

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई**  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.1444/CHNY/2019.  
& C.O.No.100/CHNY/2019  
(in ITA No.1444/CHNY/2019)  
निर्धारण वर्ष /Assessment year : 2015-2016.

|  |            |   |
|--|------------|---|
| The Deputy Commissioner of<br>Income Tax,<br>Corporate Circle 1(1)<br>Chennai 600 034. | <b>Vs.</b> | M/s. Al-Ameen International Ltd,<br>No.165/2A, GST Main Road,<br>Urapakkam,<br>Chennai 603 202. |
| <b>(अपीलार्थी/Appellant)</b>   |            | <b>[PAN AAFCA 7728M]<br/>(Respondent/Cross Objector )</b>                                       |

|               |   |                           |
|---------------|---|---------------------------|
| Department by | : | Ms. R. Anitha, IRS, JCIT. |
| Assessee by   | : | Mr. M. Razzack, C.A.      |

|                                       |   |            |
|---------------------------------------|---|------------|
| सुनवाई की तारीख/Date of Hearing       | : | 13-02-2020 |
| घोषणा की तारीख /Date of Pronouncement | : | 24-02-2020 |

**आदेश / O R D E R**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER**

This is an appeal filed by the Revenue and the Cross Objection (CO) filed by the assessee-company directed against the order of the learned Commissioner of Income Tax (Appeals)-1, Chennai

(hereinafter called as 'CIT(A)') dated 28.02.2019 for the assessment year (AY) 2015-2016.

**2.** The Revenue raised the following grounds of appeal:

*"1. The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.*

*2. The Ld. CIT(A) erred in giving relief to the assessee by deleting the addition under section 68 of the Income tax Act, 1961 based on fresh evidence submitted for the first time before the CIT(A) without giving opportunity to the AO under Rule 46A of the Income tax Rules, for verifying the said claim of the assessee based on evidences filed afresh during appellate proceedings.*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the AO restored".*

**3.** The brief facts of the case are as under:

The respondent-assessee namely M/s. Al-Ameen International Ltd is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of civil contractor. The return of income for the AY 2015-16 was filed on 24.03.2016 disclosing total income of Rs. 7,97,360/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Corporate Circle 1(1), Chennai vide order dated 27.12.2017 passed u/s.144 r.w.s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of ₹3,28,67,360/-. While doing so, the Assessing Officer made addition of share premium of ₹3,20,70,000/-

shown under the head "Reserve and Surplus" in the Balance Sheet. The Assessing Officer rejected the contention of assessee company that share premium was not received during the previous year relevant to the assessment year under consideration. The ground that this amount was not shown in the Balance Sheet in the immediate preceding assessment year 2014-2015. Since assessee had also failed to file details such as name, address, PAN and confirmation letters from whom the share premium was received, the Assessing Officer made addition of same as unexplained cash credit.

**4.** Being aggrieved, assessee preferred an appeal before the Id. CIT(A) who vide impugned order deleted the addition accepting the explanation of the assessee that the share premium was received during the financial year 1995-1996. The Id. CIT(A) also recorded finding that copies of return of income filed with Registrar of Companies (ROC) for financial years 2014-15 and 2015-16 also reflects share premium account of ₹3,20,70,000/-, taking into consideration these facts, the Id. CIT(A) deleted the addition.

**5.** The Revenue is in appeal before us challenging the correctness of the order of the Id. Commissioner of Income Tax (Appeals) and assessee is in cross objection. The Id. Senior Departmental Representative also filed copy of return for the year 2014-2015, wherein no share premium was shown under the head

‘Reserves and Surplus’. Thus, she submitted that the Id. CIT(A) had considered irrelevant material which was not produced before the Assessing Officer and without affording an opportunity of being heard to the Assessing Officer. She further submitted that the order of the Id. CIT(A) should be set aside.

**6.** On the other hand, the Id. Authorised Representative submitted that it is mistake committed by the Auditor and he had no other valid explanation to explain the discrepancy except stating that it is mistake of the Chartered Accountant.

**7.** We heard the rival submissions and perused the material on record. During the course of assessment proceedings, the Assessing Officer noticed that ₹3,20,70,000/- and credited to reserves and surplus account for the financial year 2014-2015 relevant to assessment year 2015-2016. The Assessing Officer had rightly attempted to verify the creditworthiness and genuineness of the credit as assessee had failed to furnish any details, as to genuineness, identity, credit worthiness of share premium received. During the course of proceedings before the Id. CIT(A), it appears that assessee filed copies of the statement filed with ROC and based on this information, the Id. CIT(A) had come to conclusion that share premium was received in the financial year 1994-95 relevant to

assessment year 1995-96 and deleted the addition. The correctness of findings of the Id.CIT(A) is being challenged before us by Revenue by filing copy of the return of income for assessment year 2014-2015, wherein no share premium was shown. Relevant column of ROI is scheduled below.

| B Reserves and Surplus |   |       |           |  |
|------------------------|---|-------|-----------|--|
| i                      | Capital Reserve   | Bi    | 0         |  |
| ii                     | Capital Redemption Reserve  | Bii   | 0         |  |
| iii                    | Securities Premium Reserve  | Biii  | 0         |  |
| iv                     | Debenture Redemption Reserve  | Biv   | 0         |  |
| v                      | Revaluation Reserve   | Bv    | 0         |  |
| vi                     | Share options outstanding amount  | Bvi   | 0         |  |
| vii                    | Other reserve (specify nature and amount)   |       |           |  |
| c                      | Total (viia + viib)   | Bvii  | 0         |  |
| viii                   | Surplus i.e. Balance in profit and loss account (Debit balance to be shown as -ve figure)         | Bviii | -12142422 |  |
| xi                     | Total (Bi + Bii + Biii + Biv + Bv + Bvi + Bvii + Bviii) (Debit balance to be shown as -ve figure) | Bix   | -12142422 |  |

It would clearly clinch the issue that share premium was not received in the earlier years but in current financial year. Assessee had failed to discharge onus lying on it to establish genuineness, creditworthiness and identity of the persons who contributed share premium and also failed to rebut the statement of Id. Departmental Representative. We have no option, but to confirm the addition made u/s.68 of the Act. The Id.CIT(A) ought not have deleted the addition merely based on the new material which was not placed before the Assessing Officer. In any event the Id. CIT(A) ought not to have deleted addition by placing reliance on ROC document of 1994-95 instead of financial year 2013-2014. In the circumstances, the order of the Id. CIT(A) is set aside

and we confirm the action of the Assessing Officer. Thus, the appeal filed by the Revenue stands allowed.

8. The Cross Objection filed by the assessee is only in support of the order of the Id. CIT(A) and therefore, the cross objection filed by the assessee stands dismissed.

9. To summarize, the result, the appeal filed by the Revenue in ITA No.1444/CHNY/2019 stands allowed whereas the Cross Objection filed by the assessee stands dismissed.

Order pronounced on 24th day of February, 2020, at Chennai.

**Sd/-**

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:24th February, 2020.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                          |                              |                         |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |