

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.35/Viz/2021

(निर्धारणवर्ष/ Assessment Year :2014-15)

Deputy Commissioner of Income
Tax, Circle-3(1),
Visakhapatnam.

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs.

M/s. SVN Hotels and Resorts
Pvt Ltd.,
Visakhapatnam.
PAN: AAJCS 4959 E

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, Advocate

Sri MN Murthy Naik, CIT-DR

:

25/07/2022

:

22/08/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Visakhapatnam [Ld. CIT(A)] in appeal no. 10492/2016-17/CIT(A)-1/VSP/2020-21, dated 21/09/2020 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2014-15.

2. Brief facts of the case are that the assessee engaged in the business of running Hotels, filed its return of income for the AY 2014-15 declaring NIL income. The return was summarily processed on 27/11/2014 and subsequently the case was selected for scrutiny under CASS and notice u/s. 143(2) was issued and served on the assessee on 21/09/2015. In response to notices the assessee's Authorized Representative furnished the details called for by the Ld. AO. The Ld. AO after considering the information furnished, completed the assessment by adding Rs. 3,67,88,800/- u/s. 68 r.w.s 115BBE of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the Ld. AR submitted the details as submitted before the Ld. AO. Considering the submissions made by the assessee's Representative, the Ld. CIT(A) partly allowed the appeal by deleting the additions of Rs. 3,67,88,800/-. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

3. The Revenue has raised the following grounds of appeal:

- “1. *The order of the Ld. CIT (A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) has erred in directing the AO to delete the addition of Rs. 3,55,22,000/- made towards disallowance of share premium received from M/s. Express Dealers Private Limited U/s. 68 of the Act.*

3. *The Ld. CIT (A) has erred in directing the AO to delete the addition of Rs. 12,36,800/- made towards disallowance of share premium received from M/s. Charansheela Consultants Private Limited u/s. 68 of the Act.*
4. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal. For these and other grounds that may be urged at the time of hearing of appeal, it is prayed that these above additions made on relevant disallowances be restored.”*

4. Grounds no. 1 and 4 are general in nature and need not be adjudicated.

5. Grounds No. 2 & 3 relate to additions u/s. 68 of the Act with respect to the disallowance of investments in the form of share capital and share premium received from Express Dealers Private Limited and M/s. Charansheela Consultants Private Limited.

6. The Ld. DR argued that investment were made by M/s. Express Dealers Private Limited and M/s. Charansheela Consultants Private Limited which are Kolkata based companies, and submitted that the Ld. AO after making enquiries could not trace the address of the investing company. The Ld. DR therefore submitted that these are paper companies and hence the Ld. AO has rightly disallowed the premium received from these companies and pleaded to uphold the order of the Ld. AO.

Per contra, the Ld. Authorized Representative [Ld. AR] pointed out that the investments were received through proper banking channels. The Ld. AR invited our attention to the copy of the ledger account of M/s. Express Dealers Private Limited and M/s. Charansheela Consultants Private Limited available at pages 36 to 40 of the paper book. The Ld. AR also submitted that the investor company namely M/s. Express Dealers Private Limited was subjected to scrutiny assessment for the AY 2010-11 with respect to the issue of share capital at a premium. The Ld. AR invited our attention to page 76 to 77 of the paper book wherein no specific addition was made in the assessment order of M/s. Express Dealers Private Limited with respect to the amount received as share capital by them. The Ld. AR further submitted that the investor namely M/s. Express Dealers Private Limited utilized the funds available with them as share capital, in making investments in the assessee company. The Ld. AR pleaded that the order of the Ld. CIT(A) be upheld.

7. We have heard both the parties and perused the material available on record and the orders of the authorities below. The admitted facts are that the assessee company received share premium in the form of investment amounting to Rs.

3,55,52,000/- from M/s. Express Dealers Private Limited and Rs. 12,36,800/- from M/s. Charansheela Consultants Private Limited. We have also gone through the assessment order of M/s. Express Dealers Private Limited passed U/s. 143(3) rws 147 of the Act wherein the fact that the company received funds by issuing equity shares at a premium was recorded in the assessment order. We therefore find merit in the argument of the Ld. AR that these funds were utilized by the investor company in the assessee company in the form of investment as share capital. We also see from the ledger accounts and bank statements submitted by the Ld. AR that the amounts were received through banking channels. The Ld. CIT(A) has rightly observed that an amount of Rs. 1,95,25,000/- being the opening balance in the ledger account of M/s. Express Dealers Private Limited and the balance amount of Rs. 1,60,27,000/- was received into the bank account of the assessee during the current AY, and hence if the AO wished to tax the income u/s. 68 of the Act he should have added only on Rs. 1,60,27,000/- being the receipts during the current financial year and not the opening balance. We also observe from the ledger accounts submitted by the Ld. AR of M/s. Charansheela Consultants Private Limited the amounts were received through banking channels from 2011-12 onwards.

Thus, there is an opening balance of Rs. 12,90,000/- as on 1/4/2013 whereas the allotment of shares was done for Rs. 12,36,800/-. In view of the above discussions, we find that the Ld. AO has erred in treating the investments in the assessee company as unexplained cash credits u/s. 68 r.w.s 115BBE of the Act is not valid in law and we therefore find no infirmity in the order of the Ld. CIT(A) and hence no interference is required.

8. In the result, appeal of the Revenue is dismissed.

Pronounced in the open Court on the 22nd August, 2022.

Sd/-

(दुव्वूरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :22.08.2022

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s. SVN Hotels and Resorts Pvt Ltd., 8-12-5, PVS Estates, Lower Tank Bund Road, Vizianagaram, Andhra Pradesh-535002.
2. राजस्व/The Revenue –DCIT, Circle 3(1), Income Tax Office, Infinity Towers, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh – 530016.

3. The Principal Commissioner of Income Tax-1, Visakhapatnam.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-1, Visakhapatnam.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam