

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “C” BENCH: NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.4093/Del/2024
[Assessment Year : 2013-14]**

JSM Oilfields Services Pvt.Ltd., Farm No.14, 8 th Avenue, Radhey Mohan Drive, Gadaipur, New Delhi-110017. PAN-AABCJ1500C	vs	DCIT, Circle-13(1), New Delhi
APPELLANT		RESPONDENT
Appellant by	Shri Anil Jain, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	26.08.2025	
Date of Pronouncement	21.11.2025	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by assessee against the order dated 31.07.2024 of Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld.CIT(A)”] in Appeal No. CIT(A), Delhi-5/10123/2016-17 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dt. 30.03.2016 completed u/s 143(3) of the Act pertaining to Assessment Year 2013-14.

2. Brief facts of the case are that assessee company is engaged in the business of providing technical consultancy services in the oilfield sectors and e-filed its return of income, declaring total income of INR 1,08,61,410/- on 27.09.2013. The case was selected for

scrutiny under CASS by way of issue of notice u/s 143(2) of the Act dated 03.09.2014. Thereafter, notices u/s 142(1) of the Act alongwith questionnaire were issued time to time and in compliance to the notices issued, requisite details/information were furnished and books of accounts were produced and examined by AO. Thereafter, the AO computed the income of the assessee company at INR 3,23,99,877/- by making following additions / disallowances vide order dated 30.03.2016 passed u/s 143(3) of the Act:

- (i) addition u/s 68 on account of unexplained cash credit in the books of assessee company of INR 2,10,20,000/-;
- (ii) disallowance on account of personal expenses of INR 5,13,453/-; and
- (iii) disallowance u/s 14A of the Act of INR 5,014/-

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide impugned order dated 31.07.2024, partly allowed the appeal of the assessee.

4. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *"The Ld. CIT(A) has erred in confirming the addition of Rs. 2,10,20,000 u/s 68 ignoring the submissions that the statement of third party Mr. Vivek Jain mainly relied upon by AO 10 make the above addition was neither confronted/provided by AO during assessment stage and is also not on record of AO as admitted by him in the remand report submitted to CIT(A). Further no cross examination of Vivek Jain is provided.*
2. *The Ld. CIT(A) has erred in not accepting the plea of the appellant that the AO has not followed the CBDT instruction No. 7 of 2014 for going beyond the reasons for selection under CASS.*

3. *The Ld. CIT(A) has erred in confirming the adhoc disallowance of some expenses for personal nature from 25% to 10% amounting to Rs. 212581 without pointing out any specific defect.*
4. *The order of the lower authorities is against the law and facts of the case.*
5. *The appellant craves the right to add, amend or withdrew any ground of appeal at the time of hearing.”*

5. **Ground of appeal Nos. 1 & 2** raised by the assessee are in relation to the addition of Rs. 2,10,20,000/- made u/s 68 of the Act.

6. Before us, Ld. AR for the assessee submits that the assessee company has allotted 52550 equity shares in the year 2011 and during the year under appeal, had received call money on such issued share capital comprising of INR 4/- per share towards the face value of each share and INR 396/- towards the share premium which were allotted to 08 different entities. Ld.AR submits that the AO based on the allegation that the subscriber companies are not genuine and has no creditworthiness, made the additions of the entire amount received during the year. Ld. AR submits that AO placed heavy reliance on the statement of one Shri Vivek Kumar Jain who was alleged entry provider and his statements were recorded u/s 131 of the Act by the Investigation Wing, Delhi on 22.04.2013 wherein he had admitted of managing and controlling 30 companies for providing accommodation entries. As per Ld.AR, such statements were never provided to the assessee nor an opportunity to cross-examination Shri Jain was provided to the assessee. It is further submitted by Ld.AR that during the course of appellate proceedings,

the assessee has made detailed written submissions before Ld.CIT(A) wherein this fact was brought to the notice before Ld.CIT(A) that statement of Shri Vivek Kumar Jain was never provided to the assessee. AS per ld. AR, the AO in its Remand Report dated 27.09.2017 clearly observed that statements of Shri Vivek Kumar Jain are not available in assessment folder and he further observed that the statements were sought from the Investigation Wing however, till date no such statements were provided. Ld. AR submits that AO though had reproduced certain extracts of the statements in the assessment order however, the copies of the said statements were neither available in the assessment folder nor were provided to the assessee and since no opportunity of cross-examination was given to the assessee reliance on such statements cannot be placed. For this, he placed reliance on the following judgements :-

- (i) *Krishna Chand Chela Ram vs CIT 125 ITR 713 (SC);*
- (ii) *Andaman Timber Industries vs Commissioner of Central Excise Appeal No.4228 of 2006 dated 02.09.2015;*
- (iii) *CIT vs Odean Builder Pvt. Ltd. 418 ITR 315 (SC);*
- (iv) *PCIT vs Ace Technologies Ltd. [2023] 154 taxmann.com 45 (SC);*
- (v) *Pr. CIT, Central-2 vs JPM Tools Ltd. [2023] 154 taxmann.com 44 (Delhi); and*
- (vi) *Pr. CIT vs Kishore Kumar Mohapatra [2024] 162 taxmaann.com 5 (SC).*

7. Ld.AR further submits that during the course of assessment proceedings, assessee has filed all the relevant details to prove the

identity of the shareholders and financial statements of the subscriber companies were also filed to establish their creditworthiness. He submits that AO alleged that assessee company is not having sufficient net-worth and is having fixed assets of only INR 5,16,532/- and share capital of INR 4,12,750/- and major items in Balance Sheet is the reserves and surpluses and investments however, it had issued the shares at a premium of INR 618/-. Ld.AR drew our attention to the P&L Account wherein Revenue from operations in preceding year was of INR 3.03 crores and in current year is of INR 2.49 crores and profits shown was INR 95.71 Lakhs in March 2012 and INR 73.30 Lakhs in the year under appeal. He thus submits that the assessee company is having regular business and earning profits and thus low fixed assets cannot be the sole basis for doubting the shares issued at premium.

8. Ld.AR submits that once the assessee has filed all the relevant details of subscriber companies which includes their ITR, bank statements, financial statements etc. it cannot be held that the share capital received from these companies is bogus. Ld.AR further submits that during the year only call money was received alongwith part of the share premium and neither in the preceding years when the shares were originally allotted after receiving the application money nor in subsequent year when final call money was received, Department has made any allegation with respect to the money received from the share subscriber companies and only in the year under appeal, AO had doubted the amount received towards call

money from these companies. Ld.AR further submits that out of 08 companies, AO had doubted the 04 companies having same addresses and also by doubting their financial statement by ignoring the facts that these companies are having sufficient reserves and surpluses for subscribing the shares of the assessee company. Further they are active companies as per MCA data. Ld.AR also stated that in respect of three companies, AO has placed reliance on the statements of Shri Vivek Kumar Jain which statements cannot be relied as neither they were supplied nor an opportunity to cross-examination him was given. It is thus, prayed that the addition made deserves to be deleted.

9. On the other hand, Ld.Sr.DR for the Revenue vehemently supported the orders of the lower authorities and submits that AO has made independent enquires and investigation and Remand Report was called for by Ld. CIT(A) and thus, it cannot be held that the sole basis of treating the call money received during the year as in genuine on the basis is the statements of Shri Vivek Kumar Jain. He further submits that in the remand proceedings, the assessee has failed to submit the relevant details and further AO has issued notice u/s 133(6) of the Act however, in respect of 04 companies, no replies were submitted. He thus, submits that subscriber companies are non-existent entities and therefore, lower authorities had rightly made the addition which deserves to be upheld. Reliance is placed on the judgement of Hon'ble Delhi High Court in the case of **CIT vs NR Portfolio (P.) Ltd. [2014] 42 taxmann.com 339 (Del.)**.

10. Heard the contentions of both parties and perused the material available on record. In the instant case, assessee has received total sum of INR 2,10,20,000/- from 08 companies towards call money of the shares allotted in preceding years at a premium. A sum of INR 28 Lakhs was received from M/s AGR Forex Holdings Pvt. Ltd. and no doubts were raised about the existence or creditworthiness of this company by the AO. It is further seen that during the course of assessment proceedings, assessee has filed all the relevant particulars and details with respect to the subscriber companies. AO has placed reliance on the statement of Shri Vivek Kumar Jain with respect to 03 investors companies namely (i) M/s Shri Bhawani India Pvt Ltd.; (ii) M/s SKM India Pvt. Ltd. and (iii) M/s Angali Chemicals Pvt. Ltd. However, during the course of assessment proceedings, AO never confronted the assessee about the statement of Shri Vivek Kumar Jain nor copy of these statements were provided to the assessee nor an opportunity of cross-examination was given. It is for the first time when the order was received by the assessee, it has come to the knowledge of the assessee that any such statements were ever recorded and made sole basis for making the additions. From the Remand Report, it is seen that AO has also admitted the fact that the statements of Shri Vivek Kumar Jain are not available in the assessment folder and despite of request made from Investigation Wing, no such statements were provided. Therefore, in absence of these statements, reliance could not be placed. The Hon'ble Supreme Court in the case of Krishan Chand Chela Ram and Andaman Timber Industries (supra) has held that addition based on the statement

cannot be justified unless an opportunity to cross-examine the witness of the Department is allowed to the assessee. In the instant case, it is the Revenue who alleged that the amounts received from these companies was not genuine and such allegation is based on the statements of Shri Vivek Kumar Jain thus, it is the duty of the AO to provide such statements to the assessee and to further provide an opportunity to cross-examination the witness of the department therefore, these statements cannot be solely relied for making the addition. In this regard, reliance is placed on the judgements of hon'ble supreme court as relied upon by the assessee in the case of Krishna Chand Chela Ram vs CIT (supra), Andaman Timber Industries vs Commissioner of Central Excise (supra) and in the case of CIT vs Odean Builder Pvt. Ltd. (supra).

11. It is further seen that when the assessee filed all the relevant particulars / evidences / details of the subscriber companies and most relevant fact is that during the year under appeal, assessee had received only one call money including share premium and share application money, allotment money and other call money were received in preceding/succeeding assessment years where the said payments were never doubted by the AO. Thus, by following the principle of consistency also in the year under appeal, it cannot be said that the subscriber companies are not having sufficient creditworthiness to subscribe the shares of the assessee company in the instant year and in preceding year or succeeding years when remaining amount of share capital including premium were received

no such allegation was made. The Hon'ble Delhi High Court in the case of **PCIT vs. Agson Global Pvt. Ltd** reported in **[2022]134 Taxmann.com 256 (Delhi)** while allowing the appeal in favour of the assessee towards the additions made u/s 68 of the Act has held as under :

“Section 68 of the Income-tax Act, 1961 – Cash credits (Share capital money) – Assessment years 2012-13 to 2017-18 – Assessee-company received share capital and share premium money from several investors – Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company – Whether since assessee placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuineness of investors was proved, there was no justification to make addition under section 68 – Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of assessee]”

12. It is also relevant to state that an amendment is made vide Finance Act, 2022 wherein second proviso to section 68 is added, so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI. This amendment has taken effect from 1st April, 2023 and accordingly applies in relation to the assessment year 2023-24 and subsequent assessment years. The year before us is AY 2013-14 thus this amendment is not applicable

Regarding surrounding circumstances, it is observed that while making addition u/s 68 of the Act, the AO has doubted the financial capacity of subscriber companies but such addition cannot be made on preponderance of probability and there has to be some evidence and substance in contention. The Assessing Officer has not brought anything on record to establish that the sources in the hands of subscriber companies are non-genuine. It is well-settled position of law that no matter how strong suspicion is, it cannot take place of the evidence. Therefore, in the absence of any evidence showing that in fact, appellant has given cash in lieu of call money received, merely on the basis of suspicion, no addition can be made for which reliance is placed on decision of Hon'ble Supreme court in the case of ***Daulatram Rawatmull (1964) 53 ITR 574 (SC)***.

13. Further, the Hon'ble Delhi High Court in the case of ***CIT vs. Vrindavan Farms Pvt. Ltd. etc. in ITA. No.71 of 2015*** dated **12th August, 2015** held as under :

"The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the Assessing Officer had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High court."

14. In view of the above discussion and further looking at the fact that all the relevant details and documentary evidences were filed by the assessee to establish the identity, creditworthiness and genuineness of the transactions, the said evidences cannot be

rejected without any contrary documentary evidence brought on record. It is seen all the call money was received through banking channels and the subscriber companies are having sufficient worth in the shape of their reserves and surpluses which proves the creditworthiness and genuineness of the transactions.

15. It is trite law that suspicion, howsoever strong, cannot take the place of proof as held in ***Umacharan Shaw & Bros. vs. CIT (1959) 37 ITR 271 (SC)***. The Hon'ble Supreme Court in the case of ***Dhakeswari Cotton Mills Ltd v. Commissioner of Income Tax (1954) 26 ITR 775 (SC)*** has observed that powers given to the Revenue authority, howsoever, wide, do not entitle him to make the assessment on pure guess without reference to any evidence or material. The assessment cannot be framed only on bare suspicion. The assessment should rest on principles of law and one should avoid presumption of evasion in every matter. The assessee, in the instant case, has sufficiently demonstrated the creditworthiness of the subscriber companies.

16. In view of above facts and also by following the judgements of hon'ble Jurisdictional high court, in our considered view assessee has been able to discharge the burden casted upon it of establishing the creditworthiness of the subscriber companies and further looking to the fact that the department has accepted the creditworthiness of all these subscriber companies on the occasion when they had paid application money and remaining call money. Thus, the addition

made is hereby, deleted. Ground of appeal Nos. 1 & 2 raised by the assessee are accordingly, allowed.

17. **Ground of appeal No.3** raised by the assessee with respect to the confirming of disallowance of INR 2,12,581/- being 10% of out of various expenses.

18. Heard the contentions of both parties and perused the material available on record. From the perusal of the assessment order, it is seen that AO has disallowed the expenses by alleging that the element of personal user cannot be denied. Ld. CIT(A) reduced the disallowance on estimation basis by confirming 10% of the total expenses claimed. The assessee is a Private Limited company and having separate legal entity. The Hon'ble Gujarat High Court in the case of **Sayaji Iron And Engg. Co. vs Commissioner of Income-Tax** reported in **[2002] 253 ITR 749(GUJ)** held that limited company is a separate assessable entity from its directors. Therefore, the concept of "personal use" or "non-business purpose" in the context of the company itself is generally not applicable in the same manner as it would be for an individual or a sole proprietorship. Accordingly, disallowance of INR 2,12,581/- upheld by Ld. CIT(A) out of various expenses claimed is hereby, deleted. Ground of appeal No.3 raised by the assessee is allowed.

19. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 21.11.2025.

Sd/-

(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:- 21.11.2025

Amit Kumar, Sr.P.S

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