

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 4289/MUM/2019
(Assessment Year: 2008-09)

ITA No. 4290/MUM/2019
(Assessment Year: 2009-10)

Income Tax Officer-6(2)(1), Mumbai
5th Floor, Room No. 510, Aayakar Bhavan,
M.K. Road, Mumbai - 400020 Appellant

M/s Champaklal and Brothers Pvt. Ltd., Vs
Anchor House, Office No. A/8, 1st Floor,
Ganpati Baugh, Tokershijivaraj Road,
Sewri (West), Mumbai - 400015
[PAN: ABSPR2881H] Respondent

Appearances

For the Appellant/Department : Shri Dilip K. Shah,
For the Respondent/Assessee : Dr. K. Shivram & Rahul Hakani

Date of conclusion of hearing : 03.01.2023
Date of pronouncement of order : 28.02.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are 2 appeals arising from the order dated 22.03.2019, and 25.03.2019 passed by the Ld. Commissioner of Income Tax (Appeals) – 12, Mumbai [hereinafter referred to as ‘the CIT(A)’] in appeal for the Assessment Year 2008-09 and 2009-10, respectively. Since the appeals involve common issues the same were heard together and are being disposed by way of a common order.

2. ITA No. 4289/Mum/2019
We would first take up appeal for the Assessment Year 2008-09

which has been preferred by the Revenue challenging the order, dated 22.03.2019, passed by the CIT(A) for the Assessment Year 2008-09, whereby the Ld. CIT(A) had partly allowed against the Assessment Order, dated 16.03.2016, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The Revenue has raised the following grounds in the Appeal

1. *Whether on the facts and circumstances of the case and in law, the Ld. CITs(A) was justified in deleting the addition of Rs. 5,70,78,750/- u/s 68 of the Act in the assessment order passed u/s 143(3) r.w.s. 147 dated 16/03/2016, being share capital share premium received during the year when the Assessing Officer held the same as unexplained cash credit?*
2. *The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored."*

4. The Assessee has filed Application under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 raising following grounds:

"Notice U/s. 148 of the Act is bad in law.

1. *The Id. CIT(A) failed to appreciate that there was no reason to believe to reopen the Assessment beyond 4 years as there was full and complete disclosure of facts prior to issue of notice u/s. 148 and therefore the notice u/s. 148 dt. 23/3/2015 issued beyond the period of four years from the end of relevant Assessment year is bad in law and in gross violation of the provisions of the Act.*
2. *The learned CIT(A) failed to appreciate that reopening is bad in law as complete copy of recorded reasons were not provided to the Assessee which is in violation of law.*
3. *The learned CIT(A) failed to appreciate the reopening is*

bad in law as purportedly no sanction u/s. 151 is obtained prior to reopening of assessment and if any sanction is obtained then such sanction is mechanical in nature and thus reopening is bad in law.

5. The relevant facts in brief are that the Assessee, a domestic company, filed its return of income for the Assessment Year 2008-09 on 03.10.2008 declaring loss of INR 6,12,380/-. The return filed by the Appellant was processed under section 143(1) of the Act. Subsequently, re-assessment proceedings are initiated against the Assessee and notice under Section 148 of the Act was issued on 23/03/2015 after recording reasons in writing for reopening the assessment. In response to the notice issued under Section 148 of the Act, the Assessee submitted that the return of income filed be treated as return filed in response to notice issued under Section 148 of the Act. A copy of the reasons recorded in writing was provided to the Assessee by the Assessing Officer. The Assessee filed objections before the Assessing Officer vide letter, dated 20/01/2016 which were rejected by the Assessing Officer vide order, dated 29/01/2016. Thereafter, Assessing Officer proceeded to complete the assessment under section 143(3) read with Section 148 of the Act vide order, dated 16/03/2016 at total income of INR 5,74,48,193/-, after making addition of INR 5,70,78,750/- in respect of share capital and share premium under section 68 of the Act holding the same to be cash credit.
6. Being aggrieved, the Assessee carried the issue in appeal before the CIT(A) who, vide order dated 22/03/2019, was pleased to delete the above addition of INR 5,70,78,750/- made by the Assessing Officer under Section 68 of the Act.

Therefore, the Revenue is now in appeal before us against the relief granted by the CIT(A).

7. We have considered the rival submissions and perused the material on record. The Assessee is a closely held company incorporated on 08/10/1951. The ownership and management of the Assessee vested with Mr. Surendernath Juneja , Mr. Vivek Juneja, Mr. Kamal Juneja, and Mr. Manoj Juneja (hereinafter referred collectively referred to as '*the Juneja Family*') since 15/10/1993. The Assessee owned an immovable property known as Anchor House situated on a leasehold land admeasuring 3665 Sq. Yards with factory premises in a building known as Ganpati Bagh situated at Sewari Road, Parel, Mumbai (hereinafter referred to as '**the Property**'). In 2006, the family moved the Manufacturing operations to Navi Mumbai and dispose the Property after repayment of existing liabilities to take care of the financial requirements. The Juneja Family negotiated terms with Sanghvi and Chheda Family (hereinafter referred to as '**the New Shareholder**') for transfer/allotment of shares of the Assessee. The New Shareholders made the following payments towards share application during the Assessment Years 2007-08, 2008-09 and 2009-10.

Sr. No.	Name of Applicant	Assessment Year			Total
		2007-08	2008-09	2009-10	
1	Ketan D. Sanghvi	6,887,500	13,656	6,531,250	27,075,000
2	Alpa K. Sanghvi	7,362,500	15,318,750	4,393,750	27,075,000
3	Maniben P. Chheda	3,325,000	8,550,000	15,200,000	27,075,000
4	Ritesh P Chheda	1,068,750	11,637,500	14,368,750	27,075,000
5	Mukesh P. Chheda	1,900,000	9,143,750	16,031,250	27,075,000
	Total	20,543,750	58,306,250	56,525,000	135,375,000

8. For the purpose of valuing the shares of the Assessee, the Juneja Family obtained valuation certificate from an independent valuer (i.e. M/s Anmol Sekhri & Associates) determining the value of the Property as on 31/03/2008. Taking the aforesaid value as the value of the Property, the net worth of the Assessee was determined at INR 19,00,54,203/- with INR 4,751/- as per share value. As per Share Purchase Agreement, dated 30/04/2008, the control and management of the Assessee was handed over by Juneja Family to the New Shareholders as the Juneja Family transferred its shareholding in the Assessee to the New Shareholders at a consideration of INR 4,750/- per share. Further, fresh shares were also allotted to the New Shareholders at the value of INR 4,750/- per share against the share application money of INR 13,53,75,000/- received by the Assessee during the Assessment Years 2007-08 (INR 2,05,43,750/-), 2008-09 (INR 5,83,06,250/-) and 2009-10 (INR 5,65,25,000/-).
9. During the assessment proceedings for the Assessment Year 2008-09, the Assessing Officer noted that the balance sheet of the Assessee as on 31/03/2008 reflected receipt of share application money of INR 5,70,78,750/-. The Assessing Officer, therefore, issued notice under Section 133(6) of the Act to the New Shareholders on 08/02/2016 asking them to provide specified information/details regarding the transaction. The Assessing Officer also issued a show cause notice dated 08/02/2016 to the Assessee asking the Assessee to justify the genuineness of the transaction of receipt of share application money. In response the Assessee submitted that no shares are allotted/issue during the Previous Year 2007-08 relevant to the

Assessment Year 2008-09 and furnished the information/details regarding allotment of shares at a premium during the Previous Year 2008-09 relevant to Assessment Year 2009-10. It was explained by the Assessee that the Assessee owned the Property and its value was factored in while determining the value of shares by the Net Asset Valuation (NAV) method. The transfer of shares by Juneja Family, who were existing shareholder to the New Shareholders as well as allotment of fresh shares to New Shareholders was done at the same value of INR 4,750/- per share. The Assessee filed with the Assessing Officer the income tax return acknowledgement and computation of income of the Juneja Family for the Assessment Year 2009 – 10 showing that the capital gains income arising from transfer of the shares of the Assessee has been offered to tax. Further, in order to prove identity and creditworthiness of the New Shareholders and genuineness of the transaction, the Assessee submitted complete details of names and addresses of the New Shareholder, Copy of Share Application, Details of Share Application money received, Copy of the board resolution, dated 10/08/2008, wherein the transfer of shares was approved by the Board of Directors, Copy of confirmations received from New Shareholders, a copy of bank statement of New Shareholder highlighting entries showing payment of share application money and corresponding entries in the bank statement of the Assessee, the income tax return acknowledgement along with computation income of the New Shareholders, Valuation Report dated 31/03/2008 issued by M/s Anmol Sekhri & Associates, and returns filed with registrar of companies It was submitted by the Assessee that the valuation of shares was at Fair Market Value determined in terms of provisions of Rule 11 UA of the Income Tax Rules, 1962.

However the assessing officer was not convinced with the explanation/documents furnished by the Assessee. Taking into account the history of the business carried on by the Assessee, the Assessing Officer held that the intrinsic value the share was at its lowest in view of the business not been carried on by the Assessee the Assessing Officer rejected Net Asset Value method for valuation of shares and adopted Earning Per Share method to value shares at 'Nil'. Thus, the Assessing Officer made an addition of INR 5,70,78,750/- holding the entire amount of share application money received by the Assessee during the relevant previous year as unexplained cash credit in terms of Section 68 of the Act.

10. In appeal preferred by the Assessee, the CIT(A) deleted the aforesaid addition. The CIT(A) agreed with the Assessee and rejected value of the shares computed by the Assessing Officer on the basis of profit earning capacity of the Assessee. The CIT(A) held that shares of the Assessee were to be valued after taking into account the underlying assets, and therefore, accepted the valuation of shares done by adopting Net Asset Value method. He concluded that on analysis of the facts and circumstances of the case, it could be seen that the New Shareholder did not purchase/subscribe to share of the Assessee for the profit it would generate but for the value of the Property owned by the Assessee which was a prime land. The CIT(A) also noted that the addition was not sought to be made by the Assessing Officer under Section 56(2)(viib) of the Act since the provision were inserted with effect from 01.04.2013 by the Finance Act, 2012. Therefore, the provisions of Section 56(2)(viib) read with Rule 11A were not applicable. The CIT(A) observed that in paragraph 7.2 of the Assessment

Order, the Assessing Officer had relied upon a general modus operandi of introduction of unaccounted money in the form of unsecured loan and share capital which was not applicable to each and every case of issue/allotment of shares. The CIT(A) also took note of the fact that in response to notice issued under Section 133(6) of the Act relevant details/documents, which included details of investors, income tax return, bank account statements, share application, details of share application money receipts, returns filed with Registrar of Companies and confirmations, were filed before the Assessing Officer. The source of capital of New Shareholders was disclosed to be loan taken to be New Shareholders. The aforesaid documents/details established identity and creditworthiness of the New Shareholders as well as genuineness of the transactions. However, the Assessing Officer merely brushed aside the aforesaid evidences without bringing on record any material to support applicability of provisions of Section 68 of the Act. The CIT(A) further observed that the very fact that shares were issued to the New Shareholder at a premium showed that the money introduced by way of share capital did not belong to the Assessee. The CIT(A) supported the aforesaid observations by stating that the Assessee did not have sufficient earnings to support the alleged unaccounted income relying upon the findings of the Assessing Officer that the Assessee did not have any substantial earnings. The CIT(A), thus, deleted the addition of INR 5,70,78,750/- made by the Assessing Officer under Section 68 of the Act and granted relief to the Assessee.

11. We concur with the above findings/reasoning given by the CIT(A). On perusal of record we find that during the assessment

proceedings, the Assessee had provided all the necessary/relevant details and documents to establish identity and creditworthiness of the New Shareholders, and the genuineness of the transaction of receipt of share application money followed by the allotment of shares. The notices issued under Section 133(6) of the Act were also complied with. The Assessee had also explained that high share premium was charged on account of high market value of the Property owned by the Assessee as on 31.03.2008 determined by an independent valuer and this fact was not disputed by the Assessing Officer. No deficiencies were pointed out by the Assessing Officer in any of the documents/details furnished by the Assessee. However, the Assessing Officer brushed aside the details/documents furnished by the Assessee without assigning any cogent reasons. The CIT(A) was justified in deleting the addition of INR 5,70,78,750/- made by the Assessing Officer under Section 68 of the Act. There is nothing on record to controvert the findings/reasoning of the CIT(A) and/or to support the case of the Assessing Officer that the transaction undertaken by the Assessee is hit by the provisions of Section 68 of the Act. Accordingly, we do not find any infirmity with the order passed by the CIT(A). Ground No. 1 and 2 raised by the Revenue in appeal are dismissed. In view of the aforesaid, application moved by the Assessee under Rule 27 of the Income Tax Appellate Tribunal Rules, 1962 is disposed off as being infructuous.

ITA No. 4290/Mum/2019

12. We would now take up appeal for the Assessment Year 2009-10 which has been preferred by the Revenue challenging the order, dated 25.03.2019, passed by the CIT(A) for the

Assessment Year 2009-10, whereby the Ld. CIT(A) had partly allowed against the Assessment Order, dated 31.03.2015, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

13. On perusal of the grounds raised by the Revenue in appeal, we find that the grounds raised are identical to the ground raised in the appeal for the Assessment Year 2008-09 with the only difference being that during the Assessment Year 2009-10 addition under Section 68 of the Act was made by the Assessing Officer in respect of share application money of INR.5,65,25,000/-. Since in both the assessment years, the facts and circumstances in which additions were made are identical, our adjudication/finding while disposing appeal for the Assessment Year 2008-09 shall apply mutatis mutandis to appeal for the Assessment Year 2009-10. Accordingly, Ground No. 1 and 2 raised by the Revenue in the present appeal are dismissed. In view of the aforesaid, application moved by the Assessee under Rule 27 of the Income Tax Appellate Tribunal Rules, 1962 is disposed off as being infructuous.
14. In result, the appeals preferred by the Revenue for the Assessment Year 2008-09 and 2009-10 are dismissed.

Order pronounced on 28.02.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.02.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai