

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI C.L. SETHI, JUDICIAL MEMBER
and
SHRI B.C. MEENA, ACCOUNTANT MEMBER**

**ITA No.4268/Del./2009
(Assessment year : 2001-02)**

ITO, Ward 5 (1),
Delhi.

vs. M/s. Kaliashpati Overseas Pvt. Ltd.,
824, Vikasdeep,
Laxmi Nagar, District Centre,
Delhi – 110 092.

(PAN : AACCK3865C)

**CO No.167/Del/2010
(in ITA No.4268/Del./2009)
(Assessment year : 2001-02)**

M/s. Kaliashpati Overseas Pvt. Ltd.,
824, Vikasdeep,
Laxmi Nagar, District Centre,
Delhi – 110 092.

vs. ITO, Ward 5 (1),
Delhi.

(PAN : AACCK3865C)

(APPELLANT)

(RESPONDENT)

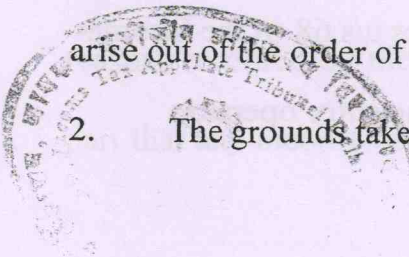
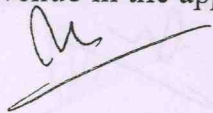
**ASSESSEE BY : S/Shri P.C. Yadav & Pradeep Yadav, Advocates
REVENUE by : Shri Ravi Ram Chandran, Senior DR**

ORDER

PER B.C. MEENA, ACCOUNTANT MEMBER :

The appeal filed by the revenue and the cross objection filed by the assessee arise out of the order of CIT (Appeals)-VIII, New Delhi dated 15.9.2009.

2. The grounds taken by the revenue in the appeal are as under :-



"01. The order of the learned CIT (Appeals) is erroneous & contrary to facts & law.

02. On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in law in deleting the addition of Rs.25,00,000/- made by A.O. u/s 68 of the I.T. Act being the unexplained credit on account of share capital and share proceeds of shares of Rs.9,00,000/- and Rs.16,00,000/- respectively.

2.1 The CIT (A) did not appreciate the fact that the assessee failed to discharge the onus of proving the source and credit worthiness of the creditors and buyers of the shares and also to prove the genuineness of the transactions.

03. The appellant craves leave to add, to alter, or amend any ground of the appeal raised above at the time of the hearing.

3. The assessee has taken the following grounds in the cross objection :-

"1. The Ld. CIT (A) has erred dismissing ground no.1 and 2 and sustaining the reopening of the case u/s 147/148 as the ld. A.O. has not recorded proper reasons for reopening of the assessment and what is recorded is merely information received by him.

2. That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal."

4. The original return of income was filed by the assessee company on 30.12.2001 declaring a loss. The return was accepted u/s 143(1). Subsequently, an information was received by the Assessing Officer from the investigation wing of department to the effect that certain persons are engaged in providing accommodation entries to the needy persons/beneficiaries against payment of certain commission. The assessee was stated to be one of the beneficiaries. After recording the reasons, a notice u/s 148 was issued on 18.3.2008 and assessment was completed on 30.12.2008 by making an addition of Rs.25 lacs u/s 68 of the Income-tax Act and Rs.6,250/- being commission allegedly paid to the entry operators



5. The CIT (A) deleted the addition by relying on the following decisions:-
- (i) CIT vs. Stellar Investment 192 ITR 287 (Del.) – against which SLP has been dismissed.;
 - (ii) CIT vs. Lovely Exports (P) Ltd. 216 CTR 195 (SC);
 - (iii) CIT vs. Orissa Corporation Ltd. 159 ITR 78 (SC); and
 - (iv) CIT vs. Gujarat Heavy Chemicals Ltd. 256 ITR 795 (SC).

After analyzing these decisions of Hon'ble High Courts and Hon'ble Supreme Court, the CIT (A) has observed as under :-

“4.4 When the facts of the present case are analyzed in the light of these decisions, it will be seen that the ratio laid down by the Hon'ble Courts squarely covers the appellant's case. In the case of the appellant, though the A.O. refers to an enquiry conducted by the investigation wing of the department, no attempt is made by him to establish the fact that the money in question has originated from the coffers of the assessee company. Merely casting a shadow of doubt is not sufficient to charge the assessee with the tax liability without collecting positive evidences to covert the doubts into a real act of tax evasion.

4.5 Therefore, I do not find that the A.O. has really made out a case for taxing the share application money and money received against sale of shares through banking channels from the persons regularly assessed to tax. Under the circumstances, the addition of Rs.25,00,000/- is not sustainable and is accordingly being deleted.”

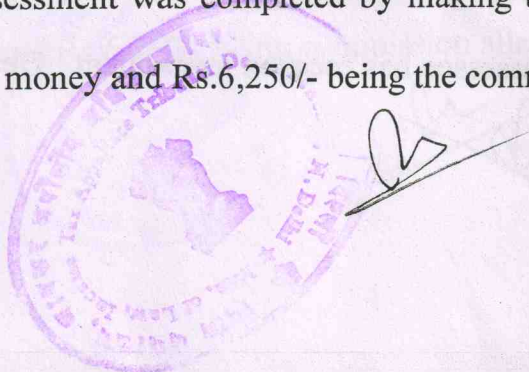
6. Since the assessee has challenged the reopening of the assessee in the cross objections, first we will decide the cross objections of the assessee.

7. While pleading on behalf of the assessee, learned AR submitted that the assessment should not have been reopened u/s 147/148 of the Income-tax Act as the reasons recorded by the Assessing Officer did not establish any satisfaction on his part that any income belonging to the assessee has escaped assessment. He further



submitted that the return of income was filed on 30.10.2001 and the case was reopened after issuing a notice u/s 148 on 18.3.2008. The reasons recorded were supplied to the assessee on 12.11.2008. The assessment was finalized u/s 147/143(3) on 30.12.2008. He submitted that the assessment was reopened on the basis of information received from investigation wing without application of mind by the Assessing Officer. There is no nexus between the reasons recorded and income of the assessee. In the reasons recorded, the Assessing Officer alleged that the assessee has received share application money as an accommodation entry to the tune of Rs.25 lacs. However, assessee has received share application money only of Rs.9 lacs and the rest of the amount was received by the assessee on account of sale of its earlier investments. He pleaded that entire reopening proceedings are vitiated. Further, he also pleaded that it is a settled law that Assessing Officer cannot go beyond reasons and only reasons have to be looked into and relied on the decision of ITAT Agra Bench in the case of Saraf Mandi Samiti, 108 ITD 115 (Agra).

8. On the other hand, the learned DR submitted that the original assessment was not completed u/s 143(3) of the Income-tax Act. Subsequently, the information was received by the Assessing Officer from the investigation wing that certain persons are engaged in providing accommodation entries to the needy persons/beneficiaries against payment of certain commission. As per information received from investigation wing, the assessee was one of such beneficiaries. Therefore, having recorded the reasons, a notice u/s 148 was issued on 18.3.2008 and the assessment was completed by making the addition of Rs.25 lacs as share application money and Rs.6,250/- being the commission paid on such entries.



9. After hearing both the sides on the issue, we are of the view that there was material received by the Assessing Officer from investigation wing. On that basis, the Assessing Officer made a reason to believe and initiated the proceedings u/s 147 of Income-tax Act by recording the reasons. Here, the information and the communication received from the investigation wing were sufficient to make a believe that income has escaped assessment. At the stage of initiation of proceedings, the sufficiency, adequacy and correctness of the reasons cannot be gone into. Prima facie there was some information available and on that basis, the assessment has been reopened by recording the proper reasons and applying the mind. This correctness and sufficiency of reasons need not to be considered at the stage of initiation of proceedings. The completeness and accuracy of the information at the time of issuing notice is not necessary. As we have earlier stated, the original assessment was made u/s 143(1) of the Income-tax Act and the Assessing Officer did not have any occasion to examine the creditworthiness of creditors and genuineness of transaction relating to the share application money/sale of shares. Therefore, it cannot be said that there was a change in the opinion. In view of these facts, we hold that there was a reason to believe which has been properly understood by the Assessing Officer and there was sufficient material on that basis notice was issued. The information received from the investigation wing constitutes a fresh information in respect of the assessee as a beneficiary of the accommodation entries. In view of this, the cross objection of the assessee is dismissed.



10. In the revenue's appeal, the issue raised is deletion of the addition of Rs.25 lacs made by the Assessing Officer u/s 68 being unexplained cash credit on account of share capital and sale proceeds of shares of Rs.9 lacs and Rs.16 lacs respectively.

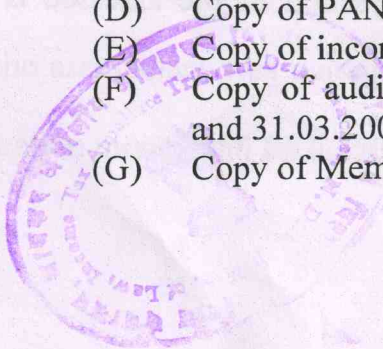
11. The revenue has contended that the assessee has failed to discharge the onus by providing the source and creditworthiness of the creditors and buyers of the shares and also to prove the genuineness of the transactions.

12. Learned DR relied on the order of the Assessing Officer. While the learned AR relied on the order of CIT (A) and also relied on the latest decision of Hon'ble Delhi High Court in ITA Nos.2093 to 2095/2010 in the case of Oasis Hospitalities (Pvt.) Limited dated 31.1.2011 from paras 25 to 35.

13. After hearing both the sides on the issue, we find that the assessee has provided the following information in respect of the shareholders and the persons to whom the sale proceeds of shares were issued :-

- “1. Harpal Associates Pvt. Ltd.
 - (A) Confirmation of transaction by letter
 - (B) Copy of Board resolution
 - (C) Copy of Covering letter for delivery of shares
 - (D) Copy of PAN
 - (E) Copy of Company master data as per Ministry of Corporate Affairs records
 - (F) Copy of Annual Return
 - (G) Copy of Memorandum and Articles of Association

2. Satwant Singh Sodhi Constructions Pvt. Ltd.
 - (A) Confirmation of transaction by letter
 - (B) Copy of Board resolution
 - (C) Copy of covering letter for delivery of shares
 - (D) Copy of PAN
 - (E) Copy of income tax return for AY. 01-02, 02-03 and 05-06
 - (F) Copy of audited balance sheet as on 31.03.2001, 31.03.2002 and 31.03.2005
 - (G) Copy of Memorandum and Articles of Association



(H) Copy of Company master data as per Ministry of Corporate Affairs records

3. Arun Finvest Pvt. Ltd.

(A) Share application form

(B) Copy of Board resolution

(C) Confirmation cum acknowledgment of covering letter for delivery of shares

(D) Copy of covering letter for delivery of shares

(E) Copy of Company master data as per Ministry of Corporate Affairs records

(F) Copy of Memorandum and Articles of Association

(G) Copy of Annual Return

(H) Copy of PAN

(I) Copy of income tax return for AY. 2001-2002

(J) Copy of audited balance sheet as on 31.03.2001

4. Fair 'N' Squire Exports Pvt. Ltd.

(A) Share application form

(B) Copy of Board resolution

(C) Confirmation cum acknowledgment of covering letter for delivery of shares

(D) Copy of covering letter for delivery of shares

(E) Copy of PAN

(F) Copy of income tax return for AY. 2002-03 and 04-05

(G) Copy of audited balance sheet as on 31.03.2002, 31.03.2004 and 31.03.2005

(H) Copy of Memorandum and Articles of Association

(I) Copy of Company master data as per Ministry of Corporate Affairs records

a. Sale of shares held as investment to Harpal Associates Pvt. Ltd. The appellant has sold shares worth Rs.4.00 Lacs out of the investment of RS.5.00 in the shares of Jaycee Steels Pvt. Ltd.

b. Sale of shares during the year and held as investment to Satwant Singh Sodhi Constructions Pvt. Ltd. The appellant has sold shares worth Rs.12.00 lacs out of Rs.24.00 lacs worth of shares subscribed by it in the shares of Shivangi Crafts Ltd.

c. Allotment of fresh to Arun Finvest Pvt. Ltd. and Fair 'N' Square Exports Pvt. Ltd. The appellant has issued fresh shares at face value worth Rs.9.00 lacs to the



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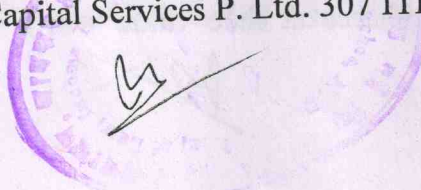
above parties out of the total fresh allotment of Rs.12.40 lacs during the year.”

We find that Hon'ble Delhi High Court in the case of Oasis Hospitalities (Pvt.) Limited, cited supra, wherein at para 28 the Hon'ble High Court has held as under :-

“28. The assessee filed copies of PAN, acknowledgement of filing income tax returns of the companies, their bank account statements for the relevant period, i.e., for the period when the cheques were cleared. However, the parties were not produced in spite of specific direction of the A.O. instead of taking opportunities in this behalf. Since the so-called Directors of these companies were not produced on this ground coupled with the outcome of the detailed inquiry made by the Investigating Wing of the Department, the A.O. made the addition. This addition could not be sustained as the primary onus was discharged by the assessee by producing PAN number, bank account, copies of income tax returns of the share applicants, etc. We also find that the Assessing Officer was influenced by the information received by the Investigating Wing and on that basis generally modus operandi by such Entry Operators is discussed in detail. However, whether such modus operandi existed in the present case or not was not investigated by the A.O. The assessee was not confronted with the investigation carried out by the Investigating Wing or was given an opportunity to cross-examine the persons whose statements were recorded by the Investigating Wing.”

The facts of the assessee's case in respect of two share applicants are similar to the facts involved in the above referred case. In view of this, we hold that the issue is covered by the decision of Hon'ble Delhi High Court where the Hon'ble Delhi High Court has also considered the following decisions :-

- (i) CIT vs. Lovely Exports (P) Ltd. 216 CTR 195 (SC);
- (ii) CIT vs. Creative World Telefilms Ltd., ITA No.2182 of 2009 decided on 12.10.2009 by Hon'ble Bombay High Court;
- (iii) Madhuri Investments Pvt. Ltd. vs. ACIT, ITA No.110 of 2004 decided on 18.2.2006 by Hon'ble Karnataka High Court;
- (iv) CIT vs. Arunananda Textiles Pvt. Ltd., ITA No.1515 of 2005 decided on 2.3.2010 by Hon'ble Karnataka High Court;
- (v) CIT vs. P. Mohanakala 291 ITR 278 (SC);
- (vi) CIT vs. Stellar Investment Ltd. 251 ITR 263 (SC);
- (vii) CIT vs. Value Capital Services P. Ltd. 307 ITR 334 (Del.)



In respect of the sale of shares held by the assessee, the addition was made by the Assessing Officer on account of non-verification about the possession of shares which were sold. In case of Harpal Associates Pvt. Ltd., the sale of shares for Rs.4 lacs was out of the shares held for Rs.25 lacs. Shares were sold at par. The assessee has submitted confirmation letter, copy of Board resolution, letter for delivery of shares, PAN numbers of the parsons and also the annual return in this regard. Similarly, in the case of Satwant Singh Sodhi Constructions Pvt. Ltd., similar type of details were submitted. Considering these facts, we find that these issues are also covered by the decision of Hon'ble Delhi High Court in the case of Oasis Hospitalities (Pvt.) Ltd., cited supra. In view of these facts, we dismiss the revenue's appeal.

7. In the result, the appeal of the revenue and the cross objection of the assessee stand dismissed.

Order pronounced in open court on this 31st day of March, 2011.

(C.L. SETHI)
JUDICIAL MEMBER

(B.C. MEENA)
ACCOUNTANT MEMBER

Dated the 31st day of March, 2011/TS

Copy forwarded to:

1. Appellant
2. Respondent *By Harpal*
3. CIT
4. CIT (A)-VIII, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.

Assistant Registrar
आयकर अपील अधिकारी
Income Tax Appellate Tribunal
नई दिल्ली/ New Delhi