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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1220/2018

PR. COMMISSIONER OF INCOME
TAX DELHI – 5

.....Appellant

Through: Mr. Siddhartha Sinha, SSC with
Ms. Anu Priya Nisha Minz,
Adv.

versus

MRS. ROWENA SHARMA

.....Respondent

Through: None

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+ ITA 1222/2018

PR. COMMISSIONER OF INCOME
TAX DELHI -5

.....Appellant

Through: Mr. Siddhartha Sinha, SSC with
Ms. Anu Priya Nisha Minz,
Adv.

versus

SHRI P K SHARMA

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

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11.02.2025

1. These two appeals raise common questions of law and relate to the additions which were made by the lower authorities under Section 69 of the **Income Tax Act, 1961**¹.

2. We had pursuant to the orders dated 08 May 2024 [ITA 1220/2018] and 07 August 2024 [ITA 1222/2018] admitted these



appeals on the following questions of law:-

ITA 1220/2018

(a) Whether in the facts and circumstances of the case the ITAT was justified in deleting the additions made under Section 69 of the Act?

ITA 1222/2018

“A. Whether the Income Tax Appellate Tribunal ["Tribunal"] is legally justified in deleting addition of unexplained booking amount of Rs. 88,66,426/- under Section 68 of the Income Tax Act ["Act"] solely for the reason that money was claimed to be received by the employee of the company of the assessee even when the assessee had not discharged its initial onus under Section 68 of the Act by not proving identity and creditworthiness of investor and genuineness of the transaction?

B. Whether the Tribunal is legally justified in deleting addition of unexplained booking amount of Rs. 88,66,426/- under Section 68 of the Act by ignoring the ratio decided as held by the jurisdictional High Court in ease of **Riddhi Promoters P. Ltd. vs. Commissioner of Income Tax** [2015 SCC OnLine Del. 8509] and **Principal Commissioner of Income Tax vs. Bikram Singh** [2017 SCC OnLine Del. 10036]?”

3. Since the facts are more or less similar, we propose to base this decision noticing the specific additions which formed the subject matter of ITA 1220/2018. From paragraph 2 and 3 of the order of the **Income Tax Appellate Tribunal**², we find that the following additions were assailed: -

“2. The Revenue has raised the following grounds of appeal in ITA NO 126/Del/2005:-

“1. On the fact and in the circumstance of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 5,09,000/- made on account of investment in shares of M/s Rajdoot Paints Ltd., relying on the confirmation of M/s Prem Veer Investment Pvt. Ltd. which is a bankrupt company. The genuineness of the transaction is doubtful.”

2. 'On the fact and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 19,21,000/- made u/s 69 of the I.T Act, on account of unexplained investment in shares of M/s

¹ Act

² Tribunal



Kuber Floritech Ltd."

3. On the fact and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 5,46,760/- made as against Rs. 6,31,014/- on account of unexplained jewellery under Section 69A of the I.T. Act, 1961 since the assessee has not able to file any evidence regarding source, time and acquisition of the seized jewellery”.

4. On the fact and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 10,03,080/- made on account of investment in Garh Land, on the basis of seized documents." ·

5. On the fact and in the circumstances of the case of the Ld. CIT(A) has erred in deleting the addition of Rs. 3,44,98,838/- made on account of purchase of land at Binola on the basis of seized documents."

3. The assessee has raised the following grounds of appeal in ITA No. 86/Del/2005:-

1.1 That under the facts and circumstances of the case, both the lower authorities grossly erred in law as well as on merits in making and sustaining the addition of Rs. 1,20,326/- as undisclosed income for bank FDRs.

1.2 That without prejudice, deduction u/s 80-L on FDR interest have been allowed.

2. That there is no justification for sustaining the addition of Rs.84,254/- as undisclosed investment in jewellery.

3. That under the facts and circumstances of the case, no interest u/s 159 BFA(1) should have been charged nil the time the photo copies of the relevant seized material not supplied and thereafter adding therein a reasonable period of about one month for reconciling the papers and preparing the return.

4. That under the facts and circumstances of the case and in view of the fact that the search took place on 08-05-97, no surcharge should have been levied.”

4. The proceedings themselves emanated from a search which was carried out in respect of the Kuber Group on 08 May 1997 and which led to the initiation of proceedings referable to Section 158BC of the Act on 23 October 1997. The respondent-assessee chose not to file any return pursuant to the initiation of those proceedings. Out of the various additions which were thereafter taken up by the Tribunal for



consideration was the infusion of INR 5,09,000/- as investment in sale of shares of **M/s Rajdoot Paints Ltd.**³ After noticing the conclusions which had been rendered by the **Assessing Officer**⁴ and the **Commissioner of Income Tax (Appeals)**⁵, the Tribunal noted that it was the case of the appellant that the assessee had failed to proffer any explanation with respect to either the source of investment or the genuineness and creditworthiness of that investing entity. It also appears to have been alleged that RPL, through which investments were routed, was a company with no assets and was bankrupt.

5. The respondent-assessee, on the other hand, appears to have provided details of the bank accounts from which those investments were routed. It is this aspect alone which appears to have weighed upon the Tribunal to delete the addition and affirm the order of the CIT(A).

6. This becomes apparent from a reading of paragraph 10 of the order which forms the subject matter of this appeal:-

“10. The Id Authorised Representative relied upon the order of the lower authorities. The Id CIT(A) has allowed the claim of the assessee by allowing the additional evidence and also noting that the total payment made by the assessee was Rs. 24.75 lacs which has been duly appearing in the balance sheet of the Prem Vir Investment Pvt. Ltd which is one of the group concern wherein, the above amount is shown as loan to the assessee. He further verified the bank statement of that company from which cheque was issued. As the complete payment stands duly disclosed and for the reason that Id Assessing Officer has recorded the addition as Rs. 5.09 lacs whereas the investment is Rs. 24.75 lacs. In view of this we do not find any infirmity in the order of the Id CIT(A). In the result ground No. 1 of the appeal is dismissed.”

7. A similar opinion has thereafter come to be rendered in respect

³ RPL

⁴ AO

⁵ CIT(A)



of the addition of INR 19,21,000 /- in shares of M/s Kuber Floritech Ltd. While dealing with this addition the Tribunal has held thus:-

“15. We have carefully considered the rival contentions and we find that with respect to the investment made by the assessee she has received money from Shri Fakruddin who is a group employee and who in turn received money from Kuber Mutual Benefit Society Ltd, therefore, the Id CIT (A) verified trail of the money invested by the assessee. Merely because Mr. Fakruddin is an employee of the company, the investment made by the assessee of Rs. 19.21 lacs in Kuber Floritech Ltd cannot be said to be bogus. The above company is also assessed to tax. In view of this, we do not find any infirmity in the order of the Id CIT (A) and hence, ground No. 2 of the appeal of the revenue is dismissed.”

8. It is this view which is reiterated again in Para 25 and which dealt with the source of credit of funds. Para 25 reads as follows: -

“25. We have carefully considered the rival contentions. As the investment made by the assessee in Kuber Planters Ltd through bank account and the source of credit of funds in the bank account also has been routed through Kuber Planters Ltd for purchase of Raigar Land. As the source of investment for purchase of Raigar Land has been demonstrated by the assessee from Kuber Planters Ltd and further as no information has been brought on record by revenue that Kuber Planters Ltd is a bogus company, we do not find any infirmity in the order of the Id CIT(A) in deleting the above addition. In the result ground No. 4 of the appeal is dismissed.”

It is this reasoning which has then been replicated in respect of each of the additions which were proposed.

9. In our considered opinion, the Tribunal as well as the CIT(A) clearly failed to bear in consideration the imperative of posing the question of creditworthiness and genuineness of the investor. The mere disclosure of the source of investment would neither suffice the requirement of Section 69 nor lead to the discharge of the onus of proof which stands placed upon an assessee.

10. While this is well settled, we deem it apposite to extract the following passage from the decision of the Supreme Court in



Commissioner of Income Tax vs. NRA Iron and Steel (P) Ltd⁶. and
where we had held as follows:-

“9.1. The issue which arises for determination is whether the respondent assessee had discharged the primary onus to establish the genuineness of the transaction required under Section 68 of the said Act.

9.2. Section 68 of the IT Act (prior to the Finance Act, 2012) read as follows:

“68. *Cash credits*.—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.”

(emphasis supplied)

The use of the words “any sum found credited in the books” in Section 68 of the Act indicates that the section is widely worded, and includes investments made by the introduction of share capital or share premium.

9.3. As per settled law, the initial onus is on the assessee to establish by cogent evidence the genuineness of the transaction, and creditworthiness of the investors under Section 68 of the Act. The assessee is expected to establish to the satisfaction of the assessing officer [*CIT v. Precision Finance (P) Ltd.*, 1993 SCC OnLine Cal 384 : (1994) 208 ITR 465] :

- Proof of identity of the creditors;
- Capacity of creditors to advance money; and
- Genuineness of transaction

This Court in the landmark case of *Kale Khan Mohd. Hanif v. CIT* [*Kale Khan Mohd. Hanif v. CIT*, (1963) 50 ITR 1] and, *Roshan Di Hatti v. CIT* [*Roshan Di Hatti v. CIT*, (1977) 2 SCC 378 : 1977 SCC (Tax) 292 : (1977) 107 ITR 938] laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee,

⁶ 2019 SCC OnLine SC 311



and there would be no further burden on the Revenue to show that the income is from any particular source.

9.4. With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge.

9.5. The Delhi High Court in *CIT v. Oasis Hospitalities (P) Ltd.* [*CIT v. Oasis Hospitalities (P) Ltd.*, 2011 SCC OnLine Del 506 : (2011) 333 ITR 119] , held that: (SCC OnLine Del para 43)

“43. ... the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 of the Act. These are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise....”

9.6. It has been held that merely proving the identity of the investors does not discharge the onus of the assessee, if the capacity or creditworthiness has not been established. In *Shankar Ghosh v. CIT* [*Shankar Ghosh v. CIT*, 1985 Tax Pub (DT) 1012 : (1985) 13 ITD 440 : (1985) 23 TTJ 20] , the assessee failed to prove the financial capacity of the person from whom he had allegedly taken the loan. The loan amount was rightly held to be the assessee's own undisclosed income.

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12. On the issue of unexplained credit entries/share capital, we have examined the following judgments:

12.1. In *Sumati Dayal v. CIT* [*Sumati Dayal v. CIT*, 1995 Supp (2) SCC 453 : (1995) 214 ITR 801] this Court held that: (SCC p. 456, para 4)

“4. ... if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the assessing officer, not satisfactory, there is prima facie evidence against the assessee viz. the receipt of money, and if he fails to rebut the same, the said evidence being un rebutted can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.”



12.2. In *CIT v. P. Mohanakala* [*CIT v. P. Mohanakala*, (2007) 6 SCC 21 : (2007) 291 ITR 278] this Court held that: (SCC p. 28, paras 16, 19 & 25 : ITR pp. 278-79)

A bare reading of Section 68 of the Income tax Act, 1961, suggests that (i) there has to be credit of amounts in the books maintained by the assessee; (ii) such credit has to be a sum of money during the previous year; and (iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books or (b) the explanation offered by the assessee, in the opinion of the assessing officer, is not satisfactory. It is only then that the sum so credited may be charged to income tax as the income of the assessee of that previous year. *The expression “the assessee offers no explanation” means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. ...*

The burden is on the assessee to take the plea that, even if the explanation is not acceptable, the material and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature.

(emphasis supplied)

12.3. The Delhi High Court in a recent judgment delivered in *CIT v. NDR Promoters (P) Ltd.* [*CIT v. NDR Promoters (P) Ltd.*, 2019 SCC OnLine Del 6599 : (2019) 410 ITR 379] upheld the additions made by the assessing officer on account of introducing bogus share capital into the assessee company on the facts of the case.

12.4. The Courts have held that in the case of cash credit entries, it is necessary for the assessee to prove not only the identity of the creditors, but also the capacity of the creditors to advance money, and establish the genuineness of the transactions. The initial onus of proof lies on the assessee. This Court in *Roshan Di Hatti v. CIT* [*Roshan Di Hatti v. CIT*, (1977) 2 SCC 378 : 1977 SCC (Tax) 292 : (1977) 107 ITR 938] , held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.

12.5. The Guwahati High Court in *Nemi Chand Kothari v. CIT* [*Nemi Chand Kothari v. CIT*, 2003 SCC OnLine Gau 248 : (2003) 264 ITR 254] held that merely because a transaction takes place by cheque is not sufficient to discharge the



burden. The assessee has to prove the identity of the creditors and genuineness of the transaction: (SCC OnLine Gau para 19)

It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has *proved the identity of his creditors*, the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors vis-à-vis the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the Revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself....

(emphasis supplied)

12.6. In a recent judgment the Delhi High Court [CIT v. N.R. Portfolio (P) Ltd., 2013 SCC OnLine Del 6466 : (2014) 42 Taxman.com 339 : 222 Taxman 157] held that the creditworthiness or genuineness of a transaction regarding share application money depends on whether the two parties are related or known to each other, or mode by which parties approached each other, whether the transaction is entered into through written documentation to protect investment, whether the investor was an angel investor, the quantum of money invested, creditworthiness of the recipient, object and purpose for which payment/investment was made, etc. The incorporation of a company, and payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus.

12.7. Other cases where the issue of share application money received by an assessee was examined in the context of Section 68 are *CIT v. Divine Leasing & Finance Ltd.* [*CIT v. Divine Leasing & Finance Ltd.*, 2006 SCC OnLine Del 1624 : (2008) 299 ITR 268 : (2007) 158 Taxman 440] and *CIT v. Value Capital Services (P) Ltd.* [*CIT v. Value Capital Services (P) Ltd.*, 2008 SCC OnLine Del 1474 : (2008) 307 ITR 334]

13. The principles which emerge where sums of money are credited as share capital/premium are:

13.1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.



13.2. The assessing officer is duty-bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

13.3. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack creditworthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

11. As is manifest from the aforesaid principles which came to be elucidated, the mere identity of the investor or a creditor does not result in the onus of proof being discharged. The assessee is additionally obliged to establish the creditworthiness and genuineness of the investor and thus prove that the investor had the capacity and the means to make that investment. The Tribunal has, in our considered opinion, clearly failed to bear the aforesaid aspects in consideration. We would thus answer the questions as posed in the negative and in favour of the Revenue/appellants.

12. The appeals are consequently allowed. The impugned orders of the Tribunal dated 11 January 2018 [ITA 1220/2018] and 09 January 2018 [ITA 1222/2018] are hereby set aside.

13. The matter shall, consequently, stand revived on the board of the Tribunal to be decided afresh and bearing in mind the observations made hereinabove.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J

FEBRUARY 11, 2025/kk