

persons for the purpose of operating bank accounts. These persons have obtained PAN no. and filing return of income. AO noted that no evidence for allotment of shares like Form No. 2 has been provided and that Directors of the Company are not produced for examination. The AO, therefore, made addition u/s 68 of the Act in a sum of Rs. 35 lakhs.

8. The AO also noted that assessee had claimed expenses of Rs. 1,24,563/-. There is no income other than interest received on FDR of Rs. 2,96,943/-, which is to be taxed under the head "Income from Other Sources". Therefore, the expenses claimed by the assessee have been disallowed.

9. Assessee challenged both the additions before Ld. CIT(A). However, both the additions are confirmed and appeal of assessee has been dismissed.

10. We have considered the rival submissions and perused the material available on record.

11. On ground no. 5, assessee challenged the addition of Rs. 1,04,516/-. The AO noted that assessee has only income from

FDR which is taxed under the head "Income from Other Sources". Therefore, expenses were not allowed. The Ld. CIT (A) on the same reason dismissed the appeal of the assessee. During the course of arguments, Ld. Counsel for the assessee did not point out any infirmity in the orders of the authorities below. Since, income is earned under the head "Income from Other Sources". Therefore, assessee shall have to prove that expenses have been incurred on account of earning of interest on FDR. However, no evidences have been produced by the assessee before the authorities below. Even no arguments are made before us. Therefore, ground no. 5 of appeal of the assessee is dismissed.

12. As regards, ground no. 3 and 4 of appeal on the addition of Rs. 35 lakhs u/s 68 of the Act, the assessee produced sufficient documentary evidences before the authorities below like share application form received from investors, bank statements, confirmation of share subscribers, ROC master data for establishing that companies are active and Income tax details of the investors with Balance Sheet. All the transactions are routed through banking channel. Copies of such documents are filed in

the paper book at pages 20 to 117. There is no cash deposit in the accounts of the investors. The balance sheet of the investors shows they are having sufficient means to make investments in assessee company. The AO did not make any adverse comment on the documents so produced by the assessee. The AO disbelieve the explanation of the assessee because no evidence for allotment of shares like Form No. 2 was provided during assessment proceedings. Ld. Counsel for the assessee, however, referred to the replies filed before the AO, PB-118, 120 & 121 to prove that all the documents were provided before AO. Copy of Form No. 2 i.e. ROC return filed before the ROC declaring the allotment of shares on 28.05.2004 is filed at pages 123 to 125 of the PB. The assessee has given certificate in the PB that these documents were filed before AO and CIT(A). The certificate is not rebutted by the Department. Therefore, the observations of the AO are incorrect that no such documents were produced before AO. Ld. Counsel for the assessee relied upon decision of High Court of Bombay at Goa in the case of The Principal Commissioner of Income vs. M/s Paradise Inland Shipping Pvt. Ltd. in ITA No. 66/2016 dated 10.04.2017 in which in para 9 it was held as under:

“9. This Court in the Judgments relied upon by the Ld. Counsel appearing for the Respondents, have come to the conclusion that once the assessee has produced documentary evidence to establish the existence of such Companies, the burden would shift on the Revenue-Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subjected to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons, would not at all be justified. The Assessing Officer, if he so desired, ought to have allowed the assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents.”

13. Ld. Counsel for the assessee also relied upon order of ITAT Delhi ‘G’ Bench dated 17.04.2017 in the case of Prabhatam Investment Pvt. Ltd. vs. ACIT, etc. in which in similar circumstances addition on merit have been deleted. The AO did not make any efforts to prove that the documents filed by the assessee were untrustworthy. It appears to be the suspicion of the AO to make addition against the assessee without making further investigation in the matter. The AO did not prove that even if, the share applicants did not have the means to make the investment,

the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as undisclosed income of assessee. Thus, no addition could be sustained against the assessee. In support of our findings, we rely upon following decisions:

- i. CIT vs. Fair Investment Ltd. 357 ITR 146;
- ii. CIT vs. Kamdhenu Steel and Alloys Ltd. & Ors., 361 ITR 220 (Del.);
- iii. CIT vs. Peoples General Hospital Ltd. 356 ITR 65 (MP);
- iv. CIT vs. Dwarakadhish Capital Pvt. Ltd. 330 ITR 298 (Del.);
- v. CIT vs. Winstral Petrochemicals P. Ltd. 330 ITR 603;
- vi. CIT vs. Value Capital Services Pvt. Ltd. 307 ITR 334 (Del.).

14. Hon'ble Delhi High Court in the case of Divine Leasing & Finance Ltd. 299 ITR 268 held that "no adverse inference should be drawn, if shareholders failed to respond to the notice issued by the AO".

15. The AO noted in the assessment order that the DIT (Inv.) in the course of investigation in the case of Shri Mukesh Gupta, Shri Rajan Jassal and Shri Surinder Pal Singh recorded their statements. The assessee was supplied with the seized material at

the fag end of the assessment proceedings and assessee sought opportunity to cross examine these persons for rebuttal of the allegation. Similarly, assessee was provided with the copies of the statement recorded by the DIT(Inv.) of Shri Vishal Agrawal and Ms. Manju Agrawal, who are apparently also Directors of the Companies from whom the assessee has received share application money, the assessee again sought their cross examination. However, the AO did not provide any opportunity to the assessee to cross examine these persons on behalf of assessee to find out the truth. Therefore, such statements cannot be read in evidence against the assessee. We rely upon decision of the Supreme Court in the case of Kishanchand Chelaram 125 ITR 713 (SC) and of Bombay High Court in case of Paradise Inland Shipping Pvt. Ltd. (supra). Since, according to the AO some of the Directors of the Investor Companies were examined by the DIT(Inv.) and their statements were relied upon by AO at assessment stage, which were not subjected to cross examination on behalf of the assessee, therefore, no adverse inference should be drawn against the assessee. Ld. DR relied upon the decision of Delhi High Court in the case of M/s Nova Promoters and Finlease

Pvt. Ltd. 342 ITR 169 and decision of Delhi High Court in the case of Jansampark Advertising and Marketing Ltd. 375 ITR 373 and contended that if AO has not done proper enquiry in the matter, matter may be remanded to the CIT(A). However, considering the facts of the case and in the light of the above discussion, it is clear that the initial burden upon the assessee to prove identity of the investors, their creditworthiness and genuineness of the transaction have been discharged by the assessee. AO thereafter, did nothing in the matter, therefore, no addition could be made against the assessee. Therefore, in our view, it is not a fit case to remand matter to the CIT(A). We are, therefore, of the view that assessee proved identity of the investors, their creditworthiness and genuineness of the transaction in the matter. Therefore, no addition could be made against the assessee. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs. 35 lakhs. Ground nos. 3 & 4 of the appeal of assessee are allowed.

16. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 01.10.2018

Sd/-

(L.P. SAHU)

ACCOUNTANT MEMBER

Dated: 01.10.2018

*Kavita Arora

Sd/-

(BHAVNESH SAINI)

JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	24.09.2018
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	01.10.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	01.10.2018
Date on which the fair order comes back to the Sr. PS/PS	01.10.2018
Date on which the final order is uploaded on the website of ITAT	01.10.2018
Date on which the file goes to the Bench Clerk	01.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

