

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC-1" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
ITA.No.3298/Del./2017  
Assessment Year 2006-2007

M/s. RMP Holding (P) Ltd., 138C, Block-B, Group-4, Dilshad Garden, New Delhi. PIN – 110 095. PAN AAACR5533N	vs.	The Income Tax Officer, Ward-15(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Suresh K. Gupta, C.A.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	18.06.2020
Date of Pronouncement :	24.06.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-7, New Delhi, Dated 01.03.2017, for the A.Y. 2006-2007.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Earlier this appeal of assessee were dismissed for default. The assessee moved M.A. for recalling of the ex-parte Order. The M.A. of the assessee is allowed and appeal is re-fixed for hearing on merits.

4. The assessee in the present appeal has challenged the reopening of the assessment under section 147/148 of the I.T. Act and addition of Rs.6 lakhs in respect of receipt of share capital money.

5. Briefly the facts of the case are that return of income of Rs.52,200/- was filed by the assessee on 29.11.2006 against which assessment under section 143(3) of the Act was completed on 30.10.2008 at an income of Rs.54,700/-. The case was reopened under section 147/148 of the I.T. Act. Notice under section 148 of the Act was issued on 22.03.2013 with the prior approval of the Commissioner of Income Tax-5, New Delhi. The reasons are

reproduced in the assessment order in which it was briefly stated that search and seizure action was conducted at the residence and office of Shri S.K. Jain and Shri V.K. Jain on 14.09.2010 and various incriminating documents / material was seized during the course of search. During the course of post-search investigation and perusal of the seized documents, it was revealed that Shri S.K. Jain and Shri V.K. Jain were engaged in the business of providing accommodation entries by providing cheques, P.Os, DDs in lieu of the cash to the large number of beneficial companies through various paper companies. They have floated various companies. As per the seized annexures, the assessee company has taken accommodation entry of Rs.6 lakhs from M/s. Finage Lease and Finance India Ltd., on 03.1.2006. Therefore, on the basis of the material collected, the A.O. had reason to believe that income chargeable to tax in a sum of Rs.6 lakhs has escaped assessment. Notice under section 148 was issued. The assessee stated before the A.O. that return filed originally may be treated as return filed in compliance to the notice issued under section 148 of

the I.T. Act. Copy of the reasons recorded were supplied to the assessee. The objections of the assessee against the reopening of the assessment were disposed of. The assessee company is engaged in carrying business of investment in financing related activities. As per the seized annexure, the assessee company has taken the accommodation entry from M/s. Finage and Finance India Ltd., amounting to Rs.6 lakhs. During the course of re-assessment proceedings, assessee has furnished copy of the share application form, copy of the bank statement and copy of the ITR etc., in respect of its claim of having engaged in genuine transaction. In order to verify the claim of assessee, notice under section 133(6) of the Act was issued to the party from whom assessee had claim to have received share capital. In compliance to the notice, M/s. Finage and Finance India Ltd., has filed confirmation, bank statement and copy of the ITR. On perusal of the bank account, it revealed that there have been regular debit and credit entries of equivalent amount within a span of 2 to 3 days. Such is a general phenomina in the case of entry providers. The assessee

company was asked to produce Principal Officer/Director of the concern for examination which could prove the genuineness of the transaction entered into by it as the onus to prove genuineness of the transaction, creditworthiness of the persons, identity of the person was upon assessee. But, assessee failed to do so. On the request of the assessee, summons were issued to Shri S.K. Jain and Shri V.K. Jain who were not the related to the said party, but, their statements were recorded as they are the persons who have controlled the whole affairs of the said party. It was stated by them that earlier also before Investigation Wing they have not admitted that they are engaged in the business of providing accommodation entries. The A.O, therefore, noted that their statements cannot be relied upon as the Investigation Wing has established that they are the entry providers and providing accommodation entries in the shape of share capital in lieu of cash received by them. The A.O. after considering the material on record found that entire transactions are paper work and assessee failed to prove the genuineness of the credit in the matter. The A.O.

accordingly made the addition of Rs.6 lakhs and completed the re-assessment proceedings.

6. The assessee challenged the reopening of the assessment as well as addition made before the Ld. CIT(A). Various case laws were relied upon. The Ld. CIT(A) considering the material on record found that reasons recorded are based on tangible material and the material collected during the course of search which clearly prove that accommodation entries have been taken by the assessee. The Ld. CIT(A) relying upon various case law, confirmed the reopening of the assessment in the matter. The Ld. CIT(A) on merit also noted that material collected during the course of search clearly reveal assessee has received accommodation entry and it is not explained why face value of the share of Rs.10/- have been taken at premium of Rs.40/- per share. As such, no prudent person would make investment in share by premium of Rs.40/- per share. The Ld. CIT(A) considering various decisions of Delhi High Court confirmed the addition on merit as well as dismissed the appeal of assessee.

7. We have heard the Learned Representatives of both the parties and perused the material on record.

8. Learned Counsel for the Assessee submitted that in A.Ys. 2007-2008 and 2010-2011, the ITAT, Delhi F-Bench, Delhi vide Order Dated 09.08.2019 have decided the identical issue. Copy of the Order is placed on record. It is stated that in the said order the Tribunal decided two appeals of the assessee and other appeals of M/s. R.K. Khemkha Enterprises vs., ITO for several years. Learned Counsel for the Assessee submitted that in the said order the Tribunal has confirmed the reopening of the assessment under section 148 of the I.T. Act and dismissed this ground of appeal of assessee. However, he tried to distinguish that the said decision is not applicable in the case of assessee. Learned Counsel for the Assessee on merits submitted that in the said order the Tribunal has deleted the addition on merits and in the case of assessee for the A.Y. 2010-2011 the matter has been remanded to the A.O. to examine the issue afresh. He has further submitted that assessee produced sufficient documentary evidences on record to

prove that addition on merit is wholly unjustified. During the course of arguments, Learned Counsel for the Assessee was required to explain whether assessee is willing to produce the Principal Officer/Director of the Investor before A.O. to prove the genuineness of the transaction in the matter and creditworthiness of the of the Investor. Learned Counsel for the Assessee after conclusion of the hearing filed a letter through email Dated 18.06.2020 stating therein that considering the quantum of tax involved, assessee had decided to move for settlement of the dispute under VIVAD SE VISHWAS SCHEME 2020 and requested that appeal may be deffered till the formalities are complied by assessee under such scheme.

9. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that the issue of reopening of the assessment under section 147/148 on identical facts has already been decided by ITAT, Delhi Bench in the case of assessee and others vide Order Dated 09.08.2019 and validity of re-assessment proceedings have been upheld. The Ld. D.R. also submitted that in the

present case assessee failed to produce the Principal Officer/Director of the Investor to prove its identity, creditworthiness of the and genuineness of the transaction in the matter, therefore, appeal of assessee may be dismissed on merit as well.

10. We have considered the rival submissions and perused the material available on record. In this case A.O. has recorded reasons for reopening of the assessment which are based upon search and seizure action conducted by the Investigation Wing in the case of Shri S.K. Jain and Shri V.K. Jain on 14.09.2010 in which incriminating material was found concerning the assessee as well. Therefore, reopening of the assessment was made by recording proper reasons. It was found that assessee has received accommodation entry from M/s. Finage Lease and Finance India Ltd., in a sum of Rs.6 lakhs. The ITAT, Delhi Bench while deciding the appeals of assessee in A.Ys. 2007-2008 and 2010-2011 along with other appeals vide Order Dated 09.08.2019 (supra), has reproduced the identical reasons for reopening of the assessment and noted that M/s. R.K.

Khemkha Enterprises Pvt. Ltd., has also received accommodation entry from one of the Investor M/s. Finage Lease Finance India Ltd., The Tribunal examining the issue in detail, confirmed the reopening of the assessment in the case of assessee as well as M/s. R.N. Khemkha Enterprises (supra). Since the issue is identical as is also considered by the Tribunal in the case of assessee and others, therefore, issue of reopening of the assessment is covered against the assessee. Learned Counsel for the Assessee has not pointed out any distinguishable facts, therefore, no infirmity is found with regard to reopening of the assessment. Further, the A.O. has recorded reasons for reopening of the assessment based on material collected during the course of search operation in the case of Shri S.K. Jain and Shri V.K. Jain. Therefore, reliable and cogent evidences were found during the course of search and such information was considered genuine on which A.O. formed his opinion for reopening of the assessment, therefore, reopening of the assessment is valid in the matter in issue. We also rely upon Judgment of Hon'ble Bombay High Court in the case

of Avirat Star Homes Venture P. Ltd., vs., ITO & Others [2019] 411 ITR 321 (Bom.) and Judgment of Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs., Geetanjali Credits and Capital Ltd., [2019] 411 ITR 338 (Del.). Thus, there is no merit in this ground of appeal of assessee qua reopening of the assessment into the matter. This ground of appeal of Assessee is dismissed.

11. As regards addition on merit of Rs.6 lakhs under section 68 of the I.T. Act, we find that assessee has though produced the documentary evidences to prove identity of the Investor, its creditworthiness of the and genuineness of the transaction in the matter, but, A.O. found from the perusal of the bank account of the Investor that there have been regular debit and credit entries of equivalent amount within a span of 2-3 days and such phenomina were found in the case of entry providers. The Ld. CIT(A) also noted in his findings that assessee company received the impugned amount of Rs.6 lakhs from the company which have subscribed shares of face value of Rs.10/- at premium of Rs.40/- per share. It is not understood as to why any

prudent Investor would invest in shares at a premium of Rs.40/- per share in the assessee company. The A.O, therefore, doubted the explanation of assessee based on these documents, therefore, asked the assessee to produce the Principal Officer/Director of the Investor for examination which could prove the genuineness of the transaction entered into by it as the onus to prove genuineness of the transaction, creditworthiness of the of the Investor and identity of the person was upon assessee, but, assessee failed to discharge the said onus. During the course of arguments, Learned Counsel for the Assessee was asked to explain whether assessee is willing to produce the Principal Officer/Director of the Investor Company before A.O. for verification of the genuineness of the transaction in the matter. Though Learned Counsel for the Assessee filed reply through email, but, did not show his willingness to produce the Principal Officer/Director of such concern before A.O. for examination in order to find-out the truth into the matter. It is merely stated that considering the quantum of amount involved, assessee is willing to opt for VIVAD SE

VISHWAS SCHEME 2020 and requested for deferment of the proceedings till such formalities are completed. Since prior to filing of this letter arguments on merit were already heard, therefore, such request is unnecessary and could not have been considered at this stage. We may also note here that vide Order Dated 03.03.2020 assessee moved an application for adjournment on the same reason that assessee would avail VIVAD SE VISHWAS SCHEME 2020. However, till date no steps have been taken by the assessee in this regard. Therefore, it is unnecessary request of the assessee to linger on the proceedings before the Tribunal. Learned Counsel for the Assessee referred to the Order of the Tribunal Dated 09.08.2019 in which in some year the addition have been deleted on merit and in A.Y. 2010-2011 the issue on merit have been remanded to the A.O. for deciding the issue afresh as per Law. After going through the said decision Dated 09.08.2019 (supra), we find that Tribunal has categorically recorded its finding in para-23 of the Order that *“no where has it been stated by the A.O. in his order that any summons under section 131 was issued to*

*these companies or to their Directors whose details were provided to him, referred to ensure their attendance.”*

However, such facts are mentioned by the A.O. in the impugned assessment order that assessee has failed to produce Principal Officer/Director of the Investor before the A.O, therefore, the said decision of the Tribunal Dated 09.08.2019 (supra) is clearly distinguishable on facts with the present assessment order. Learned Counsel for the Assessee has also failed to show willingness of the assessee to produce Principal Officer/Director of the Investor Company before A.O. at this stage. Therefore, the decision of the Tribunal would not be applicable in the case of assessee. The fact, therefore, remain that assessee failed to prove identity of the Investor, its creditworthiness of the and genuineness of the transaction in the matter. The A.O. specifically found that on the basis of the documents filed by assessee before him that there were regular debit and credit entries of the equivalent amount within a span of 2-3 days and such phenomina is present in the case of entry providers. Therefore, burden is upon assessee to prove

through reliable and cogent evidence that it has received genuine money out of the genuine transaction. If A.O. had any doubt on the paper submitted by assessee before him, it is the duty of the assessee to produce the Principal Officer/Director of the Investor Company so that A.O. could record their statement and find-out the truth. However, assessee failed to do so. Therefore, the doubts of the A.O. have not been cleared by the assessee at any stage. The burden is upon assessee to prove the ingredients of Section 68 of the I.T. Act. However, in the present case assessee has failed to discharge the onus lay upon it to prove such ingredients. Considering the totality of the facts and circumstances of the case noted above, we do not find any justification to interfere with the Orders of the authorities below in making and confirming the addition of Rs.6 lakhs. This ground of appeal of assessee has no merit and is accordingly dismissed. However, assessee is at liberty to take any step as per Law, if so advised, under VIVAD SE VISHWAS SCHEME 2020.

12. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 24<sup>th</sup> June, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.