

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCHES 'E' NEW DELHI**

**ITA No.1312/Del/2011  
Assessment Year: 2007-2008**

**INCOME TAX OFFICER  
WARD (1), NEW DELHI**

**Vs**

**M/s MADHAV TECH (INDIA) PVT LTD  
D-15/2, NEW GOBINPURA, ST NO 9  
NEW DELHI**

**Rajpal Yadav, JM and Shamim Yahya, AM**

**Dated: May 12, 2011**

**Appellant Rep by:** Smt Srujani Mohanty, Sr.DR  
**Respondent Rep by:** None (application rejected).

**Income Tax - Section 68 - Whether addition can be made in respect of share application money even when the assessee has submitted the confirmations and the salary slip of the applicant.**

**T**he A.O. noted that the assessee claimed to have received share application money of Rs. 10 lakhs from one Sri Devender Parashar. After enquiry the AO observed that it was seen from the documents that the share application was full of contradiction. The AO observed that the name of the party was not clear and no documentary evidence was furnished to establish his creditworthiness to have advanced Rs. 10 lakhs to the assessee. The only documentary evidence found in the form of pay slip and the same was rejected by the A.O. The CIT(A) held that an addition on this account was wrongly made by the AO.

**On appeal, the Tribunal held that,**

*++ the assessee has submitted the confirmations and the salary slip of the applicant. It is found that the said person has invested Rs. 10 lakhs out of his NRI account with ICICI Bank Ltd. in which he has remitted the money out of income he received from USA. Further assessee had refunded share application money of Rs. 10 lakhs to the applicant subsequently for which the details of the payment along with documentary evidences like certificate from the bank, the bank statements both of the appellant as well as that of the applicant etc. were also filed. The addition made in this regard is not to be sustained;*

*++ on the issue of the CIT(A) deleting the addition in respect of business expenses- the A.O. has made the disallowance without attributing any cogent reasoning. The CIT(A) had given a finding that the expenditure was bare minimum and it was necessary for the assessee's business. No infirmity or illegality in the order of the CIT(A).*

***Revenue's appeal dismissed***

## ORDER

**Per: Shamim Yahya:**

This appeal filed by the revenue is directed against the order of Ld.CIT(A)-IX, New Delhi dated 15.11.2010 and pertains to A.Y. 2007-08.

2. The issue raised is that the Ld.CIT(A) has erred in deleting the addition of Rs. 10 lakhs made u/s 68 of the Income Tax Act.

3. On this issue the A.O. noted that during the year the assessee claimed to have received share application money of Rs. 10 lakhs from one Sri Devender Parashar. AO made necessary enquiry in this regard from the assessee. However he was not satisfied with the replies. The AO observed that it is found from the documents in respect of share application for Rs. 10 lakhs from Shri Devender Singh was full of contradiction. The AO observed that the name of the party was not clear. He further observed that no documentary evidence has been furnished to establish his credit worthiness to have advanced Rs. 10 lakhs to the assessee. The only documentary evidence found in the form of pay slip for 2007 was furnished and the same was rejected by the A.O.

4. Upon assessee's appeal the Id.CIT(A) considered the issue and held as under.

*"During the year the appellant had shown receipt of share application money of Rs. 10 lakhs from an NRI. During the assessment proceedings the Id.AO directed the appellant to explain the said credit. In response the appellant filed copy of confirmation letter, print outs of e-mails sent by the said creditor and also his two pay slips to establish the identity and credit worthiness. Due to the paucity of time, the appellant could not file a copy of his bank statement, which was filed during the appellate proceedings as an additional evidence. Disbelieving the documents filed by the appellant, the AO made an addition of Rs. 10 lakhs u/s 68. During the proceeding before me, the appellant has filed copy of bank statement of the creditor demonstrating that he had invested Rs. 10 lakhs out of his NRE account with ICICI bank Ltd. in which he had remitted money out of his income from employment in USA. The Id.AR also submitted that the appellant had refunded the share application money of Rs. 10 lakhs to the applicant subsequently for which the details of the payment along with the documentary evidences like certificate from the bank, the bank statements both of the appellant as well as that of the creditor/applicant etc. were filed. The appellant has also successfully replied to various doubts raised by the AO as regards the amount appearing in the salary slip of the creditor and on certain other issues. All such issues/doubts and replies thereto filed by the appellant have already been discussed earlier in this order. In my considered opinion the appellant has satisfactorily replied to all the doubts raised by the applicant. In any case an addition cannot be made merely on the basis of doubts/surmises when the appellant has furnished necessary documentary evidence in support of its claim. In view of the facts and circumstances of the case, the detailed submissions made by the appellant and various judicial pronouncements relied upon by it. I am of the considered opinion that the appellant has successfully established the identity and credit worthiness of the creditor by way of filing his confirmation and salary slips. The genuineness of the transaction has been proved by furnishing copies of the bank statements. I, therefore, hold that an addition on this account was wrongly made by the Id.AO."*

5. Against the above order the assessee is in appeal before us. We have heard the Id.D.R. and perused the records. Adjournment petition from the assessee was there but we have rejected the same as in our opinion the matter can be adjudication by perusing the records

and hearing the Id.D.R. We find that the Id.CIT(A) had given a finding that the identity and credit worthiness of the party was established. The assessee has submitted the confirmations and the salary slip of the applicant. It is found that the said person has invested Rs. 10 lakhs out of his NRI account with ICICI Bank Ltd. in which he has remitted the money out of income he received from USA. Further assessee had refunded share application money of Rs. 10 lakhs to the applicant subsequently for which the details of the payment along with documentary evidences like certificate from the bank, the bank statements both of the appellant as well as that of the applicant etc. were also filed. We further find that the Id.CIT(A) found support in the case of *CIT vs Lovely Exports P.Ltd.* 216 CTR (SC) 195 = (2008-TIOL-238-SC-IT) wherein it was held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO then the department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the company. Therefore, in the background of aforesaid discussion, we find that the addition made in this regard is not to be sustained. Id.CIT(A) is correct in holding that the addition needs to be deleted. Accordingly we do not find any infirmity or illegality in the order of Id.CIT(A) and we uphold the same.

6. Another issue raised is that the Id.CIT(A) has erred in deleting the addition of Rs. 43,003/- made on account of disallowance of business expenses.

7. On this issue the AO observed that assessee has not carried out any business activity other than investing money in shares and earning dividend income and booking capital gains on sale of investment. Assessee earned dividend income of Rs. 29,975/- and also earned profit on sale of investment Rs. 31,975/- and declared a net profit of Rs. 10,028/-. Assessee disallowed Rs. 6,959/- as per provisions of S.14A of the Act. However in AO's opinion this was not adequate. He disallowed Indirect expenditure of Rs. 51,922/-. Consequently claim of Rs.34,003/- was disallowed.

8. Upon assessee's appeal Id.CIT(A) held as under.

*"It is seen that the appellant had claimed an expenditure of Rs. 51,922/- during the year. The Id.AO disallowed the entire expenditure holding that the total income shown by the appellant was exempt either u/s 10(33) or u/s 10(38). The Id.AO further held that the appellant had not carried out any business activity other than to earn investment in shares and earning dividend income and booking profit on sale of shares. The Id.AO therefore was of the opinion that since no business activity other than the exempt income was carried out, the entire expenditure of Rs. 51,922/- was liable to be disallowed. In this regard the appellant had submitted that it had already disallowed an amount of Rs. 17,918/- out of which Rs. 6959 was disallowed in accordance with the provisions of s.14A. The Id.AR therefore, submitted that the balance expenses of Rs. 34,004/- were the expenses which were compulsory due to their being of statutory and legal nature. I have gone through the nature and detail of various expenses incurred by the appellant during the year. The said expenses include accounting charges, printing and stationery expenses, legal and professional charges, audit fees, filing fees etc. which are compulsory to ensure the existence and continuation of the company. The quantum of the said expenditure has been found to be bare minimum. The Id.AR has relied upon the recent decision of the ITAT, Delhi I Bench in the case of ITO vs Mokol Fin.P.Ltd. whereby it has been held that the expenditure which are necessary for running the organization are allowable even if there is no business activity. In the case of CIT vs Ganga Properties Ltd. (1993) 199 ITR 94 (Cal) it has observed that a limited company deriving income from other sources has to maintain its establishment for complying with statutory obligations so long it is in operation and its*

*name is not struck off the register of companies or unless the company is dissolved and expenses incurred for that purpose in retaining clerical staff, secretary, accountant and incidental expenses are allowable deduction.*

*In view of the facts and circumstances of the case and the judicial pronouncements relied upon by the appellant, I am of the considered opinion that the expenditure claimed by the appellant was allowable to it for the year under consideration. Accordingly, the AO is directed to delete the addition made."*

9. Against the above order the Revenue is in appeal before us. We have carefully considered the submissions and perused the records. We find that the A.O. has made the disallowance without attributing any cogent reasoning. Ld.CIT(A) had given a finding that the expenditure was bare minimum and it was necessary for the assessee's business. The case law relied upon by the Id.CIT(A) is also relevant. As such we do not find any infirmity or illegality in the order of Id.CIT(A) in deleting the addition. Accordingly we uphold the same.

10. In the result the revenue's appeal stands dismissed.

(Order pronounced in the Open Court on 12.5.2011.)