

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष**  
**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.565/Kol/2020**  
Assessment Year: 2012-13

**ITO, Ward-2(1), Kolkata..... Appellant**

**vs.**

**M/s Snowwhite Infrastructure Pvt. Ltd..... Respondent**  
**Plot A-3, Block GP Infinity,**  
**Sector-V,**  
**Saltlake Electronics Complex,**  
**Kolkata- 700091.**  
**[PAN: AADCK0343C]**

**Appearances by:**

Shri Vijay Kumar, Addl. CIT-DR, appeared on behalf of the appellant.  
Shri Rajeeva Kumar, Adv., appeared on behalf of the Respondent.

Date of concluding the hearing : February 09, 2023

Date of pronouncing the order : April 19, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the Revenue against the order dated 22.07.2020 of the Commissioner of Income Tax (Appeals)-17, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The Revenue in this appeal is aggrieved by the action of the CIT(A) in deleting the additions made by the Assessing Officer in respect of receipt of Rs.17,61,40,800/- by the assessee company which was treated by the Assessing Officer as unexplained income of the assessee u/s 68 of the Act on the ground that the assessee had failed to

establish the identity, genuineness and creditworthiness of the share subscribers.

3. At the outset, the ld. Counsel for the assessee has submitted that there were only two shareholders of the assessee company, out of which, one shareholder has subscribed to the shares in the Financial Year 2010-11 relevant to assessment year 2011-12 and had made payment in 2010-11, itself, and the said payment was not relevant for the assessment year under consideration. The assessee company for the relevant financial year had raised share capital of Rs.11,53,24,800/- from only one company namely M/s Infinity BNKE Infocity (P) Ltd. which was its parent/holding company and the assessee is part of the real estate group of companies. It was also explained that 6,00,00,000/- of the share capital was opening balance and only 1,00,00,000/- was received in this year. That the share subscriber company was the holding company of the assessee company and that both the companies were having common directors. That the share subscribing/holding company was interested in the business of the assessee. It was explained that during the financial year 2011-12, the assessee was engaged in the business of development of real estate project. It was further explained before the CIT(A) that during the FY 2011-12, the assessee company was in the process of acquiring land and undertaking other preliminary pre-construction activities. Till the commencement of a project, the expenditure incurred thereon was booked and recorded as 'Pre-operative Expenses'. The project was in nascent stage. The preliminary work prior to commencement of construction was in progress. Presently, the assessee-company was developing a residential project at Vrindavan, Uttar Pradesh. For this

purpose, the assessee company had acquired multiple piece and parcel of lands admeasuring approximately 42 acres in aggregate at Chhatikara Road, Vrindavan - 281121, Uttar Pradesh. The assessee-company would develop the project in phases and currently Phase-I was in progress. In the Phase-L, the assessee-company plans to develop Villas/Bungalows and residential apartments. The estimated cost of the project as ascertained till date was approximately Rs.300 crore. That the assessee-company has also registered its project with Real Estate Development Authority (RERA), Uttar Pradesh. Phase-I was also commercially launched and started receiving bookings from customers. Its Registered Office was situated at Plot A3, Block- GP, Saltlake, Sector-V, Kolkata - 700091. The site office of the company was situated at Chhatikara Road, Vrindavan - 281121, Uttar Pradesh. The assessee-company employed more than 50 employees for execution of the project including qualified Engineers, Chartered Accountants, Company Secretary, M.B.A, etc. That the company was registered with various government authorities viz., ESIC, EPFO, Service Tax, GST, VAT, Professional Tax. Etc. It has an active electricity connection from Dashinanchal Vidyut Vitran Nigam for construction activity. The source of the funds of the investing company and its creditworthiness has also duly discussed by the CIT(A) in the impugned order. The assessee company has issued shares to only one shareholder namely M/s Infinity BNKE Infocity Private Limited. The entire share subscription amount was received by the assessee company from holding company i.e. IBIPL. IBIPL in turn is promoted by Infinity Infotech Parks Limited and provided finance for execution of the project either by own or through subsidiaries. The ultimate holding/parent company i.e IIPL

derived its revenue and earnings from leasing / renting of office spaces developed by it at Saltlake, Sector-V, Kolkata. Its revenue from renting operating activities and other activities was Rs. 71.56 crore in the FY 2011-12. Its net worth was Rs. 32.56 crore and borrowings from banks and financial institutions were around Rs. 255 crore. Its investment in Fixed Assets stood at Rs. 127.48 crore and in group companies Rs. 12.42 crore. The outstanding advances to subsidiaries and other group companies was Rs. 154.19 crore which includes Rs. 44.64 crore to M/s Infinity BNKe Infocity Private Limited.

In the backdrop of the above said facts, it is submitted that the transactions were wholly and exclusively between the holding and the subsidiary companies. The funds were only provided by the parent company out of its own resources / borrowed funds from Banks. The subsidiary companies were promoted by the parent company only for the purpose of expanding its business and the deals were purely commercial in nature. The main purpose or object of carrying business through subsidiaries was to mitigate the risk associated with a specific project and to create a distinct identity of the project. It also results in operational efficiency and control. Since different projects were in partnership with different persons and the existing projects were matured and operational, so it became necessary to form Special Purpose Vehicles (SPVS) to undertake the new projects. Once the project was complete or during its continuation, it becomes easier to attract an investor which helps in arranging funds for the project. Under such facts and circumstances, it was not considered viable to keep the level of Authorized & Paid-up Share Capital at a very high level. If the Authorized Share Capital of the company is kept at a higher

level, the company has to pay mammoth fees to ROC. So the company purposively kept the paid up capital base at a low level to save on unnecessary fees to ROC and also to save on servicing cost of the capital in future.

5. The ld. Counsel for the assessee has further submitted that the ld. CIT(A) had even called for remand report from the Assessing Officer in respect of various details and the evidences submitted by the assessee. That the ld. CIT(A), thereafter, has passed a detailed order after considering the remand report and other evidences furnished by the assessee. In this case, the ld. CIT(A) has categorically held that the share subscriber company was a group company of the assessee and the transaction was done for business interest and further that the identity, creditworthiness and genuineness of the transaction was duly proved. In the identical facts and circumstances, the Hon'ble Calcutta High Court in the case of PCIT vs. Anmol Stainless (P) Ltd. has upheld the order of the Tribunal deleting the additions observing that where the share applicants had substantial creditworthiness and the investment has been made by the assessee's own sister concern/group company having mostly common directors and thus establishing creditworthiness and genuineness of the transaction, the addition u/s 68 has rightly been deleted.

6. The ld. DR could not point out any distinct facts warranting our interference in the order of the CIT(A).

7. In view of the above discussion, we uphold the order of the CIT(A). The appeal of the revenue is, therefore, dismissed.

8. In the result, the appeal of the Revenue stands dismissed.

***Kolkata, the 19<sup>th</sup> April, 2023.***

Sd/-  
[गिरीश अग्रवाल /Girish Agrawal]  
लेखा सदस्य/Accountant Member

Sd/-  
[संजय गर्ग /Sanjay Garg]  
न्यायिक सदस्य/Judicial Member

Dated: 19.04.2023.

RS

*Copy of the order forwarded to:*

1. ITO, Ward-2(1), Kolkata
2. M/s Snowwhite Infrastructure Pvt. Ltd
- 3.CIT  
(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches