

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.873/Mum/2022  
(Assessment Year :2016-17)**

|  |     |  |
|--|-----|--|
| M/s. Hira Technologies Pvt. Ltd.,<br>Plot No.I-02, Part-2, Khed<br>Industrial Park<br>DTA Zone, Kanhersar<br>Pune- 410 505 | Vs. | Principal Commissioner of<br>Income Tax-8,<br>Mumbai<br>6 <sup>th</sup> Floor, Aayakar Bhavan<br>M.K.Road,<br>Mumbai – 400 020 |
| <b>PAN/GIR No.AABCH2291N</b>   |     |  |
| <b>(Appellant)</b>   | ..  | <b>(Respondent)</b>  |

|                              |  |
|------------------------------|--|
| Assessee by                  | Shri Sanjay Sanghvi & Shri Ujjval<br>Gangwal |
| Revenue by                   | Shri K.C. Kanojiya                           |
| <b>Date of Hearing</b>       | <b>21/07/2022</b>                            |
| <b>Date of Pronouncement</b> | <b>27/07/2022</b>                            |
|                              |  |

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.873/Mum/2022 for A.Y.2016-17 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-8, Mumbai u/s.263 of the Act dated 08/03/2022 for the A.Y.2016-17.

2. The only effective issue to be decided in this appeal is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case. The

interconnected issue involved therein is as to whether the Id. PCIT was justified in directing the Id. AO to make an addition of Rs.85,39,480/- in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is a private limited company engaged in the business of manufacturing of "insulation foam" in the form of rolls, sheets and tubes. The return of income for the A.Y.2016-17 was filed by the assessee company on 23/11/2016 declaring total loss of Rs.2,00,51,836/-. The return of income was selected for scrutiny and during the course of scrutiny assessment proceedings, the Id.AO sought to verify and examine the allotment of shares by the assessee company to its non-resident shareholders viz., Mr. Girish Hiranandani and Mr. Manish Hiranandani as under:-

| <b>Particulars</b>                           | <b>Mr Girish Hiranandani for 50,00,266 equity shares</b> | <b>Mr Manish Hiranandani for 35,39,214 equity shares</b> |
|--|--|--|
| Share Capital (Face Value- INR 10 per share) | 5,00,02,660  | 3,53,92,140  |
| Share Premium (INR 1 per share)              | 50,00,266  | 35,39,214  |
| Total  | 5,50,02,926 (A)  | 3,89,31,354(B)   |
| Grand Total (A+B)                            | 9,39,34,280  |  |

3.1. The above two non-resident shareholders were allotted shares @Rs.11/- per share comprising of face value of Rs.10/- and premium of Re.1 per share. The assessee in response to the various notices issued by the Id. AO furnished the following details and documents electronically, substantiating the identity of the shareholders, creditworthiness of shareholders and genuineness of the transactions:-

| <b>Particulars</b>  | <b>Relevant Notice</b>                  | <b>Date of e-filing of submission</b> | <b>Documents substantiating</b>  |
|---|---|---------------------------------------|----------------------------------|
| Name of the Allottees and number of shares allotted to them   | 142(1) notice dated 09 February 2018    | 03 March 2018                         |                                  |
| Detailed Note on share capital!   | 142(1) notice dated 09 February 2018    | 03 March 2018                         |                                  |
| Bank statement of Mr Girish Hiranandani   | 142(1) notice dated 09 February 2018    | 03 March 2018                         | Genuineness and creditworthiness |
| Name, PAN and full address of the Shareholders  | 142(1) notice dated 09 February 2018    | 03 March 2018                         | Identity                         |
| Form FCGPR submissions  | 142(1) notice dated 09 February 2018    | 03 March 2018                         | Genuineness                      |
| Minutes of the board meeting held on 11 July 2015 and 07 September 2015 approving allotment of shares to the Shareholders | 142U) notice dated 09 February 2018     | 05 March 2018                         | Genuineness                      |
| Note on share capital   | Showcause notice dated 30 November 2018 | 04 December 2018                      |                                  |
| Bank statement of Mr Girish Hiranandani showing the payments made to the Assessee   | Showcause notice dated 30 November 2018 | 04 December 2018                      | Genuineness and creditworthiness |
| Fund transfer form authorising transfer of funds from Mr Manish Hiranandani's bank account to Assessee's bank account     | Showcause notice dated 30 November 2018 | 04 December 2018                      | Genuineness and creditworthiness |
| Income Tax Return (i.e. Acknowledgement of return of income and fTR form) for AY 2016-17 of the                           | Showcause notice dated 30 November 2018 | 04 December 2018                      | Identity and creditworthiness    |

|   |   |                  |             |
|---|---|------------------|-------------|
| shareholders  |   |                  |             |
| KYC document of the Shareholders (ie Passport, Dubai residency visa and electricity bill)   | Showcause notice dated 30 November 2018 | 04 December 2018 | identity    |
| Certificate from the Chartered Accountant certifying name of the allottees and number of shares allotted to them                                    | Showcause notice dated 30 November 2013 | 04 December 2018 |             |
| Certificate from Chartered Accountant determining fair market value of the shares   | Showcause notice dated 30 November 2018 | 04 December 2018 |             |
| Form FCGPR submissions  | Showcause notice dated 30 November 2018 | 04 December 2018 | Genuineness |
| Note on capital contribution  | Showcause notice dated 30 November 2018 | 10 December 2018 |             |
| Assessee's response to show cause notice of the Ld. AO on applicability of section 68 or share premium received during the year under consideration | Showcause notice dated 17 December 2019 | 23 December 2019 |             |

3.1. The assessee pleaded that it had filed all the documents with supporting evidences thereby proving three necessary ingredients of section 68 of the Act viz. identity of shareholders, creditworthiness of shareholders and genuineness of transactions. The Id. AO, however, observed in his order that no details were filed by the assessee and accordingly, made an addition of Rs.8,53,94,800/- representing 85,39,480 shares of Rs.10/- as unexplained cash credit u/s.68 of the Act in the

assessment. In the said assessment, the premium component of Re.1/- per share was omitted to be taxed u/s.68. The assessee had preferred an appeal before the Commissioner of Income Tax (Appeals) against the order of assessment, and the same is pending. In order to bring the said premium component of Re.1/- per share to tax, the Id. PCIT invoked revision jurisdiction u/s.263 of the Act and issued a show-cause notice to the assessee in this regard, by treating the order of the Id. AO as erroneous in as much as it is prejudicial to the interest of the revenue. The assessee gave a detailed reply before the Id. PCIT vide letter dated 19/01/2022 enclosing the same documents that were filed before the Id. AO in the form of supporting evidences proving the three necessary ingredients of section 68 of the Act. The fact of assessee filing its elaborate submissions vide letter dated 19/01/2022 is also duly acknowledged by the Id. PCIT in para 3 of his order. The assessee also submitted before the Id. PCIT that the Id. AO had wrongly applied the provisions of Section 68 of the Act without going through the documents placed on record. The assessee also submitted that during the previous year relevant to A.Y.2016-17, the assessee company had received share premium to the tune of Rs.46,03,578/- only. The balance share premium of Rs.39,35,902/- (Rs.85,39,480/- – Rs.46,03,578/-) was received during previous year 2014-15 relevant to A.Y.2015-16 and hence, the same would not fall within the ambit of provisions of Section 68 of the Act for the year under consideration. This argument was made by the assessee on without prejudice basis. The assessee also submitted before the Id. PCIT that its case does not fall under any of the conditions laid down under Explanation 2 to Section 263(1) of the Act and hence pleaded for dropping of the revision proceedings. The Id. PCIT however ignored all the contentions of the assessee and reiterated the findings of the Id. AO by stating that assessee had not proved the three necessary ingredients

of Section 68 of the Act and directed the Id. AO to bring to tax the share premium component also u/s.68 of the Act subject to modification of the figure thereon to the extent of Rs.46,03,578/- instead of Rs.85,39,480/-. Aggrieved, the assessee is in appeal before us.

3.2. The Id. AR argued that assessee had received share capital from its two non-resident shareholders in Foreign Direct Investment (FDI) route. The assessee had allotted shares to its non-resident shareholders at a premium of Re.1/- per share. Hence, the total allotment price is Rs.11/- per share. This allotment price of Rs.11/- per share is duly justified by share valuation report issued by an independent Chartered Accountant who had valued the shares of the company using Discounted Cash Flow Method (DCF) vide valuation report dated 22/05/2015. The said valuation report is enclosed in page 34 of the paper book. The receipt of share capital and share premium in FDI route from two non-resident shareholders was in compliance with Foreign Exchange Management Act (FEMA) Guidelines and with approval of the Reserve Bank of India (RBI). The necessary statutory compliances to be made by filing prescribed returns to RBI have been duly complied with, as is evident from the list of documents submitted as tabulated supra. Hence, the Id. AR submitted that the share capital and share premium monies were received from two non-resident shareholders in FDI route with prior approval of the Reserve Bank of India. The shareholders are non-residents and are stationed in Dubai. The assessee had furnished the copy of their VISA, Passport, their income tax returns filed in India for the relevant years etc., their PAN, their address, electricity bill in Dubai etc., together with KYC documents of the shareholders in Dubai. The Id. AR argued that all these documents collectively prove that their identity stands established beyond reasonable doubt. The assessee had also furnished the bank statement of Mr. Girish

Hiranandani and Mr. Manish Hiranandani kept with HSBC Jebel Ali, Dubai-UAE, duly highlighting the transactions of transfer of funds from that bank account to the bank account of the assessee company. These bank statements are enclosed in pages 26-35 of the paper book. The assessee had also furnished independent Chartered Accountant valuation certificate justifying the issue of shares at a premium using DCF method. The Id. AR argued that all these documents collectively prove that the share holders have sufficient creditworthiness to make investment in assessee company. Further, the shareholders had made investment in automatic FDI route by way of transfer of funds through regular banking channels in compliance with FEMA guidelines and RBI approvals. The assessee had also furnished Foreign Inward Remittance Certificate (FIRC) for monies received from non-resident shareholders. Admittedly, these FIRCs are issued by assessee's bankers namely ICICI Bank which clearly specify the name of the shareholders from whom the monies were received together with the nature of transaction being share capital and share premium investment. The Id. AR argued that all these documents collectively prove the genuineness of the transactions beyond reasonable doubt. Hence, the Id. AR submitted that assessee had duly satisfied the three necessary ingredients of Section 68 of the Act.

3.3. We also find that all these documents were even filed before the Id. AO vide letter dated 03/12/2018, which is enclosed in page 93 of the paper book. We find that the Id. PCIT merely relies on the view of the Id. AO in the assessment who has made addition towards share capital component of Rs.10/- per assessee. For assuming jurisdiction u/s.263 of the Act, it is incumbent on the part of the Id. PCIT to apply his mind independently on going through the records placed before him. He is not supposed to rely on the findings given by the subordinates in that regard.

By placing reliance on the addition made by the Id. AO in respect of share capital component, the Id. PCIT concludes that premium component of Re.1/- per share also in principle is to be brought to tax as unexplained cash credit u/s.68 of the Act.

3.4. It is pertinent to note that the assessee had furnished detailed replies before the Id. PCIT together with all supporting documents and evidences vide letter dated 19/01/2022 stating that no addition towards share capital and share premium could be made u/s.68 of the Act in the hands of the assessee company. The fact of this letter being filed by the assessee has been graciously and duly acknowledged by the Id. PCIT in para 3 of his order.

3.5. What is in appeal before us is only the addition of share premium of Re. 1/- per share contemplated by the Id. PCIT by assuming revision jurisdiction u/s.263 of the Act on the premise that assessee had not furnished any details either before the Id. AO or before him. One more premise of the Id. PCIT is that the addition has been made by the Id. AO after considering all the submissions made by the assessee during the course of assessment proceedings. We are conscious of the fact that addition in respect of face value of Rs.10/- per share on account of share capital has already been made by the Id. AO and the same is the subject matter of appeal before the Id.CIT(A) and it is pending. Hence, we do not want to give any finding or opinion on the veracity of the addition made u/s.68 of the Act in respect of face value of Rs.10/- per share. At the same time going by the documents filed by the assessee both before the Id. AO and before the Id. PCIT, which fact had been duly acknowledged by both the parties in their respective orders, we find that the Id. PCIT had erred in assuming revision jurisdiction u/s.263 of the Act in the

instant case as it is based on the mistaken premise that assessee had not furnished any documents to prove the three ingredients of Section 68 of the Act and further on another mistaken premise that the Id. AO had made addition after considering all the submissions of the assessee. Hence, it could be safely concluded that the entire assumption of jurisdiction by the Id. PCIT u/s.263 of the Act is based on incorrect assumption of fact. On this primary ground itself revision order u/s.263 passed by the Id. PCIT deserves to be quashed and is hereby quashed.

3.6. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that the Id. PCIT erred in invoking revisionary jurisdiction in the facts and circumstances of the instant case u/s.263 of the Act. Accordingly, the grounds raised by the assessee are allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced on 27/07/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(RAHUL CHAUDHARY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 27/07/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
**ITAT, Mumbai**