

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. Saktijit Dey, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 3861/Del/2017 : Asstt. Year : 2012-13**

DCIT, Circle-22(1), New Delhi (APPELLANT)	Vs	Sarvpriya Properties Pvt. Ltd., 12, Ring Road, Lajpat Nagar-IV, New Delhi-110024 (RESPONDENT)
<b>PAN No. AAFCS7813M</b>		

**Assessee by : Sh. T. M. Shivakumar, Adv.  
Revenue by : Sh. Umesh Takyar, Sr. DR**

<b>Date of Hearing: 10.03.2022</b>	<b>Date of Pronouncement: 17.03.2022</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-14, New Delhi dated 15.03.2017.

2. Following grounds have been raised by the Revenue:

*"1. The Id. CIT(A) erred in deleting the addition of Rs.3,36,39,000/- made by the AO u/s 68 of the Income Tax Act, 1961 despite the fact that the DDIT(Inv.), Kolkata reported to the AO, in response to the commission issued to him u/s 131(1)(d) by the AO, that the share holder companies does not exist at given address. In fact the DDIT(Inv.), Kolkata in his report has held that these are the paper companies.*

*2. the Id. CIT(A) erred in not considering the fact that the assessee has charged heavy premium of Rs.190/- per share on the face value of share of Rs.10/- when the assessee has not shown any income from A.Y. 2013-14 onwards and there was no basis for receiving such a heavy premium from the non-existent companies.*

*3. The Id. CIT(A) erred in deleting the addition of Rs.3,36,39,000/- without giving any finding regarding the*

*genuineness of the share application money/share premium from the above said companies of Kolkata.”*

3. The assessee company filed its return of income on 28.09.2012 declaring the loss of Rs. 32,36,364/-. During the course of assessment proceedings the AO has observed that the assessee company has allotted shares to companies having principal place of business at 7, Ganesh Chandra Avenue, 4th Floor, Kolkata at a premium of Rs.190/- per share. The AO made addition u/s 68 amounting to Rs. 3,36,39,000/- as the assessee could not substantiate the share application money. The amounts have been received from two entities namely, M/s Rasaraj Sales Ltd. and R.P. Dealers Pvt. Ltd.

4. The Id. CIT(A) deleted the addition based on the submissions filed. Aggrieved, the revenue filed appeal before us.

5. Heard the arguments of both the parties and perused the material available on record.

6. We have gone through the submissions of the assessee before the First Appellate Authority which have been reiterated before us. The arguments are as under:

- During the year under consideration the assessee has issued the shares to the various group companies and thus has received the share application money of Rs.3,36,39,000/-. Out of the said amount the shares were allotted to R.P. Dealers from whom it has received the share application money of Rs. 3,11,09,000/-.
- The Confirmation, Bank Statement and the ITR of the share applicants were duly submitted before the Ld.AO during the assessment proceedings. The AO not satisfied

with this relied upon the enquiry report of DDIT(Inv.) Kolkata upon requested a commission under section 131 (1 )(d) dated 06.01.2015 by the ITO, Ward-22(1) to Additional DDIT (Inv.) Kolkata with a request that the enquiries may again be made to establish the credentials of section 68 of the Act.

- The office of the DDIT Kolkata reported that the existence of these companies could not have been traced out at the given address and no business activities were found. The DDIT mentioned since nobody was found therefore as per DDIT these are the paper companies.
- However the same DDIT in the same report observed that, "It is found that all the current directors of the companies are Mahesh Kumar Agarwal of 142/2, Rameshwar Nagar, New Delhi, Narfidini Garg of 141, Sunder Nagar, 1st Floor, New Delhi. Hence it is apparent that the companies were sold out to Delhi based group to secure the bogus investment made by the paper companies.
- Hence, it is observed that the purchase of unquoted share of beneficiary company by above five paper companies are bogus and uncounted income of the beneficiary company was ploughed back though share capital with premium from paper companies.
- Before the revenue authorities, it was argued that the report called for in connection with other company i.e. M/s Sadhavi Properties Pvt. Ltd. could not be used in case of assessee company and further the company M/s Rasaraj Sales Limited which is not the part of the Report sent by the DDIT, Kolkata.
- Further, the amount of Rs.25,30,000/- received from M/s Rasaraj Sales Ltd. has been refunded back to the said company even during the current assessment year and

confirmation, ITR and Bank Statement of these two companies genuineness and creditworthiness of the share applicants have already been submitted before the revenue authorities.

- That these two companies duly exist on the same addresses as provided and the company M/s Rasaraj Sales Ltd. was even assessed before the Central Circle-05, Jhandewalan, New Delhi for the last 10 years. Hence it cannot be that the notices of the assessment from the Central Circle, New Delhi were duly served at the given addresses of the company but summons issued by the DDIT, Kolkata has been remained un-served.
- Therefore, in view of the above the enquiries made by the DDIT Kolkata were insufficient, incomplete and unrealistic and not based on the facts but based on their surmises. Therefore no additions should be made on the basis of the reports of the DDIT Kolkata but the assessment should be based on documents submitted during the assessment proceedings and replies to the notices under section 133(6) issued.
- Notice u/s 133(6) of the I.T. Act was issued on 30.01.2015 to all the above mentioned companies. In response to notices u/s 133(6), all the companies but no response was received." This is a wrong assertion by the revenue. AO while making the additions has made the wrong claims that no response was received against the notice issued u/s 133(6) whereas no such notices were sent to these companies and all the notices u/s 133(6) sent by the ITO, Ward-22(1), New Delhi in case of Group Company M/s Sadhavi Properties Pvt. Ltd. (the case where the report from the DDIT (Inv) Kolkata were sought and relied upon in the appellant case) duly served with all

these companies and the same were also replied by all the share applicants and the said fact could be verified from the Assessment order passed in the case of M/s Sadhavi Properties Private Limited and the copy of assessment order is enclosed

- The observation made by the AO were only for the sake of making additions are completely wrong, baseless and out of facts.
- With regard to the details of current liabilities other than sundry creditors and advances received with complete name, address and assessment particulars of the concerned parties along with a note on the nature of such current liabilities. Share Application Money:

Sr. No.	Name of the party	Address of the party	Opening	Received during the year	Refund during the year	Allotment during the year	Closing Balance
1.	Deepmala Commodities Ltd. PAN:AAACD9451F	7, Ganesh Chandra Avenue, 4 <sup>th</sup> Floor, Kolkata-700013	11,00,000	--	11,00,000	--	--
2.	Narsi Iron & Steel Pvt. Ltd. PAN:AAACN3681P	S-1, Industrial Area, Site-A, Mathura Uttar Pradesh- 281001	5,00,000	--	--	--	5,00,000
3.	Priyadarshini Consultants & Services Pvt. Ltd. PAN:AABCP5448H	7, Chandra Avenue 4 <sup>th</sup> Floor, Kolkata-700013	17,76,000	--	17,76,000	--	--
4.	Rasaraj Sales Ltd. PAN:AABCR2905B	7, Ganesh Chandra Avenue 4 <sup>th</sup> Floor, Kolkata West Bengal-700013	--	25,30,000	25,30,000	--	--
5.	R.P. Dealers Pvt. Ltd. PAN:AABCR4122J	7, Ganesh Chandra Avenue, 4 <sup>th</sup> Floor, Kolkata, West Bengal-700013	7,46,000	3,11,09,000	8,46,000 (Refund) 43,00,000 (Adjusted)	2,67,09,000 (133545 Shares of Rs. 10/- each on premium of Rs.190/- per share)	--
6.	Sahal Food Products Pvt. Ltd. PAN:AAECS4631A	7, Ganesh Chandra Avenue, 4 <sup>th</sup> Floor, Kolkata-700013	70,000	--	70,000	--	--
<b>Total</b>			41,92,000	3,36,39,000	1,06,22,000	2,67,09,000	5,00,000

- The AO has erred in making additions of the amounts which has been even refunded during the year under consideration itself as the amount of Rs.25,30,000/- to M/s Rasaraj Sales Limited and Rs.51,46,000/- has been refunded to M/s R.P. Dealers Pvt. Ltd. and therefore, the said amount could not be added to the income of the assessee company by invoking the provisions of section 68 of the act. Further all the limbs of section 68 of the act i.e. identity, genuineness and creditworthiness of the share applicant parties were proved by way of submission of Name, Address, PAN, Confirmation, ITR Ack., Bank Statement and Balance Sheet of the parties were submitted.
- The present shareholders/ directors or their family members have been the Shareholders and directors of these five companies along with other investor companies for last more than ten years and since these companies are in the nature of financial activities, therefore, the said investments have been made by these parties in the assessee companies. Even these companies are shareholders of assessee company as on date also, as if these companies are to be bogus companies, then definitely shares must have been transferred to other persons in the next years, but this is not the case here and therefore, being the group companies of assessee companies, having common shareholders and directors, these investor companies could not be termed as paper companies and investments made in assessee company could not be held as bogus which is completely unreasonable and against the facts of the transactions.
- In brief, it was argued that all applicant companies are income tax assessee and are provided PAN by the

department. The investing companies are also regularly filing financial statements with the income tax department and ROC. Thus, their identity is well established. Genuineness of the transactions can be verified by the bank statements of the investing companies, evidencing that all transactions are through banking channels. Creditworthiness of the investing companies can be verified from the Reserve and Surplus reflected in the balance sheets of the respective companies.

- Both the investor companies are income tax assessee and the particulars thereof are available in the public domain on the government site of MCA 21 as well as with the Income Tax Department and the assessee company has also submitted their confirmations, PAN, copy of the ITR and therefore, the identity has been fully established. Besides, your honor, the investor companies have also submitted replies to the notices sent to them u/s 133(6) of the Act in case of group company M/s Sadhavi Properties Pvt. Ltd. (the case where the report from the DDIT (Inv) Kolkata were sought and relied upon in the appellant case) duly served with all these companies and the same were also replied by all the share applicants, leaving no doubt of the genuinity of the transactions.

7. The appellant company has discharged its onus as under:-

- The depositors have confirmed that the fact of having deposited money in the company which clearly reveal the source of funds, particulars of the bank account through which payment has been received and the Income-Tax particulars which go on to establish the identity and

creditworthiness of the respective lenders authoritatively and conclusively.

- A perusal of the said documents would reveal that the onus on the appellant company with regard to the duties enjoined upon it regarding receipt of cash credit have been fulfilled and discharged and it cannot be said that the appellant company had failed to establish the creditworthiness of the cash creditors and genuineness of transactions. As such no adverse inference is warranted nor justified or sustainable on the facts of the case.
- The appellant company has allotted shares for the share capital and share application money received by it.

8. We have specifically enquired as to what were the reasons of getting the premium of Rs.190/- per share. The Id. AR referring the balance sheet of the assessee company explained that the land has been brought to the books of the company which has been subsequently sold and made a profit of Rs.2.86 cr. Hence, the share premium has been duly substantiated. We have gone through the balance sheet of the assessee company which is as under:

**SARVPRIYA PROPERTIES PRIVATE LIMITED**  
1010, 10th FLOOR, SURYA KIRAN BUILDING, 19, .G. MARG, C.P. NEW DELHI-110001

**BALANCE SHEET AS AT 31.03.2012**

PARTICULARS	NOTES NO.	As at 31st March 2012	As at 31st March 2011
<b>I. EQUITY AND LIABILITIES</b>			
<b>(1) Shareholders' Funds</b>			
(a) Share Capital	3	3,688,050.00	2,352,600.00
(b) Reserves and Surplus	4	67,801,928.09	18,730,403.30
<b>(2) Share Application Money (Pending Allotment)</b>	5	-	746,000.00
<b>(3) Non Current Liabilities</b>			
Long term Borrowings	6	79,057.00	2,550,983.00
<b>(4) Current Liabilities</b>			
(a) Other current liabilities	7	587,215.00	3,483,534.00
(b) Short Term Provisions	8	898,618.00	3,000.00
<b>Total</b>		<b>73,054,868.09</b>	<b>27,866,520.30</b>
<b>II. ASSETS</b>			
<b>(1) Non-current assets</b>			
<b>(a) Fixed assets</b>			
(i) Tangible assets	9	2,950,621.00	18,303,478.00
(b) Non Current Investment	10	55,579,500.00	-
(b) Long Term Loans and Advances	11	3,535,972.00	1,251,000.00
(c) Other Non Current Assets	12	9,692,070.00	7,191,644.48
<b>(2) Current assets</b>			
Cash & Cash Equivalents	13	1,296,705.09	1,120,397.82
<b>Total</b>		<b>73,054,868.09</b>	<b>27,866,520.30</b>

8. The reserves & surplus has increased Rs.1.87 cr. To 6.78 cr. resulting in an increase of Rs.4.91 cr. The resulted application can be examined from the tangible assets and non-current investments at Schedule-10 which are reflected as under:

9 TANGIBLE ASSETS

Fixed Assets	Rate of Dep.	Gross Block			Accumulated Depreciation			Net Block	
		As At 1st April 2011	Additions/ (Disposals)	As At 31st March 2012	Upto 01st April 2011	For the Year	Upto 31st March 2012	As at 31st March 2012	As at 31st March 2011
		Amount(Rs.)	Amount(Rs.)	Amount(Rs.)	Amount(Rs.)	Amount(Rs.)	Amount(Rs.)	Amount(Rs.)	Amount(Rs.)
Land at Alibarn	-	2,813,697.00	(2,252,000.00)	561,697.00	-	-	-	561,697.00	2,813,697.00
Land at Koonakhrn	-	4,458,021.00	(4,458,021.00)	-	-	-	-	-	4,458,021.00
Land at Rajokari	-	473,920.00	-	473,920.00	-	-	-	473,920.00	473,920.00
Land at Runkata	-	10,557,840.00	(8,642,836.00)	1,915,004.00	-	-	-	1,915,004.00	10,557,840.00
<b>Total</b>		<b>18,303,478.00</b>	<b>(15,352,857.00)</b>	<b>2,950,621.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,950,621.00</b>	<b>18,303,478.00</b>
Previous Year		18,303,478.00	-	18,303,478.00	-	-	-	18,303,478.00	18,303,478.00

**10 NON CURRENT INVESTMENTS**

Particular	As At 31st March 2012	As At 31st March 2011
	Amount(Rs.)	Amount(Rs.)
<b>Non Trade Investment</b>		
<b>Investment in Equity Instrument of Unlisted &amp; Unquoted Companies(other), Fully Paid up Equity Shares Stated at Cost</b>		
Shares-RDI Homes Pvt Ltd. (C.Y. 555795 Equity Shares of Rs. 100/- Each)	55,579,500.00	-
<b>Total</b>	<b>55,579,500.00</b>	<b>-</b>

**11 LONG TERM LOANS AND ADVANCES**

Particular	As At 31st March 2012	As At 31st March 2011
	Amount(Rs.)	Amount(Rs.)
<b>(a) Capital Advances</b>		
Unsecured, considered good		
- RDI Homes Pvt Ltd.	2,284,972.00	-
- Jai Bhagwan	417,000.00	417,000.00
- Jitender	417,000.00	417,000.00
- Ram Pal	417,000.00	417,000.00
<b>Total</b>	<b>3,535,972.00</b>	<b>1,251,000.00</b>

9. Further, we have also examined the P&L account reflecting the profit on transfer of land in the subsequent year which is as under:

**SARVPRIYA PROPERTIES PRIVATE LIMITED**

1010, 10th FLOOR, SURYA KIRAN BUILDING, 19, .G. MARG, C.P. NEW DELHI-110001

**STATEMENT OF PROFIT & LOSS FOR THE YEAR ENDED ON 31.03.2012**

PARTICULARS	NOTES NO.	For the Year ended 31st March 2012	For the Year ended 31st March 2011
I. Revenue from operations	14	810,398,519.99	-
II. Other Income	15	49,191,433.00	9,205.00
<b>III. Total Revenue (I +II)</b>		<b>859,589,952.99</b>	<b>9,205.00</b>
IV. Expenses:			
Purchases	16	834,484,080.00	-
Finance Charges	17	2,266.73	42,944.77
Other expenses	18	507,163.47	22,648.00
<b>Total Expenses</b>		<b>834,993,510.20</b>	<b>65,592.77</b>
V. Expenses Trf to Pre operative Expenditure A/c		-	65,592.77
VI. Profit before tax		<b>24,596,442.79</b>	<b>9,205.00</b>
VII. Tax expense:			
Current tax		898,618.00	3,000.00
VII. Profit/(Loss) for the period (VI - VII)		<b>23,697,824.79</b>	<b>6,205.00</b>
VIII. Earning per equity share:			
(1) Basic		100.57	0.03
(2) Diluted		101.57	0.03

**15 OTHER INCOME**

Particulars	For the Year ended 31st March 2012	For the Year ended 31st March 2011
	Amount(Rs.)	Amount(Rs.)
Income Received	-	9,205.00
Accrued Interest on FDR	100,703.00	-
Loss on Transfer of Land	(133,050.00)	-
Profit on Transfer Of Land	28,633,943.00	-
Profit from RDI Homes	20,589,837.00	-
<b>Total</b>	<b>49,191,433.00</b>	<b>9,205.00</b>

10. Thus, we find that an amount of Rs.4.91 cr. has been shown under the other income consisting of profit on transfer of land of Rs.2.86 cr. and other profit from RDI homes of Rs.2.05 cr. Thus, we find that the premium received by the assessee company cannot be suspected to be of without any valid reason but the assets of the company makes it suitable for receipt of the premium in tune with the value of the fixed assets. Thus, we find that the assessee could establish

- 1) The identity of the creditor/subscriber;
- 2) The genuineness of the transaction,
- 3) The creditworthiness or financial strength of the creditor/subscriber.

Further,

- 4) The creditworthiness or financial strength of the creditor/subscriber.
- 5) Relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Share Application Forms, Share Transfer Register etc.
- 6) The onus stands discharged.

- 7) The shareholders are duly assessed to tax in the Central Circle.
- 8) The Directors of the subscribing companies and their relation with the assessee company is duly proven.
- 9) The enquiries could not conclusively bring about any material to doubt the veracity of the assessee.
- 10) The assessee has got tangible fixed assets-Land to substantiate and support and receipt of premium.
- 11) Such land has been sold and the profits have been duly offered to tax.

11. Keeping into consideration the entirety of the facts & circumstances, peculiarities of the assessee's case, we are of the considered opinion that the AO is not justified in making the addition u/s 68 of the Income Tax Act, 1961. Ergo, we hereby affirm the order of the Id. CIT(A).

12. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 17/03/2022.

Sd/-

**(Saktijit Dey)**  
**Judicial Member**

**Dated: 17/03/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**