

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.730/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2009-10)

Dy. Commissioner of Income-tax 1(1)(2) 579, Aayakar Bhawan, M.K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Goldman Sachs (I) Finance Pvt. Ltd. 951-A, Rational House, Appasaheb Marathe Marg, Mumbai-400025.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACP2448J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Laxmi Vora Prasad Dude	
Assessee by:	Shri Jehangir Mistry	

सुनवाई की तारीख / Date of Hearing: 18/07/2019
घोषणा की तारीख /Date of Pronouncement: 15/10/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 30.11.2015 passed by the Commissioner of Income Tax (Appeals) -2, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The revenue has raised the following grounds: -

"1. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in deleting the addition of share premium received on the ground that it was a capital receipt whereas in reality there is accretion to assets without a corresponding increase in liability thereby determining the nature of receipt of share premium as income



leading to rise in assets on the one hand and reserves, which are own funds of the company, on the other hand?"

2. " Whether on facts and in the circumstances of the case and in Law, the CIT(A) was justified in deleting addition to income on account of share premium without appreciating that there is no justification for premium amount received and therefore, the phrase "nature" occurring in section 68 of the Act is attracted to the facts of the case."

3. " Whether on facts and in the circumstances of the case and in Law, the CIT(A) ought to have confirmed the addition made to income on account of share premium received without there being adequate justification.

4. " Whether on facts and in the circumstances of the case and in Law, without prejudice to Question No.1 and 2 above the CIT(A) ought to have held that share premium is a revenue receipt taxable under the Act being accretion to assets without corresponding increase in liability and the corresponding reserves generated can be distributed as dividend in the form of bonus / shares. "

The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal."

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2009 declaring total income to the tune of Rs.5,72,06,030/-. The assessment was completed u/s 143(3) by assessing the income to the tune of Rs.7,47,82,70/- on 16.12.2011. Thereafter, the assessee filed an appeal before the CIT(A) who granted the relief to the assessee. While giving effect to the CIT(A) order, the AO passed the order dated 22.08.2013 determining the income to the tune of Rs.5,72,29,977/-. Thereafter, the case of the assessee was reopened u/s 148 of the Act on the ground that the assessee received high amount of share premium during the year. The assessee filed the reply dated 11.04.2014. Thereafter, notice u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company received the share premium in sum of Rs.398,13,93,000/- The assessee has given loan and advances to the tune of



Rs.47.98 crores and also made the investment in shares and securities. The balance amount of Rs.407 crores was shown as cash in hand in the bank account. The share capital of the assessee was increased from 21 lakhs in the previous year to 84.44 crores. The AO was of the view that an amount of Rs.398,13,93,000/- was chargeable to tax as per Section 56(1) of the Act and accordingly taxed. The total income of the assessee was assessed to the tune of Rs.403,86,22,977/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NOS. 1 to 4:-

4. All the issues are in connection with the deletion of addition of Rs.398,13,93,000/- of share premium. The Ld. Representative of the Revenue has argued that the premium amount was very high and share premium amount were not utilized properly as per Section 78 of the companies Act and introduction of fresh capital at a premium amounting to Rs.398,13,93,000/- partake the character u/s 56 of the I. T. Act, therefore, the said amount is liable to be added to the income of the assessee in accordance with law. It is also argued that the share premium seems to be transferred of the funds to the company which was not having high value, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -



“5.4 I have gone through the assessment order, the submissions given by the AR of the appellant company and the judicial decisions relied by the appellant company and also gone through the Board's Instruction no. 2/2015 vide F. No. 500/15/2014-APA-1 dated 29.01.2015. The AO is of the opinion that the share premium account of Rs. 398,13,93,000/- is treated as taxable income and holding the view that the share premium is fixed at exorbitantly high and the share premium amounts were not utilized properly as per Sec. 78 of the Company Act and moreover he has quoted Sec. 56(1) and Sec. 68 of the I.T. Act on the other hand, the AR of the appellant company argues that the appellant company has strongly followed the FDI guidelines and infused its capital by fresh issue of shares and further AR of the appellant company has relied on the following judicial decision i.e.

1. Vodafone India Services Pvt. Ltd. v Union of India & Others (2014) 368 ITR 01(Bom HC)
2. Shell India Markets Pvt. Ltd. v Union of India and Others (2014) 369 ITR (Bom HC)
3. Green Infra v ITO (ITA No. 7762/Mum/2012)

The AO has not doubted any genuinity of the receipt of the share premium but he formed the opinion that the exorbitant rate of share premium fixed by the appellant company and treated the same as taxable income.

I have gone through the CBOT Instruction no. 2/2015 dated 29.01.2015 wherein it is held that premium on share issued was on account of capital account transaction and does not give rise to income. The Board's instruction is reproduced as under:

“In reference to the above cited subject, I am directed to draw your attention to the decision of the High Court of Bombay in the case of Vodafone India Services Pvt. Ltd: for A. Y. 2009-10 (WP No. 871/2014), wherein the Court has held, inter-alia, that the premium on share issue was on account of a capital account transaction and does not give rise to income and hence, not liable to transfer pricing adjustment.

2. It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgement, it is directed that the ratio decidendi of the judgement must be adhered to by the field officers in all cases where this issue is



involved. This may also be brought to the notice of the 1TAT, DRPs and Can' (appeals).

3. This issues with the approval of Chairperson, CBDT."

I have gone through Vodafone India Services Pvt. Ltd. Vs Union of India 86 Others (2014) 368 ITR 01 (Born 11C) wherein it is held as under:

"For all the above reasons, we find that in the present facts issue of shares at a premium by the Petitioner to its nonresident holding company does not give rise to any income from an admitted International Transaction. Thus, no occasion to apply Chapter X of the Act can arise in such a case."

I have also gone through ITAT "O" Bench order in the case of Green Infra Ltd. ITA No. 77621Mum/2012 dated 23.08.2013 wherein it is held as under:

"Considering the entire issue in the light of the material evidence brought on record in our considerate view, the Revenue authorities have erred in treating the share premium as income of the assessee u/s. 56(1) of the Act. In our considerate view, for the reasons discussed hereinabove, we do not find it necessary to apply the provisions of Sec. 68 of the Act. We, therefore, direct the AO delete the addition of Rs.47,97, 10,000/-. Ground no. 2 & 3 are accordingly allowed."

5.5 Considering the Board's instruction no. 2/2015 vide F. No. 5/201 4-APA-I dated 29.01 .2015 and respectfully following the jurisdictional high Court Bombay's decision in the case of Vodafone India Services Pvt. Ltd. Vs Union of India & Others (2014) 368 ITR 01 (Born HC) and jurisdictional ITAT "G" Bench decision order in the case of Green Infra Ltd. ITA No. 7762/Mum/2012 dated 23.08.2013, I am of the considered opinion that the addition of Rs.398,13,93,000/- on account of share premium added as taxable income by the AO is not found to be in order. I therefore, direct the AO to delete the above addition. Accordingly, Grounds 2, 3 and 4 are allowed."

5. On appraisal of the above mentioned order, we noticed that the assessee received the share premium amount of Rs.398,13,93,000/-. The CIT(A) has relied by the CBDT Board's Instruction no. 2/2015 vide F.No.500/15/2014/-APA-1 dated 29.01.2015 in which it is stated that the premium on share issue was on account of capital account transaction and



does not give rise to income in view of the decision of Bombay High Court in case of **Vodafone India Services Pvt. Ltd. Vs. Union of India & Others (2014) 368 ITR 01 (Bom HC)**. The CIT(A) has also placed reliance upon the Mumbai Bench in case of **Green Infra Ltd. in ITA. No.7762/M/2012 dated 23.08.2013**. The facts are not distinguishable at this stage. No law contrary to the law relied upon the Ld. Representative of the assessee has been produced before us. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 15/10/2019

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 15/10/2019

Vijay/Sr.PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 730/M/2016
A.Y.2009-10

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**