

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1725/MUM/2017 (A.Y.2012-13)

ITO-14(3)(3), Mumbai 453, Aayakar Bhavan 4 th Floor, M.K. Marg Mumbai-400 020	vs	M/s Sejima Taxyarn Pvt Ltd 22, Vikram Apartments, New Maneklal Estate, Ghatkopar (W) Mumbai 400 086 PAN : AALCS7629H
APPELLANT		RESPONDENT

Assessee represented by	Shri Mehul Shah
Department represented by	Shri Hoshang B Irani – (DR)

Date of hearing	01/06/2022
Date of pronouncement	29/08/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the Revenue as against the order of the Ld. Commissioner of Income-tax (Appeals)-22, Mumbai dated 07/12/2016 passed under section 250 of the I.T. Act, 1961 which pertains to assessment year 2012-13.

2. The solitary ground involved in this appeal is that the Ld.CIT(A) has erred in deleting the addition of R.4,32,02,400/- under section 68 of the I.T. Act, 1961 on account of unexplained cash credit of share premium.

3. The assessee company was incorporated on 28/03/2008. It had purchased plot of land at Surat for setting up of texturised yarn unit. It was

submitted that commencement of the assessee company's business was delayed due to completion of formality in setting up of unit and complying with the procedures required by the government and local authorities and also in obtaining power supply. The assessee filed its return of income on 29/09/2012 declaring total income at Nil. Assessee's case was selected for scrutiny and during the assessment proceedings it was observed that the assessee company has received an amount of Rs.4,32,02,400/- by way of share application money which, according to the Assessing Officer, was unjustifiable and also the genuineness of the investors were not satisfactory. On perusal of the balance-sheet it was observed by the Assessing Officer that the assessee company issued 10,80,060 shares having face value of Rs.10/- each at a premium of Rs.40 each to 11 applicants. The Assessing Officer held that though the assessee had proved the identity and creditworthiness of the share subscribers, the genuineness of the transaction was not proved. The Assessing Officer had stated that the assessee has failed to furnish details regarding the investment and that the assessee has received the share premium at a huge sum of Rs.4,32,02,400/- on allotment of equity shares on face value of Rs.10/- each at a premium of Rs.40 per share. The Assessing Officer was also of the view that the assessee has no proper means as per the P&L Account of the assessee which could attract such huge premium and that the initial capital of the assessee company was only Rs.3 lakhs. The Assessing Officer also opined that no prudent company would invest in such a company which had no profit margins and no sufficient fixed / current assets. The Assessing Officer then concluded that the funds have been routed by flagship company and the group company and that the assessee was a medium for routing the funds. The Assessing Officer was also of the view that since there was no business activities carried out by the assessee company during the impugned year and

the earlier years, the future prospectus of the company was also unpredictable. From this observation, the Assessing Officer held that it was a case of money laundering and diversion of its own funds by issuing shares at huge premium to sister companies. The Assessing Officer also considered the fact that the return of money invested in the hands of lender was Nil and that no prudent man will give advance in such a way, i.e. his return was less than that of interest on fixed deposits with banks. It was also stated that the assessee company had not declared any dividend to its shareholders since its inception, shares have been issued and allotted to the subscribers at a huge premium of Rs.40/- per share. From these observations, the Assessing Officer concluded that the said transaction was not genuine and that the premium on shares fixed by the assessee was illogical. Relying on the decision of the jurisdictional Bombay High Court in the case of Major Metals vs UOI Writ Petition No.397 of 2011 dated February 22, 2012, the Assessing officer made addition of Rs.4,32,02,400/- as unexplained cash credit under section 68 of the Act on the ground that the genuineness of the transaction was not proved by the assessee. Aggrieved by this, the assessee was in appeal before the Ld.CIT(A). The Ld.CIT(A) deleted the said addition on the ground that the payments for shares were received through banking channels for which the bank statements have been produced by the assessee and relied on various decisions which held that the genuineness of the transaction can be established if it is through banking channels. The Ld.CIT(A) distinguished the facts of the case relied upon by the Assessing Officer in the case of M/s Major Metals vs UOI (supra) and has also considered the break up value of shares given by the assessee to be justifiable. The Ld.CIT(A) has relied on the decision of Green Infra Ltd vs ITO (23013) 38 taxmann.com 253 (Mumbai) and has

deleted the said addition on the above observation. The revenue is in appeal before us as against the order of Ld.CIT(A).

4. The Ld.DR relied on the order of the Assessing Officer and contended that the department was not aware of the subsequent progress of the assessee company. The Ld.DR further stated that the genuineness of the transaction was not proved by the assessee.

5. The Ld.AR, on the other hand, argued that the Assessing Officer was satisfied with the identity and creditworthiness of the parties and stated that the assessee company has fixed assets of plots of land in Surat City purchased during A.Y. 2008-09 for a consideration of Rs.3,19,75,687/-, the value of which has increased exorbitantly during the year. The Ld.AR further stated that the market value of the assets of the company are to be taken into consideration in determining the premium on shares issued for deciding the break up value of the share. Considering that fact, the assessee company had a sufficient asset value and that the Ld.CIT(A) was right in deleting the addition made by the Assessing Officer on genuineness of the transaction.

6. Having heard both the learned representatives and perused the materials on record, it is evident that the Assessing Officer has not denied the credibility or identity of the parties and it was only the genuineness that was in question. From the facts of the case, it is observed that the assessee has provided sufficient documentary evidence to substantiate the transaction. The assessee has also stated that the persons to whom shares were allotted on premium were relatives and family members of the Directors of the company. The assessee has further stated that the plot that was purchased by the assessee was of huge value and the government stamp duty authority valuation rate as per Jantri rate during the impugned year was estimated to be Rs.37,35,59,200/-. The assessee further stated that in order to determine the

premium on shares, the market value of the assets of the company are to be taken into consideration for determining the break up value of shares and as per the said calculation, during the assessment proceedings, the working of the break up value was arrayed at Rs.307.76 and the company had issued the shares at a value of Rs.50/- i.e. Rs.10/- for share capital and Rs.40/- for premium. According to the assessee, the share value of Rs.40/- per share was very much less compared to the break up value of share thereby establishing the genuineness of the transaction. The assessee relied on the decision of Green Infra Ltd vs ITO (supra), which held that “No doubt a non est company or a zero balance company asking for a share premium of Rs.490 per share defies all commercial prudence, but at the same time one cannot ignore the fact that it is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of the shareholders whether they were to subscribe to such a heavy premium. The revenue authorities cannot question the charging of such of huge premium without any bar from legislated law of the land. Details of subscribers were before the revenue authorities.”

7. From the above observations, we are of the considered view that the assessee has proved the identity, creditworthiness and genuineness of the transaction beyond reasonable doubt. The Assessing Officer has failed to establish his stand except for the fact that the premium was huge and that the assessee company has not commenced its operation. We find that there is no justification to invoke the provisions of section 68 of the I.T. Act in the present case where the transactions have been channeled through bank and that the identity and creditworthiness has already been established by the assessee. The Assessing Officer has not gone beyond this to prove that these were non genuine transactions nor has he substantiated with a valuation report

determining that the share premium was huge and unacceptable. Respectfully Following the decision of the co-ordinate bench in Green Infra Ltd vs ITO (supra), we do not find any infirmity in the order of the Ld.CIT(A). Therefore, we uphold the decision of Ld.CIT(A) and dismiss the ground raised by the revenue.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 29th August, 2022.

Sd/-

sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 29/08/2022

Pavanan

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai