

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'D', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 25/Del/2014

AY: 2009-10

ITO, Ward 18(4) New Delhi	Vs.	M/s Yadu Steels & Power Pvt.Ltd. 503, 5 th floor DDA building District Centre Laxmi Nagar Delhi 110 092 PAN: AAACY2843G
(Appellant)		(Respondent)

Revenue by : Smt. Naina Soin Kapil, Sr.D.R.

Assessee by : None

Date of Hearing : 28/01/2019

Date of Pronouncement: 12/02/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 30/10/13 passed by Ld.CIT(A)-21 for Assessment Year 2009-10 on following grounds of appeal:

- (i) *"The Ld. CIT(A) erred in deleting the addition of Rs.3,52,50,000/- disallowed by AO on account of share application money received, without appreciating that the assessee company has failed to submit confirmations from the said parties during the course of assessment proceedings. CIT(A) erred in ignoring the decision of Hon'ble High Court of Delhi in the case of Nova Promoters and Finlease Pvt. Ltd. and in the latest judgment in the case of CIT vs N.R. Portfolio Pvt. Ltd. respectively, the*

jurisdiction High Court have decide the same issue in favour of revenue."

(ii) *"The appellant craves, leaveor reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

2. Brief facts of the case are as under.

Assessee filed its return of income on 15/12/09 declaring 'nil' income. Case was processed under section 143(1) of I.T. Act, 1961 (the Act) and was selected for scrutiny. Accordingly notice under section 143 (2) of the Act was issued. Ld. AO recorded none appeared on behalf of assessee, and therefore penalty under section 271(1)(b) of the Act for non-compliance has been issued. He further records that, representative attended later on, and submitted audited balance sheet and profit and loss account of assessee, without there being power of attorney from assessee. Ld. AO observed from balance sheet filed that assessee received share application money of Rs.3,52,50,000/-during year, which was forwarded to sister concern by name M/s. Anjani Steels Ltd., as share application money. In view of these facts assessee was called upon to file documentary evidences of share application money received. As none appeared, Ld.AO requisitioned from Punjab National Bank, Civil Lines, Allahabad Bank statement of assessee which showed several cash deposits of Rs. 1 lakh, a copy of which has been reproduced in assessment order. Summons under section 131 of the Act was issued to Directors of assessee in order to verify the credit entries for which there was no compliance. Considering callous approach of assessee and its Directors due to non-compliance of statutory notices, Ld. AO opted to pass ex parte order. He thus

made addition by observing that assessee received share application money from 352 shareholders amounting to Rs.3.52 crores, but company Master detail on ROC web site revealed Authorised Share Capital to be Rs.2.50 crores. As none on behalf of assessee came forward to explain the credit entries Ld.AO made addition amounting to Rs.3.52 crores in hands of assessee as income from undisclosed sources.

3. Aggrieved by order of Ld. AO assessee preferred appeal before Ld. CIT (A) who deleted the addition.

4. Aggrieved by order of Ld. CIT (A) revenue is in appeal before us now.

5. At outset none appeared on behalf of assessee. Looking into fact that this appeal has been kept pending since 2014, same is taken up for adjudication.

6. Ld. Sr.DR placed reliance upon orders of Ld.AO and submitted that assessee failed to discharge its onus of explaining entries in bank statements which showed several cash deposits. She submitted that specific queries were raised by Ld.AO calling for details of persons from whom alleged share application money has been received by assessee, and assessee has been vide various notices, called upon to establish their identities, creditworthiness and most importantly genuineness of transaction. It is submitted by her, before Ld.CIT(A) assessee filed details like ration card, voter ID card, licenses etc. which was accepted by Ld.CIT (A) without making proper verification. She thus submitted that addition deserves to be confirmed, as

requirement of section 68 of the Act has not been complied with by assessee.

7. We have perused submissions advanced by Ld. Sr.DR in light of records placed before us.

8. We are in agreement with contentions of Ld.Sr.DR. Under Section 68 onus is upon assessee to prove three ingredients, i.e., identity and creditworthiness of credit entries. As to how onus can be discharged would depend on facts and circumstances of each case. It is expected of both sides - assessee and Ld.AO, to adopt reasonable approach. Assessee before us is a private limited company. It cannot issue shares in manner in which a public limited company does. It generally depend on persons known to its directors or shareholders directly or indirectly to buy its shares. Once monies are received and shares are issued, it is not as if share-subscribers and assessee lose touch with each other and become *incommunicado*. Onus thus is upon assessee to prove identity, creditworthiness of subscribers and most importantly genuineness of transactions under section 68.

9. Ld.AO has recorded that balance sheet reveals receipt of share application money by assessee amounting to Rs.3,52,50,000/- during year, which was forwarded to its sister concern M/s Anjani Steels Ltd as share application money. The alleged share-subscribers invested in cash. Ld.AO served notice to directors of assessee under section 131 but there was no compliance in respect of same. Ld.AO due to non-compliance carried out his own search with the ROC and from the company master detail it is observed that as on the date of investigation share application money of assessee was Rs.2.5 crores as and

paid-up capital was Rs.1 lakh. A copy of the master detail has been reproduced in assessment order. Sufficient opportunity was granted to assessee, however, none appeared before Ld.AO to file any requisite details in order to discharge its onus in respect of alleged share applicants.

10. Before Ld.CIT(A) assessee filed additional evidence in form of share application forms and identity of shareholders like ration card, voter ID card and license etc which were accepted by Ld.CIT (A) and adjudicated in interest of substantial Justice. It is also observed that he has forwarded same to Ld.AO for remand with a direction to make necessary enquiries regarding genuineness of shareholders vide various letters. Ld.CIT(A) records that Assessing Officer did not make any enquiry with any shareholders, and there is no finding of Ld.AO that shareholders were bogus, or there is any doubt regarding genuineness of shareholders.

11. It has been observed by Ld.CIT (A), that Ld. AO neither conducted any enquiries from concerned, and that he did not issue summons under Section 131. This aspect has been dealt with by *Hon'ble Delhi High Court* in case of *CIT vs. N.R. Portfolio (P.) Ltd.* reported in (2014) 42 *Taxmann.com* 339 in as well as *CIT vs Nipun Builders & Developers (P.) Ltd* reported in (2013) 30 *Taxmann.com* 22 9. However, we refrain from stating or going into further details or matrix, as we find that before Ld. AO, assessee had not made any appearances in person nor filed any submissions in support of its claim. In fact it is observed that notice under section 131 issued to directors of assessee, was also not answered. In our view Ld.CIT (A) has also not himself

verified any documents filed by assessee even though he has coterminous powers with that of Ld. AO. No enquiries has been made by Ld.CIT(A) regarding whether shares were issued to alleged share applicants as Master details of assessee reproduced in assessment order shows paid up shares to be 1 lakh.

11.1. In our view Ld.CIT(A) failed to find out nature of transaction. Merely on basis of Ration Card, Share Application forms, Voter ID etc. Ld.CIT(A) deleted addition. We thus reverse the order of Ld.CIT(A) as same has been passed without proper verification of facts as per law.

12. Under such circumstances we deem it fit and proper to set aside this issue back to Ld. AO for fresh adjudication to decide the issue in light of decision of Hon'ble Delhi High Court dated 17/01/2019 in case of CIT vs. NDR Promoters in ITA49/2018. Ld.AO shall conduct fresh enquiries on basis of documents filed by assessee, and also shall take up any independent enquiries as it deem fit and proper as per law. Assessee shall file all requisite details as called for or any other details as needed to prove its claim. Needless to say that Ld.AO shall follow due process of law to adjudicate upon the issue afresh.

13. In the result, this ground stands allowed for statistical purposes.

14. In the result appeal by Revenue is allowed for statistical purposes.

Order pronounced in Open Court on 12th February, 2019.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 12th February, 2019

*Gmv

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
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Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	