

आयकर अपीलिय अधिकरण “B” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 3987/Mum/2017

(निर्धारण वर्ष / Assessment Year 2007-08)

Dy. Commissioner of Income Tax, CC-2(2), Pratishtha Bhavan, 8 th Floor, M.K. Road, Mumbai-400 020	Vs.	Blue Stock Investment Pvt. Ltd. 113 Commerce House, 140, Nagindas Master Road, Fort, Mumbai-400 001
(अपीलार्थी / Appellant)	.	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ ITA No. 2090/Mum/2018

(निर्धारण वर्ष / Assessment Year 2008-09)

Bluestock Investments Private Ltd. 113, Commerce House, 140, N.M. Road, Fort, Mumbai-400 001	Vs.	Dy. Commissioner of Income Tax, CC-2(3), 8 th Floor, Room No. 806 Old CGO BLdg, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACB1671R		

अपीलार्थी की ओर से / Appellant by : Shri Vimal Punamiya, AR

प्रत्यर्थी की ओर से / Respondent by : Shri Shri Chaitanya Anjaria, DR

सुनवाई की तारीख / Date of hearing:	17.10.2018
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घोषणा की तारीख / Date of pronouncement :	10.01.2019
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आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

In these two appeals, filed by Revenue and assessee, are arising out of the orders of Commissioner of Income Tax (Appeals)-48 &4, Mumbai [in short CIT(A)], in appeals No. CIT(A)-48/I.T-148/DCCC-2(2)/2016-17, CIT(A)-4/IT-6/ITO-2(1)(2)/2015 16 vide orders dated 14.03.2017,23.01.2018. The Assessments were framed by the Dy. Commissioner of Income Tax, Central Circle 2(3), Income Tax Officer-2(1)(2), Mumbai (in short 'DCIT' 'ITO / AO') for the A.Ys. 2008-09 & 2007-08 vide order dated 23.03.2016,12 03.2015 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) quashing the re-assessment proceedings and consequent reassessment framed under section 147 r.w.s. 143(3) of the Act. For this the Revenue has raised two grounds, which are on the issue of jurisdiction as well as on merits and the grounds are as under: -

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in quashing the proceedings u/s 148 of the Income-tax Act; 1961 without appreciating that the information that M/s Alka Diamond Industries P. Ltd. was providing accommodation entries; was



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revealed during the course of search in the case of Praveen Kumar Jain and this particular information was not disclosed by the assessee either in the return of income or during the course of assessment proceedings under section 143(3) of the Income-tax Act, 1961 and the CIT(A) did not appreciate the ratio of the decision of Hon'ble Supreme Court in the case of Yogendra Kumar Gupta 51 taxmann.com 383 (SC)"

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1 Cr. Being unexplained share application money without appreciating that the assessee as well as M/s Alka Diamond Industries P. Ltd. failed to establish the genuineness of the transaction and the Ld CIT(A) further failed to appreciate that the circumstantial facts revealed in the search conducted at the various premises of Praveen Kumar Jain wherein this systematic racket of converting unaccounted income into purported share capital was detected which caused loss to the Nation by depriving the revenue on its unaccounted income."*

3. Brief facts are that the assessee is a private limited company engaged in the business of investment loans and advances. The original return was filed by the assessee on 17.10.2007 and assessment was completed under section 143(3) dated 28.11.2009. In the return of income the assessee has filed complete audited accounts wherein the investment



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of shares of Alka Industries Ltd. were disclosed. The AO issue notice under section 148 of the Act on the basis that during the course of search conducted in the case of Praven Jain Group of cases, Shri Praven Jain stated under section 132(4) of the Act that he was indulging in providing accommodation entries like bogus share capital etc. Now, during the course of re-assessment proceedings the AO issued notice under section 133(6) to Alka Industries Ltd. for furnishing various evidences. In response to notice under section 133(6) of the Act, Alka Industries Ltd. submitted details of Income Tax return, copy of ledger account of the assessee in the books of Alka Industries Ltd., copy of bank statement showing relevant transaction, source of investment and also explained the factual position vide letter dated 30.01.2015. But the AO was not convinced and he added the share application money received from Alka Industries Ltd. not fully explained and added the same under section 68 of the Act amounting to ₹ 1 crore. Aggrieved, assessee preferred the appeal before CIT(A).

4. The CIT(A) after considering the submissions of the assessee quashed the re-assessment proceedings and also deleted the addition on merits by observing Para 3.3. to 3.5 as under: -

“3.3 I have circumspected the entire facts & circumstances of the case and have carefully considered the finding of the Assessing Officer, rival submission of the Appellant and evidences on record. I find that Ld. Assessing Officer has reopened the completed assessment after expiry of 4 years from the end of relevant A.Y. without demonstrating the failure of the Appellant in disclosing full & true material and evidences during the original assessment proceeding u/s.



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143(3) completed on 28.10.2009. It is very evident from the original assessment that the then Ld. Assessing Officer has mentioned that all the details required by notice u/s.142(1) was submitted by the A.R. of the Appellant. The Ld. Assessing Officer has also admitted the fact that the Assessee was engaged in the business of investment, loans & advances. The company invests in shares and securities for a long-term perspective and gives loans & advances for earning income. Thus, after completion of regular assessment proceeding on 28.10.2009, the present Assessing Officer had not got any specific information that M/s. Alka Diamond Industries Ltd. is a benami concern or a shell company. Further, it is pertinent to mention that the Ld. Assessing Officer has only referred the general statement of Mr. Praveen Jain given under section 132(4) without revealing that the investor company is not existing company. It is to be also noted that in response to the notice u/s.133(6), M/s. Alka Diamond Industries Ltd. had furnished all the evidences by letter dated 30.01.2015 submitting the complete set of Income-tax return of A.Y.2007-08, copy of Ledger Account confirming the investments, copy of its bank account revealing the investments and clarification regarding source of investments. The Ld. Assessing Officer has admitted the veracity



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of such evidences She has not refuted the explanation of the investor company with any contrary evidence. She has only disallowed the claim on the ground that shareholding pattern of this company was not submitted and share application was not with regard to public issue. Obviously, at the time of recording reason, the Assessing Officer was not having any tangible material or reliable evidence for proceeding for making escapement assessment in a case where scrutiny was already made. Thus, I find that such issue of notice u/s.148 is not sustainable in the light of decision in the case of Sound Casting Pvt. Ltd. vs. DCIT 250 CTR 119(Bom.), ACIT vs. Resham Petrotech Ltd (2012), 136 ITD (Ahmd.), Jaishan Textile Mills Pvt. Ltd. vs. DCIT (2006) 284 ITR 542(Bom) and German Remedies Ltd. vs. DCIT(2006) 287 ITR 494(Bom.).

3.4 In he result, the Ground No. 1 is allowed.

3.5 As regards merit of the case, it is pertinent to mention that in response to the notice u/s.133(6), as mentioned earlier, investor company has furnished all the necessary evidences hence, nothing was left for the Appellant to explain with further evidence to the Assessing Officer. It is also to be noted that after receipt of various evidences from the investor, Ld. Assessing Officer has not brought on record any contrary



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evidences, hence, addition could not be made on suspicion or presumption disrespecting the evidences on record. It is to be reiterated that the learned Assessing Officer, has during the course of the assessment proceeding, issued Notices u/s.133(6) of the Act to the parties and they have confirmed the transactions made with the Appellant. No incriminating materials from any of the parties having dealing with the appellant company were either brought on record or were available to substantiate the allegation of providing accommodation entries, only because one Shri Pravin Kumar Jain in his statement has accepted of providing accommodation entries cannot ipso facto make the parties, who has invested in the appellant company, also to be engaged in the same kind of business.

In the similar case of MIs Easy Mercantile Pvt. Ltd. vis DOLT (ITA No. 6035/Mum/2011 for A.Y. 2008 09), wherein addition were made based on the statement of the said Shri Pravin Kumar Jam, the Hon'ble ITAT, Mumbai deleted the addition making the following observation:

"It is also a fact that while examining the sales made' by the assessee company, the AO issued notice u/s 133(6) of the Act to the parties who con firmed the transaction made with the assessee. Admittedly, no



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incriminating material from any of the parties having dealings with the assessee company were either brought on record or were available to substantiate the allegation of providing accommodation bills, only because one Shri Pratin Kumar Jain in his statement has accepted of providing accommodation bills cannot ipso facto make the assessee company also to be engaged in the same kind of the business."

The above view has further been followed by the Hon'ble ITAT, Mumbai in the following cases wherein additions were made again based on the statement of the said Shri Pravin Kumar Jam:

(i) DCIT CC-1, Mumbai vs Easy Mercantile Pvt. Ltd., (ITa No. 921/Mum/2013).

(ii) DCIT CC-1, Mumbai vs. M/s Sumukh Commercial Pvt. Ltd (ITA No. 922/Mum/2013)

(iii) DCIT CC-1, Mumbai vs. M/s SBJ Trading (I) Ltd., (ITA No. 923/Mum/2013)

Further, the Hon'ble ITAT "A" Bench, Mumbai has recently on 30.11.2015

decided similar matters having identical facts as under:



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i) ITA No. 3645/Mum/2014: ITA 10(2)(4) vs M/s Superline Construction Pvt Ltd.

ii) ITA No. 3644/Mum/2014: ITA 10(2)(4) vs M/s Sitara Properties Pvt Ltd.

iii) ITA No. 3646/Mum/2014: ITA 10(2)(4) vs M/s Samsung Builder & Developer Pvt. Ltd.

(iv) ITA Non. 3647/Mum/2014 ITA 10(2)(4) vs. M/s Soumya Trading & Finance Pvt. Ltd.

(v) ITA No. 3648/Mum/2014 ITA 10(2)(2) VS. m/S Prarup Properties Pvt. Ltd

(vi) ITA No. 3650/Mum/2014 ITA 10(2)(2) Vs. M/s Room Darshan Real Estate Pvt. Ltd.

vii) ITA No. 3651/Mum/2014 ITA 10(2)(2) vs. M/s Sumangal Buuilder & Developer P. Ltd.

In all the above cases the learned Assessing Officers have made additions u/ s 68 of I Tax Act for Share Application Money and Unsecured Loans received based on specific information provided by the Investigation Wing of Income Tax



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Department. The additions were deleted by the learned CIT(A) against which the Revenue filed Appeals before the Hon'ble ITAT, Mumbai. The Hon'ble ITAT Mumbai dismissed the Appeals filed by the Revenue following the Ratio decided by earlier decision of the Hon'ble Tribunal more particularly the case of ITAT E Bench in MIs. SDB Estate Pvt Ltd. vs. ITA - 5(3)(2) in ITA No. 584/Mum12015:

A.Y. 2008-09 has decided similar issue by observing as under:

"in view of the above stated legal position and in the light of reliable evidences brought on record by assessee to substantiate identity, genuineness and creditworthiness of shareholder, which have not been controverted by the Revenue, the / additions made solely on the basis of general statement of Shri Mukesh Choksi cannot be held to be justified and the same are accordingly ordered to be deleted."

Thus, in the light of above factual analysis, references of evidences, confirmation of investment by the investor and decision over the issue of Hon'ble Jurisdictional ITAT in the case of MIs. Easy Mercantile Pvt. Ltd. vs. DCIT ITA



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No.6035/Mum/2011 and other decisions, and also respectfully following the decision of Hon'ble Bombay High Court in the case of H.R. Mehta vs. ACIT, ITA No.58 of 2001, Order dated 30.06.2016, the escapement assessment made by the Assessing Officer is disapproved and addition of Rs.1 Crore made u/s.68 is deleted.”

Aggrieved, Revenue came in appeal before Tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that the assessee filed original return of income on 17.10.2007 and the same was assessed under section 143(3) vide order dated 28.11.2009. Subsequently, a search was conducted on the Praven Jain Group of cases on 01.10.2013, in which Shri Praven Jain admitted of giving accommodation entries of share application money to various parties. Alka Industries Ltd. was one of the group companies. We find from the facts of the case that the completed assessment was reopened after expiry of 4 years from the end of the relevant assessment year. From the reasons recorded, which are reproduced in Para 2 of the assessment order. Nowhere clarifies that what was the failure of the assessee not to disclose this transaction of 1 crore receiving share application money from Alka Diamond Industries Ltd. It is a fact that the assessee has disclosed the transaction in the return of income accompanying audited accounts including balance sheet which depicts receipt of share application money of ₹ 1 crore from Alka Diamond Industries Ltd. Even otherwise the assessee before the AO during the reassessment proceedings, in response to notice under section 133(6) of the Act, Alka Industries Ltd. submitted details of Income Tax return, copy of ledger account of the



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assessee in the books of Alka Industries Ltd., copy of bank statement showing relevant transaction, source of investment and also explained the factual position vide letter dated 30.01.2015. The AO during the course of re-assessment proceedings made addition of share application money of ₹ 1 crore received from Alka Diamond Industries Ltd. simplicitor on the basis of mere statement of Shri Praveen Kumar Jain without confronting the assessee. Moreover, no further enquiry was carried out by the AO whether the amount is explained or unexplained the fact that the assessee has submitted complete details before the AO.

6. This issue is now settled by Hon'ble Bombay High Court, in the given facts, by the decision in the case of CIT vs Orchid Industries Pvt. Ltd. (2017) 397 ITR 136 (Bom.) wherein honorable High court has considered the decision of division Bench of Bombay High Court in the case of CIT vs. Gagandeep Infrastructure P. Ltd (2017) 394 ITR 680 (Bom) & Hon'ble Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd (2008) 216 CTR (SC) and held as under: -

"5. The Assessing Officer added Rs. 95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

6. The Tribunal has considered that the Assessee has produced on record the documents to establish



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the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd (supra) would be applicable in the facts and circumstances of the present case.”

7. Respectfully following the ratio of Hon'ble Bombay High court in the case of Orchid Industries Pvt. Ltd. (supra) and the facts of the present case, we are of the view that the CIT(A) has rightly deleted the addition on merits and even the re-assessment was quashed. We confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed.

8. Coming to assessee's appeal in ITA No. 2090/Mum/2018 for AY 2008-09, the issue is against the order of CIT(A) confirming the action of the AO in making addition of share application money of ₹ 1,62,50,000/- and consequently addition of adhoc expenditure on account of commission paid to obtain these bogus capital at the rate of 5% i.e. ₹ 28,12,500/-. For this assessee has raised the following two grounds: -



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“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of Ld. A. O. in making addition of Rs. 1,62,50,000/- on account of Shares Application Money received during the year by treating it as alleged unexplained cash credit u/s 68 of the Income Tax Act that too by recording incorrect fact and findings and without observing the principle of natural justice.

The learned CIT(A) has also failed to appreciate the fact that the appellant has discharged the onus cast upon it to establish the identity and creditworthiness of the share applicants and genuineness of the transactions.

2. In the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of Ld. A. O. in making an ad-hoc addition of estimated unexplained expenditure u/s 69C of the Income Tax Act at the rate of 5% of the amount of addition made as alleged unexplained cash credit u/s 68 of the Act.”

9. The facts and circumstances are already mentioned in ITA No. 3987/Mum/2017 for AY 2007-09, the above appeal, and in this year the assessee has received share application money from the following parties amounting to ₹ 1,62, 50,000/-:-

Name	PAN	Share	Share	Total	No. of
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		Application money received for AY 2007-08	application money received for AY 2008-09	consideration recd.	shares Applied & allotted
ArtelligenceBio Innovations Ltd	AAACI7359F	75,00,000	52,50,000	1,27,50,000	42,500
Alka Diamond Industries Ltd.	AAACA5236D	1,00,00,000	35,00,000	1,35,00,000	45,000
Clifton Securities Pvt. Ltd	AAACC5995P	-	75,00,000	75,00,000	25,000
Navlakha Agrex Pvt. Ltd. (formerly Known as Olympus Vision Pvt. Ltd)	AAACO3898H	75,00,000	-	75,00,000	25,000
Nicco Securites Pvt. Ltd	AABCN1737D	75,00,000	-	75,00,000	25,000
Macrosoft Technology Pvt. Ltd	AACCM3329H	75,00,000		75,00,000	25,000
Total		4,00,00,000	1,62,50,000	5,62,50,000	187,500

10. We find that exactly identical issue has been dealt with by us in the group cases in the case of Diwali Capital & Finance Pvt Ltd. vs. DCIT in ITA No. 2091/Mum/2018 for AY 2008-09 wherein, we have held as under:

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“11. We have heard rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that during the assessment proceedings, the assessee has submitted the following details: -

During assessment proceedings the assessee had submitted copy of income tax return along with audit report of share applicants i.e. investing companies.

Copy of form no.2 of Diwali Capital & Finance Pvt. Ltd.

Copies of bank accounts of the assessee which inter alia depicts the credit entries by



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way of transfer of the amounts given to the assessee company by cheque.

Confirmation of the investing company has also been filed.

Further during the course of assessment proceeding the assessee also informed that the share application form received from the investor companies and some of the other documents i.e. copy of the resolution passed by the Board of Directors of assessee company for investment in shares of these companies Covering letter forwarding there with the required documents/papers for investment in shares of the assessee company were seized in search action u/s 132 of the Act, in the office premises in November 2014. These papers have been seized and it is still lying with the assessing officer. Copies of the same have not been given to the assessee as yet. We find from the facts of the case that the assessee has filed the relevant pages of inventory listing the documents during the course of search us/ 132 for establishing the fact that the documents mentioned above have been seized and are in the possession of the assessing officer. The above documents are enough to establish the credibility and the genuineness of the transactions. So far as present status of the investing companies is concerned, the assessee



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has filed data of Company Master Data from the website of Ministry of Corporate Affairs (MCA). Such data are in respect of investing company Alka Diamond Industries Ltd. The state of the investing company as on 25.10.2017 is active. Therefore, the company is still in existence and active. The master data also discloses that Balance sheet up to 31.03.2016 has been filed in respect of each of the companies mentioned above. Therefore, there cannot be any doubt about the identity of the company. The amounts have been received from investing company have Come through banking channel which are duly reflected in the Balance sheet of the assessee company Therefore, there cannot be any doubt about the genuineness of the transaction. So far as credit worthiness is concerned the investing company is regularly assessed to income tax and they are disclosing sub.

12. As the facts are identical to AY 2007-08 and the reason recorded by CIT(A) while deleting the addition in AY 2007-08 are also exactly identical. In such circumstances, we have already confirmed the order of CIT(A) deleting the addition and hence, following the earlier years order as decided above, we delete the addition. The appeal of assessee is allowed.”



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11. As the issue is covered in assessee's group case in the case of Diwali Capital & Finance Pvt. Ltd. (supra), the facts being identical, we delete the addition and allow this appeal of assessee.

12. In the result, the appeal of assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the open court on 10-01-2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य / JUDICIAL MEMBER)

Mumbai, Dated: 10-01-2019.
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI