

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.453/Del./2016
Assessment Year 2012-2013

The ACIT, Central Circle-17, Room No.101, Hall No.1, 1 st Floor, ARA Centre, E-2, Jhandewalan.New Delhi.	vs.,	M/s. TRN Energy Pvt. Ltd., 18, Vasant Enclave, Rao Tula Ram Marg, Vasant Vihar, New Delhi. PAN AACCT7295B
(Appellant)		(Respondent)

C.O.No.96/Del./2016
Arising out of
ITA.No.453/Del./2016
Assessment Year 2012-2013

M/s. TRN Energy Pvt. Ltd., 18, Vasant Enclave, Rao Tula Ram Marg, Vasant Vihar, New Delhi. PAN AACCT7295B	vs.,	The ACIT, Central Circle-17, Room No.101, Hall No.1, 1 st Floor, ARA Centre, E-2, Jhandewalan.New Delhi.
(Cross Objector)		(Respondent)

For Revenue :	Ms. Rachna Singh, CIT-D.R.
For Cross-Objector :	Shri Sajjan Kumar Tulsian, Advocate Ms. Nisha Rachh, C.A., Shri Karan Kumar, C.A.

Date of Hearing :	07.12.2017
Date of Pronouncement :	01.01.2018

ORDER

PER BHAVNESH SAINI, J.M.

The Departmental appeal as well as cross objections by Assessee are directed against the order of the Ld. CIT(A)-27, New Delhi, dated 09.11.2015, for the A.Y. 2012-2013.

2. Search and seizure and survey operation under section 132/133A of the I.T. Act was conducted on 12th April, 2012 in the case of the assessee-company along with other group cases of Aryan Group at various residential and business premises. The assessee-company filed return of income declaring loss of Rs.2,75,807. The A.O. issued notices under section 143(2) and 142(1) of the I.T. Act. The A.O. observed that during the year under consideration, the assessee-company has received fresh share application money of Rs.10,63,50,000 from M/s. Jaisri Properties Exports Pvt. Ltd., The assessee was asked to furnish evidence in support of the genuineness of the share application money. The assessee in support of the genuineness of the share application received from the Investor Company, filed name of the party, address, PAN, bank statement, confirmation of the Investor and ITR of the Investor for the year under

consideration. The A.O. further noted that audited accounts of the investor was not filed. The A.O. noted from the bank statement of the party, mostly for the date of transaction and a day or two prior to the date of transaction, there are high value transactions in those bank statement. There are numerous credits appearing in the bank account. The Investor filed return of income at Rs.2,80,610. Therefore, financial capacity is not proved. In the absence of balance sheet, source of the credit entry was not proved. A.O, therefore, was of the view that creditworthiness of the Investor Company has not been proved. Mere production of the documentary evidence would not prove the genuineness of the transaction in the matter. The A.O. accordingly, treated the share application money as unexplained and made the addition.

3. The assessee challenged the addition of Rs.10,63,50,000 before the Ld. CIT(A). The submissions of the assessee-company are reproduced in the appellate order in which the assessee-company reiterated the submissions made before the Assessing Officer. It was briefly explained that A.O. noted that there are high value transactions conducted by the Investor but there were no cash

deposits to prove that in the bank account of the Investor that may lead to suspicion. The observation of the A.O. are incorrect that there were negligible balance in the account of the investor. The financial capacity of the investor is very sound because in assessment year under appeal, the Investor Company was having share capital and reserve and surplus of Rs.40,18,26,586. The assessee-company has provided balance sheet of the Investor Company. Further, the data is available in public domain of the Registrar of Companies. Once assessee-company filed complete details before A.O, then initial onus upon assessee-company has been discharged to prove the identity of the Investor, its creditworthiness and genuineness of the transaction in the matter.

4. The assessee-company relied upon several decisions in support of the contention that it has received genuine share application money. The Ld. CIT(A) considering the material on record in the light of various decisions, deleted the addition and allowed the appeal of assessee-company. His findings in paras 8 and 9 of the order are reproduced as under :

“8. Findings :

I have considered the written submissions of the appellant, case laws and have gone through the assessment order passed u/s 143(3) r.w.s. 153A of the Act. I have also examined the submissions of the ARs w.r.t the assessment records that were requisitioned from the AO. The Appellant had received share application money of Rs. 10,63,50,000/-. The AO has treated the entire amount of Rs. 10,63,50,000/- u/s 68 of the IT Act . He has made this addition due to reason of non submission of Audited accounts of the party for the year under consideration. In the absence of availability of audited accounts the credit worthiness of the Investors could not be said to be established. The Appellant has failed to explain the “Source” of the “Source”. And that all the above Investors were based in Kolkata.

8.1. There is no doubt that the initial burden/onus of proving the identity, creditworthiness and genuineness of a transaction rest with the Appellant. Once the Appellant discharges this obligation, the onus to examine the transaction, shifts to the AO.

8.2. *In the instant case, the Appellant had proved the identity, creditworthiness and genuineness of share applicants, by submitting their Name, Address, PAN, Bank Statements and Balance Confirmations and ITR acknowledgements. The Appellant is not expected to keep the audited balance sheets of third parties in its possession.*

8.3. *It is seen that A.O. had called upon the Appellant to provide “assessment particulars” of investors vide questionnaire dated 21.01.2015. The Appellant had duly provided the assessment particulars. In fact, the Appellant had even provided the ITRs of investor.*

8.4. *The investor is assessee and moreover it is a corporate entity. The information including balance sheets and audited accounts are available in public domain on the portals of Registrar of Companies/ Ministry of Corporate Affairs. Thus, non-submission of audited accounts of Investors companies cannot be held as a valid ground for making additions u/s 68.*

8.5. *The amendment to sec. 68 requiring the Appellant to explain the “Source” of the “Source” came into effect from A.Y. 2013-14. The same cannot be applied retrospectively in A.Y. 2007-08.*

8.6. *There is no doubt that the department has come across several cases where Kolkata based companies have been identified as indulging into providing accommodation entries. However, the AO needs to look beyond the place of domicile of a company to draw an inference that the company is not genuine.*

8.7. *The Appellant has placed reliance on several judicial pronouncements including those from the Apex court as well as the jurisdictional High Court. Respectfully following the judicial pronouncements of jurisdictional High Court and keeping in view the facts of the case, the addition of Rs.10,63,50,000/- stands deleted. This ground of appeal is allowed.*

9. *In the result, the appeal is allowed.”*

5. The Ld. D.R. relied upon the order of the A.O. and also filed written submissions and submitted that mere filing of income tax details are not enough to prove genuineness of the cash credits. Merely because transactions are conducted through banking channel is no ground to delete the addition. The Ld. D.R. relied upon the following decisions.

- (i) CIT vs. Independent Media (P) Ltd., (2012) 25 taxmann.com 276.
- (ii) CIT vs. Nipun Builders & Developers (P.) Ltd., (2013) 30 taxmann.com 292.
- (iii) CIT vs. Ultra Modern Exports (P.) Ltd., (2013) 40 taxmann.com 458.
- (iv) CIT vs. Empire Builtech (P.) Ltd., (2014) 366 ITR 110.
- (v) CIT vs. Focus Exports (P.) Ltd., (2014) 51 taxmann.com 46.

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee-company filed complete details before A.O. as well as filed balance sheet of the Investor Company which was examined by the Ld. CIT(A) also. The transaction was conducted through banking channel. There were no adverse material found

during the course of search to prove that share application money was bogus. A.O. did not make any enquiry on the documents filed by assessee-company and even did not ask for production of the Investor. The Learned Counsel for the Assessee relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation Pvt. Ltd., 159 ITR 78 and other decisions in the written submissions.

7. We have considered the rival contentions and perused the material on record. In this case, the assessment under section 143(3) have been passed on scrutiny assessment. The A.O. from the books of account of the assessee-company found that assessee-company has received fresh share application money of the impugned amount from M/s. Jaisri Properties Exports Pvt. Ltd., The A.O. asked the assessee-company to prove the genuineness of the transaction in the matter with supporting documentary evidence. The assessee-company filed confirmation of the Investor Company along with its particulars, bank statement and copy of the income tax return filed with the Department. The A.O. noted that there were high value transactions conducted by the Investor Company. The Investor

Company has filed return of income at Rs.2,80,610 and copy of the balance sheet is not filed. The assessee-company has filed copy of the balance sheet before the authorities below. Copy of the same is also filed in the paper book. Page-53 of the paper book is balance sheet of the Investor Company to show that it has total capital of Rs.40,18,20,586 which was more than enough to make investment in share application money with the assessee-company. Thus, the objections of the A.O. have been clearly met by the assessee-company. It may also be noted that the A.O. did not dispute the identity of the Investor Company and merely on account of low income declared by the Investor Company was of the view that its creditworthiness is not explained. The A.O. on the one hand has mentioned in the assessment order that bank account of the Investor Company reveal that there are high value transactions carried out through the Bank. Therefore, creditworthiness of the Investor Company should not have been doubted. The assessee-company produced sufficient evidence before A.O. to discharge the initial onus upon it to prove the identity, creditworthiness and genuineness of the transaction in the matter. Further, the A.O. did not make any

investigation on the documentary evidences filed by the assessee-company. The A.O. did not ask for the production of the Investor Company for examination under section 131 of the I.T. Act. No enquiry have been made directly or indirectly by the A.O. on the documents filed by the assessee-company at the assessment stage. No adverse material was found during the course of search to prove that share application money received by the assessee-company was bogus or was an arranged affair of the assessee-company. We may refer to following decisions in support of our findings.

7.1. Decision of the Hon'ble Supreme Court CIT vs Lovely Exports P.Ltd. [2008] 216 CTR 0195 in which it was held as under :

“If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company.”

7.2. Decision of Delhi High Court in the case of CIT vs Kamdhenu Steel & Alloys Ltd. & Ors. 361 ITR 0220 (Delhi) in which it was held as under :

“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”

7.3. Judgment of Hon’ble Delhi High Court in the case of CIT vs Vrindavan Farms P.Ltd. etc. in ITA No.71/2015 dated 12.08.2015 (Delhi) in which it was held as under :

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the

documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High Court.

7.4. Decision of Hon'ble Delhi High Court in the case of CIT vs. Laxman Industrial Resources Pvt. Ltd., ITA.No.169 of 2017 dated 14th March, 2017, in which it was held as under :

“The CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon'ble Apex Court in the case of Lovely Exports Pvt.Ltd. (supra) and judgement of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008] 299 ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon'ble High Court in view of the above findings noted that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance

sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.

7.5. Decision of Hon'ble Supreme Court in the case of Earthmetal Electrical Pvt. Ltd., vs. CIT dated 30th July, 2010 in SLP.No.21073 of 1999, in which it was held as under :

“We have examined the position, we find that the shareholders are genuine parties. They are not bogus and fictitious therefore, the impugned order is set aside.”

7.6. Decision of Hon'ble Delhi High Court in the case of CIT vs. Divine Leasing & Finance Ltd., 299 ITR 268, in which it was held as under :

“No adverse inference should be drawn if shareholders failed to respond to the notice by A.O. “

7.7. Decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs. Peoples General Hospital Ltd., (2013) 356 ITR 65, in which it was held as under :

“Dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking

channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted. CIT v. LOVELY EXPORTS P. LTD. [2009] 319ITR (St.) 5 (SC) applied.”

- 7.8. Decision of Hon'ble Delhi High Court in the case of CIT vs.
- (i) Dwarakadhish Investment P. Ltd., (ITA.No. 911 of 2010) and (ii)

Dwarkadhish Capital P. Ltd., (ITA.No.913 of 2010) (2011) 330 ITR 298 (Del.) (HC), in which it was held as under :

“In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The

Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified.”

7.9. Decision of Hon'ble Delhi High Court in the case of CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603, in which it was held as under :

“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee.”

7.10. Decision of Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) (HC), in which it was held as under :

“Dismissing the appeal, that the additional burden was on the Department to show 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 the undisclosed income of the assessee. No substantial question of law arose.”

8. Considering the facts of the case in the light of material on record, it is clear that assessee-company produced sufficient documentary evidence before A.O. to prove the ingredients of Section 68 of the I.T. Act. The A.O. however, did not make any further enquiry on the documents filed by the assessee-company. The A.O. thus, failed to conduct any enquiry and scrutiny of the documents at assessment stage and merely suspected the transaction between the Investor Company and assessee-company because the Investor Company was from Kolkata. The A.O. thus, did not perform his duties at the assessment stage so as to make addition against the assessee-company. No cash was found deposited in the account of the Investor. Therefore, the totality of the facts and circumstances clearly prove that assessee-company discharged initial onus to prove

identity of the Investor Company, its creditworthiness and genuineness of the transaction in the matter. The Ld. CIT(A) on proper appreciation of the evidence before him correctly deleted the addition. No interference is called for in the matter. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue in view of the fact that no enquiry have been conducted by the A.O. in this case to dispute the documentary evidence filed by the assessee-company. The Departmental appeal has no merit and is accordingly dismissed.

9. Learned Counsel for the Assessee submitted that the cross objection is filed in support of the order of the Ld. CIT(A). Therefore, the cross objection is dismissed.

10. In the result, appeal of the Department as well as cross objection of the Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 1st January, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

//By Order//

ASST. REGISTRAR : ITAT :
DELHI BENCHES : DELHI.