

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "SMC" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.7116/Del/2019  
[Assessment Year : 2011-12]**

Molina Hotel & Resorts Pvt.Ltd., A-69, Nirman Vihar, New Delhi-110092. <b>PAN-AAECM2907M</b>	vs	ITO, Ward-5(4), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Shri Om Prakash, Sr.DR	
<b>Date of Hearing</b>	18.08.2022	
<b>Date of Pronouncement</b>	22.09.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-37, New Delhi dated 29.06.2019.

The assessee has raised following grounds of appeal:-

1. *"That Ld.CIT(A) without appreciating the correct facts of the case and considering the written submission and documents filed and case law relied upon during the course of appellate proceedings is not justified in law and facts and circumstances of the case in confirming the addition of Rs.20,00,000/- made by Ld. Assessing Officer under section 68 of the I.T. Act on account of addition to share capital.*
2. *Appellant has every right to make, add, delete, modify or alter any grounds of appeal at the time of hearing."*
3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that there is no representation on behalf of the assessee since 22.12.2020. It was incumbent upon the assessee to attend the proceedings. On two occasions, acknowledgement receipt has been

received back but no representation has been made on behalf of the assessee. Therefore, the appeal of the assessee is taken up for hearing in the absence of the assessee and being disposed off on the basis of material available on record.

3. The only effective ground in this appeal is against the addition of Rs.20,00,000/- u/s 68 of the Income Tax Act, 1961 [“the Act”] on account of addition to share capital.

### **FACTS OF THE CASE**

4. Facts giving rise to the present appeal are that the assessee company filed its return of income declaring income of Rs.1,94,330/- on 12.09.2011. The case of the assessee was taken up for scrutiny assessment and in response to the statutory notices issued to the assessee, Ld. Authorized Representative [“AR”] of the assessee attended the proceedings. The Assessing Officer [“AO”] while framing the assessment u/s 143(3) of the Income Tax Act, 1961 [“the Act”] vide order dated 10.03.2014, has made addition in respect of interest on loan amounting to Rs.1,59,517/- and addition in respect of share premium of Rs. 20,00,000/- by invoking the provision of section 68 of the Act.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Ld. Sr. DR appearing on behalf of the Revenue, submitted that there is no infirmity into the orders of the authorities below. He contended that the AO

has given clear finding that the assessee failed to prove the identity, genuineness and creditworthiness of M/s. SMF Engineering India Pvt.Ltd. from whom share capital and share premium of Rs.20,00,000/- was received during the year under consideration. The assessee has not rebutted the finding by bringing any contrary material on record. Therefore, he prayed that the finding of the authorities below may be sustained.

8. I have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has decided the issue by observing as under:-

**6.1.9.** *“Once the appellant was made aware of the result of investigation which proved that share application money transaction was not genuine, the onus was on the assessee to prove the genuineness of transaction under section 101 of the Indian Evidence Act, 1972 as it is the assessee who is asserting a claim that it has received genuine share money. It is relevant to note here that Hon'ble Supreme Court in the case of Shri Charan Singh versus Chandra Bhan Singh AIR 1988 SC 637 has clarified that the burden of proof lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. It has been further held that the party cannot, on failure to establish a prima facie case, take advantage of the weakness of his adversary's case. The party must succeed by the strength of his own right and the clearness of his own proof. He cannot be heard to say that it was too difficult or virtually impossible to prove the matter in question. Since in this case the appellant had made the claim that it had received genuine share application money, all the facts were especially within its knowledge.*

**6.1.10.** *In the present case, as discussed above, there is overwhelming evidences that the transactions on which adverse views have been taken are pre-arranged transactions under taken with the sole motive to evade tax.*

**6.1.11.** *All these above mentioned cases are also applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the facts and circumstances. The case laws relied upon by the by the appellant have been decided with reference to the specific facts and situations present in the context of those distinct cases and cannot be made universally and squarely applicable to all cases where similar issues but in different setting of facts and accompanying circumstances are found to be involved.*

**6.1.12.** *In view of the facts and circumstances borne out of the assessment order and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions in the facts and circumstances of the case as it is revealed that amount received by the appellant company as share capital are arranged transactions to introduce its unaccounted income through entry providers with the sole motive to account for the undisclosed income. Accordingly, in view of the above discussion and judicial' precedents, it is held that AO was justified in making addition of Rs.20,00,000/- as income of the assessee from undisclosed sources u/s 68 of the Act. The grounds of appeal are dismissed."*

9. The assessee has not rebutted the finding of Ld.CIT(A). Therefore, I do not see any reason to disturb the same, the finding of Ld.CIT(A) is hereby affirmed. Thus, grounds raised by the assessee are dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 22<sup>nd</sup> September, 2022.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI