

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

BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER

ITA No.7726/Del/2017
Assessment Year: 2009-10

M/s. Shishya Edutech (P) Ltd. 4346/4-C, 1 st Floor, Ansari Road, Daryaganj, New Delhi -02 C/o Shri S. K. Sahpathi House No.579, Sector -16A, Faridabad -121002 PAN No. AAHCS9225R (APPELLANT)	Vs	ITO Ward – 23(2) New Delhi (RESPONDENT)
---	----	---

Appellant by	Sh. P. C. Yadav, Advocate
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	20/02/2019
Date of Pronouncement:	01/04/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the assessee is directed against the order dated 16.10.2017 of the CIT(A)-28, New Delhi relating to A. Y. 2009-10.
2. The facts of the case, in brief, are that the assessee is a company engaged in the business of service sector such as computer training/ educational / coaching institute. It filed its return of income on 20.09.2009 declaring total income of Rs.12,05,779/-. The return was processed u/s 143 (1) of the IT Act, 1961. Subsequently information was received from the investigation wing of the department that during the course of search operation in the case of Sh. Surender Kumar Jain group of

cases and the post search enquiries it was noticed that the said group was involved in providing accommodation entries. The name of the assessee company also appears in the list as one of the beneficiaries. The assessee has received an amount of Rs.30 lacs in the form of share capital / share premium from companies / entities engaged in the business of providing accommodation entries in lieu of cash payment by the beneficiary including the assessee by charging commission. Accordingly, reopening proceeding were initiated u/s. 147 of the IT Act , 1961 by recording reasons and after obtaining sanction of the competent authority u/s 151 of the IT Act. The notice u/s 148 of the Act was issued on 11.03.2016. The assessee vide letter dated 11.04.2016 submitted that the return already filed be treated as return in response to notice u/s. 148. d

3. The Assessing Officer during the course of assessment proceedings observed that the assessee has received an amount of Rs. 30 lacs from M/s. VIP Leasing & Finance Pvt. Ltd. He deputed his Inspector to serve summon u/s 131 of the IT Act dated 12.12.2016 to the directors of the company at the addresses available on record. The Inspector reported that the addresses given by the company was fake and no such company actually exists and it is just a paper company involved in providing accommodation entry. The Assessing Officer observed from the balancesheet of the assessee that it has received share application money of Rs.2,25,000/- in the previous year i.e. year ending 31.03.2008 and in the current year i.e. 31.03.2009 it has received Rs. 30 lacs as share application money. The assessee has not filed any P & L Account for the financial year 2008-09. He, therefore, held that assessee willfully did not file its P & L

account. In absence of the same it is not ascertainable that the assessee has done any business and no income from operation has been shown. This according to the Assessing Officer gives a fair belief that the assessee's own income has been routed through balancesheet. He, therefore, asked the assessee to explain as to why the amount should not be added in its own hand in view of the seized documents which were found during the search operation at the premises of Sh. S. K. Jain wherein there is a clear mention of M/s. VIP Leasing & Finance Ltd., where the name of the assessee company appears. Further there is also mention of the pay order number, date of Pay Order number and amount of Rs.30 lacs. According to the Assessing Officer the assessee had not carried out any genuine transactions with the said party and the amount of Rs.30 lacs is assessee's own funds out of undisclosed sources of income, routed through the name of the said entry operator. Relying on various decisions including the decision of Hon'ble Delhi High Court in the case Novadaya Castles Pvt. Ltd. Vs. CIT and Nova Promoters and Finlease Private Limited and decision of Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More the Assessing Officer made addition of Rs.30 lacs to the total income of the assessee.

4. Before CIT(A) the assessee challenged the validity of the reassessment proceedings as well as the addition on merit. So far as the validity of the reassessment proceedings are concerned it was submitted that the Assessing Officer while reopening the assessment has not applied his mind and formed his belief on the basis of information received from the investigation wing of the department which is invalid. Further relying on various decisions

it was argued that the reopening of the assessment is void in lieu of various infirmities.

5. So far as the merit of the case is concerned, it was argued that the assessee has filed various documents to substantiate the identity and credit worthiness of the share applicant and the genuineness of the transactions, therefore, no addition is called for u/s 68 of the IT Act.

6. However, the ld. CIT(A) was also not satisfied with the arguments advanced by the assessee and dismissed the grounds raised by the assessee on the issue of validity of reassessment proceedings. He further upheld the addition made by the Assessing Officer u/s 68 of the IT Act on merit.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising following grounds of appeal:-

“1. That the Ld. CIT(A) erred in law and on facts in holding that the initiation of reassessment proceedings u/s 147/148 of the IT Act by the A. O. was valid in the facts and circumstances of the case.

2. That the Ld. CIT(A) erred in law and on facts in holding that the assessee failed to fulfil the requirements of section 68 of the Act as per settled law in the facts and circumstances of the case.

3. That the Ld. CIT(A) erred in law and on facts in confirming the addition of Rs.3000000/- to the income of the assessee made by the A.O. u/s 68 of the Act in the facts and circumstances of the case.

4. The appellant craves leave to amend or alter all or any of the aforesaid grounds of appeal and add any other ground of appeal”.

8. The Ld. Counsel for the assessee at the outset strongly challenged the order of the CIT(A) upholding the action of the Assessing Officer in reopening the assessment. He submitted that assessee filed his objections to the notice u/s 148 of the IT Act on 31.08.2016 and the Assessing Officer disposed of the objections vide order dated 19.12.2016. The Assessing Officer passed the assessment order on 28.12.2016 and thus the Assessing Officer has not given the period of four weeks to the assessee and passed the order, therefore, the assessment order is null and void. Further the Assessing Officer has not passed a speaking order while disposing off the objections of the assessee. He submitted that the authorities have also accorded their sanction in a mechanical manner without due application of mind. Referring to page 27 of the paper book where the approval has been given by the additional CIT and DCIT, he submitted that these are not proper approval. Relying on various decisions he submitted that the reassessment proceedings are based on report of the investigation wing and without independent application of mind by the Assessing Officer and since the order has been passed without passing a speaking order on the objections raised by the assessee and since the final order was passed within a period of two weeks from date of the disposal of the objections as against mandatory four weeks, therefore, the reassessment proceedings are null and void.

9. The Ld. Counsel for the assessee in yet another alternate argument submitted that if certain documents belonging to the assessee were found from the premises of Sh. S.K. Jain during the course of search then the correct action should have been action u/s 153 C and 153 A and not u/s 148/147. Since the

Assessing Officer in the instant case has taken recourse of the provision of section 147 as against 153 (C), therefore, such reassessment proceedings also should be held as void ab initio.

10. So far as the merit of the case is concerned, the Ld. Counsel for the assessee drew the attention of the bench to the copy of the order passed u/s 153 C and 153 A of the IT Act 1961 vide order dated 28.03.2013 for assessment year 2009-10 in the case of M/s. VIP Leasing & Finance Private Limited, copy of which is placed at page 125 and 126 of the paper book. Referring to the schedule of investments as on 31.03.2009 in the case of M/s. VIP Leasing & Finance Private Limited copy of which is placed at 122 and 124 of the paper book, he drew the attention of the bench to the same and submitted that at Sr. No. 132 the name of the assessee appears towards the investment of Rs.30 lacs in the shares of the assessee company. Referring to paper book pages from 108 to 126 he submitted that the said company has duly disclosed in its balancesheet regarding the investment in the assessee company and the assessment has been framed u/s 153 C by the ACIT, CC-23, New Delhi and no addition has been made. Therefore, when the investor is identifiable since assessment has been framed u/s 153 C and 153 A of the IT Act, 1961 and said investor has duly disclosed in its balancesheet regarding investment in the assessee company alongwith so many other companies and no adverse inference has been drawn in the hands of the investor company and since the amount has been received through banking channels, therefore, addition cannot be made in the hands of the assessee u/s 68 of the IT Act. He submitted that although these documents were very much available before the lower authorities, however, these were

completely ignored and addition has been made which is not justified.

11. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and CIT(A). He submitted that information was received in the instant case from the investigation wing that the assessee has received Rs.30 lacs from an entity belonging to the S. K. Jain group of companies who are engaged in providing accommodation entries. Although the assessee was asked to furnish documents to substantiate the identity and credit worthiness of the share applicant and the genuineness of the transaction, the assessee could not substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and credit worthiness of the share applicant and genuineness of the transaction.

12. Relying on the following decisions he submitted that the order of the CIT(A) which is in accordance with law should be upheld on validity of the reassessment proceedings as well as the addition on merit :-

1. Sudhir Kuamr Sharma (HUF) Vs. CIT 46 taxmann.com 340 (Punjab & Haryana) [2014] 224 Taxman 178 (Punjab & Haryana)
2. CIT Vs. N. Tarika Properties Investment (P) Ltd. [2013] 40 taxmann.com 525 (Delhi) [2014] 221 Taxmann 14 (Delhi)/ [2014] CTR 472 (Delhi).
3. N Tarika Properties Investment (P) Ltd. Vs. CIT [2014] 51 taxmann.com 387 (SC)/ [2014] 227 Taxman 373 (SC)
4. CIT Vs. Nova Promoters & Finlease (P) Ltd. (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187)

5. CIT Vs. Ultra Modern Exports (P.) Ltd. (40 taxmann.com 458, 220 Taxman 165)
6. Suman Gupta Vs. CIT (2013 – LL- 0122-69) (Supreme Court)
7. PCIT Vs. Bikram Singh [ITA No.55/2017] (Delhi)
8. Blessing Construction Vs. ITO [2013] 32 taxmann.com366 (Gujarat) /[2013]
9. Toby Consultants (P.) Ltd. Vs. CIT [2010] 324 ITR 338 (Delhi)
10. Sanraj Engineering Pvt. Ltd. Vs. CIT (ITA 79/2016) (Delhi)
11. PCIT Vs. Paramount Communication (P.) Ltd. (2017-TIOL-253 – SC-IT)
12. PCIT Vs. Paramount Communication (P.) Ltd. [2017] 79 taxmann.com409 (Delhi) [2017] 392 ITR 444 (Delhi)
13. Indu Lata Rangwalal Vs. DCIT [2017] 80 taxmann.com 102 (Delhi)/[2016] 384 ITR 337 (Delhi)/[2016] 286 CTR 474 (Delhi)
14. Thakorbhai Maganbhai patel Vs. ITO [2017] 78 taxmann.com 409 (Delhi) /[2017] 392 ITR 444 (Delhi).
15. Aravali Infrapower Ltd. Vs. DCIT (2017-TIOL-42-SC-IT)
16. Yogendrakumar Gupta Vs. ITO (51 taxmann.com 383) (SC)/[2014] 227 Taxman 374 (SC)
17. Raymond Woollen Mills Ltd. Vs. ITO and others [236 ITR 34]
18. R. K. Malhotra ITO Vs. Kasturbhai Lalbhai [1977] 109 ITR 537 (SC)
19. CIT Vs. P. V.S. Beedies (P.) Ltd. [1999] 103 Taxman 294 (SC)/[1999] 237 ITR 13 (SC) /[1999] 155 CTR 538 (SC)

20. ACIT Vs. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316 (SC) / [2007] 291 ITR 500 (SC)/[2007] 210 CTR 30 (SC)
21. Yuvraj Vs. Union of India [315 ITR 84] (SC)
22. Ankit Financial Services Ltd. Vs. DCIT [2017] 78 taxmann.com 58 (Gujarat).

13. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. I find the case of the assessee was reopened on the basis of the report of the investigation wing that the name of the assessee appears in the list of beneficiaries who have obtained accommodation entries from companies controlled by Sh. S. K. Jain group of cases who are basically engaged in providing accommodation entries for commission. Since the assessee according to the assessing officer could not satisfy him regarding the identity and credit worthiness of the share applicant and genuine of the transactions, the Assessing Officer made addition of Rs.30 lacs to the total income of the assessee company being the amount received for share application money by the assessee company from M/s. VIP Leasing & Finance Private Limited. I find the Ld. CIT(A) upheld the action of the Assessing Officer both on merit as well as validity of the reassessment proceedings for which the assessee is in appeal before the Tribunal.

14. So far as the validity of the reassessment proceedings are concerned, I do not find any infirmity in the order of the CIT(A) and, therefore, I uphold the same. I find the Assessing Officer in the instant case, after obtaining the report of the investigation

wing has applied his mind and taken one approval of the higher authorities. He has also disposed of the objections. Since, the re-opening was based on specific information. No notice u/s 153 C is also required. The various arguments advanced by the Ld. Counsel for the assessee in the instant case are without any merit and therefore, the legal ground raised by the assessee challenging the validity of the reassessment proceedings is dismissed.

15. So far as the merit of the case is concerned I find from the copy of the Assessment Order framed u/s 153 C/153A in the case of M/s. VIP Leasing & Finance Private Limited, copy of which is placed on pages 125 and 126 of the paper book, that the assessment in that case has been completed u/s. 153 C and 153 A. The address of the assessee has been given at 209, 2nd Floor, Sunder Kiran Building, WEA, Karol Bagh, New Delhi with PAN No. AAACV0475F. The audited accounts and the paper book in the case of M/s. VIP Leasing & Finance Private Limited disclosed the name of the assessee in the schedule of investment at Sr. No. 132 according to which an amount of Rs.30 lacs has been invested in shares of the assessee company. There are also various investments in shares of different companies. No adverse inference has been drawn in the order passed u/s 153C/153A. Although the assessment has been framed u/s. 153 C in the case of M/s. VIP Leasing & Finance Private Limited and the copy of the same was available before the authorities below however, the same was completely ignored and addition has been made u/s 68 of the IT Act. As per provision of the u/s. 68 of the IT Act the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and credit worthiness of the share applicant and the genuineness of the

transaction. The assessee in the instant case has filed the copy of the assessment order in the case of share applicant i.e. M/s. VIP Leasing & Finance Private Limited. Since the assessment has been framed u/s. 153 C and 153 A, it cannot be said that the assessee is a non existing company or a bogus company. Since this vital evidence was not considered by the Assessing Officer or CIT(A) although the same was very much available with the department during the course of the assessment proceedings, therefore, I deem it proper to restore this issue to the file of the Assessing Officer with a direction to verify the assessment record of M/s. VIP Leasing & Finance Private Limited from their Assessing Officer and decide the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee on merit are allowed for statistical purpose.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 01.04.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 01.04.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	05.03.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	01.04.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	