

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H", NEW DELHI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI C.M. GARG, JUDICIAL MEMBER

I.T.A. No. 2104/Del/2010

A.Y. : 2003-04

ITO, WARD 17(4),  
ROOM NO. 238, CR BUILDING,  
I.P. ESTATE, NEW DELHI

(Appellant )

vs. M/S VISHVDEVA LEASING &  
INVESTMENT PVT. LTD.,  
B-13/68-A, JANAKPURI,  
NEW DELHI  
(PAN/GIR NO. : AAACV 1015 F)  
(Respondent )

Assessee by  
Department by

: Mrs. Shumana Sen, Sr. D.R.  
: Sh. Ved Jain, Rano Jain & Sh. V.  
Mohan, CAs

**ORDER**

**PER SHAMIM YAHYA: AM**

This appeal by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-XIX, New Delhi dated 17.2.2010 pertaining to assessment year 2003-04.

2. The grounds raised read as under:-

- "1. On the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (A) has erred in deleting the addition of ₹ 1001500/- made u/s. 68 of Income Tax Act, 1961 especially when the identity and credit worthiness of the share applicants and genuineness of transaction was not established satisfactorily.

2. On the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (A) has erred in holding that the assessee has provided necessary details ignoring the fact that mere filing of assessment particulars does not tantamount to discharge of onus u/s. 68 of Income Tax Act.
3. On the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (A) has erred in holding that the Assessing Officer has simply acted on the information received from the investigation wing in complete disregard of the finding given in the assessment order.
4. On the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (A) has erred in holding that the Assessing Officer has not found any discrepancy in the books of the assessee especially when the cash credits appearing in assessee's books remained unexplained.
5. On the facts and in the circumstances of the case, Ld. Commissioner of Income Tax (A) has erred in holding that if there was any discrepancy in the books of the investing companies, there was a case for reopening of assessment of investing companies. Ld. Commissioner of Income Tax (A) has ignored the fact that it is the beneficiary who has obtained accommodation entries, is liable for tax."

3. In this case during the year assessee company had shown receipt of share application money/ share capital of ₹ 10 lacs from the following two parties

(i) M/s J. Singh Tradinmg & Investments Pvt. Ltd. – 17.8.02 - ₹ 500000/-

ii) M/s Particular Manage Finlease (India) Pvt. Ltd. – 18.8.02 - ₹ 500000/-

3.1 The Assessing Officer received information from the Investigation Wing of the Department that the companies which contributed towards share application money/ share capital was involved in providing accommodation entries. In view of this information Assessing Officer initiated the action u/s. 148 of the I.T. Act. Before the Assessing Officer assessee submitted the confirmations from these parties, their addresses and PAN alongwith copy of the Income Tax Returns. However, the Assessing Officer noted that letters addressed to these parties could not be served. Assessing Officer asked the information from the State Bank of Patiala from where these cheques were issued to the assessee company. Assessing Officer noted that in both the cases cash was deposited before payment by way of cheques. Assessing Officer observed that the deposits of cash into the bank accounts of both the creditors leads him to irresistible conclusion that assessee has used its own undisclosed income in obtaining the cheques from these parties. Assessing Officer further observed that Ld. Authorised Representative of the assessee was required to produce the Directors of the assessee companies but has shown his inability to produce them for cross examination to determine the source of deposit of cash and to the genuineness of the transaction. Assessing Officer held that a sum of ₹ 10,01,500/- received by the assessee on share capital

amount was to be added u/s. 68 of the I.T. Act to the income of the assessee. Further, the Assessing Officer observed that assessee must have paid commission @2% to obtain the cheque in lieu of cash and hence, commission paid @ 2% was also to be added to the income of the assessee.

4. Upon assessee's appeal Ld. Commissioner of Income Tax (A) noted that assessee had filed following documents in the course of assessment proceedings to prove the transactions.

- a) Name and address of the shareholders.
- b) Income Tax Particulars of shareholders.
- c) Share Application Forms.
- d) Confirmation of shareholders with regard to Share Capital subscribed by them.
- e) Affidavit of the shareholders with regard to share capital subscribed by them.

4.1 Ld. Commissioner of Income Tax (A) noted that Assessing Officer has not verified the details furnished by the assessee and Income tax records of the share holders/ investing companies. Ld. Commissioner of Income Tax (A) noted that Assessing Officer has not controverted this aspect and observed that assessee has discharged its burden of providing basic details which were required for verification to fulfill the conditions viz. identity of the creditor, creditworthiness of the creditor and genuineness of the transaction. Ld. Commissioner of Income Tax (A) thereafter referred the several case laws and held that he has no hesitation to conclude that assessee has provided

necessary details and has discharged onus cast on it. He noted that the Assessing Officer has not brought anything on record to dispute that facts /details furnished by the assessee. In view of the above, Ld. Commissioner of Income Tax (A) deleted the addition of ₹ 10,00,000/- on share capital.

5. Against the above order the Revenue is in appeal before us.

6. We have heard the rival contentions in light of the material produced and precedent relied upon. We find that in this case the Ld. Commissioner of Income Tax (A) has noted that assessee has submitted the various details which the Assessing Officer has not examined/enquired properly as follows:-

- a) Name and address of the shareholders.
- b) Income Tax Particulars of shareholders.
- c) Share Application Forms.
- d) Confirmation of shareholders with regard to Share Capital subscribed by them.
- e) Affidavit of the shareholders with regard to share capital subscribed by them.

6.1 We further find that the Assessing Officer has observed that letters were issued to the above parties which could not be served. Assessing Officer further observed that assessee was not able to produce the Directors of the creditor companies. Furthermore, Assessing Officer has found that cash was deposited in

the bank account before issue of cheque for share capital. Accordingly, Assessing Officer has made the addition towards the share capital/ share application money. Ld. Commissioner of Income Tax (A) on the other hand has held that the assessee has discharged its onus and Assessing Officer has not brought any thing on record to dispute the details/ facts furnished by the assessee.

6.2 In this regard, we note that it is not the case that, the enquiry the Assessing Officer has not made, was done by the Ld. Commissioner of Income Tax (A) himself. It is a settled law that the powers of the Commissioner of Income Tax is co-terminus with that of Assessing Officer. Under the circumstances, the particular enquiry that was not made by the Assessing Officer which was necessary in the facts of the case, should have been done by the Ld. Commissioner of Income Tax (A).

6.3 Furthermore, we find that in this case shares of ₹ 10 of face value has been issued at a share premium of ₹ 40/-. How this company was commanding ₹ 40/- premium on ₹ 10/- share has not been enquired. No cogent explanation was submitted in this regard before us. In this regard, we find that the Hon'ble Apex Court in the case of Kapurchand Shrimal Vs. CIT, 131 ITR 451, held that the appellate authority has jurisdiction as well as the duty to correct the errors in the

proceedings under appeal and issue proper direction as necessary. Hence, in the interest of justice, we remit the issues raised in the appeal to the file of the Assessing Officer to consider the same de novo, in light of the our above observations.

7. In the result, the appeal filed by the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on 07/9/2012.

Sd/-

SD/-

**[C.M. GARG]  
JUDICIAL MEMBER**

**[SHAMIM YAHYA]  
ACCOUNTANT MEMBER**

*Date 07/9/2012*

"SRBHATNAGAR"

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

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By Order,

Assistant Registrar,  
ITAT, Delhi Benches