

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.292 /Viz/2017
(निर्धारण वर्ष/ Assessment Year: 2012-2013)

The ACIT
Circle-3(1)
Vijayawada

Vs. M/s Mulpuri Foods and
Feeds Pvt. Ltd.
No.3-93, Ramannagudem
Vattigudipadu Post
Nuzvid
[PAN : AAGCM2045J]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Deba Kumar Sonowal, DR
प्रत्यर्थी की ओर से/ Respondent by : Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing : 12.09.2018
घोषणा की तारीख/Date of Pronouncement : 26.09.2018

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income Tax(Appeals) [CIT(A)], Vijayawada vide I.T.A.No.33/CIT(A)/VJA/2015-16 dated 30.06.2016 for the assessment year 2012-13.

2. All the grounds of appeal except ground No.2 are related to the addition made by the AO relating to the share application money u/s 68 of the Income Tax Act, 1961 (hereinafter called as 'Act').

3. Ground No.2 is related to the admission of additional evidence for not giving opportunity to the AO as required under Rule 46A of Income Tax Rules. During the appeal hearing, for a query from the bench, the Ld.DR submitted that no additional evidence was furnished by the assessee before the Ld.CIT(A), hence we dismiss ground No.2 as infructuous.

4. During the assessment proceedings for the assessment year 2012-13, the Assessing Officer (AO) found that the assessee had accepted the share application money of Rs.9,30,77,319/- as per balance sheet dated 31.03.2012. On verification of the details furnished by the assessee the AO found that a sum of Rs.5,40,00,000/- was received from 35 individuals and the Board of Directors of the company had passed the resolution on 12.05.2014 allotting the shares to the individuals. The AO found that the company had allotted the shares to all the individuals and issued the share certificates to 35 persons for an amount of Rs.5,40,00,000/-. The AO called for the share applications and the confirmation letters to verify the identity

and sources of the share application money subscribers. The assessee furnished the confirmation letters as well as the share applications to the AO and on scrutiny of the share applications, the AO found that the assessee has not given complete details and correct postal address of the share applicants, proof of identity, copy of the pattadar passbook, details of agricultural income, source and evidences for investing in share application, mode of payment of share application money, bank account details, copy of bank statement from 01.04.2011 to 31.03.2012 etc.. Therefore, the AO held that the assessee failed to establish the identity of the shareholders, genuineness of the transaction and credit worthiness of the share applicants and held the shares application money of Rs.5,40,00,000/- as unexplained cash credit u/s 68 and accordingly made the addition.

5. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition observing that the share application money was allotted to the respective shareholders and placed reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports Pvt.Ltd. [216 CTR 195] and further held that the share

application money cannot be taxed in the hands of the company and the AO is free to assess the same in the hands of the individuals.

6. Aggrieved by the order of the Ld.CIT(A), the department carried the matter to the Tribunal. During the appeal hearing, the Ld.DR submitted that scrutiny of the share applications and the confirmations reveals that there was no clear postal address and the assessee has not furnished details requisitioned by the AO. Since the assessee has failed to furnish the details it was argued that the AO has rightly made the addition in the hands of the company. The Ld DR further argued that if the assessee fails to prove the genuineness, identity and credit worthiness of the shareholders, the AO has right to enquire into the details of the share application money received by the company and make the addition, if the share application received by the company proved to be bogus. Since, in the instant case, the confirmation letters furnished by the assessee are incomplete with regard to address and the sources the Ld.DR argued that the AO has rightly made the addition and relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. NR Portfolio Pvt. Ltd in ITA No.1019/2011 dated 22.12.2013, Hon'ble High Court of Calcutta in the case of Commissioner of Income-Tax, Kolkata-II Vs. Trinetra Commerce& Trade (P) Ltd. [2016] 75

taxmann.com 70 (Calcutta), Hon'ble Delhi High Court in the case of CIT V. N.Tarika Properties Investment (P.) Ltd. in ITA No.2080 of 2010 dated 28.11.2013, CIT Vs. Maithan International [375 ITR 0123], Rajmandir Estates (P) Ltd. Vs. Pr.CIT 386 ITR 0162, CIT Vs. Navodaya Castles (P) Ltd. [367 ITR 0306], Hon'ble High Court of Delhi in the case of Riddhi Promoters (P.) Ltd. Vs. Commissioner of Income Tax-7 and argued that the assessee's case is squarely covered by the decisions relied upon by the Ld.DR and accordingly requested to set aside the order of the Ld.CIT(A) and restore the assessment order.

7. Per Contra, Ld.AR submitted that in the instant case the assessee has furnished the copies of share applications and the confirmations as requisitioned by the Ld.AO. Share applicants are having sufficient means though they are agriculturists, they are having sufficient land holdings to explain the source of the investment made by the share applicants. All the share holders are residing in and around Nuzvid and nearby places. The assessee has furnished the details and without examining the details given by the assessee, the AO made the addition drawing adverse inference from the confirmations furnished by the assessee. Since the assessee has established the identity, credit worthiness and had allotted the shares as

well as issued the share certificates the burden of the company is discharged and there is no case for making the addition. The Ld.AR further argued that the provision for taxing the share capital in the hands of the assessee company was introduced by inserting proviso to section 68 by Finance Act 2012 w.e.f. 01.04.2013. The proviso was introduced with prospective effect but not retrospective effect. Therefore, the AO is not permitted to make the addition of share capital in the hands of the assessee company in the impugned assessment year. The Ld.AR further argued that the case laws relied upon by the Ld.DR either related to the bogus companies which are dealing in accommodation entries or the issues of section 263. In the cited cases, the assesses have failed to furnish the details. Since the assessee had furnished the complete details, the Ld.AR argued that the case laws relied upon by the Ld.DR are not applicable in the case of the assessee and no interference is called for in the order of the Ld.CIT(A)..

8. We have heard both the parties and perused the material placed on record. During the year under consideration, the assessee had accepted the share application money from 35 share applicants to the extent of Rs.5,40,00,000/- and allotted the shares to all the shareholders and

furnished the Sl.No. and distinctive number of shares issued. The Ld.CIT(A) in his order stated the above fact and observed that by the end of 31.03.2014, the entire share application money pending allotment was allotted and filed copy of Form No.2 before the Registrar of Companies and confirmed the allotment of shares. The copy of Form No.2 was also furnished before the Ld.CIT(A). During the assessment proceedings, the AO directed the assessee to submit the share applications as well as the confirmations and the same was furnished by the assessee. Though the AO stated that the details furnished on 24.03.2015, there was no material to show that the AO had called for the said details earlier which the assessee has not complied with. Therefore, the submission of details on 24.03.2015 cannot be taken as ground for not making the enquiries which required to be made by the AO with regard to the genuineness, credit worthiness and identity of the share applicants. Since the assessee has complied with the requirement of AO and there was no observation of the AO in the assessment proceedings that the assessee has not complied with any of the directions given by him. Therefore, we hold that, having filed the confirmations and share applications, the assessee has discharged its burden. On going through the remarks of the AO in the assessment order, we observe that all the share applicants are having substantial land

holdings to make the contribution to share capital, therefore, there is no reason for doubting the credit worthiness of the subscribers. Having received the confirmations, it is for the AO to make further enquires and to prove whether the contribution to share capital is bogus or genuine. No such effort was made by the AO. The AO simply scrutinized the confirmations furnished by the assessee and made the addition holding that the share applicants do not have sufficient means. Since the assessee had filed the confirmations it is for the revenue to discharge the onus that the share capital introduced by the assessee was bogus. Since no such effort was made by the AO, the onus of the revenue was not discharged, hence no addition can be made u/s 68 of the Act.

8.1. The Ld.DR strongly relied on the decision of NR Portfolio Pvt Ltd of Hon'ble Delhi High Court. The facts of the case of the NR Portfolio are that on receipt of information from investigation wing that the assessee is one of the beneficiaries of the share application money from entry operators, the AO initiated proceedings u/s 147 of the Act. The notices sent to the company were returned unserved and subsequently, the notices were served by affixture at the last known address. The assessee did not appear in response to the notices issued and the AO issued show cause notice u/s 144 r.w.s. 147 which was sent through speed post, but was returned

unserved with a remark, no such firm. The AO located the address of the Chartered Accountant of the assessee company and the notice was served on CA and made known the representative that the assessment was reopened for the purpose of verification of the share capital received through entry operators. There was no compliance from the assessee company, therefore, the AO passed the assessment order u/s 144 to the best judgement. In the case of the assessee, there was no such non compliance and there was no allegation that the company had received accommodation entries for the share application money through entry operators. The assessee company is very much in existence and had furnished all the details requisitioned by the AO. Therefore, the case laws relied upon by the Ld.DR in the case of NR Portfolio is no way helpful to the revenue and the facts are distinguishable and are not applicable in the assessee's case.

8.2. The Ld.DR also relied on the decision of Riddhi Promoters(P) Ltd of Hon'ble Delhi High Court supra and the facts of the case of Riddhi Promoters are that the assessee was unable to explain the identity, genuineness, credit worthiness of the persons who made the investment. In the instant case, in the case of the assessee, the assessee had furnished the details of the share applicants and also confirmations from the share

applicants. Having established the identity, explained the sources and the shares are being allotted, the case law relied upon by the Ld.DR is distinguishable and has no application in the assessee's case.

8.3. In the case of CIT Vs. Novodaya Castles (P) Ltd., the case is with regard to share application money received through entry operators. The share application money was received through cluster companies and the assessee was unable to furnish the requisite evidence. In assessee's case, there is no such allegation that the share application money received was in fact relating to the accommodation entries. Therefore, the case law relied upon by the Ld.DR in this case is also distinguishable and has no application in the assessee's case. In the case of CIT Vs. Trinetra Commerce & Trade (P) Ltd of Hon'ble High Court of Kolkata, the AO had issued summons to the shareholders and none of them appeared before the AO, the issue in this case also relating to the accommodation entries and the facts are distinguishable as discussed. Therefore, the case law relied upon by the Ld.DR has no application in the assessee's case. The facts of the case law relied upon by the Ld.DR in the case of Trinetra Commerce & Trade (P) Ltd. is also distinguishable from the assessee's case. In the case of Rajmandir Estates (P) Ltd and Maithan International the issues are related to invoking section 263 of the act and limited issue of whether assessment

made by the AO is erroneous and prejudicial to the interest of the revenue or not and. Therefore, both the case laws not applicable to the facts of the assessee's case.

8.4. As per the observations made by us in the preceding paragraphs in the instant case, the assessee had received the share application money, complied with the requirements of the AO in the assessment proceedings and allotted the shares to the respective shareholders. The assessee also furnished the confirmation letters containing the details of land holdings. All the share applicants are agriculturists having no taxable income, therefore, there is no case for submission of PAN details, and hence we hold that the assessee has explained the source of the capital contribution, established the identity of the creditor and also credit worthiness, hence there is no case for making addition u/s 68 in the hands of the company. The decision of Hon'ble Supreme Court in the case of Lovely Exports (supra) is also squarely applicable in the case of the assessee. As rightly argued by the Ld.AR, the share capital required to be made addition in the hands of the assessee company by virtue of proviso introduced in Finance Act, 2012 to section 68 from 2013-14 onwards, but not prior to the amendment. If the revenue is of the opinion that the share application money received by the company is bogus, the revenue is free to take

appropriate action in the hands of the shareholders. But having explained the source and established the identity, the revenue is not permitted to make addition in the hands of the company, accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

9. In the result, the appeal of the revenue is dismissed.

The above order was pronounced in the open court on 26th September, 2018.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 26.09.2018

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Mulpuri Foods and Feeds Pvt. Ltd., No.3-93, Ramannagudem, Vattigudipadu Post, Nuzvid- 521211
2. राजस्व/ The Revenue – The ACIT, Circle-3(1), Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income-Tax (Appeals), Vijayawada
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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Sr. Private Secretary
ITAT, VISAKHAPATNAM