

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.3543/Del/2015  
निर्धारणवर्ष/Assessment Year:2009-10

Today Hotels (Andhra) Pvt. Ltd. 8 <sup>th</sup> Floor, Statesman House, Barakhamba Road, New Delhi.	बनाम Vs.	DCIT Cent. Circle 23, New Delhi.
PAN No. AACCT4697D		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	NONE
राजस्वकीओरसे /Revenue by	Shri Sanjay Goyal, CIT DR

सुनवाईकीतारीख/ Date of hearing:	02.01.2020
उद्घोषणाकीतारीख/Pronouncement on	06.01.2020

आदेश /O R D E R

PER BHAVNESH SAINI, J.M.

1. This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-18, New Delhi dated 26.03.2015 for Assessment Year 2009-10 on the following grounds : -

- 1) "That the CIT(Appeals) erred on facts and in law in upholding the impugned assessment order passed under section 153C which is without jurisdiction, illegal and bad in law since the prerequisite conditions for initiating proceedings under section 153C of the Act were not fulfilled in the present case.
- 2) That the CIT(Appeals) erred on facts and in law in upholding the addition of Rs. 50 lacs received from the following five

*concerns as alleged unexplained cash credits under section 68 of the Income Tax Act, 1961:*

<i>Sr. No.</i>	<i>Company Names</i>	<i>Amount (Rs.)</i>
<i>a)</i>	<i>Shalini Holding Ltd.</i>	<i>10,00,000/-</i>
<i>b)</i>	<i>Ad-Fin Capital Services P. Ltd.</i>	<i>10,00,000/-</i>
<i>c)</i>	<i>Virgin Capital Services P. Ltd.</i>	<i>10,00,000/-</i>
<i>d)</i>	<i>VIP Leasing &amp; Finance P. Ltd.</i>	<i>10,00,000/-</i>
<i>e)</i>	<i>Euro Asia Mercantile P. Ltd.</i>	<i><u>10,00,000/-</u></i>
	<i>Total</i>	<i><u>50,00,000/-</u></i>

*3) That the CIT(Appeals) erred on facts and in law in upholding the aforesaid addition of Rs. 50 lacs on the basis of ex-parte statement without appreciating that ex-parte statement not tested by cross-examination, had no evidentiary value.*

*4) That the CIT(Appeals) erred on facts and in law in upholding the aforesaid addition of Rs. 50 lacs without appreciating that the appellant had discharged its onus in terms of section 68 of the Income Tax Act, 1961.*

*The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal before or at the time of hearing.”*

2. Briefly the facts of the case are that search and seizure operation was carried out at the various premises of M/s Today Homes and Infrastructure Pvt. Ltd. and its group concerns and associated persons on 26.11.2009 and was finally concluded on 25.01.2010. The assessee company is one of the associated/group concerns of Today group of cases. During the course of search and seizure operation at various premises of Today group of cases many books of accounts or documents belonging to the assessee company were found and seized and hence prerequisite condition to initiate proceedings u/s 153C of the Income Tax Act, 1961 was

fulfilled. Therefore, after recording the necessary satisfaction for initiation of proceedings u/s 153C of the Act, notice u/s 153C/153A of the Act was issued on 02.09.2011 directing the assessee to file its return of income. The assessee filed return of income declaring total income at Rs. 21,165/-. The AO issued statutory notices to the assessee for completion of the assessment. The assessee filed objections to the initiation of the proceedings u/s 153C/153A of the Act which was, however, rejected. The AO, thereafter, considered the issue of accommodation entry received by various persons/companies on account of share capital/share premium, etc. from entry providers. The detailed submission of the assessee was recorded and ultimately the AO made addition of Rs. 50 lacs on account of unexplained credit in the books of accounts of the assessee u/s 68 of the Act on account of the amount received from five companies as mentioned in the grounds of appeal. The assessment was completed vide order dated 26.12.2011 u/s 143(3)/153C/153A of the Act.

3. The assessee challenged the jurisdiction to frame assessment u/s 153C of the Act and addition of Rs. 50 lacs before Ld. CIT(A). The submissions of the assessee are recorded and reproduced in the appellate order from pages 3 to 56 of the order in which the assessee challenged the initiation of the proceedings u/s 153C of the Act and stated that it is without jurisdiction, illegal and bad in law. Therefore, AO has no jurisdiction to frame such assessment against the assessee. The assessee relied upon several decisions of various High Courts in its submission, it

was also contended that certain statements were recorded in absence of assessee which were not confronted at the assessment. The addition on merit was also challenged supported by various decisions of different High Courts and the Tribunal. The assessee contended that addition on merit is unjustified because the assessee proved genuineness of the amounts credited in the books of account of the assessee.

4. The Ld. CIT(A), however, at pages 56 to 58 of the impugned order rejected the submissions of the assessee and dismissed the appeal of assessee. The findings of the Ld. CIT(A) are reproduced as under:

**“1. Ground No. 1 & 2 are together:**

- 1.1 *I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*
- 1.2 *The appellant has raised ground against the issue of notice u/s 153A, that this bad in law.*
- 1.3 *It is noticed from the order of assessment that the notice u/s 153A was issued and served on assessee as per the prescribed statutory procedure. There is no basis in raising these grounds. Accordingly, grounds are **dismissed**.*

**2. Ground No. 3 & 4:**

- 2.1 *I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*
- 2.2 *The appellant has raised ground against the addition of Rs. 50,00,000/- received from the following five concerns as unexplained cash credit u/s 68 of the Income Tax Act.*

S.No.	Name	Amount received FY 2008-09 (in Rs.)
1.	Shalini Holdings Ltd.	10,00,000
2.	Ad-Fin Capital Services Pvt. Ltd.	10,00,000
3.	Virgin Capital Services Pvt. Ltd.	10,00,000
4.	VIP Leasing & Finances Pvt. Ltd.	10,00,000
5.	Euro Asia Mercantile Pvt. Ltd.	10,00,000

<b>GRAND TOTAL</b>	<b>50,00,000</b>
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2.3 *It is seen from the order of assessment that Rs. 50,00,000/- is found credited in the books of account of the assessee. The Assessing Officer held that the transactions were out of unaccounted money as the assessee failed to pass the test of genuineness within the meaning of the 68 of the Act. I am not inclined to agree with the explanations given by the appellant during appeal proceedings as there is enough reason to agree with the Assessing Officer. Grounds raised in appeal are **dismissed.**"*

5. The record revealed that on earlier dates of hearing the appeal was adjourned many times on the request of the Counsel for the assessee. The assessee has been notified the date of hearing for 02.01.2020 through registered post. However, none appeared on behalf of the assessee.

6. We have heard Ld. DR and perused the findings of the authorities below.

7. After considering the submissions of the Ld. DR, we are of the view that the matter requires reconsideration at the level of the Ld. CIT(A). It is clear from the impugned order that assessee made detailed written submissions before Ld. CIT(A) which are reproduced from page 3 to 56 of the appellate order and the Ld. CIT(A) did not discuss any of the submission of the assessee and case law in his findings. The Ld. CIT(A) without giving reasons for decision dismiss the appeal of the assessee. Thus, the order of the Ld. CIT(A) is violative of section 250(6) of the Act and cannot be sustained in law. The search in this case was conducted on 26.11.2009 i.e. after close of the financial year. The entries in the books

of accounts are considered for making addition u/s 68 of the Act. The Ld. CIT(A) did not discuss anything, if any, incriminating material was found in respect of the addition so made u/s 68 of the Act during the course of persons searched. Therefore, the matter shall have to be re-examined also in the light of judgment of the Hon'ble Supreme Court in the case of CIT vs. Singhad Technical Education Society 397 ITR 344. Ld. DR in view of the above also suggested that matter may be remanded back to the Ld. CIT(A). In this view of the matter, we set aside the impugned order and restore the appeal of assessee to the file of Ld. CIT(A) with direction to re-decide the appeal of the assessee strictly in accordance with law by giving reasons for decisions in appellate order, by giving reasonable and sufficient opportunity of being heard to the assessee.

8. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court.

Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Dated: 6<sup>th</sup> January, 2020  
*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi