

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH "D", NEW DELHI
 BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER
 AND
 SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

	I.T.A. No. 2723/Del/2012	
	A.Y. : 2005-06	
M/s JKD Capital & Finlease Ltd., C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi – 110 049 (PAN: AABC31581F)	VS.	Income Tax Officer, Ward-4(2), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Ashwani Taneja, CA
 Department by : Sh. S.N. Bhatia, Sr. D.R.

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals-VII), New Delhi dated 11.3.2010 pertaining to assessment year 2005-06.

2. The issue raised is that Ld. CIT(A) has erred in law on facts in confirming the addition of Rs. 17 lacs that too without giving adequate opportunity of hearing to the assessee and without serving the mandatory notices as per law.

3. The main ground in this case pertains to addition of Rs. 17,00,000/- by the AO on account unexplained credit entries in the bank account in terms of section 68 of the I.T. Act. It was found by the AO during the assessment proceedings that there were certain

credit entries in the bank account of the assessee. The assessee was, therefore, asked to explain the sources of the following credit entries appearing in the bank account:-

- i) Rs. 2,00,000/- from Nureeru & Farms on 31.7.2004.
- ii) Rs. 8,00,000/- from Mahindra Urban Co-op Bank, Ghaziabad on 27.9.2004 and
- iii) Rs. 7,00,000/- from Mahindra Urban Co-op Bank, Ghaziabad on 27.9.2004.

However, the assessee did not give any reply to the above query made by the Assessing Officer. In the background of the above facts, the Assessing Officer added the amount of Rs. 17,00,000/- to the total income of the assessee company.

4. Upon assessee's appeal Ld. CIT(A) affirmed the action of the Assessing Officer. He noted that no details and supporting evidence whatsoever were furnished by the assessee during the course of assessment proceedings or during the appellate proceedings. Hence, he did not find any infirmity in the order of the AO. Ld. CIT(A) concluded as under:-

“As per the ratio laid down by the Apex Court and the jurisdictional High Court of Delhi, the Assessing Officer is duty bound to investigate the identity and creditworthiness of the share applicants and the genuineness of the transaction. In the instant case, the appellant has failed to discharge its primary burden of proving the identity of the share applicants as the relevant details of the address or

PAN identity of the subscriber were not furnished to the Department along with copies of the Shareholders Register, Share Application Forms, Share Transfer Register etc. In view of the foregoing discussion, I am of the considered view that the AO was justified in adding the amount of Rs. 17,00,000/- to the income of the assessee in the financial year in question. Therefore, the order of the Assessing Officer in respect of the addition of Rs. 17,00,000/- is confirmed.”

5. Against the above order the Assessee is in appeal before us.
6. We have heard both the counsel and perused the records. At the outset, Ld. Counsel of the assessee submitted that the assessee has not been given proper opportunity of being heard. He submitted that the assessment order was passed on 28.12.2007. He submitted that the query in this regard came from the Assessing Officer on 20.12.2007. Within a short while of one week assessee was not in a position to submit the necessary details. The Assessing Officer has proceeded to make the additions without getting the details from the assessee. He further pointed out that the order of the Ld. CIT(A) is also exparte. He prayed that one opportunity may be given to the assessee, so that assessee may submit the necessary details before the revenue authorities. Ld. DR did not have any serious objection to this proposition. Accordingly, we set aside the issue to the file of the AO. The Assessing Officer shall

consider the case afresh, after giving the adequate opportunity of being heard to the assessee.

7. In the result, the Appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 13/1/2014.

Sd/-

Sd/-

[I.C. SUDHIR]
JUDICIAL MEMBER

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Date 13/1/2014

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches

