

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

(Before Sri S.S. Godara, Judicial Member & Sri M. Balaganesh, Accountant Member)

ITA No. 1476/Kol/2017
Assessment Year: 2014-15

DCIT, Circle-1, Siliguri,Appellant

Vs.

M/s. Malda Flour Mills Pvt. Ltd.....Respondent
2nd Mile Udayanchal
Sevoke Road
Siliguri - 734 001
[PAN : AAFCM 9275 P]

Appearances by:

Shri S.M. Surana, Advocate, appeared on behalf of the assessee.

Shri Sankar Halder, CIT D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : December 24th, 2018

Date of pronouncing the order : January 1st, 2019

ORDER

Per Bench :-

This is an appeal of the revenue directed against the order passed by the Learned Commissioner of Income Tax (Appeals) – Siliguri, Kolkata (in short the Id CITA) in Appeal No. 39/CIT(A)/SLG/2016-17 dated 26.04.2017 against the order of assessment framed by the Learned Deputy Commissioner of Income Tax, Circle-1, Siliguri (in short the Id AO) u/s 144/143(3) of the Act dated 8.8.2016 for the Asst Year 2013-14.

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A), was justified in deleting the addition made in the sum of Rs.77 Lakhs/- on account of share application money received by the assessee as unexplained cash credit u/s 68 of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a Private Limited Company engaged in the business of running a flour and rice mill. The return of income for the Assessment Year 2014-15, was electronically filed on 25/09/2014, declaring total income of Rs.71,310/-. The Id. Assessing Officer observed from perusal of various documents filed by the assessee during the course of assessment proceedings that the

assessee had received a sum of Rs. 77 Lakhs/- on account of share application deposit from the following parties:-

- | | | | |
|-----|--|---|----------------|
| i. | M/s. Highview Management Private Limited | - | Rs.76,00,000/- |
| ii. | Hemlata Maheshwari | - | Rs.1,00,000/- |

The aforesaid share application money was received from the aforesaid two parties with premium of Rs.400/- per share. The assessee furnished the audited financial statements of M/s. Highview Management Private Limited, for the Financial Year 2011-12 relevant to the Assessment Year 2012-13; assessment order u/s 144 of the Act, of M/s. Highview Management Private Limited, for Assessment Year 2012-13; name and address from whom capital and securities premium were received by M/s. Highview Management Private Limited and change in directorship of M/s. Highview Management Private Limited, since its incorporation. The assessee had also furnished the name and address of the shareholders, their PAN and their bank statements duly highlighting the transactions/ investments in share application money together with immediate source of credit.

3.1. With regard to investment made by Ms. Hemlata Maheshwari, in the sum of Rs.1 Lakh/- in the assessee company, it was pleaded that the return of income for the Assessment Year 2013-14 of Ms. Hemlata Maheshwari is sufficient to invest Rs.1 Lakh/- in the shares of assessee company. The evidences in the form of ITR acknowledgements, balance sheets, computation of income for the Assessment Year 2012-13, 2013-14 & 2014-15, were submitted in support of creditworthiness of share subscribers and genuineness of the investment made thereon. It was also pleaded that the company M/s. Highview Management Private Limited, had a bank balance of Rs. 1.05 Crores, as on 31/03/2014, proving the financial ability to make investment in the assessee company. The assessee vide its letter dt. 12/07/2016 also submitted that Shri Anirudh Maheshwari and Shri Rajiv Kr. Maheshwari are now directors of M/s. Highview Management Private Limited and that Shri Anirudh Maheshwari, is also the director of the assessee company. Hence it was concluded that monies were received from group companies of the assessee company having common directors thereby, the identity of the party, creditworthiness of the party and genuineness of the transactions stood conclusively proved. The Id. Assessing Officer observed that M/s. Highview Management Private Limited, was incorporated on 24/03/2012 and had total income of Rs.85,535/-, as net profit, and the income earned by that company does not justify the making of

investment of Rs.76 Lakhs/- as share application money in the assessee company. The ld. Assessing Officer invoked the provisions of proviso to Section 68 of the Act, introduced by the Finance Act, 2012, *w.e.f. 01/04/2013*, i.e., from Assessment Year 2013-14, onwards and concluded that the assessee had not established the source of source. With regard to the sum of Rs.1 Lakh/-, received from Ms. Hemlata Maheshwari, the sum was received in cash and accordingly, the genuineness of the said transactions was also doubted by the Assessing Officer in the assessment. Accordingly, the ld. Assessing Officer proceeded to add the sum of Rs.77 Lakhs/- as unexplained cash credit u/s 68 of the Act, while framing the assessment.

3.1.1. The ld. CIT(A) observed from the balance sheet of M/s. Highview Management Private Limited, that it belongs to the same group of the assessee company having common director. He further observed that for Assessment Year 2012-13, an addition of Rs.2.96 Crores/- was made by the Income Tax Officer, Ward – 5(4), Kolkata, on account of share capital vide order dt. 19/03/2015 in the hands of M/s. Highview Management Private Limited. He observed that the total funds at the disposal of M/s. Highview Management Private Limited, was Rs.2.96 Crores. Since the addition has already been made towards share capital in the hands of M/s. Highview Management Private Limited, part of such addition were invested by M/s. Highview Management Private Limited in the assessee company to the tune of Rs.76 Lakhs/- and hence the source of source is also explained. Accordingly, he deleted the addition made u/s 68 of the Act. Since no factual submissions were made with regard to share application money received in cash in the sum of Rs.1 Lakh/- from M/s. Hemlata Maheshwari, the ld. CIT(A) upheld the addition.

4. Aggrieved the revenue is in appeal before us.

5. We have heard rival submission. The ld. A/R, placed on record the balance sheet of the assessee company as on 31/03/2014, relevant to the Assessment Year 2014-15. From the said balance sheet, we find that a sum of Rs.76 Lakhs/- was received by the assessee company from M/s. Highview Management Private Limited in the earlier Financial Year relevant to Assessment Year 2013-14. From the bank statement of M/s. Highview Management Private Limited, we find that these sums were paid on

19/07/2012 and 25/07/2012, both dates falling in Assessment Year 2013-14. Hence, no addition u/s 68 of the Act, can be made during the year under consideration, in respect of the said sum. We find that during the year under appeal, this share application money pending allotment in the sum of Rs.76Lakhs/- as on 31/03/2013, was converted into share capital and share premium. There was no physical receipt of money during the year under appeal. Hence, we hold that there cannot be any addition u/s 68 of the Act, for the year under consideration. Accordingly, the grounds raised by the revenue are dismissed.

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

Kolkata, the 1st day of January, 2019.

Sd/-
[S.S. Godara]
Judicial Member
Dated : 01.01.2019
{SC SPS}

Sd/-
[M. Balaganesh]
Accountant Member

Copy of the order forwarded to:

1. ***M/s. Malda Flour Mills Pvt. Ltd***

***2nd Mile Udayanchal
Sevoke Road
Siliguri – 734 001***

2. ***DCIT, Circle-1, Siliguri***

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

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Assistant Registrar
ITAT, Kolkata Benches

