

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “एसएमसी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘SMC’, NEW DELHI**

**सुश्री सुषमा चावला, उपाध्यक्ष
BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT**

आयकर अपील सं. / ITA No.2341/Del/2018

निर्धारण वर्ष / Assessment Year 2009-10

M/s Aditya Real Build Pvt. Ltd.,
Plot No. 153, Pocket 9, Sector 22,
Rohini, New Delhi-110085

PAN-AAGCA7823E

.....अपीलार्थी / Appellant

vs

ITO, Ward-1(3),

New Delhi

Respondent

.....प्रत्यर्थी /

स्थगन अपील सं./S.A. No. 437/Del/2019

निर्धारण वर्ष / Assessment Year 2009-10

M/s Aditya Real Build Pvt. Ltd.,
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New Delhi

Respondent

.....प्रत्यर्थी /

अपीलार्थी की ओर से / Appellant by : Sh. Prabhakar Kumar, CA

प्रत्यर्थी की ओर से / Respondent by : Sh. Sanjog Kapoor, Sr. DR

सुनवाई की तारीख / Date of Hearing : 02.12.2019	घोषणा की तारीख / Date of Pronouncement: 29.01.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal and the stay application filed by assessee are against order of CIT(A)-I, New Delhi dated 07.12.2017 relating to assessment year 2009-10 against order passed under section 143(3) of the Act.

2. The appeal and the stay application relating to the assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee is aggrieved by the addition of Rs.30,54,000/-. The appeal has been filed after a delay of 24 days. The assessee has moved an application for condonation of delay and after perusing the same, the delay of 24 days is condoned and appeal is being adjudicated after hearing both the authorized representatives.

4. Briefly in the facts of the case, the assessee had furnished the return of income of Rs. 2,540/-. The AO received information from the Investigation Wing that Shri. S.K. Jain was providing accommodation entries and the name of the assessee company also figured in the list of beneficiaries of share capital premium / loan. The said information was consequent to search and seizure on premises of Shri. S.K. Jain. Consequent to the information received from Investigation Wing, the AO recorded reasons for reopening the assessment and issued notice under section 148 of the Act. In reply, the assessee submitted that the return of income earlier filed by it should be treated as filed in response to

notice under section 148 of the Act. Thereafter, notice under section 143(2) was issued to the assessee. The AO on the analysis of the various documents relating to the Jain brothers concluded by making an addition of Rs. 30,00,000/- under section 68 of the Act. Further the addition of Rs. 54,000/- was made on account of commission on the said transaction. The CIT(A) upheld the order of AO against which the assessee is in appeal before us.

5. The learned AR for the assessee pointed out that before the AO admittedly no reply was filed to the show cause notice and he further stated that the assessee company was floated during the preceding year and the aforesaid addition was not warranted in the hands of the assessee under section 68 of the Act.

6. The learned DR for the Revenue pointed out that the assessee was a private limited company and had alleged to have received premium on 18 Lacs. He further stressed that creditworthiness of the persons from whom share application plus premium was received had to be established but the assessee had failed to do so. He further placed reliance on the ratio laid down by the Hon'ble Supreme Court in Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P.) Ltd.,

7. On the perusal of the record and after hearing both the authorized representatives, the issue which arises in the present appeal is in relation to the alleged share application and premium received by the assessee company. The assessee is a company with paid up capital of

Rs. 1,00,000/- which admittedly was floated in the preceding year. During the year under consideration, the assessee claims to have received premium of Rs. 18,00,000/- over and above the share capital issued by it. The assessee has failed to establish the creditworthiness of the persons from whom application money and premium had been received. The AO had received the information in this regard on the basis of investigation carried in the case of Jain brothers and the immediate source of the amount credited was found to be through the accommodation entry provider companies. The onus upon the assessee has not been discharged to establish the creditworthiness of the persons and also to establish the premium raised on the alleged share capital issued by the assessee.

8. In this regard, the Supreme Court in Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P.) Ltd., (supra) has laid down the proposition that where there was failure of assessee to establish credit worthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital/premium received by assessee company. Merely because assessee company had filed all primary evidence, it could not be said that onus on assessee to establish credit worthiness of investor companies stood discharged.

9. In view thereof, we uphold the addition made under section 68 of the Act for share capital and premium received by the assessee

company. The addition is thus upheld in the hands of the assessee. The grounds of appeal raised by the assessee are thus dismissed.

10. Consequent to the decision of the appeal in the case of the assessee, the stay application is also dismissed.

11. In the result, both appeal and stay application of the assessee are dismissed.

Order pronounced in the open court on 29th January 2020.

Sd/-
(SUSHMA CHOWLA)
उपाध्यक्ष/VICE PRESIDENT

दिल्ली / दिनांक Dated : 29th January, 2020
SH

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi