*IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 23rd August, 2013
Judgment pronounced on: 28th November, 2013

+ **ITA 2080/2010**

COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Abhishek Maratha, Adv

Versus

N TARIKA PROPERTIES INVESTMENT PVT. LTD.
..... Respondent

Through: Mr. Arvind Bansal, Adv

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. This is an appeal under Section 260A of the Income Tax Act (hereinafter referred to as "the Act") filed by the Revenue against the order dated 24.08.2009, passed by the Income Tax Appellate Tribunal (hereinafter referred to as the "ITAT") whereby the ITAT has dismissed the appeal of the Revenue against the order of the Commissioner Income Tax (Appeals)

(hereinafter referred to as the "CIT (Appeals)") deleting the addition of Rs.34,50,000/- made under Section 68 of the Act with respect to the share application money received by the Assessee.

2. Vide order dated 11.05.2012, the following substantial question of law was framed:

> *"Whether the order of the tribunal dated 24.8.2009 ignores and does not deal with the factual findings recorded by the assessing officer and is, therefore, perverse?"*

3. The case pertains to the Assessment Year 2001-02. Return was filed on 31.10.2001 by the Assessee declaring total income of Rs. 1,42,508/-. Assessment was completed under Section 143(3) on 26.03.2004 at income of Rs. 8,90,160/-.

4. On giving appeal effect, vide order dated 10.02.2005, the revised income stood assessed at Rs.8,64,414/-.

5. Information was received from the Investigation Wing of the appellant that the Assessee was identified as one of the beneficiaries who had received bogus entries from the following parties:-

Name	Cheque No.	Amount in Rs.	Date
M/s. Landmark Communication Pvt. Ltd.	494833	5,00,300	19.08.2000
M/s. Landmark Communication Pvt. Ltd.	494835	5,00,750	30.08.2000
M/s. Fair N. Square Exports Pvt. Ltd.	111077	4,50,360	16.06.2000

6. Notice under Section 148 of the Act was issued to the Assessee on 15.02.2007. In response to which the Assessee filed a letter dated 21.02.2007 stating that return originally filed may be treated as return in response to the notice under Section 148.

7. Notice under Sections 143(2) & 142(1) was issued on 21.06.2007 and the Assessee was required to furnish information in respect of persons who had been

allotted shares between the period 31.03.2001 and 31.03.2007, besides seeking other information and details. The notice was not complied with and a second notice was issued again on 06.07.2007, which was also not complied with. Instead, the Assessee vide letter dated 28.09.2007, challenged the validity and legality of the action taken under Sections 147 and 148 of the Act. The Assessee raised objections to the action taken under Section 148. The objections were disposed of vide order dated 12.12.2007.

8. On 18.12.2007, the Assessee filed confirmation from the respective persons who had subscribed to the share capital, in the Financial Year 2000-01, relevant to the Assessment Year 2001-02 in issue. The Assessee was directed to prove the creditworthiness in respect of the parties from whom share application money had been received during the Financial Year 2000-01. The subscription of share capital during the

relevant financial year is as under:

Name	Amount in Rs.
M/s. Landmark Communication Pvt. Ltd.	10,00,000
M/s. Jai Baba Traders Pvt. Ltd.	8,00,000
M/s. S J Hosiery Pvt. Ltd.	10,00,000
M/s. Bhawani Engineering Pvt. Ltd.	6,50,000
	34,50,000

9. The Assessee requested for and was provided the photocopies of the extracts of the bank statements which were filed by the Assessee during the course of original assessment proceedings. The Assessee was provided with the bank statements of M/s. Landmark Communication Pvt. Ltd. and M/s. Jai Baba Traders Pvt. Ltd. that had been filed by the Assessee during the original assessment proceedings.

10. On 24.12.2007, a request for adjournment was made on behalf of the Assessee to 27.12.2007. However, on 27.12.2007, none appeared for the Assessee, so the assessment was made on the basis of details filed by the Assessee, inquiries made by the AO and details

available in the original assessment records.

11. The Assessing Officer noticed that the extracts of bank accounts submitted by the Assessee during the original assessment proceedings had been fabricated. The Assessing Officer had requisitioned the bank statements from the banks which established that immediately before the issuance of cheques for the purpose of making pay order or demand draft, there was a deposit of cash. The Assessing Officer noticed that the entry by transfer shown in the bank account (furnished by the Assessee in the original assessment proceedings) was fabricated. The Assessing Officer prepared the following chart as a comparison between the fabricated entries and actual bank statement obtained from the bank.

M/s. Landmark Communication Pvt. Ltd. (A/c No.3194 with Jai Laxmi Co-op. Bank)					
FABRICATED STATEMENT					
Date	**Narration**	**Cheque**	**Debit**	**Credit**	**Balance**

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		No.			
28/08/2000	By Tr	--	--	5,01,500	5,03,050 cr.
29/08/2000	To Tr (to pay order)	494833	5,00,750	--	2,300 cr
29/08/2000	By clearing			5,00,000	5,02,300 cr.
30/08/2000	To Tr (pay order)	494835	5,00,750		1,550 cr.
ACTUAL STATEMENT as obtained from Bank by this office.					
Date	**Narration**	**Cheque No.**	**Debit**	**Credit**	**Balance**
28/08/2000	By Cash	--	--	220,000	4,42,210 Cr.
28/08/2000	By Cash	--	--	60,000	5,02,210 Cr.
28/08/2000	To Tr (PAY ORDER)	494828	5,00,300	--	1,910 Cr.
29/08/2000	By Cash	--	--	300000	3,01,910 Cr.
29/08/2000	By Cash	--	--	200000	5,01,910 Cr.
29/08/2000	By Cash	--	--	700	5,02,610 Cr.
29/08/2000	To Tr (PAY ORDER)	494833	5,00,300	--	2,310 Cr.
30/08/2000	By Cash	--	--	300000	3,02,310 Cr.
30/08/2000	By Cash	--	--	500000	8,02,310 Cr.
30/08/2000	By Cash	--	--	200000	10,02,310

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					Cr.
30/08/2000	To Clearing	494834	5,00,000	--	5,02,310 Cr.
30/08/2000	To Tr (PAY ORDER)	494835	5,00,750	--	1,560 Cr.

M/s. Jai Baba Traders Pvt. Ltd. (A/c. No.17757 with Canara Bank, Ballimaran Delhi)

FABRICATED STATEMENT

Date	Narration	Cheque No.	Debit	Credit	Balance
31 AUG 2000	TR	--	--	450000	4,55,366 Cr.
31 AUG 2000	TR	--	--	350000	8,05,366 Cr.
31 AUG 2000	DD	198960	8,01,200		4,166 Cr.

ACTUAL STATEMENT as obtained from Bank by this office.

Date	Narration	Cheque No.	Debit	Credit	Balance
31 AUG 2000	CASH	--	--	450000	452516.77 Cr.
31 AUG 2000	CASH	--	--	351000	803516.77 Cr.
31 AUG 2000	DD	198960	8,00,000	--	2,716.77 Cr.
31 AUG 2000	CASH CHARGE		800	--	1,916.77 Cr.

12. The Assessing Officer noticed that the bank statement

furnished during the original assessment proceedings was fabricated and misled the Assessing Officer in as much as it omitted to show the deposit of cash immediately prior to issuance of cheques for preparation of pay orders or DDs in favour of the Assessee regarding subscription of its share capital. The AO found that the Assessee had adopted unfair practice by adducing false evidence to get undue advantage of giving colour of genuineness to bogus entries through fabricated bank accounts.

13. The Assessing Officer found that the deposits were mostly by cash or transfer entries from the same bank of the entry providers. The AO held that there were facilitating accounts which showed transfer entries from one account to another to avoid direct reflection of deposits/withdrawal of cash. Further that the Assessee had received accommodation entries to launder unaccounted money in the shape of

subscription to its share capital. With regard to the share subscribed by M/s. Bhawani Engineering Pvt. Ltd. and M/s. SJ Hosiery Pvt. Ltd., the Assessing Officer found that the pay order/DDs in respect of both the companies were made out of the bank account of M/s. Bhawani Engineering Pvt. Ltd. The transactions in the bank accounts showed that there was a corresponding withdrawal of the amount in cash on the very same day of the crediting of cheques and there was immediate issuance of cheques/DDs on deposit of cash and simultaneously, they were facilitating accounts which showed transfer entries from one account to the other to avoid direct reflection of deposit/withdrawal of cash.

14. The Assessing Officer held that the said companies had no creditworthiness, financial worth or regular resources to justify their subscription of share capital money in the Assessee company. The Assessing

Officer held that the Assessee had failed to discharge the onus to prove the creditworthiness of the said investors in terms of Section 68 of the Act, more so, in view of the fact that the extracts of bank statements furnished by the Assessee were fabricated.

15. The Assessing Officer relying on the decision of the Delhi High Court in ***CIT vs. Himalaya International Ltd. (2008) 214 CTR 437 (Del.)*** vide order dated 28.12.2007 held that the Assessee had failed to discharge the onus in proving the Identify of the creditors/subscribers, genuineness of the transactions and the creditworthiness. The Assessing Officer accordingly made an addition of Rs.30,50,000/- in the hands of the Assessee.

16. On an appeal by the Assessee, the CIT (Appeals), vide order dated 03.03.2009, deleted the addition made by the Assessing Officer. The CIT (Appeals) accepted the contention of the Assessee that once the

share applicants were identified, there could not be any addition under Section 68 in the hands of the recipient company even if the share applicants/share holders are bogus and the other parameters i.e. creditworthiness and genuineness of transaction were not required to be fulfilled in respect of share application money/share capital once identity was established.

17. The CIT (Appeals) held that the Assessee had filed confirmation letters which contained the addresses, PAN numbers and other details and that the Assessee had discharged its burden on proving basic details that were required for verification to fulfill the conditions i.e. identity of creditors, creditworthiness of the creditors and genuineness of transactions. The CIT (Appeals) held that the AO had not verified the details or the IT records of the investors. The CIT (Appeals) held that the Assessee had provided the necessary details and

discharged the onus cast on it.

18. With regard to the discrepancy between the bank accounts maintained by the share applicants and the copy of the bank accounts furnished in the course of assessment proceedings, the CIT (Appeals) held that it was a case of reopening of assessment of the share applicants i.e. M/s. Landmark Communication Pvt. Ltd. and M/s. Jai Baba Traders Pvt. Ltd. The CIT (Appeals) held that the Assessee could not be penalized for the mistakes/faults committed by the share applicants and that the AO had not found any discrepancy in the bank accounts maintained by the Assessee. The CIT (Appeals) directed the AO to reopen the assessment of the said two share applicants to bring to tax the deposits made in their respective bank accounts. The CIT (Appeals) accordingly deleted the addition made of Rs.34,50,000/-.

19. The appeal filed by the Revenue against the order of the CIT (Appeals) has been dismissed by the ITAT vide the impugned order dated 24.08.2009. The ITAT, relying on the decision of the Supreme Court in the case of ***CIT vs. Lovely Exports P. Ltd. 216 CTR 195 (SC),*** has held that since in the present case details of all persons from whom the share application money was received were furnished alongwith PANs, account details, share application forms and also confirmation letters and bank accounts, the addition could not be made in the hands of the Assessee by invoking provisions of Section 68 of the Act. The ITAT confirmed the findings of the CIT (Appeals).

20. Aggrieved by the order of the CIT (Appeals) as confirmed by the ITAT, the Revenue has filed the present appeal.

21. Learned Counsel for the Appellant/Revenue has submitted that the orders of the CIT (Appeals) and the

ITAT are perverse in as much as they have failed to appreciate the fabrication in the bank statements of the share applicants that had been filed by the Assessee. The Assessee had failed to establish the creditworthiness of the investors and also the genuineness of the transaction.

22. The Learned counsel for the Respondent/Assessee submitted that by providing the PANs, account details , share application forms and confirmation letters the Assessee had discharged the onus and no addition could be made in the hands of the Assessee. Additions if any could be made in the hands of the applicants. In support of his contention learned Counsel relied upon the Judgment of this court in the case of **CIT VS GANGESHWARI METALS PVT LTD. 2013 (2) A.D. (DELHI) 378.**

23. We have heard the learned counsel for the parties. We are of the considered opinion that the orders of the

CIT (Appeals) and the ITAT in deleting the additions made by the AO under Section 68 of the Act are perverse and are clearly unsustainable.

24. Recently in the case of **COMMISSIONER OF INCOME TAX VS NR PORTFOLIO PVT. LTD (INCOME TAX APPEAL NO. 1018 OF 2011 AND 1019 OF 2011)** vide Judgment dated 22nd November, 2013 we have held that mere production of PAN Number or assessment particulars does not establish the identity of a person. The identification of a person includes the place of work, the staff and the fact that it was actually carrying on business and further recognition of the said company/individual in the eyes of public. We have further noticed that PAN Numbers are allotted on the basis of applications without actual de facto verification of the identity or ascertainment of the active nature of business activity. PAN Number is allotted as a facility to revenue to keep track of

transactions. The PAN Number cannot be blindly and without consideration of surrounding circumstances treated as sufficiently disclosing the identity of the individual.

25. Following **CIT VS NOVA PROMOTERS AND FINLEASE PRIVATE LIMITED CASE (2012) 342 ITR 169 (DELHI)** we have held that in view of the link between the entry providers and incriminating evidence, mere filing of PAN Number, acknowledgement of Income Tax Returns of the entry providers, bank account statement is not sufficient to discharge the onus on the Assessee.

26. We have further held that the Court or Tribunal should be convinced about the identity, creditworthiness and genuineness of the transactions. The onus to prove the three factum is on the Assessee as the facts are within the personal knowledge of the Assessee. Mere production of incorporation details, PAN Numbers or

income tax returns may not be sufficient when surrounding and attending facts predicate a cover up. The production of incorporation details, PAN numbers or income tax details may indicate towards completion of paper work or documentation but genuineness, creditworthiness and identity of investment and the investors are deeper and obtrusive than mere completion of paper work or documentation.

27. As we have held that PAN Numbers are allotted on the basis of applications without actual de facto verification of the identity or ascertainment of the active nature of business activity. PAN Number is allotted as a facility to revenue to keep track of transactions. The PAN Number cannot be blindly and without consideration of surrounding circumstances treated as sufficiently disclosing the identity of the individual. The mere filing of share application is not enough as the said application is not an

unimpeachable document and does not on its own prove the genuineness or authenticity of the transaction. It can at best be treated as a corroborative document. Since the share application form is not an unimpeachable document, it cannot on its own be treated as sufficient for cross-verification of the transaction. We have already held that that mere production of PAN Number or assessment particulars does not establish the identity of a person. The identification of a person includes the place of work, the staff and the fact that it was actually carrying on business and further recognition of the said company/individual in the eyes of public.

28. The Assessing Officer had requisitioned the Bank Statements of the share applicants as there was a doubt about the correctness of the bank statements furnished by the Assessee during the original assessment proceedings. The bank statements

requisitioned from the banks established that immediately before the issuance of cheques for the purpose of making pay order or demand draft, there was a deposit of cash. The entry by transfer shown in the bank account (furnished by the Assessee in the original assessment proceedings) was fabricated.

29. The bank statements of the investors furnished by the Assessee during the original assessment proceedings were fabricated and misleading. They omitted to show that there was deposit of cash immediately prior to issuance of cheques for preparation of pay orders or DDs in favour of the Assessee regarding subscription of its share capital. False evidence had been adduced by the Assessee during the original proceedings to get undue advantage of giving colour of genuineness to bogus entries through the bank accounts. The deposits were mostly by cash. With regard to the share subscribed by M/s. Bhawani Engineering Pvt.

Ltd. and M/s. SJ Hosiery Pvt. Ltd., the Assessing Officer has noticed that the pay order/DDs in respect of both the companies were made out of the bank account of M/s. Bhawani Engineering Pvt. Ltd. The AO has held that the transactions in the bank accounts showed that there was a corresponding withdrawal of the amount in cash on the very same day of the crediting of cheques and there was immediate issuance of cheques/DDs on deposit of cash.

30. The Judgment in the case of **M/S GANGESHWARI METALS PVT. LTD. (SUPRA)**, does not advance the case of the respondent inasmuch as in the said judgment it has been held that tehre are two types of cases. One in which the assessing officer carries out the exercise which is required in law and the other in which the assessing officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject

the same on the presumptions. The High Court held that case to be falling in the second category. In the present case the asessing officer has not sat back with folded hands but has conducted the enquiry. He has requisitioned and examined the bank accounts and found discrepancy in the bank statement filed by the Assessee at the time of the orignal assessment and the ones requisitioned. The said judgment is clearly not applicable in the facts of the present case.

31. We are of the considered opinion that the Assessee has not been able to discharge the initial onus and has not been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transaction. The surrounding circumstances and inquiries made by the Assessing Officer were significant but the said finding though not disturbed have been ignored. Further the Tribunal has failed to take holistic view and has relied upon neutral

and general evidence without noticing other evidence, which are :-

a) The Respondent - Assessee is a private limited company.

b) The subscribers were unknown persons, not related or friends.

c) The subscribers bank account statements furnished were forged and fabricated.

d) There were corresponding cash deposits in the bank accounts before issue of share application cheques.

e) The subscriber companies it has been shown were carrying on effective and day to day business or were angle investors.

f) The subscribers did not bother and ensure protection of their investment.

32. In view of the above, we are of the view that the Assessee has not discharged the onus satisfactorily and the additions made by the Assessing Officer was justified and sustainable and the order of the Tribunal

ignoring and nor dealing with the factual findings recorded by the assessing officer is perverse.

33. The substantial question of law is thus answered in favour of the Appellant/Revenue and against the Respondent/Assessee. The appeal is accordingly allowed with costs that are assessed at Rs. 20,000/-.

SANJEEV SACHDEVA, J.

28th NOVEMBER, 2013 **SANJIV KHANNA, J.**
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