

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

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

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 9888/Del/2019 : Asstt. Year : 2016-17**

Income Tax Officer, Ward-7(2), New Delhi	Vs	Darrameks Hotels & Developers Pvt. Ltd., 15, Ring Road, Lajpat Nagar, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCD9005F</b>		

**Assessee by : Sh. Sanjiv Rai Mehra, CA  
Revenue by : Sh. Lalit Kishore, Sr. DR**

<b>Date of Hearing: 26.05.2022</b>	<b>Date of Pronouncement: 28.06.2022</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 the Id. CIT(A)-3, New Delhi, dated 31.10.2019.

2. The brief facts of the case are that the AO observed that the appellant has issued 39,894 equity shares on which share premium has been received @ Rs. 1006 per share. The AO observed that the appellant has furnished RBI approval for issue of 15000 shares only. The AO asked the appellant to furnish Forward Inward Remittance Certificate (FIRC) in respect of the shares issued. The AO has added the amount of Rs.3,16,84,056/- received by the appellant on account of share capital and share premium, by stating that the appellant has not furnished any response.

3. During the course hearing, the Id. DR relied on the Assessment Order while the Id. AR relied on the submissions made before the Id. CIT(A). The submissions of the Id. AR are as under:

*"During the year under consideration the appellant was constructing a hotel near Rishikesh Uttrakhand and to meet the cost of the same one of the shareholders M/s Dekram Investments was allotted 39,894 equity shares of Rs. 10/- at a premium. The following allotments were made:*

<i>Date of Allotments</i>	<i>No of Shares</i>	<i>Face Value</i>	<i>Premium</i>
<i>29-04-2015</i>	<i>15000</i>	<i>10</i>	<i>1030</i>
<i>26-10-2015</i>	<i>15000</i>	<i>10</i>	<i>1006</i>
<i>28-03-2016</i>	<i>9894</i>	<i>10</i>	<i>998</i>

*The above mentioned shares were allotted to Dekram Investments in accordance with the provisions of Section 62(1)(a) of the Companies Act, 2013. The process followed in respect of above allotments is as follows:*

*1. Board meeting for approval of rights issue*

*In accordance with Section 62(1)(a) and Section 179 of the Companies Act, 2013, the proposal of rights issue needs to be approved at a meeting of the board.*

*Accordingly, the board meetings for approval of rights issue and approval of offer letters were held on 23 February 2015, October 14, 2015 and 3 March 2016 respectively.*

*2. Valuation Report to be obtained from Chartered Accountant*

*For determining the price at which equity shares have to be issued, RBI has issued Foreign Exchange Management (Transfer or Issue of Securities to a person resident outside India) Regulations 2000.*

*Under these regulations, for determining the price of equity shares proposed to be issued, a valuation has to be done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.*

*The valuation report was received from D K Munjal & Associates, Chartered Accountants. The value of equity shares has been calculated following the discounted cash flow technique as prescribed under Foreign Exchange Management (Transfer or Issue of Securities to a person resident outside India) Regulations 2000*

*3. Dispatch of offer letters to shareholders, offer period & receipt of application money*

*In accordance with Section 62(2), the offer letters were sent through email to all the shareholders on 19<sup>th</sup> April 2015, 15 October 2015 and 5 March 2016 respectively.*

*In accordance with Section 62(1)(a) of the Companies Act 2013 the offers were kept open for the period mentioned in Table A above. The rights issue offer period for the 2<sup>nd</sup> & 3<sup>rd</sup> allotment remained opened for a period less than 15 days with the consent of all the members.*

*The application money was received on 24 April 2015, 23 October 2015 and 11 March 2016 respectively for the three offers.*

*4. Intimation to RBI on receipt of inward remittance*

*The Company is required to intimate the receipt of inward remittance within 30 days to RBI in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.*

*The Report of receiving amount of consideration for issue of shares was filed with the RBI on 9 May 2015, 23 November 2015, 7 April 2016*

#### *5. Allotment of equity shares*

*In accordance with Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, the equity shares must be allotted within 60 days of receipt of consideration.*

*Accordingly, the equity shares were allotted on 29 April 2015, 26 October 2015 and 28 March 2016 in compliance with the regulations.*

#### *6. Filing of Form FCGPR to RBI*

*Allotment of equity shares to Non Resident requires filing of Form FCGPR with RBI within 30 days of allotment pursuant to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.*

*In respect of the above allotments, form FC-GPR were filed with RBI within the prescribed time on 25 May 2015, 24 November 2015 and 25 April 2016 respectively.*

*Details of allotments alongwith the respective resolutions, share valuations, company secretary certificates, FIRC and Reserve Bank of India approvals were duly uploaded to the Income Tax website and acknowledgement no. 19121811032236, 19121811032256, 19121811032268, and 19121811032282 were obtained (copies of*

*these are annexed at Pages 1 to 4 of the paper book). Also attached at Pages 5 to 61 are the covering letter dated 19-12-2018, the details of date wise allotments, the respective applications to the Reserve Bank of India, share valuation reports the certificate of Company Secretary the foreign inward remittance certificates (FIRC) and the Reserve Bank approvals.*

*White framing the assessment the learned assessing officer did not examine the documents in details and assumed only on approval for 15000 equity shares was obtained from Reserve Bank of India and hence made an addition of Rs.3,16,84,056/- on the ground that FIRC and Reserve Bank clearance was not available. It is not the case of the Assessing officer that addition is made under section 68 since she has accepted the identity and capacity of the said shareholder whose latest Balance Sheet is enclosed. Also enclosed is letter dated 23-11-2015 of Yes Bank forwarding to Reserve Bank of India KYC details obtained by Yes Bank (the bank receiving the funds) from the remitting bank State bank of Mauritius.*

*It is humbly submitted that the assessing officer has grossly erred in stating that these document were not filed, whereas the record shows that these were duly filed and are part of record and the above addition be deleted."*

4. We have considered the facts of the case and the submission made by both the parties.

5. We are in agreement with the observation of the Id. CIT(A) wherein it was held that the shares were issued to the same shareholder namely M/s Dekram Investments and the appellant had furnished all the details to the AO at the time of assessment vide letter dated 19.12.2018 in response to the notice dated 16.12.2018 issued by the AO. The AO has not

doubted the genuineness of the transactions and the appellant has filed the relevant documents to prove the same both at the time of assessment and during the course of proceedings before the Id. CIT(A). As all relevant documents have been filed and there is no reason to doubt the genuineness of the transactions, the addition made by the AO is deleted and the ground of appeal is allowed.

6. Ground no. 2 of the appeal is related to the addition of Rs.6,48,230/- made by the AO by disallowing business expenses.

7. The AO observed that the appellant is engaged in the Hotel business and during the year, the appellant has not received any revenue income and has claimed expenses of Rs.6,48,230/-. The AO has disallowed the same by stating that the appellant has not carried out any business activity.

8. We find that the business of the appellant is to acquire land and to construct hotels etc. The company was incorporated in 2007 and in 2013 it started to acquire land and started construction soon thereafter. As at March 31, 2016 the tangible assets including land were Rs.2,97,03,035/- and Capital work in progress including unallocated expenses was Rs.37.29 Crores. The expenses claimed by the assessee u/s 37(1) of the Income Tax Act, 1961 are as under:

Depreciation u/s 32	1,35,153/-
Insurance	32,362/-
Audit Fee	25,000/-
Advertisement	2,38,304/-

Auditor out of Pocket	9,500/-
Bank Charges	60,825/-
Entertainment	31,639/-
Office Repairs	3,048/-
Computer Repairs	5,200/-
Other Repairs	40,203/
Filing Fee	4,295/-
Membership	20,000/-
Misc. Expenses	10,840/-
Printing & Stationery	<u>31,861/-</u>
Total	<u>6,48,230/-</u>

9. As observed, the above expenses are the minimum to keep the business running and are all revenue expenses allowable u/s 37(1) of the Income Tax Act, 1961. The expenses directly related to the project have been capitalized as capital work in progress (CWIP). The company has shown capital work in progress of Rs. 21.90 crores as on 31.03.2016 in the balance sheet.

10. The Hon'ble Delhi High Court in the cases of Carfour WC & C India Pvt. Ltd. vs. DCIT 368 ITR 692 (Delhi) and CIT vs. L.G. Electronics (India) Ltd. 282 ITR 545 (Delhi) held that business of the assessee may commence on date and the income generation may start at a much later date. Despite the fact that no revenue is generated the expenses u/s 37(1) and u/s 32 have to be allowed.

11. In this regard, reference is made to the decision of the Hon'ble High Court of Delhi in the case of CIT vs. Dhoomketu

Builders and Development Pvt. Ltd. reported in 368 ITR 680, where in Para 9, it is held as under:

*"The Tribunal has observed that having regard to the business of the assessee, which is the development of real estates, the participation in the tender represents commencement of one activity which would enable the assessee to acquire the land for development. If the assessee is in a position to commence business that means the business has been set up. The acts of applying for participation in the tender, the borrowing of monies for interest from the holding company, the deposit of the borrowed monies on the same day with NGEF Ltd. as earnest money were all Acts which clearly establish that the business had been set up. The commencement of real estate business would normally start with the acquisition of land or immovable property. When an assessee whose business it is to develop real estates, is in a position to perform certain acts towards the acquisition of land, that would clearly show that it is ready to commence business and, as a corollary that it has already been set up. The actual acquisition of land is the result of such efforts put in by the assessee; once the land is acquired the assessee may be said to have actually commenced its business which is that of development of real estate. The actual acquisition of the land may be a first step in the commencement of the business but section 3 of the Act does not speak of commencement of the business, it speaks only of setting up of the business. When the assessee, in the present case, was in a position to apply for the tender, borrowed money for interest albeit from its holding company and deposited the same with NGEF Ltd. On the same day, it shows that the assessee's business had been set up and it was ready to commence business. The learned senior standing counsel for the Revenue would, however, state that till the land is acquired, the business is not set up. The difficulty in accepting the argument is that an assessee may not be successful in acquiring land for a long period of time though he is ready to*

*commence his business in real estate and that would result in the expenses incurred by him throughout that period not being computed as a loss under the head "Business" on the ground that he is yet to set up his business. That would be an unacceptable position. The other argument of the learned standing counsel for the Revenue that the tax auditors of the assessee have themselves pointed out that the assessee is yet to commence its business is also irrelevant because of the distinction between the commencement of the business and setting up of the same."*

12. Hence, while affirming the order of the Id. CIT(A), we are of the opinion that revenue expenses cannot be disallowed on the grounds that the assessee has not shown any revenue income in a particular year.

13. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 28/06/2022.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

**Dated: 28/06/2022**

\*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**