

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES," " JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 08/JP/2017
निर्धारण वर्ष/Assessment Years : 2012-13

M/s Aditya Infra Realtors Ltd. 11/129, Mehtab Singh Ka Nohra, Near K.K. Tent House, Alwar.	बनाम Vs.	The ITO, Ward-2(3), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCA 4985 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 30/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 22/06/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Alwar dated 17.10.2016 relevant for the assessment year 2012-13 wherein the assessee has raised the following ground of appeal:-

"1. The Ld. CIT(A) has erred on facts and in law in confirming an addition of Rs. 1,60,88,000/- by observing that share along with premium was issued to M/s Emmthree Financial Services Pvt. Ltd. without realizing the money in a fair and transparent manner and therefore AO was justified in treating the share capital along with share premium money received by the assessee as unexplained

u/s 68 of the Act. He has further erred in making various observations which are irrelevant and contradictory to each other while sustaining the addition."

2. None has appeared on behalf of the assessee. It is noted that the appeal was filed way back in the year 2017 and the matter has been scheduled for hearing on multiple occasions. It is further noted that the Id. Counsel who was appointed by the assessee had since withdrawn from the case on 18.03.19 and thereafter, the Registry has tried to serve notice on the assessee on multiple occasions however, the notices have been returned unserved by the postal department. Lately, the DR was directed to serve the notice on the assessee and a report dated 8.01.2021 has been placed on record that the notice has been served on the assessee through email as provided by the assessee. In spite of service of notice through email which is now an accepted mode of communication, there is no compliance on part of the assessee, the matter has been adjourned on number of occasions. Even when the matter was called for hearing on 30.03.2021, none has appeared on behalf of the assessee nor any adjournment application was filed. It thus appears that the assessee is not interested in pursuing the present appeal and it was accordingly decided that no useful purpose would be served in adjourning the matter any further and to hear the matter ex-parte *qua* the assessee taking into consideration the material available on record.

3. Briefly the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that there has been infusion of fresh funds in the form of share application money amounting to Rs. 2,01,100/- and share premium amount of Rs. 1,58,86,900/- in the books of assessee company. The matter was thereafter examined by the Assessing Officer calling for information U/s 133(6) as well as recording statement of the Director of the assessee-company who also happens to be Director of the investor company, thereafter addition of Rs. 1,60,88,000/- was made U/s 68 of the Act. The relevant findings of the AO are contained at para 4 of the assessment order which read as under:-

"4.0 In view of the above it seems that all these things are made believe arrangements assessee Co. and M/s Emmthree Financial Services Pvt. Ltd and it appears that assessee company has been formed for special purpose vehicle on paper to introduce a huge sum of money as its capital from against false debts and investment. The company was formed in the year April, 2008 since then no business activity has been carried out. During the year consideration the assessee company has received share application money for a share of nominal value of Rs. 10 each per share at a premium of Rs. 790 each. Apparently there was no reason to why the share of this company would command so much share premium.

The submission of the assessee in this regard is not acceptable on the basis of following reasons:

(i) No worth of the assessee company financially.

(ii) the company was formed on 08th April 2008 for the purpose of carrying on business of real estate since then no business activity is made.

(iii) The company is filing its income tax return nil since its inception and is showing loss.

(iv) Shares not listed in recognized stock exchange.

(v) Cheque of Rs 1,60,88,000/- issued against share not encashed.

(vi) There is no Head Office of the company at registered office address 11/219, Mehtab Singh ka Nohra Near K.K. Tent House, Alwar. It is the residential house in which the family of Sh. Kamalkant Sharma lives for a long time.

(vii) Shri S.K. Bhargava who is the Director in both the companies M/s M/s Aditya Infrealators Ltd., Alwar and M/s Emmthree Financial Services Pvt Ltd, New Delhi is the key person who makes financial arrangements conveniently to transfer the unaccounted money and to avoid the taxability.

In this case shares of Rs. 10 were applied at a premium of Rs. 790. There is no apparent reason as to why such huge amount of share premium would be paid for obtaining share of face value of Rs. 10. Any prudent person who makes investment in shares would make the investment in accordance with the fair market value of the shares and also consider the book value of the share, earning per share and book profit of the company. As the company is not making any profit and is regularly making losses therefore there is no book profit etc. and the fair market value of its shares would be definitely below the face value of the share. It is also noticed that the share holder Co. M/s Emmthreee Financial Services Pvt. Ltd., New Delhi is also in loss on perusal of the return filed for A.Y. 2012-13.

By no stretch of imagination it can be said that examination under section 68 of disproportionate share premium money hinges on the provision of section 56 (viib). Admittedly this sub section was inserted by the Finance Act, 2012. Simply because this section was inserted with effect from 01-04-2013 it cannot be inferred

that any huge share premium receipt much beyond the fair market value prior to this insertion does not require any examination by the revenue authorities under section 68. As a matter of fact section 56(v) was inserted w.e.f. 01.04.2005. This was in connection with the amounts received without consideration and the treatment thereof. In other words this related to taxation of gifts received. By no stretch of imagination it can be claimed that prior to this insertion the receipt of money without consideration as gift was not required to be examined.

This was designed to facilitate the transfer of these companies to other persons on transfer of debts, investment or discounted value of shares or on payment of nominal value. In other words the value embedded in the share premium was meant to be transferred under hand and unaccounted money, and prima facie it appears as the book profit of the company is nil and the company is in loss who will want to make investment in as such company but a huge amount of Rs. 1,60,88,000/-has been invested on a high share premium of Rs. 790/-. On the other hand the company M/s Emmthree Financial Services Pvt. Ltd who have subscribed is also in loss.

Hence just because the share application with huge and unjustified share premium was received from M/s Emmthree Financial Services Pvt. Ltd against its so called debts and investment made in properties is not tenable on the facts and circumstances of the case.

The contents of the above para clearly throws light on the modus operandi adopted by the assessee company and certainly creates suspicion and doubts as regards the genuineness and reasonableness of the alleged transactions.

In the light of the analysis of the documents furnished by the assessee in this regard and also in view of the discussions made in the above forgoing paras it is held that the assessee had failed to discharge the creditworthiness and genuineness of the transactions.

For the reasons as discussed above the share capital along with premium is held to be unproved and unexplained. Therefore , an addition of Rs. 2,01,100/- towards share application money and Rs 1,58,89,900/- towards share premium are hereby made invoking provisions of section 68 of the Income Tax Act."

4. Being aggrieved the assessee carried the matter in appeal before the Id. CIT(A) and after considering the submissions so filed by the assessee, the Id. CIT(A) has recorded his findings which are contained at para 5.3 & 5.3.2 of his order which read as under:-

"5.3 I have gone through the assessment order as well as submissions made by the appellant. Following facts have emerged;

- 1. That the appellant company is supposedly dealing in the real estate business. However, effectively this is the first year of the business where the company has shown sale of services amounting to Rs. 1,33,743/- and loss of Rs. 7,666/.*
- 2. That the company has shown reserves and surpluses at Rs. 2.29 cr. (approx.) and share capital of Rs. 57 lakhs.*
- 3. That during the year under consideration, the appellant company had issued to M/s. Emmthree Financial Services Pvt. Ltd, a total of 20,110 shares of face value of Rs. 10/- per share at a premium of Rs. 790/- per share totaling to Rs. 1,60,88,000/- .*
- 4. That while looking at the share transaction, it is found that share premium was determined without any basis. It is a limited company but there are parameters to value a share. Share value cannot be determined without any basis. In this case looking at the balance sheets, the value of share premium does not match with the worth of the company.*
- 5. That it has further been found that the entire transaction of share issuance by the appellant company to M/s Emmthree*

Services Pvt. Ltd. also involves properties transfer to the appellant company.

6. That there are 3 key players involved in the transaction of certain property assets during the year under consideration i.e M/s Emmthree Services Pvt. Ltd., M/s Aditya Infrealtors Limited and M/s A P Constructions.

7. That there is an assignment deed signed on 30/03/2012, between M/s Emmthree Services Pvt. Ltd. as Assignor and M/s Aditya Infrealtors Ltd. as assignee, when the assignor has passed on property worth Rs. 1,60,88,493/- to the assignee.

8. That there is another assignment deed signed on 31/03/2012 between M/s Aditya Infrealtors Ltd. as assignor and M/s A P Constructions where the same property assets were assigned to M/s A P Constructions by M/s Aditya Infrealtors Ltd.

9. That as per assignment deed a cheque was issued by M/s Aditya Infrastructures Ltd. to M/s Emmthree Services Pvt. Ltd. for an amount of Rs. 1,60,88,493/- vide cheque no. 269030 dated 30/03/2012 drawn on Standard chartered Bank.

10. That M/s Emmthree Services Pvt. Ltd. has issued a cheque for the identical amount of Rs. 1,60,88,000/- on 29/03/2012 on account of shares issued by M/s Aditya Infrealtors Ltd. But curiously, the cheque was never encashed by M/s Aditya Infrealtors Ltd.

5.3.2. I have taken into consideration the entire gamut of the issues involved. It is my considered view that all the 3 above mentioned players in the property deal came together to transact the business without paying due taxes. The appellant company enjoyed the benefit of the properties and in lieu of it issued share at a premium not commensurating with the balance sheet of the company. The cheque issued to the beneficiary of the shares i.e. M/s Emmthree Services Pvt. Ltd. was also not encashed. That amply points towards a fact that shares were issued without realizing the money in a fair and transparent manner. Therefore, A.O is quite justified in treating shares capital along with the

share premium money shown received by the appellant company as unexplained under section 68 of the Act. The entire chain of transactions, to my mind is aimed at evading due income tax. Accordingly, the addition of Rs. 1,60,88,000/- is sustained and the appellant's ground of appeal on this issue is dismissed."

5. After hearing the Id DR and perused the material available on record, we find no justifiable basis to interfere with the findings of the lower authority as the assessee has failed to provide necessary explanation to the satisfaction of the AO about the genuineness of the transaction including the related matters of valuation and creditworthiness of the investor company. Therefore, the ground of appeal so taken by the assessee is dismissed and the order of the Id CIT(A) is hereby sustained.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 22/06/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/06/2021.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Aditya Infrealtors Ltd., Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(3), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 08/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar