



IN THE INCOME TAX APPELLATE TRIBUNAL “ H ”, BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

ITA No.7109/Mum/2016

(Assessment Year :2009-10)

DCIT CIR 6(3)2 R.No.522, 5 <sup>th</sup> Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020	Vs.	M/s. K.Right Management Solutions Pvt. Ltd., Kalpataru Residency Tower-A Road No.8, Sion (E) Mumbai – 400 019
<b>PAN/GIR No.</b>		<b>AACCK1720C</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

Assessee by	Shri M.C. Omi Ningshen
Revenue by	Shri Jitendra Jain
<b>Date of Hearing</b>	<b>16/04/2018</b>
<b>Date of Pronouncement</b>	<b>19/04/2018</b>

### आदेश / O R D E R

#### PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue against the order of CIT(A)-12, Mumbai dated 21/09/2016 for A.Y.2009-10 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2. In this appeal, revenue is aggrieved for deleting addition of Rs.1,12,50,000/- u/s.68 of the IT Act being the amount under the head 'share capital / share premium'.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee company is in services sector, providing advisory services in the field of Finance and Strategy. The assessment

In question had been reopened u/s. 147 of the Act on the ground that the assessee company is in receipt of huge share premium amounting to Rs.1,12,50,000/-, and the assessee being an unlisted company, the nature of the share application received is not substantiated. Accordingly AO added this amount u/s.68 of the IT Act.

4. By the impugned order, CIT(A) deleted the addition after observing as under:-

*6.3 I have carefully perused the assessment order and the submission of the appellant. On perusal of the submission filed on records, it is seen that the AO has added the share premium of Rs 1,12,50,000/- and accepted the share capital of Rs 12,50,000/-. The appellant, during assessment proceedings before the AO, has give the reason for charging the share premium which is noted in page 3 of the assessment order. The AO has not given the reason why and as to how the company could not charge the share premium. It is seen from the balance sheet as on 31.03,2009 that the appellant has reserve and surplus earned from profit & loss account of Rs 54,98,434/- as on 31.03.2008 and of Rs 85,20,361/- as on 31.03.2009. If the number of shares are divided to this amount then the amount allotted per share will be Rs 550 as on 31.03.2008 and Rs 852 as on 31.03.2009. The appellant has allotted the share at the end of the year, ie, on 28.02.2009 and therefore charge of premium of Rs 900 is appearing to be a very close figure of Rs 852/-. Hence/ the transaction of charging of premium of Rs 900/- is not an abnormal transaction and can be looked into on the basis of preponderance of human probabilities. Therefore, the decision relied on by the AO with respect to the preponderance of probabilities is not found acceptable here in this case. Further, during assessment proceedings/ the AO has not pin pointed anything on record and brought out on record as to how the value of charging of share premium is not acceptable to him. It is also seen that the AO has accepted the identity and creditworthiness of the investor. The AO has even partly accepted the genuineness of the transaction with respect to the corresponding share capital of Rs 12,50,000/- but has not accepted the share premium which has no logic. The whole addition is made on the basis of assumptions and presumptions. The judicial rulings relied on by the AO are on different aspects and A.O. has also not explained as to how these decisions are applicable in the instant case. Hence, I do not find any merit in the assessment order. Therefore, ground no 1 of the appeal is allowed.*

5. Against the above order, Revenue is in further appeal before us.
6. Learned DR relied on the order of the AO, whereas learned AR relied on the order of CIT(A). He also invited our attention to the audited accounts placed on record which reflected that assessee was having sufficient reserve and surplus so as to suit the premium amount charged on the preference shares so issued to M/s. Business Match Services (I) Pvt. Ltd. Our attention was also invited to the return filed by M/s. Business Match Services (I) Pvt. Ltd. at an income of Rs.4.46 Crores on which tax of Rs.1.43 Crores was paid.
7. We have considered rival contentions and carefully gone through the orders of the authorities below. From the record, we found that during the year assessee company received share application money from Business Match Services (India) Pvt. Ltd. for subscribing 1% Non-Cumulative Non-Convertible Preference Share of Rupees of 100/- each along with Rs. 900/- as Share Premium, The company allotted fully paid up 12,500, 1% Non-Cumulative Non-Convertible Preference Shares of face value of Rs.100/' at a Premium of Rs.900/- on 28/02/2009. The address of Subscriber M/s Business Match Services (India) Pvt. Ltd. is Shop No. 2, Neptune II, Smt Nargis Putt Road, Pali Hill, Bandra (W) Mumbai - 400050, PAN No, AAACB6129N. Details of payments received from the share subscriber vide account payee cheques issued on HDFC Bank. Before allotment of fresh Shares, the company had a

paid up capital of Rs. 100,000/- (10,000 Equity Shares of Rs. 10 each fully paid up) with Revenue Reserve & Surplus of Rs. 55 Lacs on 31.03.2008, which means book value per share of the company was Rs. 560 per share. At the end of the year ie. as on 31.03.2009 the Revenue Reserve & Surplus excluding share premium was Rs, 85 Lacs by this, the value per Share of the company was Rs. 860 per share, ie; shares were valued 86 times its face value. It is pertinent to note that the new shares were issued at nine times its face value. The book value per share of the company itself justifies the charging of premium on share and also on the basis of future Prospect of the business / investment. The Business Match Services (India) Pvt Ltd, who subscribed/invested in Preference Capital of the company is a Investment company and its net worth is more than Rs 2,500 Lacs and the size of the Audited Balance Sheet is in excess of Rs 10,000 lacs, as can be seen from its Balance Sheet as on 31.3.2009 which is placed on record.

8. After analyzing the balance sheet of the assessee company, the CIT(A) has recorded a finding to the effect that assessee has reserve and surplus as on 31/03/2009, according to which volume per share works out to Rs.852/- and assessee has issued a share at a premium of Rs.900/- which is very near to the figure of Rs.852/-. A categorical finding has also been recorded by CIT(A) with regard to identity and creditworthiness of the investor company M/s. Business Match Services (I) Pvt. Ltd. as well as the genuineness of the transaction. Finding recorded by CIT(A) are as per material on record which has not been controverted by learned DR by

bringing any positive material on record. Accordingly, we do not find any reason to interfere in the finding so recorded by CIT(A) resulting into deletion of addition made u/s.68 of the IT Act.

**9. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on this 19/04/2018

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/04/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai