

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.2666/Kol/2019
Assessment Year: 2012-13

Steelex India (P) Ltd.....Appellant
C/o SN Ghosh & Associates,
Advocates, "Seben Brothers' Lodge,
P.O. Buroshibtala,
P.S. Chinsurah, Dist-Hooghly,
W.B.-712105.
[PAN:AAECS2322Q]

vs.

ITO, Ward-3(2), Kolkata.....Respondent

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 24, 2022

Date of pronouncing the order : September 9, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Assessee against the order dated 14.10.2019 of the Commissioner of Income Tax (Appeals)-12, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1.FOR THAT the Ld. Commissioner of Income Tax (Appeals)-12, Kolkata failed to appreciate that none of the conditions precedent existed for and/or were fulfilled by the Ld. Income Tax Officer, Ward 3(2). Kolkata for his specious action of assuming jurisdiction u/s. 68 of the Income Tax Act, 1961 in respect of the share capital received by the appellant in the instant case and the alleged addition in the amount of Rs.1,00,00,000/- upheld under such pretext is therefore ab initio void, ultra vires and ex-facie null in law.

2. FOR THAT on a true and proper interpretation of the scope of the provisions of s. 68 of the Income Tax Act, 1961, the Ld. Commissioner Of Income Tax (Appeals)-12, Kolkata was absolutely in error in upholding the specious addition of Rs. 1.00,00,000/- resorted to by the Ld. Income Tax Officer, Ward 3(2). Kolkata on account of share capital received without considering the matter in the proper perspective and such

spurious conclusion reached on extraneous considerations not germane to the issue in dispute is absolutely arbitrary, unwarranted and perverse.

3. FOR THAT the specious approach of the Ld. Commissioner of Income Tax (Appeals)-12, Kolkata of misreading evidence, considering improper facts, failing to consider proper position in law and thus coming to an erroneous finding in sustaining the impugned addition on account of share capital in the sum of Rs. 1,00,00,000/- made by the Income Tax Officer, Ward 3(2), Kolkata on the manifestly wrong application of the provisions of s. 68 of the Income Tax Act, 1961 basing on considerations not relevant to the issue in dispute is wholly illegal, illegitimate and infirm in law.

4. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-12, Kolkata was remiss in sustaining the purported addition to the tune of Rs.81,007/- within the province of s. 14A of the Income Tax Act, 1961 made by the Ld. Income Tax Officer, Ward 3(2). Kolkata by misreading the parameters of rule 8D(ii)/(iii) of the Income Tax Rules, 1962 and the adverse conclusion reached on that behalf in violation of the statutory prescription is completely unfounded, unjustified and untenable in law.”

2. **Ground Nos.1 to 3** – Vide Ground Nos.1 to 3, the assessee has contested the action of the lower authorities in treating the share subscription of Rs.1,00,00,000/- received by the assessee from the share subscriber M/s Lagan Vinicom P. Ltd. as unexplained cash credits u/s 68 of the Act. During the assessment proceedings, the Assessing Officer investigated about the identity, creditworthiness of the share subscriber and genuineness of the transaction and asked the assessee to furnish the following details:

- i) Personal appearance of the directors of the assessee company as well as the directors of the share holding companies who had fresh share application and premium in the said A.Y.
- ii) Detailed narration of all debit and credit entries found in the bank statement of F.Y 2011-12.
- iii) Bank statement for the said F.Y 2011-12 i.e. A.Y 2012-13
- iv) All the books of account and supporting evidences for cross verification.

Though the assessee furnished the details as asked for by the Assessing Officer, however, the Assessing Officer noted that the assessee had failed to produce before him the directors of the assessee company as well as directors of the share subscriber company.

He, therefore, held that the assessee had failed to discharge the burden upon it regarding genuineness of transaction by producing directors of the companies and, therefore, treated the said amount of Rs.1,00,00,000/- as unexplained cash credits and added the same into the income of the assessee u/s 68 of the Act.

3. The ld. CIT(A) confirmed the additions so made by the Assessing Officer.

4. Before us, the ld. Counsel for the assessee has submitted that the assessee has duly discharged the initial burden lying upon it to prove the identity, creditworthiness of the share subscriber and genuineness of the transaction.

The ld. Counsel for the assessee has submitted that the required documents such as the copy of return, audited accounts, bank statement and source of such investment etc. were filed by the assessee. The ld. Counsel for the assessee has further submitted that the Ld. Assessing Officer did not dispute the fact that Lagan Vincom P. Ltd is a body corporate incorporated on 14th day of January 2009 having Corporate Identity Number U51909WB2009PTC131974 and is independently assessed to income tax under Permanent Account Number AABCL5732E and had duly filed its return with its Assessing Authority i.e. the Income Tax Officer, Ward 1(4), Kolkata on 22-03-2013 disclosing a total income of Rs.1,70,693/- for the assessment year under dispute. The ld. Counsel further submitted that in the balance sheet for assessment year under consideration filed by Lagan Vincom P. Ltd. along with the return of income, the share application of Rs.4,00,000/- along with premium of Rs.96,00,000/- paid, against which 40,000 equity shares were allotted by the appellant have been duly disclosed. The investment in the equity shares of the assessee was duly disclosed in the return by Lagan Vincom P. Ltd. was not disputed in the assessment order dated 24-12-2019 framed u/s. 143(3)/147 of the Income Tax Act, 1961. The ld. Counsel has further submitted that the Lagan Vincom P. Ltd. had disclosed an amount of Rs.6,40,47,351/- on account of "Reserve & Surplus" in its balance sheet as on 31-03-2011 and the amount rose to Rs.6,41,65,300/- as on 31-03,2012. In fact, there is not a single cash transaction in the bank account of Lagan Vincom P. Ltd during the relevant previous year. Further, the director of the said share subscriber had duly made full compliance before the Ld.

Assessing Officer in response to summons u/s 131 of the Act. In fact, there was no adverse evidence with the Ld. Assessing Officer to conclude the genuine transaction within the scope of unexplained cash credit.

5. The Id. Counsel for the assessee has further submitted that even the director of the assessee company had actually appeared before the Assessing Officer and furnished the necessary details. He has further invited our attention to page 9 of paper book which is copy of the assessment order framed in the case of subscriber company i.e. M/s Lagan Vinicom P Ltd. to submit that the Assessing Officer of that company has made addition of Rs.1,22,50,000/- as unexplained credits u/s 69A of the Act, hence, that explains the source of the amounts in the hands of share subscriber. Therefore, the investment by the said company in the hands of the assessee can be assumed to be explained. The Id. Counsel, in this respect, has also relied upon the decision of the Coordinate Bench of the Tribunal in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018 wherein, the Coordinate bench under similar circumstances has made the following submissions:

“We find no merit in the Revenue's instant grievance in the light of relevant facts on record. There is no dispute about the assessee's having declared its share subscription premium from M/s Agrani Credit & Finvest Pvt. Ltd., Crown Mansion Pvt. Ltd., Liberal Infrastructure Pvt Ltd., Darshan Enclave Pvt. Ltd., Snow Fall Impex Pvt. Ltd. involving corresponding sums of ₹27,60,000/-, ₹55,20,000/-, ₹82,80,000/- in case of third and fourth and ₹48,30,000/- in last entity's case; respectively totalling to ₹3,01,00,000/-. Case file suggests that the assessee has placed on record their income tax acknowledgement of the impugned assessment year 2012- 13, directors' report alongwith audited financial statements, explanation regarding source of investments, bank statements, share application forms and board's resolution(s) followed by their respective regular assessment orders pertaining to very assessment year u/s. 143(3) of the Act. Their Assessing Officer(s) made u/s 68 unexplained cash credits additions of share premium amounting to ₹67,03,00,000, ₹44,85,00,000/-, ₹24,42,00,000/- & ₹21,70,00,000/- in case of first four entities and accepted similar credits of ₹20,45,00,000/- to be genuine satisfying all parameters of identity, genuineness and creditworthiness. It can therefore be safely assumed that all these additions sums forming subject-matter of the impugned additions to be accepted as genuine in respective investors entities' end as the source of the amount(s) in issue totalling to ₹3,01,00,000/-. Learned Departmental Representative fails to dispute that the same very amount cannot be added twice in payees and recipients' hands u/s 68 of the Act. We therefore see no reason to accept Revenue's instant former substantive ground. We affirm CIT(A)'s findings under challenge qua the instant former issue.

6. The Ld. DR before us could not dispute that since the addition has been made in the hands of the subscriber company, then the same amount cannot be added twice in recipient's hands u/s 68 of the Act. However, the ld. DR insisted that one to one transaction that is to say that the exactly same money has been received in the hands of the assessee has not been proved. We do not find merit in the above contention of the ld. DR. It is not the case of the Revenue that the subscriber company has invested more than the amount it was added in its hands. In view of this, since the Revenue could not dispute the identity, creditworthiness of the subscriber as well as genuineness of the transaction, therefore, the addition made by the lower authorities is not sustainable and the same is accordingly ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 9th September, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated:09.09.2022.

RS

Copy of the order forwarded to:

1. Steelex India (P) Ltd
2. ITO, Ward-3(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches