

Certificate of incorporation/PAN didn't prove identity of shareholder-Cos if evidence showed them as paper Cos

Summary – The High Court of Delhi in a recent case of Navodaya Castles (P.) Ltd., (the Assessee) held that Certificate of incorporation, PAN etc., are not sufficient for purpose of identification of shareholder when there is material to show that shareholder was a paper company and not a genuine investor.

Facts

- The assessee-company filed loss return which was processed under section 143(1).
- Subsequently, on the basis of a report submitted by the Investigation Wing that the assessee was a recipient of accommodation entries in form of share application money/share capital/share premium, the assessment was reopened under section 147 and assessee was asked to furnish details of shareholders who were allotted shares in the year under consideration, their confirmations, copy of the income tax returns, bank accounts, copy of share certificates issued, allotment letters, etc.
- The hearing of case remained unattended despite several adjournments and belatedly the assessee filed part information.
- The summons issued to the shareholders under section 131 had been received back unserved in five cases. In the meanwhile, the Assessing Officer managed to get hold of the bank statements of the shareholders, who had allegedly made deposits by way of cheques and pay orders. It was found that huge cash deposits in lakhs were being regularly deposited in the said accounts and then pay orders/cheques were issued to the assessee. These companies were under control of one M and his group, who were operating various accounts. The Assessing Officer, accordingly, made addition under section 68.
- On appeal, the Commissioner (Appeals) deleted the addition holding that there was evidence in the form of share application forms, copy of bank statements of the share subscribers from where the share application amount was paid, confirmation of the companies towards investment in share capital, certificate of incorporation with copy of memorandum and articles of association, copy of PAN card, ITR, etc., and, thus, the assessee was able to prove the identity of the shareholders, genuineness of the transactions and there was no room for doubt and suspicion.
- The Tribunal dismissed the revenue's appeal.

Held

- There are two sets of judgments and cases, but these judgments and cases proceed on their own facts. In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholders, bank account from which payment was made, the fact that payments were received through banking channels, filed necessary affidavits of the shareholders or confirmations of the directors of the shareholder companies, but thereafter no further inquiries

were conducted. The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The Assessing Officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances. The primary requirements, which should be satisfied in such cases is, identification of the creditors/shareholders, creditworthiness of creditors/shareholders and genuineness of the transactions. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct.

- Certificate of incorporation, PAN etc., are relevant for purpose of identification, but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor.
- In case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call money, dividends, warrants, etc., have to be sent and the relationship remains a continuing one., Therefore, an assessee cannot simply furnish some details and remain quiet when summons issued to shareholders remain unserved and uncomplied. As a general proposition, it would be improper to universally hold that the assessee cannot plead that they had received money, but could do nothing more and it was for the Assessing Officer to enforce shareholders' attendance in spite of the fact that the shareholders were missing and not available. Their reluctance and hiding may reflect on the genuineness of the transaction and creditworthiness of the creditor. It would also be incorrect to universally state that an Inspector must be sent to verify the shareholders/subscribers at the available addresses, though this might be required in some cases. Similarly, it would be incorrect to state that the Assessing Officer should ascertain and get addresses from the Registrar of Companies' website or search for the addresses of shareholders themselves. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances require that there should be some more evidence of positive nature to show that the subscribers had made genuine investment or had, acted as angel investors after due diligence or for personal reasons. The final conclusion must be pragmatic and practical, which takes into account holistic view of the entire evidence including the difficulties, which the assessee may face to unimpeachably establish creditworthiness of the shareholders.
- In the instant case, the Tribunal has merely reproduced the order of the Commissioner (Appeals) and upheld the deletion of the addition. In fact, it substantially relied upon and quoted the decision of its co-ordinate bench in the case of *CIT v. MAF Academy (P.) Ltd.* a decision which has been overturned by the Delhi High Court *vide* its judgment in *MAF Academy (P.) Ltd.* [\[2014\] 361 ITR 258/42 taxmann.com 377 \(Dehi\)](#). In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as

per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about identity and creditworthiness of shareholders as well as genuineness of the transactions.

- In view of the aforesaid discussion, the matter requires an order of remit to the Tribunal for fresh adjudication keeping in view the aforesaid case law.