

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)  
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

**I.T.A. No. 1883/Kol/2017**  
**Assessment Year: 2012-13**

Income-tax Officer, Ward-6(1), Kolkata	Vs.	Confirm Realbuild Pvt. Ltd. (PAN: AAEECC6398Q)
Appellant		Respondent

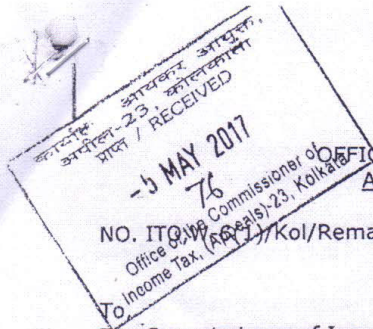
Date of Hearing	15.11.2018
Date of Pronouncement	30.11.2018
For the Appellant	Shri Sankar Halder, Addl. CIT, Sr. DR
For the Respondent	Shri M. D. Shah, AR.

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal preferred by the revenue is against the order of the Ld. CIT(A)-23, Kolkata dated 02.06.2017 for AY 2012-13.

2. At the outset itself it has been brought to our notice that the AO had made an addition of Rs.10,96,00,000/- received by the assessee on account of share capital and share premium u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) which has been deleted by the Ld. CIT(A) after taking note of the remand report given by the AO after examining the directors of the investor company as well as that of the assessee company and after examining documents filed before the AO. The Ld. AR drew our attention to the remand report of the AO which is as under:



OFFICE OF THE INCOME TAX OFFICER , WARD-6(1),KOLKATA  
AAYAKAR BHAWAN,CHOWRINGEE SQUARE,KOLKATA-69  
 NO. ITO (Appeals)-23, Kolkata / Kol/Remand Report/2017-18/ 67

Dated 05.05.2017

The Commissioner of Income Tax (Appeal)-23, Kolkata  
 Aayakar Bhawan  
 Kolkata.

Sub: Remand Report under Rule 46A in the case of M/s Confirm Realbuild Private Limited, PAN - AAEC6398Q, Assessment Year 2012-13 - Submission thereof.

Ref: NO. CIT (A)-23/Remand/Kol/2017-18/96 dated 28.04.2017

Respected Sir,


Kindly refer to the above.

Kindly find enclosed a Remand Report under Rule 46A as desired in the case of assessee appellant as named above.

Submitted for your kind perusal and further order.

Encl: As stated above.

Yours faithfully

  
 (L.L. LEPCHA)  
 ITO, WARD-6(1),KOLKATA

Sub: Remand Report in the case of M/s Confirm Rebuild Private Limited, PAN - AAEECC6398Q, A.Y. 2012-13 - Submission thereof.

On verification of paper book and records contained in respective assessment folder it has been observed that

In compliance of notice u/s 142(1) issued assessee company on 15.10.2014, filed copy of MOA, annual accounts, copy of ITR V, copy of statement of current bank account maintained by assessee, list of directors, GAR 7, Form 2, Form No.5, name and addresses of investor companies, statement of bank account and power of attorney.

On the basis of information provided by assessee, notice u/s 136(6) issued to 16 investor companies on 17.12.2014 by post. None of the notices issued u/s 133(6) by post return unserved. Compliance contains copy of ITR V, copy of individual ledger, source of fund, statement of bank account, annual accounts, list of investments, copy of share application and share allotment letter in almost all cases.

Total quantity of authorised shares was 250000 numbers. Rate fixed was Rs.10/- per share. Total equity shares issued to sixteen private companies during the relevant previous year was 229000 numbers. Gross payment received against allotment of 229000 number of shares was Rs. 109600000/-. Premium received calculated at Rs.  $(109600000 - 22900000 - 229000) = 478.60$  each.

Summon u/s 131 issued to directors of investor companies as well as assessee company on 02.02.2015 by post. Date fixed for personal attendance of all directors on 25.02.2015. None of the directors turned up against summon issued u/s 131.

Capital receipt of Rs.109600000/- was added back u/s 68 of Income Tax Act, 1961 on the grounds of non-appearance against summon issued u/s 131 and on the basis of principle of preponderance.

Assessment order passed u/s 143(3) on 11.03.2015.

Paper book as produced during the course of appeal proceeding contains statements of sources of share application money and inflow and outflow of fund, copies of bank statements, ITR V and annual accounts for AY 2012-13 related to M/s Pratush Commercial Private Limited.

On examination of paper book it was seen that investor company is a registered under ROC. It holds PAN and files return regularly. A current bank account maintained and still being operated. Books value of assets as on 01.04.2011 was reported at Rs. 982.54 lakhs. Source of fund applied for investment in assessee company was refund of loan from Sri Tanuj Drolia of Dover Park, Kolkata-19. Similarly, Rs.16.00 lakhs & Rs. 24.00 lakhs. was received by M/s Pratush Commercial Private Limited from M/s Pratush Consultant Private Limited and M/s B K Drolia (HUF) respectively and paid to assessee company for allotment of shares. Cheque details and credit in bank account of M/s Pratush Commercial Private Limited verified. Total payment of Rs.  $(3200000 + 4000000) = 7200000$ /- was received by assessee company from M/s Pratush Consultant Private Limited. Same found recorded and reported in ITR. Figures verified with accounts of assessee company but no difference found.

Statement of Sri Pawan Kumar Drolia, one of the directors of M/s Pratush Commercial Private Limited was recorded. At the time of recording statement Sri Drolia affirmed the financial transaction made by his company with M/s Confirm Rebuild Private Limited during the FY 2011-12 and said that source of fund for payment was refund of loan. In fact, major source of fund was sale of shares. Proceeds of old shares were applied in providing short term loans and advances and investment. Investment made in M/s Confirm Rebuild Private Limited during the FY 2011-12 was Rs.22.00 lakhs only. Short


terms loans and advances were partly recovered and applied in investment in M/s Confirm Realbuild Private Limited.

Statement of Sri Vivek Kumar Kejriwal one of the directors of assessee company recorded. At the time of recording Sri Kejriwal was asked to justify the issue of equity shares at premium. He said that there was no bar under Company Act as well as I T Act.1961 to issue equity shares at premium. It was Board of directors who decided to issue equity share at premium.

Directors of company found some companies, directors of which were known to us. They show interest in purchase of equity shares. Hence, transactions were completed on agreed price.

Matter regarding concealment of transactions were not found highlighted in assessment order. Assessment order was passed u/s 143(3) not u/s 144. Further, notice u/s 142 (2A) in the course of assessment proceeding not issued to assessee company which indicates the genuineness of transactions and books of accounts. Value of financial transactions as reported appears accepted by AO, however, on the grounds of non-appearance of directors of investor companies and assessee company against summons issued u/s 131 and principle of preponderance of probability addition u/s 68 made.

On the examination of information contained in paper book as stated above no infirmity in the matter related to general criteria set for mode of financial transactions, identity of entity involved, creditworthiness of investors and genuineness of transactions found.

  
( L L LEPCHA )  
ITO, WARD-6(1), KOLKATA

3. On perusal of the aforesaid remand report, we note that the conclusion made by the AO is that he has examined the directors of the assessee company and the share-subscribing companies and after examination of the documents filed by the assessee which was placed in the paper book before him, made him return a finding that there is no infirmity in the matter related to general criteria set-for mode of financial transaction, namely identity of entity involved, creditworthiness of investors and genuineness of the transactions. The Ld. CIT(A) after perusal of the remand report of the AO and after independently examining the documents furnished before him, has taken a decision to delete the addition. We note that u/s. 68 of the Act where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the AO, the sum so credited may be charged to income tax as the income of the assessee of that previous year. So, here in this case, the assessee has offered its explanation about the nature and source thereof of the share capital and premium it collected by furnishing details of share-subscribers, about their identity, creditworthiness and genuineness of the transaction and the AO though during remand proceedings was satisfied about the nature and source thereof, then question of addition invoking the deeming provision does not arise. Here in this case, the AO has recorded his satisfaction as evident from perusal of remand report [supra] which action of AO has been confirmed by the Ld. CIT(A). So, the addition u/s. 68 of the Act was rightly deleted by the Ld. CIT(A). In the light of the aforesaid facts and circumstances, we wonder as to how the AO/ITO has again raised this ground challenging the action of Ld. CIT(A) by preferring an appeal before us, when he (AO) himself has given a clean chit to the assessee company in respect to share capital and premium collected by it. We note that assessment of a subject has to be done by the AO and in this case, the AO himself after examining the directors of the assessee company as well as that of the share subscribing companies and after making enquiries in respect of the documents filed before him has recorded his satisfaction about the nature and source of the credits found in the books of the assessee which were in the form of share capital as convincing because the assessee was able to discharge the onus of proving the identity, creditworthiness and genuineness of the share capital. In such a scenario, the filing of the appeal by the AO before us is nothing but an

abuse of the process of law when on one hand he is satisfied with the identity, creditworthiness and genuineness of the share capital introduced by the assessee and thereafter again challenging it before the Tribunal is against the principle of estoppel because AO cannot blow hot and cold at the same time. Therefore, in the facts and circumstances discussed above and after having a look at the documents filed before us by the assessee to prove the identity, creditworthiness and genuineness of the transaction, we are of the considered opinion that assessee has discharged its onus by placing materials to explain the nature and source of the share capital, therefore, we find no infirmity in the action of Ld. CIT(A) in deleting the addition made u/s. 68 of the Act. Therefore, we are inclined to dismiss this appeal of the revenue.

4. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 30/11/2018

Sd/-  
(J. Sudhakar Reddy)  
Accountant Member

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 30th November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – ITO, Ward-6(1), Kolkata.
- 2 Respondent – M/s. Confirm Realbuild Pvt. Ltd., 9/12, Lal Bazar Street, Mercantile Bldg., 3<sup>rd</sup> floor, Block-E, Kolkata-700 001.
- 3 CIT(A)-23, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary