

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 4134/Mum/2018
(निर्धारण वर्ष / Assessment Year 2009-10)

PMI Entertainment India Pvt. Ltd. 55A, Silver Astra, JB Nagar, Above PMC Bank, Andheri East, Mumbai-400059	बनाम/ Vs.	The Income Tax Officer Ward 16(1)(3) Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AADC01031E		

अपीलार्थी की ओर से/ Appellant by	:	Shri Tarun Ghia, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Shreekala Pardeshi, DR

सुनवाई की तारीख / Date of hearing:	28.06.2021
घोषणा की तारीख / Date of pronouncement:	13.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-7, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-7/IT-31/135/2016-17 dated 02.04.2018. The assessment was framed by the Income Tax Officer, Ward 16(1)(3) (in short ITO / Assessing Officer) for the A.Y. 2009-10 vide order dated 30.03.2015 under section 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, the learned counsel for the assessee stated that he has not pressed ground No.1 for reopening of assessment i.e. jurisdictional issue. Hence, this reopening issue is dismissed as not pressed.

3. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the Assessing Officer in making addition of total share premium of ₹1,86,84,000/- out of which the share premium of 1,40,21,079 along with share application money of ₹13,54,690/- aggregating to ₹1,53,75,769/- collected during the financial year 2007-08 relevant to Assessment Year 2008-09. For this, assessee also stated that substantial evidences were produced but CIT(A) has not accepted. For this, assessee has raised the following ground Nos.2 to 5 as under:-

"2. On the facts and circumstances of the case and in law, learned AO ought to have appreciated that provisions of Sec. 68 would apply only to the receipts credited during the relevant previous year. Learned AO erred in not appreciating that out of the total share premium of Rs. 1,86,84,000/-, Rs. 1,40,21,079/- share premium together with share application money Rs.13,54,690/- aggregating Rs 1,53,75,769/- was collected and accounted during the preceding previous year relevant to assessment year 2008-09 and therefore cannot attract provisions of Sec. 68 in the assessment of previous year relevant to assessment year 2009-10.

3. *On the facts and circumstances of the case and in law, learned AO ought to have appreciated that the appellant had produced substantial evidences about identity, credit worthiness and genuineness of the transactions and had discharged burden of proof and there is no cogent evidence against the genuineness of the transactions. Ld. CIT(A) could have also appreciated the same.*

4. *Learned AO has already accepted genuineness of the transactions in respect of share application money to the extent of Rs.18,00,000/-. Learned CIT(A) has also confirmed the same. Therefore, learned AO as well learned CIT(A) ought to have appreciated that the share premium money is from the same person and along with the same share application.*

5. *Learned AO and Ld. CIT(A) should have appreciated that proviso casting burden upon assessee to prove source of source has been inserted only from AY 2013- 14 and does not apply to prior transactions."*

4. Before us, the assessee contended that the substantial evidences were produced and as per balance sheet also the fact is that the share application money along with share premium amounting to ₹1,53,75,769/- was received prior to 31.03.2008 and remaining only

₹51,71,557/- received during the previous year relevant to this Assessment Year 2009-10. Before us, the assessee contended that the Foreign Inward Remittance Certificates clearly establish that the money was brought into India through normal banking channels. Moreover, the assessee has established that the Non-Resident Investor, Mr. Gunawan Sulaiman, an Indonesian Citizen residing in Singapore is an existing shareholder and Director of the assessee company since 06.04.2004 holding DIN 01112138. The Ministry of Company Affairs issues Directors Identification Number (DIN) pursuant to verification of Identity and Address proof of a person. The assessee claims that it has fully discharged its onus in establishing the genuineness of the transaction and identity and credit-worthiness of the Investor Party who is an existing Director and Shareholder of the Company, who has already invested in the assessee Company in earlier years. The CIT(A) only noted that the assessee could not prove the genuineness of transactions or even identity of the creditors. Hence, the transaction is not genuine because creditworthiness of the creditor is not established. The CIT(A) confirmed the action of the Assessing Officer by observing in Para 7.2 as under:-

"7.2 Having considered the rival submissions and perused the relevant material on record filed by the Appellant, I am of the view that the Appellant has not given adequate documentary evidence with regard to the identity of Shri I Gunawan Sulaiman, the genuineness of the transaction and above all the creditworthiness of the creditor. The sources of income of the creditor have not been

explained/ provided by the assessee and therefore, there is a big question mark as to the credit worthiness of the creditor. As observed by the AO, even the identity of the creditor and genuineness of transaction have not been proved by the assessee."

5. Hence, he confirmed the entire addition vide Para 7.2.4 as under: -

"7.2.4 In view of the foregoing discussion and binding precedents, I am of the view that the Assessing Officer was justified in making an addition of ₹1,86,85,000 as un-explained credit under section 68 of the Act, the having failed to prove the identity of the creditor, genuineness of the transaction and above all the creditworthiness of the creditor in a transparent matter with the help of proper documents and the also having failed to offer any justification for a very high chare premium."

Aggrieved, now assessee is in appeal before us.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We direct the Assessing Officer to first verify from the accounts of the assessee and other details, whether this amount of ₹1,53,75,769/- has been received prior to 31.03.2008 or not. In case this amount received prior to 31.03.2008, no addition for this amount will be made. In case, this amount received in this year then the assessee will again explain in entirety with evidence before

the Assessing Officer. For remaining amount of ₹51,71,557/-, the assessee will explain with evidence to meet with the conditions of section 68 of the Act. To this proposition both agreed, the learned DR as well as the learned Counsel for the assessee. In term of the above, the matter is set aside and restore to the file of the Assessing Officer.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13.08.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 13.08.2021

सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

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 (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai