

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य के समक्ष ।
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.522/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO-1(1)(1), 534, Aayakar Bhawan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	M/s. Art Housing Pvt. Ltd. Block No. 302, Mehta Business Centre, Khaitan Chambers, 143/145 Modi Street, Fort, Mumbai-400 001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No AAHCA 6007 F		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Ms. N. Hemalatha
प्रत्यर्थी की ओर से/Respondent by	:	Shri Dharan Gandhi & Shri Vishesh Sangoi
सुनवाई की तारीख / Date of Hearing	:	11.10.2017
घोषणा की तारीख / Date of Pronouncement	:	04.01.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against order of the Id. Commissioner of Income Tax (Appeals) dated 26.01.2016 and pertains to assessment year 2009-10.

2. The grounds of appeal read as under:

- i. "Whether, on the facts and circumstances of the case and in law, the CIT(A) was justified in directing the deletion of the sum brought to tax by the

AO as unexplained income under Section 68 of the Income Tax Act, 1961 in respect of moneys credited in the books as share application money Rs.45,00,000?"

ii. "Whether, on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the assessee proved identity, credit-worthiness and genuineness of moneys credited in the books as share application money of Rs 45,00,000, just by submitting name, address and other details of the share applicants disregarding all the evidences gathered by the revenue establishing that the share capital introduced were through benami concerns operated by Shri Pravin Kumar Jain, which evidences not only remained uncontroverted but even the onus shifted back on assessee in such circumstances were not discharged in the facts of thi case?"

iii. "Whether, on the facts and circumstances of the case and in law, the CIT(A) was justified in allowing the appeal of the assessee by relying on the decision of Apex court in the case of CIT vs Lovely Exports Pvt Ltd 216 CTR 195(SC) without appreciating that the facts in the instant case were different than those in the case relied upon, as in the instant case, the AO did not sit idle but made investigations with the share holders before making an adverse inference and hence the case law relied upon is not applicable in this case?"

3. The genesis of this case lies in search and survey action was carried out in the case of Shri Praveen Kumar Jain and his group on 01.10.2013. The search action resulted into collection of evidences and other findings which proved that the said person through a web of concerns run and operated by him was engaged in providing accommodation entries of various natures. The Assessing Officer received information from Investigation Wing that the assessee was in receipt of accommodation entry in the form of bogus share application money from the concerns operated by the said Shri Praveen Kumar Jain. The Assessing Officer further noted that during the year consideration, the assessee company is engaged in business of Brokerage. It is seen that from the balance sheet of the assessee that in the year, the

assessee has shown authorized share capital of Rs.50,00,000/- and issued subscribed and paid up share capital at Rs.46,00,000/-. Out of this, Rs.45,00,000/- consists of share application money.

4. Upon the Assessing Officer's enquiry, the assessee submitted the name, PAN number and details of the companies which had invested in the share capital along with share application forms and bank statement of five applicants, copy of acknowledgement, audited profit and loss account and balance sheet of nine share applicants. However, the Assessing Officer noted that all the documents are the Xerox copies of the relevant papers not authenticated by the authorized person or Principal Officer of the company. In the questioner, the assessee has been specifically asked to submit the ledger confirmation of the applicants but the same was not filed by the assessee company and, hence, the Assessing Officer was of the opinion that it is clear that the assessee company has failed to fulfill the onus on it completely, and that bank statements of only five companies out of nine companies were filed.

5. The assessing officer in the assessment order noted that in this case information was received from the DGIT Investigation Wing, Mumbai that the assessee company has taken accommodation entries of share application money from benami concerns operated by one Shri Pravin Kumar Jain. The information so received contained transaction of share application money of Rs.45,00,000/- in the name of nine of the companies of Shri Pravin Kumar Jain, viz. Anchal Properties Pvt. Ltd., New Planet

Trading Co. P. Ltd. (Ansh Mercandise Pvt. Ltd.), Faststone Trading Co. Pvt. Ltd. (Atharv Business Pvt. Ltd.), JPK Trading (India) Pvt. Ltd. (Duke Business Pvt. Ltd.), Kush Hindustan Entertainment Ltd., Nakshatra Business Pvt. Ltd. (Hema Trading Co. Pvt. Ltd.), Realgold Trading Co. Pvt. Ltd. (Olive Overseas Pvt. Ltd., Capetown Mercantile Co. Pvt. Ltd.(Sumukh Commercial Pvt. Ltd., Lexus Infotech Ltd. (Triangular Infocom Ltd.) during the year under consideration. As mentioned above, the details furnished by the assessee also reveals the name of the said parties as Nine of its share application money parties, for a sum of Rs.45,00,000/-.

6. During the search at various premises which were shown by the assessee group to be the place of operation and registered office addresses as per the Income Tax records, the official website of the Ministry of Corporate Affairs and bank documents, it was found that the entities operated by Shri Pravin Kumar Jain were non-existing at these addresses and no genuine business was being carried out at any of these premises.

7. The Assessing Officer thereafter referred to the statements and admissions of the related persons. Further, the Assessing Officer observed that during the search action as well as the pre search enquiries, it was found that the all the registered addresses of the concerns of Shri Praveen Kumar Jain were non-functional and nowhere the books of accounts of any of the suspected concerns were found. However, during the search proceedings, the search teams came across a premise

located at 104, Durga residency, Inderlok, Phase-III, Bhayander (E), Thane. The said address was not reflected in any of the official records filed with any of the relevant Government agencies. The said premise was a secret place of operation maintained by Shri Praveen Kumar Jain. Various hard disks, pen drives and documents were found at this place which contained books of accounts of various concerns run and operated by him. It was also noted that Shri Praveen Kumar Jain himself was a director in 13 concerns only and all other concerns were managed and operated by him in the names of various dummy directors / proprietors. Statement of Shri Uttam C. Hinger, who is brother-in-law as well as an associate of Shri Praveen Kumar Jain, was recorded on 03.10.2013 u/s.132(4) of the Act at the said premises at Bhayander.

8. Thereafter elaborately referring to the findings in the case of the said Shri Pravin Kumar Jain. The Assessing Officer held as under:

Apart from the above, during the search/survey cases in various groups like Parinee Group, Shahakar Group, Manba Group, Marathon Group etc. carried out by Mumbai Directorate, it has been confirmed by these beneficiaries that the entries taken by them from the concerns of Shri. Praveen Kumar Jain are bogus in nature and they are of the nature of accommodation entries only. Thus, the findings of the above discussed search actions very well corroborate the findings of the search action in the case of Shri. Praveen Kumar Jain Group and establishes beyond doubt that all the concerns run, controlled and operated by Shri. Praveen Kumar Jain are indulged in the activity of providing accommodation entries only. Therefore it has been established fact that, M/s. Anchal Properties Private Limited is one of the concerns of Pravin Kumar Jain has given accommodation entry of Share application money to the assessee of Rs. 45,00,000/-.

10.19 Having regard to the above discussion with regard to the gamut of activities carried out by Shri. Praveen Kumar Jain under the garb of various

different entities, thereby providing only accommodation entries and not indulging into any genuine business activity, now coming to the facts of the present case whereby it is found that the present assessee company has also claimed to have obtained a sum of Rs.45,00,000/- as and by way of 'Share application money from Nine of the entities of Shri. Praveen Kumar Jain viz. Atharv Business Private Limited (M/s. Faststone Trading (I) Pvt. Ltd) The Statement of Shri Praveen Kumar Jain vis-a-vis the Statements of various brokers / Shri. Manish Jain , director of Atharv Business Pvt. Ltd, ckimnry directors of his various entities & statement of Accountant Mr. Nilesh Parmar etc. together with the seized material in his case establish that Shri. Praveen Kumar Jain and his various entities, including Atharv Business Private Limited, have never carried out any genuine business activity but they have merely provided accommodation entries in different forms while the present case relates to an accommodation entry of Rs.45,00,000/-under the guise of 'Share application money' shown in the Balance Sheet of the assessee company.

10.20 In fact Pravin Jain group of company advancing loans or share application of money to various companies though these companies have no business or creditworthiness to give the share application money on loan. A maza of transactions were created wherein circular entries were made to prove that there existed a creditworthiness however if one lift corporate veil, the entire truth comes to light This is a substantive finding of the investigation wing which has been subsequently accepted by the Pravin Jain. In such company the capital of the companies is raised artificially by the circular transaction. The balance sheet of such companies would typically show share capital and reserve (premium) on the liability side and fictitious assets like investment in unquoted shares on the asset side the investments are also in the shares of the own companies of the operator.

10.21 It is abundantly clear through the facts available on record that not only Mr. Pravin Jain and his group of companies accepted the fact on record that the transactions with large numbers of assessee were sham but also the credential of the companies operated by him are such that the entries were given without any actual transaction however, documentary evidences were created in such a way to give its colour of correctness. The companies operated by him indulged in circuitous transactions.

10.22 It is also well settled legal position that tax authorities are entitled to look into surrounding circumstances to find out the real transaction by applying the test of human probability as per the principle laid down by the Honble Supreme Court in the case of CITVs. Durga Prasad More 82 ITR 540 (SC).

"Science has not yet invented any instrument to test the reliability if the evidence placed before a Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to the reliability of a piece of evidence. But, in that sphere, the decision of the final fact-finding authority is made conclusive by law."

9. Thereafter, the assessing officer referred to several decisions as under:

1. *Shri Naresh Pahuja* 54 taxmann.com 258;
2. *M/s. Kachwala Gems vs. JCIT* (ITA No. 134/JP/2002 dated 10.12.2003);
3. *M/s. Kachwala Gems vs. JCIT* [2006] 206 CTR (SC) 585;
4. *Vijay kumar Talwar vs. CIT* [2011] 330 ITR 1 and
5. *CIT v. P. Mohanakala* [2007] 161 Taxman 169 (SC)

10. The assessing officer concluded as under:

11. In view of the discussion, foregoing facts and findings, the purported share application money of Rs.45,00,000/- is hereby treated as a 'cash credit' in the books of the assessee company, whose nature and source is not explained and, therefore, deemed to be the assessee's income as envisaged in Section 68 of the Income Tax Act, 1961 and accordingly the same is added to income of the assessee company under the head "Income from other sources".

11. Against the above order, the assessee appealed before the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) reproduced the assessee's submissions in 18 pages of his order. Thereafter, by one paragraph on page 19, he deleted the entire addition by observing as under:

3.1 I have gone through the case of *CIT vs. Lovely Exports*, 216 CTR 195 (SC) wherein the Hon'ble Supreme Court has held a view that once that name and address and other details given to the Department, the Department is free to reopen the concerned individual assessment records and the share application money cannot be declared as undisclosed income u/s. 68 of the Income Tax Act, so respectfully following the decision of the Hon'ble Supreme Court in the case of *Lovely Exports*, I direct the AO to delete the addition of Rs.45,00,000/- and hence this ground of appeal is allowed.

12. Against the above order, the assessee is in appeal before the ITAT.

13. I have heard both the counsel and perused the records. I find that in this case the assessee has received share application money from nine concerns which were operated by Shri Praveen Kumar Jain and his group. The modus operandi of Shri Praveen Kumar Jain and his group has been elaborately brought out in the assessment order. Shri Praveen Kumar Jain has clearly admitted that his group concerns which included the concerns from which the assessee has received share application money were indulging in providing bogus accommodation entry. It has further been noted that these concerns operated by Shri Praveen Kumar Jain were not doing any proper business but were engaged in providing accommodation entries. In the investigation done, it has been found that the addresses given are non-existent. In these circumstances, the assessing officer has made it clear case that the assessee has obtained bogus share capital entry from non-existent concerns which are in existence only on paper and are being operated by Shri Praveen Kumar Jain and his group to provide bogus accommodation entries of which the assessee has been recipient of Rs.45 lakh as share capital.

14. The assessee in its response has only mentioned that the assessee has given the name and address and PAN numbers of the investing companies and, hence, it has discharged the onus. In none of the responses, the assessee submitted that these companies are actually in existence at the addresses mentioned. That these companies

should be issued summons. That assessee is prepared to bring the directors or the principal officers for confirmation. In fact, the assessing officer has noted that assessee has failed to submit the ledger copies of these concerns duly signed by the principal officers. That the documents submitted are only xeroxed copies. This clearly bolsters the Revenue's case that these are non-existent companies and are operating only on paper to provide accommodation entry being run by Shri Praveen Kumar Jain and his group concerns. The transaction through banking channel does not absolve the assessee from the finding that these are dubious entities by way of which the assessee's undisclosed income has been channeled back as share application money.

15. The reliance by the Id. Commissioner of Income Tax (Appeals) on the order of Hon'ble Apex Court decision in the case of *CIT vs. Lovely Exports Pvt. Ltd.* 216 CTR 195 (SC) is totally misplaced. In the said case before the Hon'ble Apex Court there was no clear establishment that the share applicant companies are bogus being operated by Shri Praveen Kumar Jain and his group to provide bogus accommodation entries. Similarly is the position of the case laws referred by the learned counsel of the assessee. In none of the case there was clear establishment that the assessee has received bogus accommodation entry. And the assessee has miserably failed to dislodge the finding of the Revenue that these companies are only operated by Shri Praveen Kumar Jain to provide bogus accommodation entries. As held by the Hon'ble Apex Court in the case of *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) and *CIT vs.*

Durga Prasad More [1971] 82 ITR 540 (SC), the Revenue authorities are not supposed to put on blinkers but have to look into the surrounding circumstances. The clear factual evidence that these bogus companies of Shri Praveen Kumar Jain and his group established to provide bogus accommodation entries cannot be disregarded by only looking at the Xeroxed copies of documents submitted by the assessee. There is not a whisper by the assessee that these companies are actually in existence at that the address mentioned, or that the directors of any of these companies are actually accessible.

16. In these circumstances, in light of the overwhelming evidence that assessee has obtained bogus accommodation entries from entities operated by Shri Praveen Kumar Jain and his group, the mere production of Xeroxed copies of documents cannot support the case of the assessee. Accordingly, I set aside the order of the Id. Commissioner of Income Tax (Appeals) and decide the issue in favour of Revenue.

17. In the result, this appeal filed by the Revenue stands allowed.

Order pronounced in the open court on 04.01.2018

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 04.01.2018

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai