

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 949/DEL/2017 [A.Y. 2012-13]

The I.T.O
Ward - 3(4)
New Delhi

Vs.

M/s Azure Retreat P] Ltd
52A, Friends Colony East
New Delhi

PAN: AAHCA 1531 A

(Applicant)

(Respondent)

Assessee By : Shri Sachit Jolly, Adv
Ms. Disha Jham, Adv

Department By : Shri Kumar Hrishikesh, CIT - DR

Date of Hearing : 23.02.2022
Date of Pronouncement : 23.02.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the Commissioner of Income Tax [Appeals] - 01, New Delhi dated 23.12.2016 pertaining to Assessment Year 2012-13.

2. The grievances of the Revenue read as under:

"1. The Id. CIT(A) erred in law and on facts in deleting the addition of Rs. 16,67,89,253/- made u/s 68 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] being bogus accommodation entry in the guise of share capital and premium.

2. The Id. CIT(A) erred on facts and in law in allowing capitalization of travelling expenses of Rs. 8,30,746/-."

3. Representatives were heard at length. Case records carefully perused.

4. Briefly stated, the facts of case are that during the course of scrutiny assessment proceedings, the Assessing Officer sought clarification from the assessee in respect of 15,04,978 equity shares of par value of Rs. 10/- issued at a premium of Rs. 110/- to M/s Blue Bay Hospitality Pvt Ltd, Mauritius for a total consideration of Rs. 16,55,47,646/-.

5. The Assessing Officer further asked the assessee to explain as to why during the same period equity shares were issued at par value @ Rs. 10/- each to M/s Blue Ocean Resorts Pvt Ltd, Shri Rajiv Sajhwhney and Shri Rishal Sawhney.

6. The assessee filed detailed reply.

7. After considering the facts and submissions, the Assessing Officer observed that M/s Blue Bay Hospitality Pvt Ltd, Mauritius is itself a loss making company and as per the financial statements, the Assessing Officer observed that this company did not carry out any business activity during the F.Y. 201-12 relevant to Assessment Year under consideration. The Assessing Officer further found that M/s Blue Bay Hospitality Pvt Ltd, Mauritius took unsecured loan from one Shri Joseph Thomas, Dubai.

8. The Assessing Officer further observed that the assessee has made investments through its subsidiary M/s Mandrem Hotels Pvt Ltd, Goa. The Assessing Officer further found defects in the certificate of the CA, determining the fair value of each equity share computed as per the Discounted Cash Flow Method [DCF]. After referring to various judicial decisions, the Assessing Officer made addition of Rs. 16,55,47,646/- as

unexplained cash credit u/s 68 of the Act and further made addition of Rs. 12,41,607/- being alleged commission paid by the assessee for getting accommodation entry.

9. Proceeding further, the Assessing Officer noticed that the assessee capitalized a sum of Rs. 11,86,783/- on account of travelling expenses claimed to have been incurred for the purpose of business and profession during the year under consideration. The Assessing Officer was of the firm belief that the assessee has incurred these expenses on personal trips of the directors of the company and the expenses are personal in nature, and accordingly, de-capitalized Rs. 8,30,748/-.

10. The assessee strongly agitated the matter before the ld. CIT(A).

11. Before the ld. CIT(A), it was strongly contended that the assessee has furnished all necessary evidences in respect of M/s Blue Bay Hospitality Pvt Ltd. It was explained that the price of share issued to M/s Blue Bay Hospitality Pvt Ltd was calculated in accordance with the guidelines of the Reserve Bank of India [RBI]. It was explained that the

shares were valued in accordance with the DCF method as prescribed in the guidelines.

12. It was brought to the notice of the Id. CIT(A) that there is a master circular of Foreign Investment in India which was issued by the Foreign Exchange Department, RBI. Pricing guidelines in respect of fresh issue of shares to persons, resident outside India under the FDI Scheme shall not be less than the fair value of shares. It was further contended that the assessee has discharged the onus cast upon it by provisions of section 68 of the Act.

13. After considering the facts and submissions, the Id. CIT(A) found that allotment of shares to the foreign investors was made at the rate determined in accordance with the guidelines issued by RBI. The Id. CIT(A) was convinced with the valuation of shares as per DCF method and was further convinced that the issue price was not less than the fair market value. The Id. CIT(A) further observed that the assessee has submitted necessary documents in respect of M/s Blue Bay Hospitality Pvt Ltd., Mauritius. The Id. CIT(A) further found that Shri Joseph Thomas

holding resident permit issued by United Arab of Emirates, is the beneficial owner of company and has given unsecured loans to M/s Blue Bay Hospitality Pvt Ltd., Mauritius.

14. On further probe of the assessment records, the ld. CIT(A) found that the Income Tax Department has made a reference for exchange of information by an authority competent under an agreement referred to in Section 90 or 90A of the Act. The reference was made vide letter dated 25.02.2015 of the Assessing Officer, which was forwarded through Principal Commissioner-1, Delhi to the Joint Secretary (FT&TR; II CBDT vide letter dated 02.03.2013.

15. Reference was made by the Joint Secretary (FT&TR)-II to Director, Large Taxpayer Department, Mauritius Revenue Authority, Port Louis, Mauritius vide letter dated 14.03.2015 under Article 26 of the DTAA between India and Mauritius with reference to M/s Blue Bay Hospitality Pvt Ltd., Mauritius.

16. The ld. CIT(A) concluded by finding that the Mauritius Taxing Authority have confirmed the transaction and have also forwarded the bank statement of M/s Blue Bay Hospitality Pvt. Ltd. On the basis of conclusive evidences evidencing the transaction, the ld. CIT(A) deleted the addition.

17. In so far as the decapitalization 70% of the travelling expenses is concerned, the ld. CIT(A) found and examined the evidences in respect of travel made by the directors and was convinced that the travel was made for the business purposes and directed the Assessing Officer to delete the decapitalization.

18. Before us, the ld. DR strongly supported the findings of the Assessing Officer. It is the say of the ld. DR that the assessee has failed to establish the source of fund value with M/s Blue Bay Hospitality Pvt. Ltd.

19. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

20. We have given a thoughtful consideration to the orders of the authorities below. Facts on record show that the assessee received investment from M/s Blue Bay Hospitality Pvt. Ltd through banking channel and the fair value of the shares have been determined as per the guidelines of the RBI. The undisputed fact is that on a reference made by the competent authority to FT&TR, I CBDT, the Mauritius authorities have confirmed the transaction.

21. We further find that the Mauritius Taxing Authority have also confirmed that Shri Joseph Thomas is the ultimate beneficial owner of M/s Blue Bay Hospitality Pvt. Ltd and has given unsecured loan to the company. The Mauritius Taxing authority have also confirmed that the entire transaction has been done through banking channel and have also forwarded the bank statement of M/s Blue Bay Hospitality Pvt. Ltd. The funds were received with the permission from the RBI.

22. We further find that the source of the source of the investment received by the assessee from M/s Blue Bay Hospitality Pvt. Ltd has been conclusively explained by the assessee and such source of source have

been confirmed by the Manutius Revenue authority vide letter dated 04.05.2015 to the FT & TR division.

23. Considering the conclusive evidences brought on record, we do not find any error or infirmity in the findings of the ld. CIT(A). Addition of Rs. 16,55,47,646/- stands deleted. Ground No. 1 is dismissed.

24. In so far as capitalization of travelling expenses is concerned, we find that the Assessing Officer has made a general observation that these expenses were incurred by the directors for personal purposes whereas we find that after verifying the documentary evidence brought on record, the ld. CIT(A) was convinced that the travelling expenses were incurred by the directors for business purposes of the appellant for putting up hotel in Goa. There is no evidence brought on record by the Assessing Officer to prove that these expenses were of personal in nature. Therefore, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 2 also stands dismissed.

25. In the result, the appeal of the Revenue in ITA No. 949/DEL/2017 is dismissed.

The order is pronounced in the open court on 23.02.2022 in the presence of both the rival representatives.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 23rd February, 2022.

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	