

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 1158/MUM/2020
Assessment Year: 2009-10

Income-tax Officer-9(3)(3),
Room No. 471, 4th floor,
Aayakar Bhavan, Churchgate,
Mumbai-400020.

Vs.

M/s Geetamrut Agro Estate
Pvt. Ltd.,
(1) Shop No. 21, Anuradha
Society, IRLA Bridge, Next to
Fire Bridge, Andheri West,
Mumbai-400058.
(2) Shop 11, Suncity Garden,
Varse, Roha, Railgad,
Maharashtra-402109.

PAN No. AADCG 1701 C
Respondent

Appellant

Revenue by : Shri Sanyam Suresh Joshi, DR
Assessee by : Shri Mani Jain

Date of Hearing : 16/12/2022
Date of pronouncement : 06/02/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 29.11.2019 passed by the Ld. Commissioner of Income-tax (Appeals)-16, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2009-10, raising grounds as reproduced under:



Whether on the facts, and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made U/S.68 of the Act overlooking the facts established by the AO in the assessment order that investors have no means during the year under consideration and its claim of sources of money from Principal Mutual Funds and its genuineness is doubtful?"

Whether on the facts, and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition without appreciating the fact that merely furnishing of Income tax return and CIN/PAN of the investors do not prove the creditworthiness and genuineness of transaction in absence of supporting financial documents/statements during the assessment proceedings and the appellate proceedings?"

2. Briefly stated, facts of the case are the due to non-filing of regular return u/s 139(1) of the Income-tax Act, 1961 (in short 'the Act') by the assessee, the Assessing Officer issued notice u/s 148 of the Act dated 30.03.2014 after recording reasons to believe that income escaped assessment. In response, the assessee filed return electronically on 03.09.2014 declaring loss of ₹11,781/-. During reassessment proceedings, the Assessing Officer asked the assessee to explain source of share premium received by the assessee company @ ₹1800/- per share on allotment of 10408 shares having face value of ₹10 per share. The assessee responded that in view of future prospectus in the field of contract farming, horticulture etc. and the projections made to the investors, the assessee charged premium and invited share capital from two entities namely M/s Vinamra Universal Traders Pvt. Ltd. and Greenary Sez Infrastructure Pvt. Ltd. for 9390 and 1018 shares respectively. The



Assessing Officer issued notice u/s 133(6) of the Act to both the parties. In response to which both the parties filed the details including financial statement and explained that share application money was sourced through sale of principal mutual fund. The Ld. Assessing Officer however, rejected the contention of the assessee in view of high share premium charged and observation that part of financial statement not filed by one of the investor namely M/s Greenary Sez Infrastructure Pvt. Ltd. On further appeal, the Ld. CIT(A) after analyzing the submissions of the assessee held, **firstly** that proviso to section 68 (which creates an obligation on the issuing company to explain the source of share capital and premium) has been introduced by the Finance Act, 2012 w.e.f. 01.04.2013 and does not have retrospective effect, relying on the decision of the Hon'ble Bombay High Court in the case of **CIT v. Gagandeep Infrastructure Pvt. Ltd. (ITA No. 1613 of 2014)**. **Secondly**, he observed that assessee has discharged his onus u/s 68 of the Act. The relevant finding of the Ld. CIT(A) is reproduced as under :

“6.1.6 Further, from the documents and the details submitted by the appellant company during the assessment proceedings and the appellant proceedings, it is observed that the almost all the documents has been submitted by the appellant company. The Appellant Company has provided investors Income Tax Return, acknowledgments with PAN numbers, copies of their bank account to show that the entire amount had been paid through normal banking channels, Copy of FROM No.2, Copy of FROM NO.23 AC/ 23ACA, share certificate, Board resolution copy and minutes of approving the



approval of equity shares and hence when the appellant has furnished all the relevant details of shareholders and shareholders were existing.

6.1.7 As per the provision of sec 68 of the IT Act, primarily trio is required to discharge by the appellant company, the same is analyzed hereunder:

1. IDENTITY - It is noted that investor companies from which the appellant company has been received the share application money has a valid CIN and PAN number. Further, both the investor companies has properly filed their income tax returns.. Further, they represent before the Ld. AO in response to the notice issued us 13316) of the IT Act.

2. CREDITWORTHINESS:- - It is noted that both the investor companies has been in the business of investment. Further, from the financial statement of both the companies, it is established that Investor Company has net owned capital and some borrowings also. Also, it is noticed that both the companies has invested small portion of their overall funds.

3. GENUINENESS OF TRANSACTION: - In this regard, it is clearly seen from the bank statement that all the shares were transferred through the banking channel only. Further, it is notice from the assessment order that the Ld. AO has agreed with the share valuation DCF method. Further, the project prepared by the appellant company is related to the contract farming, horticulture and development of real estate and the appellant company has been in the same line of business and having expertise in the field. All the transaction was made purposefully as investor have the benefit of investing such a company who has project and expertise to execute the project properly.

6.1.8 Therefore, the appellant company has discharged the initial onus under Section 68 of the Act, for establishing the credibility and identity of the shareholders.”

2.1 Further, the Ld. CIT(A) observed that the Assessing Officer has conducted inquiries however nothing found adverse and therefore,



he was not justified in making the addition u/s 68 of the Act. The relevant observation of the Ld. CIT(A) are reproduced as under:

“6.1.11 In the present case, the A.O. had conducted enquiry which revealed that:

i. The enquiries and documents revealed that the investor companies had filed their income tax returns regularly, which would show that the investors did have the proper identity and eligible to invest funds for purchase of shares at a premium.

ii. The enquiries conducted by AO and material on record also specify that the investors has paid such heavily premium just because of getting major shareholding in the appellant company and simultaneously appellant company has invested in that project for the purpose of which taking such new investment.

iii. It is to be holed that the Ld. AO has also accept the rate at which share premium is being received by the appellant company.”

3. Aggrieved with the above finding of the Ld. CIT(A), the Revenue is in appeal raising the grounds as reproduced above.

4. Before us, the Ld. Counsel of the assessee has filed a paperbook containing pages 1 to 136 which interalia include submissions filed before the Assessing Officer, remand report etc.

5. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. In the ground raised, the Revenue has challenged the finding of the Ld. CIT(A) mainly on the ground that source of investment and no creditworthiness or genuineness has been established. From the



order of the lower authorities and the submissions filed, we find that both the investor parties are having valid PAN Number and notice issued u/s 133(6) of the Act have been duly responded by both the investors and therefore, identity of those two investors is not in doubt. As far as source of money invested in the shares of the assessee-company is concerned both the parties have intimated that same was out of principal mutual funds. The Assessing Officer has not found anything wrong in the said source explained by those share investors. The assessee has justified the amount of the share premium by way of filing valuation report of a Chartered Accountant, a copy which is available on paperbook page No. 54 to 56. The valuer has made valuation following the discounted cash flow method. Both the share investors have filed their financial statement, the AO however observed that balance sheet and profit and loss account along with audited report was not filed in the case of the Greenary Sez Infrastructure Pvt. Ltd. However, he find that same were again filed before the Ld. CIT(A). In the remand report, the Assessing Officer has accepted that all the documents were duly filed during the course of assessment proceedings and therefore, the basis of the Assessing Officer in the assessment order for justifying the addition due to non-filing of balance sheet; profit and loss account of investor is not correct. In view of the above, in our opinion, the finding of the Ld. CIT(A) on the issue-in-dispute do not



require any interference. Accordingly, we uphold the same. The grounds of appeal of the Revenue are accordingly dismissed.

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

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 06/02/2023.**

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 06/02/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai