

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "T", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.2259/M/2015  
Assessment Year: 2010-11**

M/s. Reed Infomedia India Pvt. Ltd., 5 <sup>th</sup> Floor, One India Bull Centre Tower 1C, Senapati Bapat Marg, Elphinstone Road, Mumbai – 400 013 <b>PAN: AADCR2986G</b>	Vs.	Income Tax Officer 7(2)(1), Mumbai
(Appellant)		(Respondent)

**ITA No.2579/M/2015  
Assessment Year: 2010-11**

Income Tax Officer 8(1)(2), Room No.621-A, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s. Reed Infomedia India Pvt. Ltd., 414, Empire Complex, Senapati Bapat Marg, Lower Parel, Mumbai – 400 028 <b>PAN: AADCR2986G</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vijay Mehta, A.R. & Shri Rajesh Lakhara, A.R.  
Revenue by : Shri Saurabhkumar Rai, D.R.

Date of Hearing : 09.03.2017

Date of Pronouncement : 03.04.2017

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The above captioned cross appeals one by the assessee and the other by the Revenue have been preferred against the order dated 19.02.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)]. First we take up Revenue's appeal bearing ITA No.2579/M/2015.

**Revenue's Appeal (ITA No.2579/M/2015)**

2. The Revenue in its appeal has taken the following grounds:

"1. The Learned CIT(A) has erred on facts and in law in restricting the addition made U/s.68 on account of increase in share capital to Rs.1,96,00,000/- instead of Rs.4,00,00,000/- without properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer in the assessment order that the assessee has increased share capital during the year for an amount of Rs. 4,00,00,000/-.

2. The Learned CIT(A) has erred on facts and in law in restricting the addition made U/s.68 to Rs.1,96,00,000/- on account of increase in share capital inspite of holding that the assessee could not prove the genuineness of the transaction as per requirement of Sec.68 and there is increase of Rs. 4,00,00,000/- in share capital during previous year relevant to A.Y.2010-11 (Share capital was Rs.6,00,00,000/in A.Y.2009-10 and Rs.10,00,00,000/- in A.Y.2010-11). The Ld. CIT(A)'s order is contrary to law and facts and deserves to be set aside and A.O.'s order be restored.

3. The Ld. CIT(A)'s order is contrary to law and facts and deserves to be set aside and A.O.'s order be restored.

4. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary."

3. The brief facts relevant to the issue under consideration are that the assessee company is a joint venture of two companies i.e. M/s. Reed Elsevier Overseas BV (a foreign company) with 51% share capital and M/s. Infomedia 18 Ltd. (Indian company) with 49% share capital. The assessee is engaged in the business of publication of magazine in the gems and jewellery sector. For the assessment year under consideration, the AO noted from the balance sheet of the assessee that during the year, the share capital of the assessee has been increased by Rs.4,00,00,000/- (Rupees four crores only). He asked the assessee to furnish necessary details in this respect. The assessee accordingly furnished the necessary details to the AO including the names of the subscribers, PAN numbers, annual financial report of subscribers, cash flow statements etc. However, the AO was not satisfied by the details submitted by the assessee and observed that the assessee has failed to prove the source,

identity of the subscribers and the genuineness of the transaction. He, therefore, made the addition of the above amount of Rs.4,00,00,000/- as unexplained credits under section 68 of the Act into the taxable income of the assessee. Being aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A).

4. It was explained before the Ld. CIT(A) that during the year under consideration, the assessee had received share capital money to the tune of Rs.1,96,00,000/- only from M/s. Infomedia 18 Ltd. in consideration for issue of Rs.1,96,00,000/- equity shares of Rs.10/- each. However, the assessee company had received a sum of Rs.2,04,00,000/- as share capital money from the foreign company M/s. Reed Elsevier Overseas BV in consideration for issue of 20,40,000 equity shares of Rs.10/- each during the preceding assessment year 2009-10. The assessee also submitted before the Ld. CIT(A) that the necessary details in this respect including the audited accounts of the assessee, the details of share application money received along with details of share holding pattern, PAN and address of shareholders, bank statement and form No.2 i.e. intimation to Registrar of Companies for increase in share capital etc. were furnished before the AO during the A.Y. 2009-10 also. The said details were duly verified by the AO and after that the AO did not make any addition in respect of the share capital money received in A.Y. 2009-10. That, even otherwise, no addition could have been made by the AO in the relevant assessment year 2010-11 in respect of the said amount. The Ld. CIT(A), after considering the above submissions and evidences on the file, held that it was clear from schedule 'H' that the figure of investment as on 31.03.10 was Rs.4,90,00,000/- whereas the figure was Rs.2,94,00,000/- as on 31.03.09; meaning thereby that there was introduction of fresh share capital of Rs.1,96,00,000/- only. He, therefore, held that no addition of the said amount of Rs.2,94,00,000/- was warranted for the year under consideration. The Ld. CIT(A), however, held that the assessee had not submitted the bank accounts

and confirmation from the subscriber regarding the receipt of Rs.1,96,00,000/- claimed to be received as share capital from its holding company M/s. Infomedia 18 Ltd. during the year under consideration. He, therefore, upheld the addition of Rs.1,96,00,000/- out of the total addition of Rs.4,00,00,000/- made by the AO.

5. Before us the Ld. D.R. could not point out any differentiating new fact which may justify our inference into the observation of the Ld. CIT(A) regarding the introduction of the share capital money of the amount of Rs.2,94,00,000/- during the year assessment year 2009-10 and not for the year under consideration i.e. A.Y. 2010-11. Moreover, during the assessment proceedings for the earlier assessment year A.Y. 2009-10, this issue was duly examined by the AO and being satisfied, no additions were made by him. In view of this, we do not find any infirmity in the order of the Ld. CIT(A) while deleting the addition of Rs.2,94,00,000/- out of the total disputed addition of Rs.4,00,00,000/-.

6. It is pertinent to mention here that the AO while computing the income of the assessee had wrongly mentioned the figure of addition of Rs.6 crore whereas the total share capital introduced by the assessee was of Rs.4,00,00,000/-. This fact has also not been disputed by the Revenue. We, therefore, do not find any merit in the appeal of the Revenue regarding the action of the Ld. CIT(A) in deleting the above addition of Rs.2,94,00,000/-.

Now coming to the assessee's appeal bearing ITA No.2259/M/2015.

**ITA No.2259/M/2015 (Assessee's appeal)**

7. The assessee in its appeal has taken the following grounds:

“1. That on facts and in law the CIT (A) erred in upholding addition to total income of Rs.1.96 crores under section 68 of the Income Tax Act.

1.1 That on facts and in law the CIT (A) erred in holding that the appellant had failed to Discharge onus casted upon it as per provisions of section 68 of the Income Tax Act.

2. That on facts and in law the CIT(A) erred in upholding the action of the AO in subjecting to tax differential receipts (as per AS-26 information) of Rs.10,84,800/-.

2.1 That on facts and in law the CIT (A) erred in not appreciating that income Corresponding to differential receipts of Rs.10,84,800/- has been offered and Subjected to tax in AY 2009-10.

3. That on facts and in law the AO/CIT (A) erred in not allowing set off of brought forward losses.

4. That on facts and in law the orders passed by AO and the CIT (A) are bad in law and void ab-initio.

That the appellant prays for leave to add, alter, amend and / or vary the ground(s) of appeals at or before the time of hearing."

### **Ground No.1**

8. A perusal of the ground No.1 of the appeal reveals that the assessee has agitated the confirmation of the remaining amount of Rs.1,96,00,000/- claimed to be received as share capital by the assessee from M/s. Infomedia 18 Ltd. The Ld. A.R. of the assessee in this respect has brought our attention to page No.285 of the paper book and stated that the said amount was adjusted against the running account between the parties and therefore there was no question of submitting the bank accounts. The Ld. A.R. has further submitted that the necessary details had already been furnished by assessee before the AO such as the name, address, PAN and shareholding pattern of the shareholder and even the copy of ledger account and annual financial report for financial year 2009-10 of M/s. Infomedia 18 Ltd. The Ld. A.R. has also invited our attention to the relevant evidences on the file and has submitted that in the audited financial statement for the financial year 2009-10 of M/s. Infomedia 18 Ltd. the investment made by the company has been reflected. Further, the transaction was disclosed under the "Related party transaction information" in the financial statement of the assessee company and similarly the details of transaction were also disclosed by the M/s. Infomedia 18 Ltd. The Ld. A.R. of the assessee has further invited our attention to page 69 of the paper book to demonstrate that the transaction details were also disclosed by way of cash

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flow statement. Even the information about the source and application of funds of M/s. Infomedia 18 Ltd. was also provided through cash flow statement. He, therefore, has submitted that the information about source of funds and application of funds was duly provided to the AO. The Ld. A.R. has further submitted that so far as the confirmation from the subscriber was concerned, the subscriber M/s. Infomedia 18 Ltd. has submitted that the above details were duly available in the financial statement of the subscriber M/s. Infomedia 18 Ltd. Moreover, all the relevant details such as address, PAN, ledger account of the assessee company in the books of M/s. Infomedia 18 Ltd. have been filed and the AO had not doubted the same. Moreover, the assessee had discharged the burden on its part and there was no contrary evidence before the AO to doubt the above transaction.

9. The Ld. D.R., on the other hand, has relied upon the findings of the lower authorities.

10. We have heard the rival contentions and have also gone through the records. As noted above, the assessee has duly furnished all the details and has also explained that the share application money was adjusted against the running account between the parties. Further, all the necessary details like PAN number, annual financial report of subscribers, cash flow statements etc. were also filed and the investment duly shown in the accounts/financial statement of the investor company. Under the circumstances, we do not find any justification on the part of the lower authorities in making addition of the above amount of Rs.1,96,00,000/- received by the assessee as share application money from M/s. Infomedia 18 Ltd. The addition made by the lower authorities on this account under section 68 of the Act is hereby ordered to be deleted. Ground No.1 of the appeal is therefore allowed in favour of the assessee.

### **Ground No.2**

11. Vide ground No.2, the assessee has agitated the action of the Ld. CIT(A) in upholding the addition of Rs.10,84,800/- made by the AO on account of non matching/difference of the figure pertaining to form 26AS.

During the assessment proceedings, the AO found that the assessee did not make any claim for TDS made of Rs.43,694/- on the receipt of Rs.10,84,800/- which were reflected in form 26AS. The AO observed that since the assessee did not offer any explanation for the same, hence the same were disclosed receipts of the assessee. He, therefore, made the addition of the said amount of Rs.10,84,800/- into the income of the assessee.

12. In appeal before the Ld. CIT(A), the assessee submitted that the said receipts were accounted in the financial year 2008-09 relevant to A.Y. 2009-10. The assessee in this respect also furnished the copies of the ledger accounts of the respective parties into the accounts of the assessee. The Ld. CIT(A), however, observed that the assessee had failed to establish one to one correlation between the receipts upon which TDS was deducted by the respective parties and with the income accounted for by the assessee for the F.Y. 2008-09 relevant to A.Y. 2009-10. He therefore, confirmed the addition so made by the AO.

13. Before us, the Ld. A.R. of the assessee has submitted that the AO had not asked for the details and information pertaining to form 26AS from the assessee. However, while passing the assessment order, the AO added the said amount into the income of the assessee. The Ld. A.R. has further submitted that the receipts in question pertained to the income booked in F.Y. 2008-09 and which was outstanding as on 31.03.09. The said income was duly accounted in the F.Y. 2008-09. However, the customers might have accounted the expenses in next year. Therefore, the said amount is appearing in form 26AS as income of F.Y. 2009-10. The Ld. A.R. bringing our attention to copies of the relevant ledger accounts has stated that all the entries of receipts

have been duly accounted for and that the matter may be restored to the file of the AO for verification and reconciliation of these entries.

14. The Ld. D.R., on the other hand, has relied upon the findings of the lower authorities.

After considering the relevant submissions, we are of the view that if the receipts have already been booked by the assessee in F.Y. 2008-09, the same cannot be booked as income of the assessee for the next year i.e. F.Y. 2009-10. However, the relevant receipts/entries need to be verified by the AO. We accordingly restore this issue to the file of the AO for reconciliation of these entries and if the claim of the assessee is found to be correct, then no addition will be made in respect of the receipts already booked in the earlier assessment year. This issue is accordingly treated as allowed in favour of the assessee.

### **Ground No.3**

15. The assessee has agitated the action of the lower authorities in not allowing the set off of brought forward losses. The Ld. A.R. has brought our attention to the para 6 of the impugned order and has stated that the Ld. CIT(A) has summarily rejected this ground. He has further submitted that even no information was asked for by the AO from the assessee while denying the said claim of set off of brought forward losses. He has further submitted that information of brought forward losses was very much available on record before the AO in the form of schedule CFL of the e-return of income. Further, the tax auditor has also certified the details of losses and the copy of tax audit report was also available on record. Even the carry forward of losses could very well be verified by the AO from the earlier year assessment orders. He has further submitted that even the factum of brought forward losses can be well verified by the AO at this stage also. Considering the above submissions of the Ld. A.R., this issue is also restored to the file of the AO for verification and if the claim of the assessee is found to be correct, then to allow the same in

accordance with law. In view of our findings given above, the appeal of the assessee is treated as allowed.

16. In the result, appeal of the Revenue is hereby dismissed and that of the assessee is hereby treated as allowed.

**Order pronounced in the open court on 03.04.2017.**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Sanjay Garg)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 03.04.2017.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.