

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.5893/Del./2019
(ASSESSMENT YEAR : 2012-13)**

DCIT, Circle 23 (1),
New Delhi.

vs.

Shri Balaji Infradevelopers Pvt. Ltd.,
TA-121, 2nd Floor, Tughlakabad Extn.,
Main Okhla Road,
New Delhi – 110 002.

(PAN : AAMCS6375H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Abhishek Kumar, Sr. DR

Date of Hearing : 08.12.2022

Date of Order : 05.01.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id. CIT (Appeals)-34, New Delhi dated 17.04.2019 for the assessment year 2012-13.

2. The grounds of appeal taken by the Revenue read as under :-

“1. Whether on the facts and circumstances of the case and in law, Ld. CIT (A) has erred in deleting total addition of Rs.3.08 cr out of total addition of Rs.3.20 cr. Without having sufficient details to prove the creditworthiness and genuineness of the transaction w.r.t. share premium.

2. Whether on the facts and circumstances of the case and in law, Ld. CIT (A) has erred in accepting the valuation of share on premium on the basis of profit earning capacity value method and

the future cash profit or merely on the cash flow of the company which was not in accordance with the Rule 11UA of Income Tax Rules, 1962.”

3. Assessing Officer in this case noted that on examination of the balance sheet, he observed that during the year, assessee has received share application money including share premium amounting to Rs.3,20,00,000/- from the different persons/entities. Assessee was asked to furnish the address and PAN of the parties. However, no details were submitted before the AO. Assessee was also asked to furnish copy of ITR, balance sheet, financials and bank statement of share applicant persons but no compliance was made by the assessee. Hence, AO added the sum received as unexplained credits.

4. Upon assessee's appeal, Id. CIT (A) began discussion of the submissions of the assessee. After elaborate referring to the same, he noted that the assessee has submitted various documents and submissions. Thereafter, Id. CIT (A) remembered that these were additional evidences and he has mentioned that a remand report was called for from the AO. He made some cursory remark of the AO's objection as under :-

“In the remand report, AO has objected in the admission of additional evidences. The AO has submitted that appellant has not taken any valuation report in respect of the share allotment and this process has been done as per mutual understanding between both the parties. The appellant allotted shares to Mr. Vishal Gupta, Mrs. Rashmi Gupta, Mr. Vineet Aggarwal, Mrs. Sumita Aggarwal, Mr. Zeeshan Ali and Mrs. Rakshanda Javi, whereas allotment to M/s Vision Venture Ltd. and M/s Narayani Infratel was made at a premium of Rs.990/-. Hence the provisions of section 56(2)(vii) are clearly attracted in this case. Further, appellant has received payment in cash from the existing shareholders at Rs. 12 lacs. Thus appellant has not discharged the onus with respect of share capital I premium as per provisions of section 68 of the IT Act.”

Thereafter, ld. CIT (A) again started the narration of assessee's case and the documents submitted, but nowhere there was a mention that ld. CIT (A) has factually examined the submissions.

5. Against the above order, Revenue is in appeal before us. Despite several notices, none has appeared on behalf of assessee. Notices have returned unserved. Hence we are adjudicating after hearing the ld. DR for the Revenue and perusing the records.

6. As already noted above, nothing was submitted before the AO and ld. CIT (A) has mentioned that he has remanded the matter to the AO only after elaborating discussing the assessee's case. There is no mention that after his own examination of factual aspects, he is dismissing the AO's objection. In these circumstances, in our considered opinion, ld. CIT (A)'s deletion of addition is not legally sustainable. In our considered opinion, interest of justice would be served if the matter is remitted back to the AO. AO is directed to decide the issue afresh in the light of the submissions which were considered by the ld. CIT (A) on which AO's comments are not available. Needless to add, assessee should be granted adequate opportunity of being heard.

6. In the result, this appeal filed by the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on this 5th day of January, 2023.

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 5th day of January, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-34, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.