

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

(Conducted through Virtual Court)

**ITA No.599/Ind/2018
Assessment Year: 2013-14**

ITO Aayakar Bhawan, Collectorate Compound, Chankyapuri, Dhar(M.P.)	Vs.	M/s. Sardar Patel Hospital & Research Centre Ltd. Khasra No. 251, Village- Pitgara, Mhow-Neemuch Road, Opp. Rest House, Bhadnawar, Distt. Dhar
(Appellant)		(Respondent)
PAN: AAPCS7153Q		
Appellant by	Shri Aditya Shukla, Sr. DR	
Respondent by	Shri Shailendra Solanki, AR	
Date of Hearing	06.07.2022	
Date of Pronouncement	06.09.2022	

ORDER

PER MADHUMITA ROY, J.M.:

The instant appeal filed by the Revenue is directed against the order dated 06.04.2018 passed by the Ld. CIT(A)-II, Indore arising out of the order dated 30.03.2016 passed by the ITO, Dhar, under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2013-14.

2. We have heard both the parties and perused the materials available on record.

3. The assessee, Hospital and Research Centre having dispensary, diagnostic centre has paid its return of income on 02.10.2013 declaring total income at Rs. NIL. Upon scrutiny notice under Section 143(2) dated 02.09.2014 was served upon the followed by notice under Section 142(1). During the course of assessment proceedings, upon examination of the books of accounts it was found that the assessee has not supported any business activity for the A.Y. 2012-13 since the hospital building was under construction and therefore, consequently no income was earned.

4. However, it further appeared that the declared paid up capital of Rs. 5,20,000/- for 52,000 shares for Rs. 10 each. The assessee has declared share application money received from share applicants for A.Y. 2012-13 of an amount of Rs. 2,82,35,000/- and Rs. 3,58,51,100/-. During the year under consideration the assessee was, therefore, required to explain the share application money whereupon confirmation from share applicants was filed from where it was further noticed that the assessee has sold share at premium of Rs. 15/- as against share of Rs. 10/-. The assessee was, therefore, issued show-cause on 18.03.2016 to justify the receipt of share premium/share application money in excess of authorized share capital and further it justify the receipt of premium as per working under Rule 11U IT Rule, 1962. Further that, a show cause as to why the premium of Rs. 2,43,67,400/- received during the previous year may not be treated as income from other sources under section 56(2)(viib) of the Act was issued to the assessee. In response whereof the assessee filed a reply on 29.03.2016 on the following contents:

“To,

Dated 25/03/2016

*The Income Tax Officer
Aayakar Bhawan Chankyapuri
Dhar (M.P.)*

Dear Sir,

*Re: Sardar Patel Hospital & Research Centre Limited Village Pitgara, Mhow-Neemuch Road, Badnawar, Distt. Dhar (M.P.)
PAN: AAPCS7153Q IT Assessment: 2013-14*

Sub: Reply of Notice u/s 142(1) of the Income Tax Act, 1961.

With reference to your honors notice no. F.No.ITO/Dhar/2013-14 dated 18th March, 2016 received by us on 25th March, 2016 u/s 142(1) of the Income Tax Act, 1961 for the A Y 2013-14. In this regard we hereby give your honor the following explanation:-

The Authorized share capital of the company during the F. Y. under consideration was increased from Rs.1,00,00,000/- to Rs. 2,50,00,000/- vide EGM dated 28.02.2012 and same had been submitted to Registrar of Companies Gwalior in Form No. 5 on 04.05.2012. Company had received share application money from share applicants amounting to Rs. 2,82,35,000/- during the F. Y. 2011-12 (Preceding to P. Y. under consideration) and Rs.3,58,51,100/- during the F. Y. 2012-13 (relevant P. Y. under consideration).

As far as your honours question regarding that the company had received share application money of Rs.2,82,35,000/- in F. Y. 2011-12 against the Authorized share capital of Rs. 1,00,00,000/-. We have to inform your honour that this is a case of over-subscription of share capital and we hereby draw your honors attention to sec. 39 of the companies Act, 2013 where there is the condition of minimum subscription and no limit on over subscription of securities. We hereby also inform your honour that no allotment was made by company during F. Y. 2011-12 to any share applicants who had given share application money. During the Financial year 2012-13 company has received share application money from share applicants of Rs. 3,58,51,100/- but company has not allotted any shares to share applicants according to decisions of Board of Director of the Company.

The question regarding that why the shares were not allotted and also the share application money was not refunded, on this point we hereby inform your honour that the provisions of Companies Act, 2013 became applicable during financial year 2013-14 and the company was facing guanines hardship in allotment of shares while complying the provisions of amended Companies Act, 2013.

The Boards of Directors of the company has decided to allot shares on premium to share applicants considering present fair market value of land & building under construction of the company and its Goodwill & preferred business & commercial rights in the surrounding area as on date of allotment.

The Boards of Directors of company has allotted 5,67,960 shares to 48 share applicants on in the F. Y. 2013-14 at nominal premium at Rs.15/- per share which is decided by the Board on present fair market value of land and investment made by companies under construction of Hospital building etc. We hereby inform your honour that the company had allotted 5,67,960 no. of shares to 48 share applicants (Share capital in Rs. 56,79,600/- and premium in Rs. 85,19,400/-) during the F.Y. 2013-14 and company has allotted shares to remaining share applicants in next financial years, hence there is no question of refund of share application money.

As regard share premium we have to clarify that during the F. Y. 2012-13, the company had not allotted any shares hence no question of allotment on premium arises of said assessment year therefore provisions of sec.56(2)(viib) are not attracted in relevant assessment year.

On perusal of section 56(1) of the Act it indicates that to tax any amount under this section, it must have some character of "Income".

We would like to draw your honour attention to the case of Green Infra Ltd. V/s Income-tax Officer 2012(12)TMI 949 -ITAT MUMBAI. The relevant facts of the case are as under:-

The company issued share of Rs. 10/- at a premium of Rs. 490/- per share. The share holders were found genuine existing and who have verified investment made by them.

The Tribunal observed 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 we 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 share holders whether they want to subscribe to such a heavy premium.

The Revenue authorities cannot question the charging of such huge premium without any bar from any legislated law of the land.

Identity of shareholders has been established beyond all reasonable doubts in fact the revenue authorities have not questioned the identity of the share holders.

The genuineness of the transaction can also be safely concluded since the entire transaction has been done through the banking channels duly recorded in the books of accounts of the assessee duly reflected in the financial statement of the assessee.

Not even single evidence could be found which could lead to the transaction as sham.

The share holding pattern also cannot be said to generate any transaction which could be said to be sham. The Revenue authorities have erred in treating the share premium as income of the assessee u/s 56(1).

The addition was deleted and matter stood decided in favour of assessee.

In case of the Assessee Company also the Identity of shareholders has been established beyond all reasonable doubts in fact the revenue authorities have not questioned the identity of the share holders. The genuineness of the transaction can also be safely concluded since the entire transaction has been done through the banking channels duly recorded in the books of accounts of the assessee duly reflected in the financial statement of the Assessee. Not even singly evidence could be found which could lead to the transaction as sham. The share holding pattern also cannot be said to generate any transaction which could be said to be sham.

Further, your honour had issued summon to share applicants and share holders u/s 131{1} of the Income Tax Act, 1961. All were presented at your honours office and has given statement with relevant supporting documents presented by share applicants regarding investment were made by him in the company.

In the said notice your honours have intended to make addition of the premium amount to the total income of the Assessee Company. We would like to draw your attention to the case law of:-

Cadell weaving mills company ltd 2001 249 ITR 265 Bom where the Bombay High Court held that the share premium is a capital receipt not taxable u/s 2(24) of the Income Tax Act, 1961.

Mahindra & Mahindra Ltd 1973 91 ITR 130 Bom the same view was taken.

Therefore we request your honour not to add the amount of security premium in the income of the Assessee as there is no rational in doing so.

We hereby submit confirmation of accounts from the remaining share applicants for your honour perusal & verification.

Thanking you.

Yours faithfully,
For M/s. Pramod P.Chopra & Associates
Chartered Accountants
Sd/-
CA Pramod Chopra
(Proprietor)”

Encl. As above.

5. The case was made out by the assessee was not found acceptable and addition of Rs. 2,43,67,400/- under Section 56(2)(viib) of the Act was made by the Ld. AO. Learned CIT(A) allowed the appeal preferred by the assessee on the ground that no allotment of share on premium was shown by the appellant for the year under consideration. Therefore, no transaction took place. While doing so, the Ld. CIT(A) observed as follows:

*“3.4 The appellant had taken plea that he had neither received any share premium nor allotted any share on premium in the relevant assessment year. In support of his case, the appellant has relied on the decision of ITAT Mumbai in the case of Green Infra Ltd vs Income Tax Officer 2013 (12) TMI 949 ITAT Mumbai. This case has no applicability to the appellant's case as the appellant has neither received any share premium nor allotted any share on premium in the relevant assessment year. The appellant has also submitted financial statement for the year ended 31st March 2013. I have carefully gone through the said statement. I have also carefully examined the balance sheet as on 31.03.2013 and also on 31.03.2012. It is clear from the above verification that no such allotment of share on premium was done by the appellant. Thus, it is apparent from the document so submitted by the appellant that no such transaction had taken place in the said relevant year so the addition made by the AO on this issue can't be sustained for the assessment year in question. Thus, in light of the above facts, the addition so made by the AO is hereby deleted in full and accordingly, these grounds of appeal are hereby **allowed.**”*

6. Having heard the learned counsel appearing for the parties and having regard to the facts and circumstances of the case and particularly upon examining the documents filed before us, we find that when there was no allotment of any share on premium in the relevant assessment year, therefore, no transaction had taken place. The order of the addition made by the Ld. AO is, thus, not sustainable in the eyes of law. Keeping in view of the matter, this particular aspect of the matter and applying the judgment passed by the Hon'ble

ITAT, Mumbai Bench in case of Green Infra Ltd. Vs. ITO 2013 (12) TMI 949 (ITAT Mumbai), in our considered opinion, the Learned CIT(A) rightly deleted the addition without any ambiguity so as to warrant interference. Hence, appeal preferred by the Revenue is, thus, found to be devoid of any merit and dismissed.

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

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on .06th Sept. 2022.

Sd/-
(B.M. Biyani)
Accountant Member
Indore, 06th September, 2022
Tanmay, Sr.PS/S. K. Sinha, Sr.PS **True Copy**
Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-
(Madhumita Roy)
Judicial Member

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	11.08.2022 & 05.09.2022
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	