

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.6556/Del/2019
Assessment Year : 2013-14

ITO,
Ward-7(3),
New Delhi.

Vs. Diethelm Travel India Pvt. Ltd.,
WP-501/A, 2nd Floor,
Rohini Complex,
Shiv Market,
Ashok Vihar Phase-1,
New Delhi.

PAN: AACCD6610J

(Appellant)

(Respondent)

For Revenue : Shri Gurpreet Shah Singh, Sr. DR
For Assessee : None

Date of Hearing : 10.01.2023
Date of Pronouncement : 12.01.2023

ORDER

PER SHAMIM YAHYA, A.M.:

This appeal by the Revenue is directed against the Order of the
Ld. CIT(A)-34, New Delhi, dated 24.05.2019 and pertains to A.Y. 2013-14.

2. The grounds of appeal read as under:-

"1. On the facts and in the circumstances of the case and in law the Id.CIT(A) has erred in deleting the addition of Rs.1,87,60,000/- made by the AO on account of unexplained cash credit u/s 68 of the IT Act, 1961.

2. The appellant craves leave to add, alter or amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

3. The assessee in this case is engaged in the business of arranging inbound and outbound package tour and other correlated business activities including booking of tickets. On perusal of the assessee's financial records, the AO noticed that in the year under consideration the share capital was increased by Rs.1,87,60,000/-, i.e., 1870 shares of Rs.1000/- each. The AO asked the assessee to submit Form-2 (allotment of shares) filed before the RoC. The assessee was unable to submit Form-2 regarding allotment of shares. Considering that no information was provided by the assessee's representative and the same was admitted, vide order sheet entry dated 18.03.2016, the total amount received for increase of share capital was considered by the AO as unexplained cash credit u/s 68 of the Act and added to the income of the assessee. Upon assessee's appeal, the Id.CIT(A) noted the following submissions of the assessee:-

"5.1 During the course of appellate proceedings, appellant has submitted that an addition of Rs. 1,87,60,000/- made by the AO as unexplained cash credit u/s 68 due to increase in preference share capital i.e. 18760 shares of Rs.1000/- each. The appellant company passed resolution for allotment of shares to NRI companies who are the major share holder of the appellant company i.e. Diethelm Travel Ltd. Thailand (holding company) and M/s Globex Corporation Ltd. The payment amounting to Rs. 1,87,60,000/- was received from Globex Corporation Ltd. through banking channel. M/s Globex Corporation Ltd., NRI company having its registered office Bangkok, therefore the identity of the foreign investor is established. The AO himself has accepted the similar share capital in the earlier AYs 2009-10 and 2011- 12 u/s

143(3). The appellant has enclosed the certificate of incorporation of M/s Globex Corporation Ltd., confirmation letter and financial statement of Globex Corporation Ltd. in support of its contention."

4. The Id. CIT(A) considered the above and accepted the veracity thereof. He noted that the AO has been asked to give a remand report, but, the AO objected to admitting the additional evidences. He noted that the AO has not examined the identity, credit worthiness and genuineness of the transaction as per the provisions of section 68 of the Act and made the addition. He noted that rather, the AO has treated the investment in share capital as unexplained on the basis of non-furnishing of Form 2 and on the basis that the assessee has not filed the share certificates in respect of the shares issued. The Id.CIT(A) proceeded to hold that sufficient evidence have been filed to prove the identity, credit worthiness and genuineness of the transaction. Accordingly, he directed that the addition be deleted. The order of the Id.CIT(A) in this regard can be gainfully referred as under:-

"5.2 I have considered the facts of the case, finding of the AO and submissions of the appellant. During the year under consideration, appellant has issued 31817 preference shares to M/s Globex Corporation Ltd. and 33116 preference shares to M/s Diethem Travel Ltd. Thailand. The AO has made the addition in respect of 18760 shares issued to' M/s Globex Corporation Ltd. during the year as appellant has failed to furnish Form No. 2 in support of allotment of shares./ The appellant has filed Form No. 2 in respect of shares issued to M/s Diethem Travel Ltd. and M/s Globex Corporation Ltd. The remand report is called for from the AO in which he has objected for admitting the additional evidences. The appellant has filed the copy of bank account in which it has reflected that appellant has received the amount from M/s Globex Corporation Ltd. on 5th May, 2012 and 7th June, 2012 amounting to Rs.1,30,57,167/- and Rs. 1,87,60,459/-

respectively in respect of 13057 shares and 18760 shares. The appellant has filed the bank certificate of M/s Globex Corporation Ltd. for making payment of Rs.1,87,60,459/- in respect of issuance of 18760 shares in support of its contention. The AO has not examined the identity, creditworthiness and genuineness of the transaction as per the provisions of section 68 and made the addition in respect of part of the shares issued to Globex Corporation Ltd. The appellant has issued 31817 shares to M/s Globex Corporation Ltd. during the year whereas AO has treated investment in share capital unexplained in respect of 18760 shares only on the basis of non furnishing of Form 2. The appellant has filed the share certificate in respect of shares issued to M/s Globex Corporation Ltd. confirmation letter, financial statement and copy of certificate of incorporation of M/s Globex Corporation Ltd, and certificate evidencing that payment received through banking channel by the appellant. Since appellant has received share capital / share application from NRI and it has furnished sufficient evidences to prove identity, creditworthiness and genuineness of the transaction and also filed Form 2 in support of allotment of shares, AO is not justified in disallowing the share capital of Rs. 1,87,60,000/- without bringing any adverse evidence on record. Considering the above facts, addition made by the AO at Rs. 1,87,60,000/- is not sustainable and it is hereby deleted.”

5. Against the above order, the Revenue is in appeal before us.
6. We have heard the Id. DR and perused the record. None appeared on behalf of the assessee despite several notices. Notices have returned unserved and notice was also served through the office of Id. DR. Hence, we proceed to adjudicate the issue by hearing the Id.DR and perusing the record. We note that the assessee has not submitted any document in respect of the increase in share capital before the AO. The documents were filed before the CIT(A) who wanted a remand report from the AO. On AO's objection to the admission of additional evidence, he proceeded to hold that the AO has not

examined the identity, credit worthiness and genuineness of the transaction, but, he has disallowed the transaction only for lack of Form-2. We find that the powers of the CIT(A) are coterminous with that of AO. If examination was not done by the AO, it was incumbent upon the Id.CIT(A) to do the same himself. Accordingly, in the interest of justice, we remit the issue to the file of AO. The AO is directed to decide the issue afresh in the light of the additional evidences submitted and submissions made before the Id.CIT(A) and, thereafter, pass an order as per law. Needless to add, the assessee should be granted adequate opportunity of being heard.

7. In the result, this appeal by the Revenue is allowed for statistical purposes only.

Order pronounced in the open court on 12.01.2023.

Sd/-

[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Dated, 12th January, 2023

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Copy to:

1. The appellant
2. The respondent
3. Ld. CIT(A) concerned
4. CIT concerned
5. DR ITAT "A" Bench, Delhi
6. Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.