

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D' NEW DELHI)

BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER  
AND  
SHRI B.K. HALDAR, ACCOUNTANT MEMBER

I.T.A. No.2251/Del/2011  
Assessment year : 2007-08

ITO,  
Ward-4 (1),  
New Delhi.

v.

JMD Global (P) Ltd.,  
A-33/29, Guru Nanak Pura,  
Shakarpur, New Delhi.

(Appellant)

(Respondent)

**PAN /GIR/No.AAACJ-9822-A**

Appellant by : Ms. Y. Kakkar, DR.  
Respondent by : Shri None.

ORDER

PER B.K. HALDAR, AM:

This is an appeal filed by the revenue against the order of Id CIT(A) –VII, New Delhi dated 21.2.2011 for assessment year 2007-08. The revenue has taken following grounds of appeals:-

1. The order of the Id CIT(A) is erroneous & contrary to facts & 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 of ₹.50,00,000/- made by the Assessing Officer u/s 68 of the Income Tax Act, 1961 being the unexplained share capital and share premium.
- 2.1. The Ld CIT(A) ignored the findings recorded by the Assessing Officer and the facts that assessee failed to prove the existence & credit worthiness of the creditors and genuineness of the transaction.

3. The appellant craves leave to add, to alter or amend any ground of the appeal raised above at the time of hearing.
2. Notice issued for hearing was served by the Department on the last known address of the assessee. However, on the date of hearing neither anybody attended on behalf of the assessee nor was there any adjournment application. In view of the above, we proceeded to hear the appeal ex parte qua the respondent.
3. The Ld DR contended that the Ld CIT(A) was not justified in admitting the additional evidence and even after admitting the additional evidence proper opportunity in terms of Rule 46A(3) was not allowed to the Assessing Officer. According to the Ld Dr, though no such ground was taken by the revenue specifically the same would be covered by ground No.1 taken by the revenue. In support of the above contentions, the Ld DR relied on the following case law:-

1. ITO v. M/s Mittal International (India) Pvt. Ltd. 2008-TIOL-474-ITAT-DEL dated 30.6.2008.

4. It was further contended by the Ld DR that the Assessing Officer had the jurisdiction to look into the genuineness of the brought forward trade creditors and could make addition if the same is not found to be genuine. In support of the above contention, following case laws were cited:-

1. Shri Suresh Kumar Jain v. ITO 2010-TIOL-354-ITAT-Bang. Dated 8.01.2012.
2. Mr. Lachman Dass Bhatia v. CIT 2010-TIOL-757-HC-Del.-IT dated 28.,10.2010.

Thus, it was contended by the Ld Dr that the Ld CIT(A) was not justified in deleting the addition of ₹.50,00,000/-.

5. We have heard the Ld DR and perused the record. We find that the addition pertains to increase in share capital of ₹.5,00,000/- and

share premium of ₹.45,00,000/- lakhs. The impugned amount of ₹.50,00,000/- was received from seven parties whose names and details thereof have been enumerated by the Assessing Officer in page 3 of the assessment order. The Assessing Officer required the assessee to furnish details relating to the above parties u/s 142(1) of the Act which the assessee did not comply with. Notice issued u/s 133(6) of the Act to the said parties were also not complied with by those parties. The Assessing Officer, therefore, added the impugned amount of ₹.50,00,000/- u/s 68 of the Income Tax Act, 1961. After referring to various case laws as discussed by him in the assessment order.

6. Before the Id CIT(A), it was contended by the assessee that all the allottees were in Calcutta and as the notice u/s 133(6) were sent towards the fag end of the time barring period, the same could not be replied by those parties before the assessment order was passed. As additional evidence, copies of confirmation letters sent by the respective companies were furnished before the Ld CIT(A). The Ld CIT(A) sent the additional evidence furnished by the assessee to the Assessing Officer. It is mentioned by the Ld CIT(A) that the additional evidence was sent to the Assessing Officer in terms of Rule 46A(3) of the Act. However, it is seen from his order that (para 5.2) the additional evidence was admitted by the Ld CIT(A) only after receiving the objection of the Assessing Officer. After admission of additional evidence, it does not appear that the Ld CIT(A) had given the Assessing Officer opportunity for enquiry and verification with reference to copies of confirmations provided by the assessee before the Id CIT(A). It is also not clear as to whether the placement of shares were public placement or private placement. There is no evidence in the record of the Tribunal to ascertain that the shares of the assessee company could be placed with such a huge amount of premium.

7. In the facts and circumstances enumerated above, we are of the considered opinion that it would serve end of justice if the impugned orders of the Assessing Officer as well as the Ld CIT(A) are set aside on the disputed issue and the matter remanded back to the file of the Assessing Officer with the direction that a fresh order be passed on the issue involved as per law after giving the assessee adequate opportunity of being heard. We direct accordingly.

8. In the result, the appeal filed by the revenue is allowed for statistical purposes.

9. Order pronounced in the open court on the date of hearing i.e. 27<sup>th</sup> day of January, 2012.

Sd/-

(U.B.S. BEDI)  
JUDICIAL MEMBER

Sd/-

(B.K. HALDAR)  
ACCOUNTANT MEMBER

Dt. .1.2012.  
HMS

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

