

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.9170/Del/2019
(Assessment Year: 2008-09)**

Vedic Foundation Private Limited,
43-B, 1st Floor, Dilshad Garden,
Delhi – 110 093.

vs. ITO, Ward 26 (2),
New Delhi.

(PAN : AAACI8590C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Joshi, CA
REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 10.01.2024
Date of Order : 25.01.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-28, New Delhi dated 27.09.2019 for the assessment year 2008-09.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the Ld. CIT (A) has erred both on facts and in law by confirming an addition of Rs.1,45,00,000/- u/s 68 of the I.T. Act, 1961 made by the assessing officer in his order passed u/s 147/143(3).

2. That the Ld. CIT (A) has erred both on facts and in law by confirming an addition of Rs.4,35,000/- u/s 69C of the I.T. Act, 1961 made by the assessing officer in his order passed u/s 147/143(3).”

3. Brief facts of the case are that in this case, return of income was filed by the assessee on 30.09.2008 declaring the loss of Rs.27,360/-. The case was processed u/s 143 (1) of the Income-tax Act, 1961 (for short 'the Act'). Subsequently, information was received by AO from the Investigation Wing of the Department that the assessee is beneficiary of taking accommodation entries of Rs.35,00,000/- in the garb of share application money/share capital from entry providers namely, Shri Praveen Kumar Jain group in the names of the following entities :-

Name of the Company	Amount
Hema Trading Co. Pvt. Ltd.	1000000
Realgold Trading Company Pvt. Ltd.	2500000
Total	3500000

3.1 It was further found by the AO that the assessee had also received the share application money aggregating to Rs.1,10,00,000/- from the following parties during the year under consideration :-

Name of the Company	Amount
Kapindra Multitrade Pvt. Ltd.	15,00,000
Eternity Multitrade Pvt. Ltd.	50,00,000
Dynamatic Import and Exports Pvt. Ltd.	15,00,000
Vibhuti Multitrade Pvt. Ltd.	30,00,000
Total	1,10,00,000

3.2 AO asked the assessee to furnish details of the said transactions. AO noted that assessee has filed all relevant documents. However, AO was not convinced. He noted that the assessee company has merely attempted to

complete the paper trail in respect of such transactions to disguise the same as genuine. AO issued notices u/s 133 (6) of the Act to the above companies. However, AO noted that assessee could not produce the Directors/Principal Officers of the said companies. Hence, AO took adverse inference and treated the transactions as liable to be added under section 68 of the Act. AO made basis of addition on the fact that assessee has not produced Directors/Principal Officers of these companies, thereafter he detailed the modus operandi of business of Praveen Kumar Jain and AO concluded that assessee has not discharged its onus and the entire amount of Rs.1,45,00,000/- is liable to be added to the income of the assessee u/s 68 of the Act. The AO also noted that since the assessee had arranged accommodation entries of the amount of Rs.1,45,00,000/- from Praveen Kumar Jain group of companies, the commission @ 3% of the total sum was taken by the entry providers. Hence, AO added 3% for arranging bogus transaction amounting to Rs.4,35,000/- and added the same under section 69C of the Act.

4. Upon assessee's appeal, ld. CIT (A) considered the issue and confirmed the AO's order. While doing so, he observed that assessee company is different from public limited company. He gave various features of public limited company and found that in the case of private company like the assessee, there is rotation of funds. Ld. CIT (A) held that assessee has not been able to satisfy the three conditions i.e. identity of creditor,

creditworthiness and genuineness of transactions. Similarly, he noted that in response to section 133 (6) notice, no reply was received. He further noted that the request of the AO to produce the Directors to examine the details by the assessee was not met out by the assessee and summons u/s 131 of the Act issued by the AO to examine the Directors of creditor companies were also not responded despite due service. Hence, ld. CIT (A) held that assessee had not filed any evidence in respect of creditor companies. He further made general discussion upon the companies but only topic noted against the assessee was that creditors were not examined as the assessee did not comply with the notices to produce them. Ld. CIT (A) gave several instances and decisions also which were in general regarding the evidence of the accommodation entry providers and finally, he upheld the addition of Rs.1,45,00,000/- under section 68 of the Act.

5. Against this order, assessee is in appeal before us.

6. Ld. Counsel of the assessee submitted that the assessee has submitted all the documents necessary to prove the identity, creditworthiness and genuineness of the assessee company and that no defect has been found and mentioned in the orders of the authorities below. He further submitted that in the Investigation Wing information, what was found against the assessee was not provided to the assessee. Further, he submitted that only three companies were mentioned by the Investigation Wing. However, ld.

Counsel of the assessee submitted that other companies were not at all mentioned in the bogus entry providers list. He further submitted that assessee has asked to cross-examine Praveen Kumar Jain but this request was not granted. He further submitted that ld. CIT (A) was wrong when he mentioned that AO has issued summons to the concerned parties. He submitted that only assessee was requested to produce the Directors at the fag end of the assessment. Ld. Counsel submitted that the assessee has filed the balance sheet of the companies and the financials of the companies and no adverse inference has been taken by the authorities below. He further submitted that the assessment year concerned is prior to AY 2013-14, hence source of source examination is not applicable here. Further, ld. Counsel of the assessee relied upon several case laws as under :-

- (i) Pr. CIT vs. Laxman Industrial Resources Ltd. 397 ITR 106 (Delhi);
- (ii) CIT vs. Orchid Industries Pvt. Ltd. 397 ITR 136 (Bombay);
- (iii) CIT vs. Kamdhenu Steel and Alloys Ltd. 361 ITR 220 (Delhi);
- (iv) Shiv Dhoot Pearls 237 taxman 104 (Delhi);
- (v) Dwarkadhis Investment P. Ltd. 330 ITR 298 (Delhi);
- (vi) CIT vs. Lovely Exports (P.) Ltd. 216 CTR 195 (SC),

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below. He submitted that assessee was requested to produce the Directors but they were not produced. He further submitted that these companies are bogus entry providing companies and whose identity,

creditworthiness and genuineness was not proved. He further submitted that the financials of these companies given in the paper book submitted by the assessee do not inspire much confidence. Hence, he submitted that the orders of the authorities below need to be sustained.

8. We have heard both the parties and perused the records. We find that only three companies were noted as bogus entry providers by the Investigation Wing information. However, for other five companies, there is no allegation of bogus entry providing by the Investigation Wing. AO has noted that assessee has submitted all the documents as called for. In this regard, we note that with respect to these companies, assessee has provided the following chart and also attached details with the paper book filed before us :-

Sr.No.	Nature of Documents
1.	Acknowledgement of Return of Income and computation of total income for the A.Y. 2008-09 along with Financial Statement of the assessee for the A.Y. 2008-09
2.	Ledger Copy along with Bank Statement of assessee reflecting the payment received for share application money
3.	M/s. Hema Trading Private Ltd.
	3.1 Ledger confirmation
	3.2 Bank Statement Highlighting the transactions
	3.3 Acknowledgement of return of income for the A.Y. 2008-09
	3.4 Financial Statements as at 31.03.2008
	3.5 Share application form and board resolution
4.	M/s. Real Gold Trading Co. Pvt. Ltd.
	4.1 Ledger confirmation
	4.2 Bank Statement Highlighting the transactions
	4.3 Acknowledgement of return of income for the A.Y. 2008-09
	4.4 Financial Statements as at 31.03.2008
	4.5 Share application form and board resolution
5.	M/s. Kapindra Multitrade Pvt. Ltd.
	5.1 Ledger confirmation
	5.2 Bank Statement Highlighting the transactions
	5.3 Acknowledgement of return of income for the A.Y. 2008-09
	5.4 Financial Statements as at 31.03.2008
	5.5 Share application form and board resolution

6.	M/s. Eternity Multitrade Pvt. Ltd.
6.1	Ledger confirmation
6.2	Bank Statement Highlighting the transactions
6.3	Acknowledgement of return of income for the A.Y. 2008-09
6.4	Financial Statements as at 31.03.2008
6.5	Share application form and board resolution
7.	Dynamic Import & Exports Pvt. Ltd.
7.1	Ledger confirmation
7.2	Bank Statement Highlighting the transactions
7.3	Share application form and board resolution
8.	Vibhuti Multitrade Pvt. Ltd.
8.1	Ledger confirmation
8.2	Bank Statement Highlighting the transactions
8.3	Acknowledgement of return of income for the A.Y. 2008-09
8.4	Financial Statements as at 31.03.2008
8.5	Share application form and board resolution
9.	Submissions made before the Learned Assessing Officer during the course of assessment proceedings
10.	Submissions made before the Learned CIT (AO during the course of appellate proceedings.
11.	Form 2 for shares allotted.

9. We find that all the documentary evidences were duly provided to the AO. AO did not offer any examination of these documents and did not mention even a single adverse point in the financials of these companies. His whole exercise was based upon his claim that section 133 (6) notice was returned unserved. However, it was not at all the case that these companies were not having PAN or they were not filing income-tax returns. Ld. CIT (A) has mentioned that AO has issued summons u/s 131 of the Act to the Directors of the company but no such mention was there in the order of the AO. From the examination of the financials, balance sheet and bank statement, it is noted that transactions were through banking channel and these companies have sufficient financial reserves to provide the credits/ loans to the assessee company.

10. In these circumstances, when all the details were provided and no adverse feature was noted therein, assessee has discharged the onus cast upon it. The authorities below have based these adverse orders only by making general observation and repeating that assessee did not produce the directors of these companies. Our adjudication finds support from following case laws relied upon by the assessee :-

- (i) Pr. CIT vs. Laxman Industrial Resources Ltd. 397 ITR 106 (Delhi) – It was held that in respect of addition under section 68 of the Act, when all documents provided and no scrutiny by AO of the documents, addition solely on the basis of Investigation Wing report is to be deleted.
- (ii) Similarly, in the case of CIT vs. Orchid Industries Pvt. Ltd. 397 ITR 136 (Bombay), in connection with section 68 of the Act, it was held that when all the details have been given, non-appearance of the parities is irrelevant.
- (iii) Similarly, in the case of CIT vs. Kamdhenu Steel and Alloys Ltd. 361 ITR 220 (Delhi), Shiv Dhoot Pearls 237 taxman 104 (Delhi) and Dwarkadhis Investment P. Ltd. 330 ITR 298 (Delhi), it was held that source of source of investment company is not required to be explained.
- (iv) In the case of CIT vs. Lovely Exports (P.) Ltd. 216 CTR 195 (SC), it was held by Hon'ble Apex Court that if share application money is received by assessee company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen

their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income u/s 68 of the Act.

11. Thus, in the background of the aforesaid decisions and precedent, we are of the opinion that assessee has discharged its onus, hence orders of authorities below are set aside. Since addition under section 68 of the Act has been directed to be deleted, the addition for commission does not survive and the same is also directed to be deleted.

12. In the result, this appeal of the assessee stands allowed.

Order pronounced in the open court on this 25th day of January, 2024.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 25th day of January, 2024
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**