

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4455/DEL/2016 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

ITO Ward-6(2), Room No. 380C C. R. Building, New Delhi (APPELLANT)	Vs	Cintec Steel Pvt. Ltd. A-116, Group Industrial Area, Wazirpur New Delhi AACCC8361K (RESPONDENT)
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Appellant by	Sh. T. M. Shivakumar Adv
Respondent by	Dr. Maninder Kaur, Sr. DR

Date of Hearing	08.09.2021
Date of Pronouncement	12 .10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 31/05/2016 passed by CIT(A), 2, New Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 1,98,50,000/- on account of unexplained cash credit u/s 68 of the I.T. Act, 1961, ignoring the fact that the assessee had failed to discharge its onus of establishing the genuineness and creditworthiness of source of funds received.”*

3. The assessee filed e-return dated 26/9/2012 declaring income of Rs.2,35,290/-. The assessee Company was engaged in the business of job of work of stainless steel circle and sheets. The Assessing Officer observed that from the balance-sheet of the assessee, it reveals that the assessee company has received share application money during the year amounting to Rs.1,98,50,000/- and Rs. 15, 00,000/- received in the previous years as well as Rs. 3,00,000/- was un-allotted share application money to the share applicants mentioned in the assessment order. The assessee filed details and reply before the Assessing Officer. After going through the details and reply the Assessing Officer made addition of Rs.1,98,50,000/- to the income of the assessee as unexplained credit u/s 68 of the Income Tax Act, 1961.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) has without going into the details filed before the CIT(A) has allowed the appeal of the assessee thereby deleting the addition. The CIT(A) has over looked the genuineness and creditworthiness of the parties and simplicitor accepted the contentions of the assessee. From the perusal of the records, it can be seen that the parties have not attended/respond to the notice issued u/s 133(6). Thus, the CIT(A) was not right in allowing the appeal of the assessee.

6. The Ld. AR submitted that this is not a case where any report has been received from Investigation Wing of the Department or any such agencies. No cash has been deposited in the share applicants' bank accounts. All payments have been made through banking channels. Most of the Share Applicants are very much assessed to tax in Delhi jurisdiction itself. They had sufficient bank balances when the payments was made to the assessee. The

addition has been made only on the basis of conjectures and surmises. Even though the Assessing Officer discussed share capital received from 17 parties in his order, the addition u/s 68 has been made only in respect of share capital received during the year from 12 parties. The list of the said 12 parties and the share capital received from them is mentioned at Page-3 of order of CIT(A). On the directions of the Assessing Officer, in discharge of its primary onus, the assessee had submitted the (i) Copy of Acknowledgment of the Return of Income filed by the Party for A.Y.2012-13; (ii) Party's Bank Account statement evidencing the payment through banking channel and (iii) Confirmed copy of account of the Parties (confirmations). The Assessing Officer issued notices u/s 133(6) of the Act to all the share applicants and independently obtained the Confirmations from them along with ITR copies and Bank statements, share certificates etc directly from the share applicants, which is mentioned at first and second para on page - 3 of Assessment Order. The Assessing Officer also obtained copies of Bank Statement of all the Share Applicants again from the respective Banks by issuing notices u/s 133(6) of the Act and cross-verified the same. In spite of the fact that the Assessee had discharged its onus of establishing the identity, creditworthiness and genuineness of the credits as required u/s 68 of the Act, the Assessing Officer directed and the assessee on 13.03.2015 to produce the Principal officers / Directors of the share applicants on 20.03.2015 and stated that in case of failure, he would treat the amount as unexplained cash credit u/s 68 of the Act. On the failure of the assessee to comply with his direction the Assessing Officer passed the Asst Order on 24.03,2015. The Assessing Officer has annexed six reports of the ward Inspector to the Assessment Order who is supposed to have conducted enquiry on the existence of the Share Applicants (six) at certain addresses (on 5.03.2015 and 23.03.2015) and had found them either not in existence at the given addresses or that the premises were locked. The Ld. AR submitted that the Inspector had tried to locate the entities at their old addresses or in their former names ignoring the current names and the addresses furnished during the assessment proceedings duly noted in the beginning of third para from top

of page 13 of the Assessment Order. Further, the last of the enquiry by Inspector was conducted by the Inspector on 23.05.2015 and the Assessment Order was passed on the next day on 24.03.2015 without any further action. The Assessment Order is full of vague presumptions and conclusions made without any basis. This is not a case where any report has been received from Investigation Wing of the Department or any such agencies. No cash has been deposited in the share applicants' bank accounts. All payments have been made through banking channels. Most of the Share Applicants are very much assessed to tax in Delhi jurisdiction itself. They had sufficient bank balances when the payments were made to the assessee. The addition has been made only on the basis of conjectures and surmises. The Assessing Officer ignored that the Assessee had duly discharged its onus of establishing the identity, creditworthiness and genuineness of the credits as required u/s 68 of the Act. He has also ignored the fact that he himself got the same cross-verified and got confirmations directly from the Parties as well as the Banks by issue of notices u/s 133(6) of the Act. The Assessing Officer in the order on page 13 in the beginning of third para from top mentioned that he had issued summons u/s 131 of the Act to the Share Applicants and that no one had attended his office in response to them. It is not known why he did not pursue the same as the entire share applicant companies were assessed to tax in Delhi jurisdiction and the Assessing Officer had all the Income Tax Particulars of the parties. Aggrieved by the Assessment Order, an appeal was filed before CIT(A) who after examined all the issues involved and deleted the addition in a speaking order dated 31.5.2016. The main reasons for deleting the addition made by the Assessing Officer are mentioned at para 3.2 on Page -12 of the order of CIT(A). The Ld. AR submitted that the Assessing Officer has not found any adverse material that could have discharged the onus cast upon him under law after the Assessee discharged its primary onus by furnishing all the required documents to prove the identity, creditworthiness and genuineness of credits. He got all evidences of the Assessee cross-verified directly from the Share Applicants as well as from the Bankers by issuing notices u/s 133(6) of

the Act. He had received replies from all the share applicants / shareholders and had not found anything to reject evidences filed by the Assessee. In spite of that, he directed the Assessee to produce the Director / Principal officers of the Share applicants and on the failure to do so, finalised the asst order by making addition u/s 68 of the Act which is against established principles of law. The Ld. AR submitted that Revenue's appeal is devoid of any merit as the order of CIT(A) is well reasoned and takes into account the principles of law as pronounced by the Hon'ble Supreme Court as well as by the jurisdictional High Court of Delhi and the jurisdictional bench of Tribunal. The Ld. AR relied upon the ratio of the decisions of the co-ordinate Bench of this Tribunal in Income Tax Officer ward 5(1) New Delhi vs. M/s Blisswood Green Infrastructure and Developers Pvt. Ltd. ITA no. 5120/Del/2016 dated 15.02.2019 where in after considering the ratio of the decisions of the High Court's including that of the Jurisdictional High Court, the Revenue's appeal on similar facts has been dismissed. The Ld. AR also relies upon the decision of the coordinate Bench of this Tribunal in Shri Shyam Sunder Infrastructure (P) Ltd. vs. ITO Ward 8(3) New Delhi dated 19.5.2021 in ITA No.2106/Del/2013 where it has been held that the Revenue cannot draw adverse inference on nonproduction of Directors of the investor companies when all the documentary evidence have been duly submitted discharging the initial onus and the Assessing Officer did not do anything to bring tangible adverse evidence on record. For the proposition that the initial burden of the assessee gets discharged on furnishing the ITR copies, Bank Statements and Confirmations from the Parties:

- a. CIT V. Steller Investment Ltd. (2001) 251 ITR 263 (SC);
- b. CIT v. Divine Leasing & Finance Ltd. (2007) 158 Taxman 440 (Del.)
- c. CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.)
- d. CIT Vs. Lovely Exports (P) Ltd. [2008] 299 ITR 268 (SC);

For the proposition that that non-compliance to the summons u/s 131 by the creditor cannot be held against the assessee as it is for the AO to take necessary action for non- compliance the Appellant relies upon the ratio of the

following:

- a. CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.).
- b. CIT Vs. Orissa Corporation Pvt. Ltd. (3986) 159 ITR 78 (SC)

For the proposition that mere non-production of Directors / Principal officers of the Share applicant companies without anything more and where all relevant documents are placed on records which remained uncontroverted specifically, cannot justify adverse inference u/s 68 of the Act, the Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Commissioner of Income Tax - V vs. Nipun Auto Pvt. Ltd (Delhi High Court in ITA 225/2013 dated 30.4.2013). For the proposition that the Assessing Officer cannot shift the onus back onto the Assessee Company without the Assessing Officer producing any tangible material to doubt the veracity of the documents furnished by the assessee the decision of the Hon'ble Delhi High Court in Commissioner of Income Tax - V vs Nipun Auto Pvt. Ltd (Delhi High Court in IT A 225/2013 dated 30.4.2013) was relied upon by the Ld. AR. For the proposition that Revenue cannot reject the claim of the creditworthiness on the basis of the low income reflected in their Return of income the decision in case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del.) was relied upon by the Ld. AR.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that in Assessment Order, the Assessing Officer has categorically stated that the Directors or persons related to share applicant were never produced before the Assessing Officer despite giving notice under Section 133(6) of the Act. But the CIT(A) in para 3.2 (k) mentioned the correct names and addresses which was not given to the Assessing Officer by the Assessee at the initial stages of the assessment proceedings but at the end period of the Assessment proceedings. The parties with correct address were never inspected by the Assessing Officer. The CIT(A) without verifying the actual existence of the share applicant parties at those

addresses, simplicitor accepted the contentions of the assessee, which is not just and proper. Therefore, we are of the view that the matter needs to be adjudicated after taking cognizance of the new addresses of the share applicants provided by the assessee by issuing fresh notice under Section 133(6) to those parties. And thereafter, take cognizance of the relevant material and adjudicate the matter. Thus, the matter is remanded back to the file of the Assessing Officer for proper adjudication after issuing fresh notice under Section 133(6) to those share applicant parties and thereafter, adjudicate the issue a fresh as per the due process of law. Needless to say, the assessee be given opportunity of following principles of natural justice.

8. In result, the appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 12th Day of October, 2021

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 12/10/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

