

आयकर अपीलीय अधिकरण, 'ब' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1469/Mds/2014

निर्धारण वर्ष /Assessment year :2006-2007

Assistant Commissioner of
Income Tax,
Company Circle I(3)
Chennai 600 034.

vs

M/s. Cosmo Foundations Ltd,
No.11, Cosmo Towers,
Dr. Thomas Road,
T. Nagar,
Chennai 600 017.

(अपीलार्थी/Appellant)

**[PAN AAACN 1489K]
(प्रत्यर्थी/Respondent)**

आयकर अपील सं./I.T.A.No.1995/Mds/2014

निर्धारण वर्ष /Assessment year :2006-2007

M/s. Cosmo Foundations Ltd,
No.11, Cosmo Towers,
Dr. Thomas Road,
T. Nagar,
Chennai 600 017

vs

Assistant Commissioner of
Income Tax,
Company Circle I(3)
Chennai 600 034.

**[PAN AAACN 1489K]
(अपीलार्थी/Appellant)**

(प्रत्यर्थी/Respondent)

Assessee by
Department by

: Shri. Y. Sridhar, C.A.
: Shri. A.V.Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 07.12.2015

घोषणा की तारीख /Date of Pronouncement : 31.12.2015

आदेश / ORDER**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These are cross appeals directed against the order of Commissioner of Income Tax (Appeals)-I, Chennai, dated 28.02.2014 for the assessment year 2006-2007.

2. The grievance of the department is with regard to deletion of addition of ₹2,50,00,000/- set to be received from Smt. Vimalamma.

3. The facts of the case are that there was survey u/s.133A on 03.06.2008. During the course of survey it was found that the assessee had purchased land from Smt. Vimalamma and paid ₹3,71,70,255 on 17.06.2006. The value of the property was fixed at ₹5,60,00,000/- and the balance unpaid amount was brought into the books of assessee as Share application money pending allotment. It was stated by the Managing Director of the assessee company that Smt. Vimalamma had applied for shares for a value of ₹1,88,00,000/-. On examination of Smt. Vimalamma, she stated that she had received a total consideration of ₹3,75,00,000/- and there was no investment in the form of share application money of assessee company. Hence, the assessment was reopened by issue of notice u/s.148 of the Act and

assessment was framed by adding the unexplained share capital amount of ₹3,14,14,460/- on the reason that Smt. Vimalamma denied received the amount. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. On appeal the Commissioner of Income Tax (Appeals) observed that increase in shareholders fund in the balance-sheet of the assessee of ₹3,14,14,460/- needs to be explained by the assessee. The assessee has shown this amount as ₹2,85,00,000/- received from Smt.Vimalamma and ₹29,14,460/- from other promoters. With regard to Smt.Vimalamma, ₹1,00,00,000/- credited to shareholders fund was well supported by the cheque payment through United Bank of India. There was no doubt about its credibility which was also acknowledged by the assessee. With regard to ₹1,85,00,000/-, it was shown in the balance sheet of the assessee as shares allotted towards part consideration of sale of land (sale consideration of her property ₹5,60,00,000/-, as per guideline value, reduced by ₹3,75,00,000/- actually received and acknowledged by her). Smt. Vimalamma has accepted having given ₹1,85,00,000/- towards shareholders fund in her confirmation letters dated 17.3.2006 addressed to the Board of Directors (2 letters both dated 17.3.2006). However, in the sworn statement dated 04.06.2008, subsequent to survey u/s 133A of the act conducted on 03.06.2008, she expressed

her ignorance of having invested any amount in any company towards shares. In her letter dated 30.6.2011 in response to summons u/s. 131 of the Act issued by the AO, she has admitted the sale consideration of ₹.5,60,00,000/- in her return of income and stated that the balance amount (₹1,85,00,000) has not been paid by the purchaser of the property i.e., the assessee. She has also stated that she has not given any consent or agreed to deem the difference as share application money by Cosmo Foundations Ltd. Based on these details, the AO has submitted his remand report dt.06.01.2012 through proper channel received in this office on 10.01.2012 stating that Smt. Vimalamma has not given any consent to treat the difference as share application money by the assessee. It appears from the facts that Smt.Vimalamma has got confused and worried with the higher tax liability in the form of long-term capital gains when the sale consideration of the property was taken at a higher rate i.e., ₹5.60 crores as per guideline value when the market rate is about ₹3.50 crores for which the agreement was entered with the assessee. This fact was evident in her letter dated 30.6.2011. Therefore, she was not clear of the balance amount of ₹1,85,00,000/-. At one point of time she stated that she has asked the Board of Directors to allot the shares to the extent of balance amount and at another point of time she stated that she has not given any consent

for such allocation of shares. But the fact remains that she has not received the difference amount from the buyer (assessee company) which has arisen mostly due to difference of guideline value and the actual market value. Since she has filed her return of income and offered the higher value as per guideline value for capital gains in her return of income there is no default from her side on that point. From the assessee's point of view i.e., the buyer of the property, the amount has not been paid to her and came forward to allocate the shares of its company and recognise the same in its balance-sheet. From this point of view, the Commissioner of Income Tax (Appeals) opined that the amount payable of ₹.1,80,00,000/- should be taken as liability outstanding and be allowed as share application money in the name of Smt. Vimalamma and accordingly deleted the addition made by the Assessing Officer. Against this, the Revenue is in appeal before us.

5. We have heard both the sides and perused the material on record. As per the sale deed of property dated 17th March, 2006 the sale consideration was ₹5.6 crores. As per sale deed Smt. Vimalamma received full sale consideration of ₹5.6 crores and there was no mention about the allotment of share in lieu of share consideration. Further, on few occasions, she narrated in earlier para that she had denied making any investment in assessee company. However, the

Commissioner of Income Tax (Appeals) gave a finding that ₹2.85 crores was made as investment by Smt. Vimalamma. In our opinion, the assessee shall furnish all details to prove the transaction. The onus to prove the identity, credit worthiness and genuineness of transaction is on assessee as the entire facts are in her knowledge. Mere production of confirmation letter from Smt.Vimalamma is not sufficient in this case. She has given different statements at different stages. We do not know whether she is truthful and honest to disclose the correct fact. Being so, her statements are not reliable when surrounding and attending facts brought on record by the A.O indicate and reflect paper work and documentation. But genuineness, creditworthiness and identity are deeper, it shall require to be established by documents. Being so, the Commissioner of Income Tax (Appeals) has taken just cursory look at the entire things and deleted the addition which is improper. Hence, the matter is remitted back to the file of the Assessing Officer for conducting detailed inquiry and decide the issue afresh. The assessee has to file bank account details of Smt. Vimilamma to prove the transaction. This appeal of the Revenue is partly allowed for statistical purposes.

6. The assessee appeal in ITA No.1995/Mds/2014 is not pressed before us by the Id. Authorised Representative. Therefore, the

appeal of the assessee is dismissed as not pressed.

7. In the result, the appeal of the Revenue is partly allowed for statistical purposes and the appeal of the assessee is dismissed.

Order pronounced on Thursday, the 31st day of December, 2015, at Chennai.

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:31.12.2015

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |