

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

I.T.A. No. 4227/DEL/2014

A.Y. 2005-06

INCOME TAX OFFICER,
WARD-11(3), New Delhi
ROOM NO. 374A, C.R. BLDG.,
NEW DELHI

(APPELLANT)

VS. M/S FUSSY FINANCIAL
SERVICES PVT. LTD.
1117/12, 3RD FLOOR,
NAIWALA, KAROL BAGH,
NEW DELHI – 110 005
(PAN: AAACF0157G)
(RESPONDENT)

Department by : Sh. Anil Kumar Sharma, Sr. DR

Assessee by : Sh. Kapil Goel, Adv.

ORDER

PER H.S. SIDHU, JM :

This appeal by the Revenue is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-XIII, New Delhi dated 23.05.2014 pertaining to Assessment Year 2005-06 on the following grounds:-

1. On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,17,67,951/- made on account of unexplained credits u/s. 68 of the I.T. Act.

2. The appellant craves leave for add, alter or amend any ground of appeal raised above at the time of hearing of this appeal.

2. The brief facts of the case are that the assessee had filed its return of income for the relevant assessment year 2005-06 on 29.10.2005 declaring income of Rs. 3,557/-. The return was processed u/s. 143(1) of the I.T. Act, 1961. Subsequently, the notice u/s. 143(2) of the Act was issued to the assessee. In response to the notice, the A.R. of the assessee attended the proceedings from time to time and filed the details. In this case during the year the share capital of the assessee company has increased by Rs. 1,01,90,000/- and Reserve and Surplus has increased by Rs. 1,98,64,000/- which shows that shares were allotted on premium. Other liabilities also increased by Rs. 6,31,020/-. The Assessee has also invested most of the amounts in other companies by way of loans or share purchase. As per profit and loss account the assessee has shown an income of Rs. 85,873/- only from other sources. AO observed that the share capital raised by the assessee company required verification hence notices u/s. 133(6) were sent to all the parties. Confirmations from all the parties was also received. However, from the confirmations received, it was noted that all the confirmations were received from Karol Bagh post office whereas some of the parties were from Delhi Gate area. Thereafter AO observed that the assessee company has received / provided entries to other paper companies so as to pass on the money to the ultimate beneficiaries and the transaction is also not genuine, identity is not

proved as none of the Directors have been produced or appeared in response to the summons issued and also as per the report of the Inspector in this regard. However, creditworthiness also remains disputed. AO further observed that in fact the assessee has not done any real business and has circulated the money within the group to ultimate beneficiaries. As the Department is also looking after the cases of beneficiaries and the amounts channelized through this group would be taxed in the hands of beneficiaries, the amount of total credits of Rs. 3,17,67,951/- made in its bank account with Kotak Mahindra Bank, KG Marg, New Delhi, during the year was added to the income of the assessee on protective basis and accordingly the AO completed the assessment at Rs. 3,27,37,450/- u/s. 143(3) of the I.T. Act, 1961 vide order dated 27.12.2007. Aggrieved by the assessment order dated 27.12.2007, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 23.05.2014 has deleted the addition and partly allowed the appeal of the assessee.

3. Aggrieved with the impugned order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

5. On the contrary, Ld. A.R. of the Assessee relied upon the order of the Ld. CIT(A).

6. We have heard both the parties and perused the records, especially the order of the Ld. CIT(A). We find that Ld. First Appellate Authority has elaborately discussed and adjudicated the issue in dispute vide para no. 2.1 at page no. 5 to 11. The relevant findings of the Ld. CIT(A) are reproduced as under:-

"2.1 I have carefully perused the facts of the case and the detailed submissions made by the counsel of the appellant. The facts denoted in the assessment order reveal that the Assessing Officer made the addition of Rs. 3,17,678,951/- on protective basis u/s. 68 of the Act. The Assessing Officer accepted the fact that the appellant is acting as the entry operator. The case was remanded back to the Assessing Officer for his specific comments on the quantum of share application money received by the company. The Assessing Officer vide remand report dated 16.8.2012 reported that total credits of Rs. 3,17,67,952/- came into the bank accounts of the country.

The statement of Sh. PN Jha, Director of the Company was recorded u/s. 131 of the Act by the

Assessing Officer on 11th of June, 2004. The statement is reproduced as under:-

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Sh. PN Jha in his answer to the various questions categorically explained that the company is doing the business of investment and finance. In answer to Q.No. 8 he explained that the bank accounts of the company have been used for providing the accommodation entries. The company has earned the gross commission income ranging from 0.5% to 1% and after adjusting the various expenses the net income ranges between 0.25% to 0.5%. He categorically explained that the various entries have been rotated through their bank accounts and entries to the following have been given during the year as appearing in the books of accounts as on 31.3.2005.

Investments	As at 31.03.2005	As at 31.03.2004
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Esteem Securities & Leasing Ltd.	500000.00	500000.00
Prosafe Investment Pvt. Ltd.	7372000.00	1242000.00
Proshare Investment & Fin. Pvt. Ltd.	2334000.00	1484000.00
SAR Finance & Investment P Ltd.	750000.00	750000.00
VS Capital Services P Ltd.	570000.00	570000.00
Nishtika Investment & Fin. Pvt Ltd.	800000.00	800000.00
Rosmik Finlease Ltd	150000.00	150000.00
Chintan Securities &Fin. Ltd.	650000.00	650000.00
ABO Investment Pvt. Ltd.	1960000.00	560000.00
Finwiz Capital Services Pvt. Ltd.	4850000.00	450000.00
G&G Pharma (I) Ltd	450000.00	450000.00
Meenakshi Overseas Pvt. Ltd.	1100000.00	1100000.00
Zars Trading Pvt. Ltd.	400000.00	400000.00
Investwell Securities Pvt. Ltd.	500000.00	500000.00
Afrosaster Merc~ants Pvt. Ltd.	910000.00	--
Aggregate Finance &	5665000.00	~ --
Genius Polymers Pvt. Ltd.	3500000.00	--
Hareram Restaurents Pvt. Ltd.	1100000.00	--
Meghna Towers Pvt. Ltd.	1050000.00	--
Rajat Chits Pvt. Ltd.	700000.00	--
Subham Electricals Pvt. Ltd.	1150000.00	--
Swastik Propbuilrl Pvt. Ltd.	500000.00	--
Others	13440000.00	10301150.00
	50401000.00	19907150.00

The analysis of the investment account reveal that the company has made investment of Rs. 5,04,01,000/. The statement given by Sh. PN Jha assumes importance wherein he categorically admitted that the company was doing the business of investment and finance and during the year the bank accounts of the company have been used to provide the accommodation entries. The

addition of Rs. 3,17,67,951/- made by the Assessing Officer on protective basis therefore, deserves to be deleted.”

7. On going through the aforesaid findings of the Ld. CIT(A), we find that the Assessing Officer made the addition of Rs. 3,17,67,951/- on protective basis u/s. 68 of the Act. The Assessing Officer accepted the fact that the assessee is acting as the entry operator. The case was remanded back to the Assessing Officer for his specific comments on the quantum of share application money received by the company. The Assessing Officer vide his Remand Report dated 16.8.2012 reported that total credits of Rs. 3,17,67,952/- came into the bank accounts of the company. The statement of Sh. PN Jha, Director of the Company was recorded u/s. 131 of the Act by the Assessing Officer on 11th of June, 2004. The statement of Sh. PN Jha is mentioned at impugned order page no. 6 to 9 *written in Hindi language*, which is not reproduced hereunder. However, Sh. PN Jha in his answer to the various questions categorically explained that the company is doing the business of investment and finance. In answer to Q.No. 8 he explained that the bank accounts of the company have been used for providing the accommodation entries. The company has earned the gross commission income ranging from 0.5% to 1% and after adjusting the various expenses the net income ranges between 0.25% to 0.5%. We further find that the various entries have been routed through their bank accounts and entries to the following have been given during the year as appearing in the books of accounts as on 31.3.2005.

Investments	As at 31.03.2005	As at 31.03.2004
Esteem Securities & Leasing Ltd.	500000.00	500000.00
Prosafe Investment Pvt. Ltd.	7372000.00	1242000.00
Proshare Investment & Fin. Pvt. Ltd.	2334000.00	1484000.00
SAR Finance & Investment P. Ltd.	750000.00	750000.00
VS Capital Services P Ltd.	570000.00	570000.00
Nishtika Investment & Fin. Pvt Ltd.	800000.00	800000.00
Rosmik Finlease Ltd	150000.00	150000.00
Chintan Securities & Fin. Ltd.	650000.00	650000.00
.ABO Investment Pvt. Ltd. *	1960000.00	560000.00
Finwiz Capital Services Pvt. Ltd.	4850000.00	450000.00
G&G Pharma (I) Ltd	450000.00	450000.00
Meenakshi Overseas Pvt. Ltd.	1100000.00	1100000.00
Zars Trading Pvt. Ltd.	400000.00	400000.00
Investwell Securities Pvt. Ltd.	500000.00	500000.00
Afrosaster Merc~ants Pvt. Ltd.	910000.00	--
Aggregate Finance &	5665000.00	~ --
Genius Polymers Pvt. Ltd.	3500000.00	--
Hareram Restaurents Pvt. Ltd.	1100000.00	--
Meghna Towers Pvt. Ltd.	1050000.00	--
Rajat Chits Pvt. Ltd.	700000.00	--
Subham Electricals Pvt. Ltd.	1150000.00	--
Swastik Propbuilrl Pvt. Ltd.	500000.00	--
Others	13440000.00	10301150.00
	50401000.00	19907150.00

7.1 We further note that the analysis of the investment account reveal that the company has made investment of Rs. 5,04,01,000/. The statement given by Sh. PN Jha assumes importance wherein he categorically admitted that the company was doing the business of investment and finance and during the year the bank accounts of the company have been used to provide the accommodation entries. The addition of Rs. 3,17,67,951/- made by the Assessing Officer on protective basis, which is not sustainable in the eyes of law, because in this case the AO himself stated in the assessment order that the Department is

looking after the cases of beneficiaries and the amounts channelized through this group would be taxed in the hands of the beneficiaries, the amount of total credits of Rs. 3,17,67,951/- made in its bank account with Kotak Mahindra Bank, KG Marg, New Delhi, during the year is added to the income of the assessee on protective basis. In this case we find that AO has not made any substantive assessment. There may be substantive assessment without any protective assessment, but there cannot be any protective assessment without there being a substantive assessment.

7.2 Keeping in view of the facts and circumstances of the present case, we are of the considered view that Ld. CIT(A) has rightly deleted the addition in dispute, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

8. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced on 05/06/2017.

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU]
JUDICIAL MEMBER

Date: 05/06/2017

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY
By Order,

Assistant Registrar,
ITAT, Delhi Benches