

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "D", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 460/DEL/2011

A.Y. 2001-02

INCOME TAX OFFICER,  
WARD 4(4), New Delhi  
ROOM NO. 234-B,  
C.R. BUILDING, I.P. ESTATE,  
NEW DELHI

VS. M/S LOKESH SECFIN PVT. LTD.  
NO. 6/13, NORTH AVENUE,  
KESAVAPERUMALPURAM,  
CHENNAI – 600028  
(PAN: AAACL2189C)

**(APPELLANT)**

**(RESPONDENT)**

Department by : Sh. Shravan Gotru, Sr. DR

Assessee by : None

**ORDER**

**PER H.S. SIDHU, JM :**

This appeal by the Revenue is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-VII, New Delhi dated 02.11.2010 pertaining to Assessment Year 2001-02 on the following grounds:-

"1. *The order of the Ld. CIT(A) is erroneous and contrary to facts and law.*

2. *On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in deleting the*

*addition made of Rs. 71,76,750/- made u/s. 68 of the I.T. Act being the unexplained cash credits.*

*2.1 The Ld. CIT(A) ignored the findings recorded by the AO and the fact that the assessee is involved in the business of receiving accommodation entries.*

*3. The appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of the hearing.*

2. The brief facts of the case are that the assessee company is a private limited company engaged in the business of finance and investment activities. The primary business of the company is to purchase and sale of shares of various companies and to invest in shares of different companies. For AY 2001-02 the return of income was filed on 31.10.2001 declaring NIL income. The return of the assessee was processed u/sd. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) on 28.6.2002. Subsequently a notice u/s. 148 of the Act dated 31.3.2008 was issued. Finally, the reassessment order was completed on 26.12.2008 determining the total income at Rs. 71,49,221/- wherein the AO has made an addition of Rs. 71,76,750/- under section 68 of the Act. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 2.11.2010 has deleted the addition in dispute by partly allowing the appeal of the assessee.

Aggrieved with the impugned order passed by the Ld. CIT(A), Revenue is in appeal before the Tribunal.

3. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal. He further stated that Ld. CIT(A) has erred in deleting the addition made of Rs. 71,76,750/- made u/s. 68 of the Act being the unexplained cash credit and also submitted that Ld. CIT(A) has ignored the findings recorded by the AO and the fact that the assessee is involved in the business of receiving accommodation entries.

4. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. 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 assessee, therefore, we are deciding the present appeal *ex parte* qua assessee, after hearing the Ld. DR and perusing the records.

5. We have heard the Ld. DR and perused the records, especially the order of the Ld. CIT(A). We find that Ld. First Appellate Authority has adjudicated the issue in dispute vide para no. 4.1 to 4.4 at page no. 5 to 8 of the impugned order. The said relevant findings of the Ld. CIT(A) are reproduced as under:-

"4.1 I have carefully considered the submissions made on behalf of the appellant, the findings of the Assessing Officer in the assessment order as well as in the remand report and the facts on record. It is observed that the AO based his arguments purely on the basis of information from Investigation wing of the Income-tax Department, New Delhi. He has entirely relied upon such information for reaching such conclusion. The above information may be a sufficient ground to initiate reassessment proceedings of a case, but to make an addition the AO has to establish the fact of fraudulent nature of such transaction. Purely on surmises and conjectures no transaction can be held as bogus unless the same is proved on the basis of sound reasoning and evidence on the part of the AO before making the addition. When the assessee has furnished all necessary proof in support of its claim, it is all the more necessary to rebut such evidence with cogent and credible evidence on the part of AO before making the addition. The amount of Rs. 71,76,750/- has been fully explained by the assessee with supportive evidence and information. The source of cash has also been fully explained and the amount received from M/s Iris

*Infrastructural Pvt Ltd, M/s MKM Finsec Pvt Ltd and M/s' Kaul Securities Pvt Ltd has been fully explained. In fact, no new capital has been introduced in the account. This also implies 'that there has neither been fresh loan nor fresh share capital introduced in the accounts of the appellant company during the year under consideration.*

*The perusal of the accounts of the appellant company does not leave any room for doubt that the said amount was nothing but the sale proceeds of the shares of the companies, namely M/s Padmini Polymer Pvt Ltd. And other companies which have already been shown by the appellant in the Profit & Loss Account for A.Y. 2001-02. When the sale proceeds of the shares have already been shown by the appellant and the same have also been offered as income, it cannot be brought to tax again in the same A.Y. 2001-02 which is under appeal.*

*4.2 It is also seen that the Assessing Officer could not point out any discrepancy in the evidences relied upon by the assessee. He has neither brought out any direct or inferential evidence to contradict the contention of the assessee. It is further observed that even though AO. has vast powers u/s 131 and 133(6) of the Act, he has not used any of his powers to verify the*

*genuineness of the claim of the assessee by verifying the documents furnished by it. If AO. had doubted the impugned transaction after receiving the evidences which had been produced by the assessee in support of its claim it was very much open to the A.O. to do his independent enquiry and verification. This has not been done by the A.O. Further, what is the desired documentary evidence required to support the claim of the assessee as required by the AO. is not coming out of the order of the A.O. The appellant has adduced the documentary evidences I support of the transaction in question. The identity of the purchaser of the shares was established as it was borne on the record on the Income-tax Department. Durning to the shares which were sold by the appellant as per its version, there is no evidence or material to even suggest, as pointed out on behalf of the appellant, that the cheques directly or indirectly emanated from the assessee so that it could be. said that the assessee's own money was brought pack in the guise of sale proceeds of the shares. Though, the purchasers of the shares could not be examined by the AO, since they were existing on the file of the Income tax Department and its income tax details were made available to the A.O, it was equally the duty*

*of the AO to have taken steps to verify its assessment records and if necessary to also have them examined by the respective AO having jurisdiction over it which has not been done by him.*

*4.3 Since the addition has been made as unexplained cash credit, it is considered necessary to examine the case in the light of the provisions of section 68 of the Act. Under section 68 of the Act if any sum is found credited in the books of accounts of the appellant & the appellant offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged to income tax as the income of the assessee of the relevant previous year. Therefore, what has to be enquired into by the Assessing Officer is the nature & 'source of the sum or deposit. If the explanation with regard to nature & source is not found satisfactory, only then the amount so credited may be treated as income. Section 68 has come up for consideration before various High Courts which have held that the assessee has to prove three conditions (i) identity of the creditor (ii) Capacity of such creditor to advance money & (iii) genuineness of the transaction. [Vide Shankar Industries v. CIT (1978)]*

114 ITR 689 (Cal.); *C. Kant & Company v. CIT* (1980) 126 ITR 62 (Cal.); *Prakash Textile Agency vs. CIT* (1980) 121 ITR 890 (Cal.); *Oriental Wire Industries Pvt. Ltd .. vs. CIT* (1981) 131 ITR 688; *CIT Vs. B.C. Mohanty* (1995) 212 ITR 199 (Ori.); *Ialan Timbers Vs. CIT* (1997) 223 ITR 11 (Gau.) & *CIT vs. Korlay Trading Company Ltd.* (1999) 232 ITR 820 (Cal.)].

*If all the aforesaid three conditions are proved the burden shifts on the Revenue to prove that the amount belonged to the assessee. [CIT vs. United Commercial & Industrial Co. (P) Ltd. (1,991) 187 ITR 596 (Cal.); M.A. Unneeri Kutty vs. CIT (1992) 198 ITR 147 (Ker.); CIT vs. Precision Finance P. Ltd. (1994) 208 ITR 495 (Cal.);*

*It has also been held by the various High Courts that the assessee cannot be asked to prove the source of source or the origin of origin. Reference may be made the decisions in S. Hastimal vs. CIT (1963) 49 ITR 273 (Mad.); Tola Ram Daga vs. CIT (1966) 59 ITR 632 (Gau.); CIT vs. Daulat Ram Rawatmull (1973) 87 ITR 349 (SC); Sargoi Credit Corpn. V s. CIT (1976) 103 ITR 344 (Pat.); CIT vs. Orissa Corpn. (P) Ltd. (1986) 159 ITR 78 (SC) & Kishan Chand Chellaran vs. CIT 125 713 (SC). In this regard, it is important to take note of the*



*judgment in the case of Kishan Chand Chellaram (Supra) holding that the burden is on the department to show that the money belonged to the assessee by bringing proper evidence on record & the assessee could not be expected to put evidence to help the department to discharge the burden that lay upon it. The evidence, if any, gathered behind the back of the assessee cannot be used against him without confronting him with it. There is no evidence on the basis of which Assessing Officer would come to a finding that sum credited in the bank account of the assessee represented the undisclosed income of assessee.*

*4.4 In these circumstances, it is held that the addition of Rs. 71,76,750/- cannot be sustained and accordingly, the same is directed to be deleted. As a result, grounds of appeal no. 8 & 9 are allowed.”*

7. On going through the aforesaid findings of the Ld.CIT(A) as well as the finding of the Assessing Officer made in the assessment order, we find that AO has passed the assessment order 26.12.2008 u/s. 144/147 of the Income Tax Act, 1961 i.e. exparte qua assessee by holding that assessee has failed to give satisfactory explanation about the nature and source of the amount of Rs. 71,76,750/- credited in its bank accounts and discharge its onus of proving the genuineness of transactions and

creditworthiness of the parties from whom the amount has been received. However, the Ld. CIT(A) in his impugned order that AO held has neither brought out any direct or inferential evidence to contradict the contention of the assessee. He further stated that AO has not used any of his powers to verify the genuineness of the claim of the assessee by verifying the documents furnished by it. He further stated that if the AO had doubted the impugned transaction after receiving the evidences which had been produced by the assessee in support of its claim it was very much open to the AO to do his independent evidence required to support the claim of the assessee as required by the AO is not coming out of the order of the AO. But the AO in his assessment order held that as the assessment proceedings were getting time barred on 31.12.2008 and in spite of the having been given numerous opportunities, assessee has not furnished any of the details asked vide questionnaire and order sheet entries. In view of aforesaid discussions, we are of the considered view that the assessee remain non-cooperative before the AO and did not file requisite documents before the AO, as asked by him, as a result thereof the AO passed the exparte order u/s. 144/147 of the Act and therefore, did not verify the documents furnished by the Assessee and also not done the independent inquiry and verification. Therefore, in the interest of justice, we think it proper to set aside the issue in dispute to the file of the AO to decide the same afresh, after making independent inquiry and verification, as deem fit. However, the Assessee is also directed to submit all the necessary documents, as asked by the AO during the assessment

proceedings and fully cooperate with the AO and did not take any unnecessary adjournment. Accordingly, the issue in dispute is set aside to the file of the AO with the aforesaid directions.

8. In the result, the Appeal filed by the Revenue stands allowed for statistical purposes.

Order pronounced on 01/09/2017.

Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd/-

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

Date: 01/09/2017

"SRBHATNAGAR"

**Copy forwarded to: -**

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

TRUE COPY  
By Order,

Assistant Registrar,  
ITAT, Delhi Benches