

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1097/Hyd/2017  
Assessment Year: 2007-08**

**ITO,  
Ward-1(3),  
Hyderabad.**

(Appellant)

**Vs. Beta Avenues Private  
Limited,  
Hyderabad.  
PAN: AACCN 9423 D  
(Respondent)**

Assessee by: Sri K.A. Sai Prasad  
Revenue by: Sri J. Siri Kumar

Date of hearing: 01.10.2018  
Date of pronouncement: 29.11.2018

**ORDER**

**PER Smt. P. Madhavi Devi, J.M.:**

This is Revenue's appeal for the Assessment Year 2007-08 filed against the order of the CIT(A)-1, Hyderabad dated 17.03.2017. The Revenue has raised the following grounds of appeal:-

1. *The Ld. CIT(A) erred in deleting the addition made by the Assessing Officer on account of treating the alleged unsecured loan of Rs. 20 Crs received by the assessee during the year as income of the assessee for rendering liaison services by the assessee through its directors.*
2. *The Ld. CIT(A) ought to have appreciated that the amount of Rs. 20 Crs was received from M/s Walden Properties Pvt Ltd through intermediary M/s. Veen Promoters Pvt Ltd and in turn assessee allotted its share of the face value of Rs. 10/- to M/s. Walden Properties Pvt Ltd in the subsequent year at a premium of Rs. 252/- per share.*
3. *The Ld. CIT(A) failed to note that the assessee-company had shown meagre profit of Rs. 6,827/- for FY 2006-07 and considering the profile of the assessee-company such huge share premium paid by M/s. Walden Properties Pvt Ltd was*

*not for intrinsic value of shares issued but for securing other benefits from the assessee-company through its directors.*

4. *The Ld. CIT(A) ought to have further appreciated that he amount of Rs. 20 Crs was received by the assessee-company during the year even if the liaison services were rendered through its director Sri N. Prasad and therefore the amount is taxable in the hands of the assessee company in the year of receipt of the amount.*
5. *The appellant craves leave to add, delete substitute and amend any ground of appeal before and / or at the time of hearing of the appeal.*
6. *For these and other grounds that may be urged before / at the time of hearing of the appeal, it is prayed that he addition of Rs. 20 Crs may be made by the Assessing Officer."*

2. Brief facts of the case are that the assessee-company filed its return of income for the A.Y. 2007-08 on 27.03.2008 admitting total income of Rs. 6,830/-. During the assessment proceedings u/s 143(3) of the Act, a show-cause notice was issued to the assessee on 05/03/2013 asking the assessee to show-cause as to why the loan purported to have been taken from M/s. Veen Promoters Pvt Ltd., should not be treated as its income. The assessee filed its explanation vide letter dated 18/03/2013. The Assessing Officer was however not convinced with the assessee's contentions and held that the amount of Rs. 20 Crs received by the assessee is the income of the assessee. He accordingly brought it to tax.

3. Aggrieved, assessee preferred an appeal before the CIT(A), who allowed the same and the Revenue is in appeal before us.

4. While the Learned Departmental Representative supported the order of the A.O., the Learned Counsel for the Assessee submitted that the very same issue of loan taken by the assessee's sister concern M/s. Alpha Villas Pvt Ltd., had come up before the "A" Bench of this Tribunal for the A.Y. 2008-09

(ITA Nos.1413 & 1424/H/2014 dated 14.02.2018) and the Tribunal held that the sum of Rs. 20 Crs is in the nature of 'share premium' which is capital in nature and therefore, it cannot be brought to tax. A copy of the said order of the Tribunal (supra) is filed before us.

5. Having regard to the rival contentions and the material on record, we find that the assessee had explained to the A.O. that the source of loan taken from M/s. Veen Promoters Pvt Ltd., by the assessee-company is from M/s. Walden Properties P Ltd., a group company of M/s. Indu Projects Ltd., in which Sri N. Prasad is the Director and that M/s. Indu Projects Ltd., had invested the amounts as 'share application' money in M/s. Veen Promoters Pvt Ltd., and no money was advanced by it to M/s. Beta Avenues Ltd., ie., the assessee herein. It was submitted that the assessee had directly allotted shares to M/s. Walden Properties P Ltd., and therefore, the sum of Rs. 20 Crs was received towards equity only and not towards any fee for so-called services provided by Mr. N. Prasad. We find that even in the case of M/s. Alpha Villas Private Ltd (supra), the issue was whether the loan received from M/s. Veen Promoters was share capital? After examining the nature of the transactions, the Tribunal at para 20 to 26 of its order held as under:-

*"20. The proceedings u/s 144A were initiated to examine whether the sum of Rs.14.99 crores shown as share capital and premium received by the assessee from M/s Cornerstone Properties Investments (P) Ltd, Bangalore is a capital receipt or is taxable as assessee's income for the relevant assessment year. The Addl. CIT observed that during the financial year 2007-08, both the assessees i.e. Alpha Villas P Ltd (AVPL) and Alpha Avenues P Ltd (AAPL) have received Rs.14.99 crores as share capital and share premium, while M/s. Gilchrist Investments P Ltd had received Rs.20.00 crores from M/s. Cornerstone Properties & Investments (P) Ltd. He observed that the assessee had allotted shares to CPIPL on 3.3.2008 @ Rs.3.60 per share, whereas two days prior thereto i.e. on 1.3.2008, the assessee had allotted 30,75,000*

shares at face value of Rs. 10/- to Shri N. Prakash, the promoter and Director of the assessee company. He also observed that the money received from CPIPL was immediately invested as share capital in Jagati Publications (P) Ltd (JPPL) for allotment of 4,16,666 shares of JPPL at a premium ITA Nos 1413 and 1424 of 2014 Alpha Villas P Ltd Secunderabad. Page 15 of 18 of Rs.350/per share and identical transactions were done by AAPL as well.

21. The Addl.CIT observed that the immediate source for CPIPL for investment in the assessee companies was the share capital received by it from Walden Properties Pvt Ltd., (WPPL) on various dates starting from 31.07.2007 to 9.10.2007 and that the WPPL had stated that its source for such investment is the sale proceeds from customers and surplus fund from its cancellation of FDRs. The AO observed from the books of account of WPPL for the financial year 2006-07 and 2007-08, that it was in heavy need of funds for its operations for financial year 2007-08 and had secured loans. The correspondence between the WPPL and CPIPL was also furnished before the A.O by Mr. B. Subhash of WPPL on 29.11.2010. From the sequence of events, the AO observed that the WPPL had evinced interest in acquiring 50% stake in CPIPL at Rs.60 crores and had also stated that its operational team and supervisory team would participate in the project at Bangalore, but the CPIPL did not agree for participation of the operational team and management team from WPPL from the day-to-day, but agreed for a periodical overview. He observed that on 26.06.2007 WPPL agreed to the proposal of CPIPL without any due diligence and has paid money to CPIPL which was immediately invested in the assessee companies. He observed that the CPIPL did not inform WPPL, the names of the companies in which investments were going to be made nor had WPPL asked for the names but were informed orally, only at a later stage. Observing that the CPIPL had invested in the assessee companies, which in turn invested in JPPL, the Additional CIT was of the opinion that WPPL ITA Nos 1413 and 1424 of 2014 Alpha Villas P Ltd Secunderabad. Page 16 of 18 being a group concern of Indu Group, in which Shri N. Prakash and his brother are also the Directors, adopted the assessee as conduit to invest in JPPL, and that such transfer of funds is for the liaison services rendered by the promoters of the assessee company at the highest level of the State Government and hence directed to treat the share premium as the income of the assessee. He also arrived at the net worth of the assessee company to hold that the payment of premium @ Rs. 350/- per share is not justified. The AO followed the directions of the Add. CIT.

22. On the other hand, we find that the CIT (A) has deleted the addition by observing that Shri N. Prasad is not an active Director in all these companies, including the appellant company and that if the receipts were for liaison services provided by Shri N. Prasad to Indu Group, then such income in normal course would have accrued to him and should be considered as income in his individual hands and that the payment to the assessee company is a mere application of income accrued in the hands of the service provider i.e. Shri Nimmagadda Prasad. Against the relief granted by the CIT(A), the revenue is in appeal before us.

23. *The undisputed facts are that WPPL and Indu group are related parties and WPPL had invested in share capital of CPIPL, which in turn, had invested in the assessee's before us and the assessee's, in turn have invested the said amount in RCL and JPPL. The amount invested by CPIPL in the assessee's i.e AAPL and APPL is 14.99 crores each, which has in turn, has been invested by the assessee's into JPPL and RCL. Thus, it is clear that the assessee's are the conduits for the investment of share ITA Nos 1413 and 1424 of 2014 Alpha Villas P Ltd Secunderabad. Page 17 of 18 capital in RCL and JPPL, and the number of share and the premium paid by the CPIPL to the assessee's and by the assessee's to RCL and JPPL is also the same. Thus, it is clear that the assessee's have not earned or retained any income to treat it as their income u/s 68 of the IT Act.*

24. *Further, we also find that the amendment to Sec. 56(viib) of the IT Act has come into the statute w.e.f 1.04.2013 and prior to such an amendment, there was no provision to tax the share premium as the income of the assessee. For this reason also, the share premium cannot be brought to tax in the hands of the assessee.*

25. *Further, we also find that the Hon'ble Bombay High Court, in its recent decision in the case of M/s Apeak InfoTech, Nagpur and others in ITA Nos. 26 of 2017 to 31 of 2017, dated 08.06.2017, has held that the share premium is a capital receipt like share capital and therefore is not taxable.*

26. *In the case before us also, the share premium has been brought to tax as the income of the assessee. Respectfully following the decision of the Hon'ble Bombay High Court in the above case (cited supra), we hold that the share premium, even it is in excess of the value of the net worth of the assessee, can only be treated as capital receipt and cannot be brought to tax. Though, we do not agree with the findings of the CIT(A), that it is the income of the individual Shri N. Prasad, and has to be brought to tax in his hands, for the reasons given above, we hold that the share premium cannot be brought to tax in the hands of the assessee's before us. Thus, the grounds of the appeal of the Revenue on this issue are rejected."*

6. Since the facts and circumstances of the case before us are similar, we do not see any reason to take a different view from that of the Tribunal in ITA No.1413 & 1424/H/2014 (supra). Respectfully following the same, the grounds of appeal raised by the Revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

Pronounced in the open Court on 29<sup>th</sup> November, 2018.

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 29<sup>th</sup> November, 2018

**OKK**

Copy to:-

- 1) M/s. Beta Avenues Private Limited, Plot No.D-19, 2nd Floor, Flat No.202, Opp. Apollo Hospital, Vikramपुरi Colony, Secunderabad.
- 2) ITO, Ward-1(3), 7<sup>th</sup> floor, B-Block, IT Towers, AC Guards, Masab Tank, Hyderabad.
- 3) The CIT(A)-1, Hyderabad
- 4) The Pr. CIT-1, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File

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