IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 3940/Del/2016
(Assessment Year: 2012-13)

DCIT, Circle : 10 (1), New Delhi.	Vs.	M/s. Gogoal Hydro Pvt. Ltd., B–3/50, Safdarjung Enclave, New Delhi – 110 029. **PAN : AADCG8593L**
(Appellant)		(Respondent)

Assessee by :	None
Department by :	Ms. Shivani Basal, Sr. D.R.;
Date of Hearing	09/06/2021
Date of pronouncement	14/07/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

01. This appeal is filed by the Revenue against the order of passed by the Ld. Commissioner of Income Tax (Appeals)–4, New Delhi, dated 26.04.2016, for assessment year 2012-13 raising following grounds of appeal:-

" 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition made by the AO u/s 68 of the Act amounting to Rs. 2,50,00,000/- without appreciating the fact that the assessee failed to discharge the onus of proving the identity of the subscriber, the genuineness of the transaction and creditworthiness of the share applicant.

2. Whether on the facts and in the circumstances of the case and law, the Ld. CIT (A) erred in holding the purchase of computers and its part as revenue in nature and deleting addition of Rs. 1,85,592/- which was held by the AO as capital in nature ignoring the fact that purchase of new computers is not allowable as revenue expenditure.

3. Whether on the facts and in the circumstances of the case and law, the Ld. CIT (A) erred in deleting addition made by the AO u/s 68 of the Act holding that the AR, not the assessee made the surrender during assessment proceedings ignoring the fact that the addition was made by the AO on the basis of detailed enquiry and not only on the basis of surrender made by AR

of the assessee.

02. The facts of the case shows that assessee is a company engaged in the business of design, engineering and manufacturing of Hydro power generating equipments, erection and commissioning of Hydro power generating machines. It filed its return of income on 30th September, 2012 at Rs.3,60,57,450/-. The assessment order under Section 143(3) of the Income Tax Act, 1961 (the Act) was passed on 27th March, 2015. The ld. Assessing Officer made an addition of Rs.2,50,00,000/- on account of share capital under Section 68 of the Act. Total income of the assessee was assessed at Rs.6,10,57,450/-.

03. Assessee preferred an appeal where the ld. CIT (Appeals) deleted the addition holding as under:-

> " 4. The Ground No. 1 to 3 are regarding the addition on account of share application money amounting to Rs.2,50,00,000/- received from certain companies. I have considered the facts of the case, the assessment order, written submissions and paper book filed by the appellant.
>
> Appellant has contended that with regard to the identity of the share applicants, they submitted the details as per Records of Registrar of Companies showing CIN, PAN and Income Tax jurisdiction of the share applicant companies. The bank statements in the name of share applicant companies and acknowledgement of their latest Income Tax Return with regard to the genuineness of transactions of issue of new shares were submitted. Bank statement showing relevant entries of debits and credits of the share applicant companies and their confirmations with regard to the creditworthiness and audited financial statements showing substantial shareholder's fund and reserve and surplus to make investment, were also submitted. The appellant also contended that the share application money during the assessment year under consideration had been received through proper banking channels from all of the share applicant companies.
>
> The Appellant argued that it is well settled law that addition of cash credit under section 68 of the Income tax Act, 1961 cannot be made when the assessee discharged his initial onus by furnishing necessary documents to prove identity, credit worthiness and genuineness of transactions and

then the burden is shifted on the Assessing Officer and he should have embarked upon further inquiry. If that was not done and the Assessing Officer did not care to discharge the onus which was laid upon him, the assessee cannot be burdened with liability under section 68.

In the instant case, it is not in doubt that the assessee had given the particulars of registration of the applicant companies, confirmation from the share applicants, bank accounts details and had shown payment through account payee cheques, etc. With these documents, it can be said that the assessee had discharged its initial onus. With the registration of the companies, their identity stands established, the applicant companies were having bank accounts, they had made the payment through account payee cheques. The important question which arises at this stage is as to whether on the basis of these facts, could it be said that it is the assessee which has not been able to explain the source and receipt of money. According to the assessee, he had given the required information to explain the source and was not obligated to prove source of the source. It is the submission of the assessee that even in case there is some doubt about the source of source, it would not automatically follow that the said money belongs to the assessee and becomes its unaccounted money. The assessee appears to be correct on this aspect. Something more which was necessary and required to be done by the Assessing Officer was not done. The Assessing Officer failed to carry his suspicion to logical conclusion by further investigation. After the registered letters sent to the investing companies had been received back undelivered, the Assessing Officer presumed that these companies did not exist at the given address. If the companies are not existing, one can draw the conclusion that the assessee had not been able to disclose the source of amount received and presumption under section 68 for the purpose of addition of amount in the hands of the assessee. But, it has to be conclusively established that the company is non-existence.

The Assessing Officer did not bother to find out from the office of the Registrar of Companies, the addresses of those companies from where the registered letter received back undelivered. If the address was same at which the letter was sent or the Inspector visited and no change in address was communicated, perhaps it may have been one factor. The applicant companies have PAN and are assessed to income tax the AO made no

efforts to examine as to whether those companies were filing tie income tax return and if they were filing the same, then what kind of returns were filed. Likewise, when the bank statements were filed, the Assessing Officer could find out the addresses given by those applicant companies in the bank, who opened the bank accounts and who are the signatories, who introduced those bank accounts and the manner in which transactions were carried out and the bank accounts operated. Just because the creditors/share applicants could not be found at the address given, it would not give the revenue a right to invoke section 68 without any additional material to support such a move.

On the basis of above and the case laws relied upon by appellant the facts of the present case are more in line with facts of Lovely Exports (P) Ltd. There was a clear lack of inquiry on the part of the assessing officer once the assessee had furnished all the material. In such an eventuality no addition can be made under section 68 of the Act. When the money is received by cheque and is transmitted through banking channels the genuineness of the transaction stands proved. In view of same the grounds of appeal no. 1 to 3 are allowed.

5. The Ground no. 4, I have considered the ground raised in appeal and facts of the case, the assessment order, written submission and paper book filed by the appellant. Appellant contended that the authorized representative is only the link between the authority and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment. Thus, keeping in view the above facts, the assessment order passed under section 143(3) of the Income tax Act. 1961 is bad in law. Appellant further contended that lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client - lawyer's relationship as buyers or agents, the lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject matter of the retainer. One of the most basic principles of the lawyer-client relationships is that lawyers have fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as

to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorized to settle and compromise a claim, and merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/ settlement. I have examined the explanation of appellant and in my considered view addition cannot be made on the basis of surrender made by the AR unless and until it is agreed by the director of the company. In view of same this ground of appeal is allowed. "

04. Therefore, the Revenue is aggrieved with that order and has preferred this appeal.

05. Despite notice, none appeared on behalf of the assessee. On earlier occasion on 21.2.2019, 9.5.2019, 30.09.2019, 2.11.2019, 5.03.2020, 15.12.2020, 8.02.2021, 13.04.2021 and also on today on 9.06.2021 none appeared on behalf of the assessee. Therefore, we do not have any other alternative, but to dispose off this appeal on the merits of the case.

06. The learned departmental representative vehemently supported the order of the learned assessing officer and submitted that the assessee has been given numerous opportunities for proving the genuineness of the share capital of ₹ 25,000,000/–. It was further stated that assessee itself is surrender during the course of assessment proceedings the above sum as it was shown before the assessing officer that they have forfeited the above sum in the next year. It was stated that the issue is squarely covered in favour of the revenue by the decision of the honourable Supreme Court in case of NRA Iron steel as well as the decision of the honourable jurisdictional High Court in case of NDR promoters. The learned departmental representative further submitted that when the assessee itself is surrender the above amount during the course of assessment proceedings the learned CIT – A has deleted the addition without any basis. She therefore submitted that the order of the learned CIT – A does not have any legs to stand. It was further submitted that the learned CIT – capital has deleted the addition on a very naive on looking at the papers submitted by the assessee. She submitted that none of the directors of the share

applicant were produced before the CIT – A. See also submitted that even the director of the assessee company were also not produced before the learned CIT – A and even then the addition has been deleted merely based on the written submission of the assessee.

07. We have carefully considered the contentions of the learned departmental representative and perused the orders of the lower authorities. Facts show that assessee has received share application money of Rs.2,50,00,000/- from 6 different companies. The share application money was actually forfeited by the assessee in the next year which created a doubt in the mind of the Assessing Officer that how can a company invest a huge sum in the form of share capital and allow it to get forfeited without making any attempt of recovery of such sum in the immediately next year. Therefore, the assessee was asked to prove identity, credit-worthiness and genuineness of the whole transaction. Assessee submitted certain details based of which that these are the companies having very meager income and further the source of the fund invested by these companies as also issue of share capital at a premium to other companies. All these 6 companies has the identical address of City Business Centre, 3603, 1st Floor, Chamber No. 12, Darya Ganj, Delhi-2. On verification of the confirmation of computer generated confirmation identically worded were submitted before the Assessing Officer by all the 6 companies of the same date. The assessee was asked to produce the principal officers of all these companies for examination on 20th January, 2015. However, assessee did not produce even a single principal officer or Director of the 6 companies. Assessee was also given another opportunity on 16.02.2015 to produce the Directors. On that date too assessee could not produce any of them. The assessee was given third opportunity to produce the Directors on 23rd February, 2015. The summons were also issued on all the above 6 companies. The assessee did not produce any of the Directors on 23rd February, 2015 and the summonses issued to these companies were returned back. The assessee was shown the returned summons and asked to produce the Directors once again. Again on 2nd March, 2015 and 11th March, 2015 assessee was issued the show cause notice that why the addition should not be made and to produce the Directors. At the fag end of the assessment proceedings

assessee submitted that it has forfeited the amount of share application money due to non-payment of first call by these companies. Thus, the claim of the assessee is that the share application money received by it of Rs. 2.5 crores in assessment year 2012-13 were forfeited by it in the subsequent year for non-payment of the first call. The ld. Assessing Officer further asked the assessee to furnish the bank details of 6 companies from whom the cheques were received as well as the annual return filed with the Registrar of Companies. The Assessing Officer further issued summons on 17th March, 2015 for all the Directors. Summonses were returned back and assessee did not furnish any information. The summonses were returned back showing that no such company exists at the addresses mentioned. The Assessing Officer further deputed an Inspector to serve summons under Section 131 of the Act. The report of the Inspector shows that there was no sign-board or name plate of any of these companies. On enquiry, one Mr. Vinod Kumar, care taker of the building stated that no such companies are working there or have ever existed. Inspector further enquired from the neighbors and all of them stated that no one knows about these companies ever existed there. Further on 19th March, 2015 the assessee was also asked to produce the share holders register and Form No. 2 filed with the Registrar of Companies of the Companies Act for issue of shares to these companies. He was also asked that how pending share application money can be forfeited. The ld. AR submitted that no Form No. 2 was filed with the ROC, but the shares were allotted to these companies. He also produced share holder register. On the basis of all the information, the Assessing Officer analyzed the annual accounts of the assessee company for the year ended on 31st of March 2012 where the share application money was outstanding for pending allocation of Rs.2 .73 crores and for 31st of March 2013 the share application money of Rs 2 .5 crores were forfeited. The learned AO issued summons to the director of the assessee company u/s 131 of the act for personal disposition in order to produce original application made by the persons for share application money whose shares have been forfeited. On 27th of March 2015 the authorised representative of the assessee submitted that that they are submitting the share application money for addition to the income of the assessee for financial year 2011 –

12. The learned authorised representative also submitted that the assessee company offered the share application money for taxation and suomotu surrender the same. The learned assessing officer rejected the contention of the assessee holding that assessee has failed to establish the identity, creditworthiness and genuineness of the transactions of the share application money. He discussed numerous judicial precedents. And made the addition of 25,000,000/– u/s 68 of the income tax act by order u/s 143 (3) of the income tax act dated 27th of March 2015. The learned CIT – A has deleted the addition made on the details submitted by the assessee of the records of the registrar of Companies of the share applicant, permanent account number and income tax jurisdiction of the share applicant company, the bank statement as well as the acknowledgement of the latest income tax return. He held that assessee has discharged its initial onus cast u/s 68 of the income tax act. He further held that the learned assessing officer failed to carry a suspicion to logical conclusion by further investigation. The learned CIT – A did not mention what further investigation the learned assessing officer could have carried out when neither the assessee could produce any of the directors, nor the director of the assessee company remained present before the AO. Further the respective summons issued twice by the learned assessing officer returned unserved and definition of Inspector also proved that no such company existed at that assessee given by the assessee. Assessee did not give any other address of the shareholders. The financial position of the share applicant was also shaky and lacked any credence. It was also unfair therefore the learned CIT – A to note that just because the creditors/share applicants could not be found at the address given it would not give the revenue are right to invoke Section 68 without any additional material to support such a move. In fact the learned assessing officer has done what could have been done. The learned CIT – A was further stated by the fact that the money is received by cheque and transmitted through banking channels the genuineness of the transaction stands proved. We are sorry to state that all such transactions are only through banking channels. Merely because the transactions are carried out through banking channels the creditworthiness of the parties as well as the genuineness of the transaction

does not prove at all. The learned CIT – A further stated that offer of the sum to be taxed by the learned authorised representative who only appeared before the assessing officer could not be the reason for making the addition. He plainly overlooked the fact that the learned assessing officer has not accepted the surrendered made by the learned authorised representative but has made the addition solely on the basis of the material produced by the assessee and failure of the assessee to produce the directors of the shareholders before him not only once but on many occasions. Even the director of the assessee company was not produced. The learned CIT – A did not utter a word in his whole order that what would be the reason for surrender of the sum by the assessee and forfeiture of the share application money immediately in the succeeding year. Therefore we completely agree with the argument of the learned departmental representative that the order of the learned CIT – A does not have any legs to stand. None of the judicial precedents cited before the learned CIT – A applies to the facts of the case. The case before us is squarely covered by the decision of the honourable Supreme Court in case of NRA iron and steel Ltd[2019] 110 taxmann.com 491 (SC)/[2020] 268 Taxman 1 (SC)/[2019] 418 ITR 449 (SC) and further proceedings in the same case before the honourable Supreme Court reported in[2020] 117 taxmann.com 752 (SC)/[2020] 273 Taxman 14 (SC) and the decision of the honourable Delhi High Court in case of Pr. CIT v. NDR Promoters (P.) Ltd. [2019] 102 taxmann.com 182/261 Taxman 270/410 ITR 379 (Delhi). In view of this we reverse the order of the learned CIT – A relating the addition of 25,000,000/– made by the learned assessing officer u/s 68 of the income tax act and restore the order of the learned assessing officer. In the result ground number 1 – 3 of the appeal filed by the learned assessing officer are allowed.

08. In the result appeal filed by the learned assessing officer is allowed.

Order pronounced in the open court on 14/07/2021.

Sd/-	**Sd/-**
(SUDHANSHU SRIVASTAVA)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 14/07/2021.
MEHTA

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	14.07.2021
Date on which the typed draft is placed before the dictating member	14.07.2021
Date on which the typed draft is placed before the other member	14.07.2021
Date on which the approved draft comes to the Sr. PS/ PS	14.07.2021
Date on which the fair order is placed before the dictating member for pronouncement	14.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	14.07.2021
Date on which the final order is uploaded on the website of ITAT	14.07.2021
date on which the file goes to the Bench Clerk	14.07.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	