

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “G”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.923/M/2022
Assessment Year: 2008-09**

M/s. Zarco Realities Pvt. Ltd., 3, Ground Floor, B Wing, Trade World, Kamala Mill City, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 PAN: AAACP6265H	Vs.	Commissioner of Income Tax (Appeals)-48, 7 th Floor, Pratyakshakar Bhavan, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Satyapal Kumar, D.R.

Date of Hearing : 21 . 09 . 2022
Date of Pronouncement : 31 . 10 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Zarco Realities Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 08.04.2022 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2008-09 on the grounds inter alia that :-

“1. The Learned AO has erred in law and facts in re-opening the assessment u/s. 147 of the Act and the Honourable CIT Appeal has erred in law and facts in confirming the Reopening of Assessment.

2. Appellant craves leave to add to, amend, alter and/or delete any of the forgoing grounds of appeal any time on or before the hearing of the appeal or during the course of hearing.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: assessee is into the business of investment and related activities and earning from capital gain, dividend and interest income. Assessee filed its original return of income for A.Y. 2008-09 at Rs.2,84,220/-, which was reopened under section 147 of the Income Tax Act, 1961 (for short ‘the Act’). During the scrutiny proceedings Assessing Officer (AO) noticed that the assessee is an unlisted company and the nature of share application received i.e. intrinsic value of share in comparison to the excess premium received, is not substantiated. After collecting information from the public domain that share process of M/s. M.K. Ltd. was fluctuating heavily during the relevant period, assessee has taken the market value of share of M.K. Ltd. on 01.01.2008 at Rs.320/- per share whereas since 23.01.2008 its share price was hovering around Rs.30/- per share. AO after recording the reasons reopened the assessment after initiating the proceedings under section 147/148 of the Act. Declining the contentions raised by the assessee AO proceeded to make the addition of Rs.3,13,35,000/- brought in by the assessee in its books of account as share capital and share premium, on its failure to satisfactorily explain under section 68 of the Act and thereby framed the assessment under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition on merits by partly allowing the appeal. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. Initially for two dates the assessee has sent letters requesting adjournment which were allowed. Thereafter none appeared on behalf of the assessee despite taking next dates. It appears that assessee is not interested in prosecuting the present appeal. So the Bench has decided to dispose of this appeal on the basis of documents available on file with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. Before the Tribunal the sole ground raised by the assessee is that the AO has erred in law and facts in reopening the assessment under section 147 of the Act and Ld. CIT(A) vide impugned order has also erred in confirming the reopening of assessment. This ground was also raised by the assessee before the Ld. CIT(A) who has decided the same against the assessee by returning following findings:

“7. Decision on Gr. No.1: I have carefully considered the submission of the assessee in the light of facts on records and the findings of the AO. My findings are as under:

7.1 The AO has observed from the assessment record that during the year under consideration, the assessee has shown receipt of share premium amounting to Rs.3,13,35,000/-. According to the AO, since there was no scrutiny assessment u/s 143(3) took place in this year,

the share premium having been received by the assessee was not examined. In the opinion of the AO, since the assessee is an unlisted company and the nature of the share application, received (the intrinsic value of the share in comparison to the excess premium received) is not substantiated. Therefore, in order to examine the issue of share premium, a notice u/s 133(6) of the LT. Act 196] was issued to the assessee, on 28.03.2014. As per the valuation statement submitted by the assessee, it had valued of its share on the basis of market valuation of 35,92,310 shares of M/s Emco Ltd., held it on the date of receipt of share application/premium. The assessee has taken the Market value of shares of M/s Emco Ltd. on 1.1.2008 at Rs. 320/- per share. Details gathered from the website of moneycontrol.com, heavy fluctuation in the shares are found during the period Jan., 2007 to Jan., 2008.

7.2 According to the AO, the volume of shares traded during the relevant period i.e. in and around the date of share premium received by the assessee, were very minimal which has created doubt whether there was deliberate rigging of market prices of shares. Hence, in the opinion of the AO, the valuation of shares for the purpose of share premium, which was primarily-based on the market value of share of M/s Emco ltd. on 01.01.2008, did not appear to be justified. Accordingly, the case of the assessee was re-opened by-issue of notice u/s 148 dated 30.03.2015. after duly recording the reasons for reopening.

7.3 In my opinion, the AO has got reason to believe that income has escaped assessment. At the stage of re-opening of the assessment, only prima-facie believe should be there at the level of the AO, as held by various courts and not the conclusive one. Moreover, no scrutiny assessment u/s 143(3) has been passed in this case. Hence, there is no question of change of opinion. Considering the totality of the facts and circumstances of the issue involved, it is held that the AO has correctly reopened the assessment u/s 147 of the IT. Act. Hence, the ground of appeal no. 1 is dismissed.”

7. We have perused the findings returned by the Ld. CIT(A) who has duly thrashed the facts by taking into account the human probabilities and found the entire transactions undertaken by the assessee doubtful in the light of the heavy fluctuation in the shares during the period January 2007 to January 2008 which is at the rate of 30% per share but the assessee has taken the value of the share at the rate of Rs.320/-. When the assessment of the assessee was not concluded under section 143(3) of the Act there was no question of

change of opinion. Assessee has not preferred to appear before the Bench despite appearing twice before the Tribunal for the reason best known to him and it appears that the assessee is not interested in prosecuting the present appeal, hence, we find no scope to interfere into the findings returned by the Ld. CIT(A).

8. Resultantly, the appeal filed by the assessee is hereby dismissed.

Order pronounced in the open court on 31.10.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.10.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.