

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 1332/Mum/2020**

(Assessment Year 2011-12)

Glowshine Builders & Developers

Pvt. Ltd.

CTS 40-44,

Sahara India Point S V Road, Vs.

Goregaon West,

Mumbai-400 104

**(Appellant)**

ITO

Ward 12(2)(3)

Aaykar Bhavan,

M.K. Road,

Churchgate,

Mumbai-400 020

**(Respondent)**

**PAN No. AAACG3422F**

**Assessee by** : None

**Revenue by** : Shri Prabhat Kumar Gupta, DR

**Date of hearing:** 07.09.2022

**Date of pronouncement :** 20.09.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by assessee for assessment year 2011 – 12 against the order passed by the Commissioner of income tax (appeals) – 20, Mumbai dated 25/9/2019 wherein the appeal filed by the assessee against the assessment order passed u/s 144 read with section 147 of the income tax act, 1961 dated 24/12/2018 was dismissed. Therefore, assessee is aggrieved and has preferred this appeal.
02. Assessee has raised following grounds of appeal:-

*"1. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in passing on*

*Ex-parte order confirming the addition made by the Assessing Officer.*

*2. That the Id. CIT(A) has failed to appreciate that the address of the appellant company had changed and no correspondence of the Income Tax Department was received on changed address and therefore there was no deliberate default on the part of the appellant.*

*3. That without prejudice the Ld. CIT(A) is not justified in confirming the order of the Assessing Officer by holding that Ex-Parte order u/s 144 has been rightly passed by him.*

*4. That without prejudice there was no reason to believe that Income chargeable to tax has escaped assessment with the Assessing Officer and therefore the very reopening of the case of Assessment Year 2011-12 u/s 147/148 of the Income Tax Act, 1961 is beyond jurisdiction and bad in law.*

*5. That without prejudice in any view of the matter the Id. CIT(A) has erred in law and facts in confirming the addition made by Assessing Officer in respect of share premium amounting to Rs. 182,25,50,440/- u/s 68 of the Income Tax Act, 1961 while at the same time holding that share application money as explained.*

*6. That in any view of the matters the order passed by the CIT(A) is without affording a proper opportunity to the appellant and is contrary to the*



*principles of natural justice and audi alteram partem and therefore deserves to be set aside.*

*7. That the appellant craves leave to add, alter, amend, withdrawals any or all grounds of appeal at any time before or during the course of the appellate proceedings."*

03. Assessee is a company engaged in trading in shares and builders and developers. It filed its return of income declaring income of ₹ 177,990/- on 30/9/2011. The return of the assessee was not picked up for scrutiny. Subsequently notice u/s 148 of the act was issued on 27/3/2018. The main reason recorded by the learned assessing officer reproduced at paragraph number 2 of the assessment order shows that there was information received from the Deputy Director of income tax (investigation Wing) wherein assessee was operating a bank account with ICICI bank Ltd at Lucknow wherein it was found that assessee company is merely a paper company, as there is no business activity carried on by this company and assessee company is managed and controlled by the director and key persons of 'Sahara group' and for the same reason the companies are having registered office in Mumbai but bank accounts are opened in Lucknow and all the accounts are used for parking of the funds. On perusal of the return of income, the learned AO noted that assessee has subscribed paid-up capital along with share application money of ₹ 1,822,550,440/- and a meager income. This company is issuing shares at a premium of ₹ 740/- per share where the value of the

shares is merely face value. Therefore, the learned assessing officer recorded 'reasons to believe' u/s 147 of the act and issued notice for reopening of the assessment. The notice was issued to the last known address of the assessee company, on the email address given by the assessee in the return of income but there was no response. Several other notices were issued but it was not complied. Therefore, the learned assessing officer has no alternative but to pass an assessment order. Accordingly he made an addition u/s 68 of the act of ₹ 1,822,550,440/- and determined the total income of the assessee at ₹ 1,822,728,430/- against the returned income of ₹177,994/- by order dated 24/12/2018 passed u/s 144 read with section 147 of the Act.

04. Assessee preferred appeal before the learned CIT – A who confirmed reopening of the assessment as well as the addition made by the learned assessing officer on merits of the case. Therefore, assessee is in appeal before us.
05. Despite notice, none appeared on behalf of the assessee. It is the fate in earlier point of time also. This appeal is filed by the assessee on 07/02/2020. Subsequently on seven occasions, notices were issued but neither adjournment was sought nor any representation was made. The notices were issued to the assessee by registered AD at the address mentioned in form number 36 i.e. CTS-40 – 44, Sahara India point, SV Road, Goregaon, Mumbai 400104. There is a change in the address from the appeal before the learned CIT – A and the time the appeal was filed before us. We also note that

assessee has filed return of income, but notices u/s 148, and 142 (1) of the act, show cause notices were not at all responded. Further, the learned CIT – A also issued 4 notices which was served on the assessee as per paragraph number 4.1 of his order, none appeared before him. Same are the fate of notices sent by us. Therefore, the conduct of the assessee shows that it wants to agitate the issue but do not want to remain present to pursue those appeals. As there is no other alternative left with us, the appeal of the assessee is decided on the merits of the case as per information available on record.

06. The learned departmental representative vehemently supported the orders of the lower authority and say that the facts of the case are clear that assessee is merely a paper company and the money that has been raised by the assessee has gone to the Sahara group.
07. We have carefully considered the rival contention and perused the orders of the lower authorities. During the year the case of the assessee is reopened by receipt of information from the investigation wing that there is an ICICI bank account opened in Uttar Pradesh in the name of the company whereas the registered office of the assessee is in Mumbai, assessee does not have any business worth naming and has issued share capital of ₹ 1,822,550,440/-. As there is an information received by learned AO about the share capital received by the assessee at a huge premium which does not support the financial of the assessee, the return of income of the assessee was examined, which did not show any financials

to support the above share capital, the funds have been diverted from the assessee to Sahara group, the income of the assessee is meager and therefore all these reasons clearly established that the learned assessing officer has 'reason to believe' that income of the assessee has escaped the assessment. The requisite notices have been duly served on the assessee. The assessee has chosen not to respond to them. Therefore, we do not find any infirmity in the order of the learned assessing officer in assuming jurisdiction u/s 147 of the income tax act. The learned assessing officer has a tangible material, return of income of the assessee was not picked up for scrutiny, the return of income was examined before the issue of notices, belief entertained by the assessee is of a reasonable person and therefore, reopening is upheld. No infirmity is found in the order of the learned CIT – A in confirming the same. Therefore, ground numbers 1 – 4 of the appeal are dismissed.

08. The ground number 5 and 6 are with respect to the merits of the addition of ₹ 1,822,550,440/- u/s 68 of the Income Tax Act. The assessee also challenges that the learned CIT – A did not afford proper opportunity. We find that the learned assessing officer did not have any information about the identity, creditworthiness, and genuineness of the transaction of issue of share capital of ₹ 1,822,550,440/-. In absence of any information before the learned assessing officer, he is duty-bound to make the addition u/s 68 of the Income Tax Act. As assessee has failed to discharge its initial onus, there is no infirmity

in order of learned AO in confirming the addition of ₹ 1,822,550,440/-. Even before the learned CIT – A there is no evidence placed before him to deviate from the order of the learned AO. With respect to the opportunities granted to the assessee to represent the case before the learned CIT – A, 4 opportunities were given by service of notice, which was served on the assessee. Further, the personal information was given in form number 35 wherein an email was mentioned, the learned CIT – A also sent an email of notice of hearing on that id, despite that there is no response from the assessee. Similarly before us, several notices issued, which were not responded to, therefore, we do not have any material to deviate from the orders of the lower authorities.

09. However, we find that the amount of share capital issued by the assessee along with two other companies namely Gold star Nirman private limited and Camilla Buildcon private limited, have bank accounts with ICICI bank Ltd, Sahara India complex, Kapurthalla , Lucknow, UP. All these three companies have huge share capital subscribed to them and the money from all these three companies are transferred to the Sahara group. All these three companies are managed and controlled by the directors and persons of Sahara group. For this reason, the companies are registered in Mumbai, but their bank accounts were operated from Lucknow. This coincidence is further corroborated from the fact that now the assessee in form number 36 has given its address which is also at Sahara India point. The company does not have any net

worth but amount advanced to Sahara group. Therefore, it is a clear ploy to transfer the money to Sahara group through this shell companies. The information mentioned in the email column of form number 36 is also irrelevant. Form number 36 is also not verified by the managing director of the company. The form number 35 is signed by one person and form number 36 is signed by different person but there is no certification that any of them is the director of the company or managing director of the company authorised to sign return of income u/s 140 of the act. Even the interest of the assessee is also very clear that it wants to get the amount of the addition confirmed in the hands of this assessee, therefore, the real beneficiary of the money is not at all touched.

010. In view of the above facts, the confirmation of addition in the hands of this company will allow the real beneficiary of the above sum go Scott free. Accordingly, we set-aside the addition of ₹ 1,822,550,440/- added in the hands of the assessee u/s 68 of the Income Tax Act as unexplained share capital, back to the file of the learned assessing officer with a direction to the AO to issue enquiry letter to the banker of these company i.e. ICICI bank, Lucknow to find out who operated this account, the necessary summons to the director of this company as well as the company who received the above sum should also be issued and they must be examined before making addition in the hands of this assessee or deleting the addition. The AO is further directed to intimate/initiate if the transaction leads to any violation of the Prohibition of Benami



transaction act, 1988. After all these examination, the assessee is directed to show the identity and creditworthiness of the persons who invested money into the assessee, the summons would also be issued to the investor in this company to examine the genuineness of the transaction. If on examination, the learned assessing officer reaches at a conclusion that there is a bigger financial fraud committed by the assessee, the respective authorities are also required to be intimated. Accordingly, ground number 5 and 6 of the appeal are set-aside to the file of the learned assessing officer with above direction.

011. The appeal of the assessee is partly allowed.

Order pronounced in the open court on 20.09.2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.09.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai