

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-2', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 6251/Del/2015  
Assessment Year: 2005-06

ITO, Ward 17(1),  
Room No. 323A,  
CR Building,  
New Delhi – 02

**(APPELLANT)**

vs. M/S MOKSHA SECURITIES (P)  
LTD.,  
H-60, UPPER GROUND FLOOR,  
CONNAUGHT PLACE, NEW DELHI  
**(PAN: AAACM8069Q))**  
**(RESPONDENT)**

**AND**

CROSS OBJECTION NO. 74/Del/2016  
(IN ITA NO. 6251/DEL/2015)  
Assessment Year: 2005-06

M/S MOKSHA SECURITIES (P) vs. ITO, WARD 17(1),  
LTD., NEW DELHI  
H-60, UPPER GROUND FLOOR,  
CONNAUGHT PLACE, NEW DELHI

**(APPELLANT)**

**(RESPONDENT)**

Department by : None  
Assessee by : Shri Gautam Jain, Adv. & Sh. P.K. Kamal

**Date of Hearing : 17-08-2016**

**Date of Order : 02-09-2016**

**ORDER**

**PER H.S. SIDHU, J.M.**

The Department has filed the Appeal and Assessee has filed the Cross Objection which is emanate from the Order dated 16.9.2015 of Ld. CIT(A)-6, New Delhi pertaining to assessment year 2005-06. The grounds raised in the revenue's appeal reads as under:-

1. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting the addition of RS. 60,00,000 made by the Assessing Officer (AO) u/s 68 of the Income Tax Act (me Act) on*

*account of disallowance for receiving bogus accommodation entries even when the assessee did not discharge its onus u/s 68 of the Act?*

2. *Whether on the facts and circumstance e case and in law the Ld. CIT(A) is*

*justified in deleting the addition of Rs. 60,000 made by the AO u/s 69 of the Act on account of commission paid for arranging the accommodation entries even when the assessee did riot discharge its onus u/s 69 of the Act?*

3. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) having noticed want of proper enquiry is justified in allowing the appeal and*

*deleting disallowance made without ensuring that effective enquiry was carried out as laid down by Hon'ble Jurisdictional High Court in case of CIT Vs Jansampark Advertising and Marketing (P) Ltd (2015) 375 (Del)?*

4. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*

5. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of*

*appeal either before or at the time of hearing of the appeal*

2. The brief facts of the case are that the aassessee had filed its income tax return u/s 139 on 31.03.2006 declaring loss of Rs.19,44,961 which was duly accompanied by the Audited Statement of accounts. It was noted that the address of the assessee company was declared as 12/15 East Patel Nagar, New Delhi. However, the returns for assessment years 2009-10 and onwards were filed declaring the new address of the coy as H -69, Connaught Circus, New Delhi. The inspection of file shows that the notice u/s 148 dated 30.03.2012 was issued on 31.03.2012 through speed post at the wrong addresses i.e. 39/1, East Patel Nagar, New Delhi and despite the fact that new address of the company was within the knowledge of the

assessing officer. According to the assessee, this notice was never served upon the assessee. AO observed that it reveals that notices u/s 142(1) were issued on 13.08.2012, 8.10.12, 27.11.12 and 14.12.12 & 4.03.2013 but the same were also never received by the assessee since issued at the wrong address. Thereafter, the assessee received the copy of final notice u/s 142(1) from one Mr. Jolly having his office at 3911, East Patel Nagar, New Delhi through email on 18.12.2012. Subsequently, the assessee objected to the service of the alleged notice u/s 148 and requested the AO, vide letter dated 21.12.2012, to treat the original return as the return filed in response to notice u/s 148. The assessee, vide letter dated 21.12.2012, also requested for the copy of the reasons recorded u/s 148 which was supplied to the assessee on the same date. In response to the same, the assessee filed objections against the initiation of reassessment proceedings vide letter dated 7.2.2013 wherein it was stated that the assessee had received the advance of Rs. 60,00,000/- in terms of agreement to sell the property from M/s Cubic Commercial Resources Ltd. through account payee cheque in the normal course of its business activity and the same was duly reflected in the audited statement of accounts. Accordingly, it was requested that reassessment proceedings be dropped. The assessing officer, vide order dated NIL, rejected the request of the assessee. Thereafter, without issuing any notice u/s. 143(2), the notice u/s. 142(1) dated 4.3.2013 was served on assessee which directed the assessee to produce (i) confirmation in respect of the money received from the above said party, (ii) the nature of the transaction with the said party, (iii) bank statement for the year under consideration and (iv) return of income along

with the balance sheet and audit report. In response to the same, the assessee attended the assessment proceedings on 18.03.2013 and filed all the information mentioned above vide letter dated 15.3.2013 along with the submissions. The assessment proceedings were adjourned to 20.03.2013. On 20.03.2013, the proceedings were verbally adjourned to 26.03.13 but on that date, the AO refused to accept the additional documents and therefore the same were sent by the assessee through speed post. Thereafter, the AO completed the assessment vide his order dated 26.03.13 u/s. 147/143(3) of the Income Tax Act, 1961 and added the sum of Rs. 60 lakhs and further an amount of Rs. 60,000/- was added being commission paid @1% u/s. 69C of the Act being expenditure incurred out of undisclosed sources.

3. Aggrieved with the aforesaid assessment order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 16.9.2015 has deleted the additions in dispute and partly allowed the appeal of the assessee.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. In this case, Notice of hearing to both the parties, in spite of the same, Department nor its Representative appeared to prosecute the matter in dispute, nor filed any application for adjournment by the Department. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the

Department, therefore, we are deciding the present appeal exparte qua Revenue, after hearing the Ld. AR and perusing the records.

6. Ld. Counsel of the Assessee has relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, the same may be upheld and accordingly, the appeal of the Revenue may be dismissed.

7. I have heard the Ld. Counsel of the assessee and perused the records, especially the impugned order passed by the Ld. CIT(A). I find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and adjudicated the issue as under from pages 24 to 26 of the impugned order. The said relevant paras are reproduced as under:-

*"From the above statement, Sh. SK Gupta was stating that he received cash and in turn issued cheques. But from the bank statement, the source of funds for M/s Cubic Commercial, in most of the cases was clearance of cheques, to advance money to the assessee.*

*With regard to the receipt of money assessee stated that it received Rs 60 Lakhs from M/s Cubic Commercial against booking of property. Copy of the agreement of sale was also produced before the assessing officer (last para of page 2 of the assessment order). With this evidence the onus has shifted from assessee to assessing officer. But AO made no attempts*

*to disprove the contents of the sale agreement. None of the directors of M/s Cubic Commercial were summoned by the AO. No letter of enquiry were also issued to the company or its Pr. Officers. AO did not ask the assessee also to produce them.*

*The entire addition was based on the statement of Sh. S.K. Gupta who was neither a share holder nor a director of M/s Cubic Commercial. But the copy of the sworn statement of Sh. S.K. Gupta was never made available to the assessee. Even on 15<sup>th</sup> March, 2013 assessee again requested for copy of the statement and requested for cross examination of Sh. S.K. Gupta, which was not provided to the assessee.*

*As per the letter dt. 30.03.2012 of ACIT, Central Circle 18, New Delhi addressed to the AO, Sh. Aneja Ji is the conduit for these accommodation entries. But Sh. Aneja Ji was never examined by the Ad, never summoned by him, no statement was recorded by the AO.*

*The above events show the complete lack of enquiry from the side of the AO regarding the genuineness or otherwise of the transaction.*

*In such cases, what would be the fate of addition, has been decided In various cases as under.-*

*333 ITR 119 (Del) OASIS HOSPITALITIES P. LTD.*

*AS far as the creditworthiness or financial strength of the creditor / subscriber is concerned, that can be proved by producing the bank statement of the creditors / subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. Once the documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinise the same and in case he nurtures any doubt about the veracity of these documents, to probe the matter further. However, to discredit the documents produced by the assessee on the aspects, there have to be some cogent reasons and materials for the Assessing Officer and he cannot go into the realm of suspicion.*

*Held, dismissing the appeal, that the addition was rightly deleted by the Commissioner (Appeals) and the Tribunal. Requisite documents were furnished showing the existence of the shareholders from accounts and even their Income- tax details. From bank accounts of these shareholders, it was found that they had deposited certain cash and the source thereof was questionable. The Assessing Officer should have made further probe which he failed to do. Moreover, the remedy with the Department lay in reopening the case*

*of the investors and the addition could not be made in the hands of the assessee.*

***MOD CREATIONS PVT. LTD. (Delhi)***

*All documents filed*

*Sufficient balance in accounts of creditors*

*Just four days time given to produce the the sub creditors*

*Assessee need not prove either genuineness of transactions executed between creditors and sub creditors or creditworthiness of sub creditors.*

*AO made no attempts to verify sources of sub creditors, when all details about them are available*

*Addition deleted.*

***3571TR 146 (Del)- FAIR FINVEST LTD.***

*Recent affidavits filed*

*Shares still held by the applicants*

*Shares issued on par*

*No enquiries by AO*

*No summons u/s 131 issued by AO*

*AO simply basing on inv report*

*Addition deleted*

***361 ITR 10 (Del)- GANGESHWARI METAL P. LTD.***

*Amount received by ale payee cheque*



*Documentary evidence by A*

*Identity of investors established*

*No enquiry by AO*

*No attempt to prove documents were fabricated.*

*Mere reliance on Inv. Report not enough.*

**361 ITR 155 (Del)-NIPUA AUTO PVT. LTD.**

*AO failed to produce any tangible materials to doubt veracity of documents furnished by assessee.*

*Addition deleted.*

*In all the above cases, it has been held by the Hon'ble Judiciary that addition cannot be made simply basing on some report like report received from investigation wing etc. and when the assessee produces certain evidence, the onus lies on the AO to cause enquiries / verification to demolish that evidence. In the present case, no such attempt has been made by the AO to cause enquiries / verification to demolish that evidence. In the present case, no such attempt has been made by the AO. And no enquiry or verification was ever done by him.*

*The addition made is hereby deleted.*

*In effect, the appeal is partly allowed."*

8.1 After going through the findings of the Ld. CIT(A), as aforesaid, I am of the considered view that it is a well settled law that addition cannot be made simply basing on some report like Report received from Investigation Wing etc. and when the assessee produces certain evidence, the onus lies on the AO to cause enquiries/ verification to demolish that evidence. However, in the present case no such attempt has been made by the AO and no enquiry or verification was ever done by him. Hence, Ld. CIT(A) has rightly relied upon the following various case laws of the Hon'ble Delhi High Court wherein similar and identical situation was dealt with and the addition in dispute was deleted.

- 333 ITR 119 (Del) Oasis Hospitalities P. Ltd.
- MOD Creations Pvt. Ltd. (Delhi)
- 357 ITR 146 (Del) Fair Finvest Ltd.
- 361 ITR 10 (Del) Gangeshwari Metal P Ltd.
- 361 ITR 155 (Del) Nipua Auto Pvt. Ltd.

8.2 In the background of the aforesaid discussions and precedents relied upon by the Ld. CIT(A) in his impugned order, I am of the considered view that Ld. CIT(A) has passed a well reasoned order which does not need any interference on my part, hence, I uphold the same and reject the grounds raised by the Revenue and dismiss the Appeal filed by the Revenue.

9. In the result, the appeal of the Revenue is dismissed.

**ASSESSEE'S CROSS OBJECTION**

10. As far as Assessee's Cross Objection is concerned, the same is only supportive the Ld. CIT(A)'s order. Since I have dismissed the Appeal of the Revenue as aforesaid, hence, the Cross Objection filed by the Assessee has become infructuous and dismissed as such.

11. In the result, the Revenue's Appeal as well as Assessee's Cross Objection stand dismissed.

Order pronounced in the Open Court on 02/09/2016.

**Sd/-**

**(H.S. SIDHU)  
JUDICIAL MEMBER**

Dated: 02/9/2016

**\*SR BHATNAGAR\***

**Copy forwarded to: -**

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

TRUE COPY

By Order,

**ASSISTANT REGISTRAR**