

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, KOLKATA
BEFORE SHRI SANJAY GARG, HON’BLE JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, HON’BLE ACCOUNTANT MEMBER

ITA No. 465/Kol/2019
Assessment Years: 2012-13

Balgopal Merchants Pvt. Ltd. 65A, Satish Mukherjee Road Ground Floor Kolkata - 700026 [PAN: AAECB9254G]	Vs.	Income Tax Officer, Ward- 10(1), Kolkata
(Appellant)		(Respondent)

Assessee by :	Shri S.K. Thakur, C.A.
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 20/04/2023
घोषणा की तारीख/Date of Pronouncement : 04/05/2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order passed by the Learned Commissioner of Income Tax (Appeals) - 15, Kolkata, (hereinafter the “ld. CIT(A)”) dated 11/10/2018 for Assessment Year 2012-13 against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) by Tax Recovery Officer - 4, Kolkata, dated 23/03/2015.

2. Grounds of appeal raised by the assessee are reproduced as under:-

“1. For that in the facts and circumstances of the case, the Ld. CIT(Appeals)-15 erred in violating the principles of natural justice. As such, the order passed u/s 250 is void ab-initio. The action of the Ld. CIT(Appeals)-15 was wholly unreasonable, uncalled for and bad in law.

2. For that the Ld. CIT(Appeal)-15, erred in making addition of entire Share Capital & Share Premium of Rs.3,65,95,490/- as unexplained cash credit u/s 68 of the Income Tax Act.

3. For that the Appellant craves to adduce additional ground and/or modify or withdraw any of the foregoing grounds before, or at the time of hearing of the appeal."

3. Brief facts of the case are that assessee was incorporated on 29/06/2011 and claims to be engaged in the business of trading and dealing of land. The year under consideration i.e., Assessment Year 2012-13 is the very first year of operation of the company which is a broken year considering its date of incorporation. Assessee filed its return of income reporting total income at "Nil" on 29/03/2014. During the course of assessment, Id. Assessing Officer enquired about the equity share capital raised by the assessee for an amount of Rs.3,66,00,000/-, comprising of share capital at Rs.11,71,000/- and security premium of Rs.3,54,29,000/-. Ld. Assessing Officer issued summons u/s 131 of the Act on the Director of the assessee to produce relevant documentary evidence and explanation/justification for the large share premium raised by the assessee. Ld. Assessing Officer noticed that there was no compliance from assessee by way of which identity, genuineness of the share subscribers and creditworthiness of the transactions can be established. The details of share capital raised during the year is tabulated as under:-

Share Capital as Subscription to the Memorandum (Incorporation Date i.e., 29.06.2011)	Rs.1,00,000/-
1 st Allotment as on 30.03.2012 (without any premium to 5 individuals as explained earlier)	Rs.10,00,000/-
2 nd Allotment on 31.03.2012 (With Security Premium to two companies as explained earlier only Capital Part)	Rs.71,000/-
2 nd Allotment on 31.03.2012 (With Security Premium to two companies as explained earlier only Premium Part)	Rs.3,54,29,000/-
Total of Above	Rs.3,66,00,000/-

4. From the above table, it is noted that there are two classes of share subscribers comprising of five individuals to whom shares were issued at face

value of Rs.10/- each without any premium, totaling to Rs.10,00,000/-. The details of the above five share subscribers is tabulated as under:-

Dt. Of Allotment	Name of Allottees in Full	Address	Occupation	Nominal Amount per share (in Rs.)	Premium Amount per share (in Rs.)	No. of Share			Total Premium Amount (in Rs.)
						Equity	Preference Shares other than Redeemable Preference Shares	Redeemable Preference Shares	
30/03/2012	SANJAY SINGH	46, SHIB THAKUR LANE, KOLKATA-700007	Business	10.00	Nil	20000	Nil	Nil	200,000.00
30/03/2012	SUNIL KUMAR GUPTA	28/15, MADAN BISWAS LANE, HOWRAH-711106	Business	10.00	Nil	20000	Nil	Nil	200,000.00
30/03/2012	BINAY KUMAR SHAW	28/A, MADAN BISWAS LANE, HOWRAH MUNICIPAL CORP., GOLABARI, HOWRAH-711106	Business	10.00	Nil	20000	Nil	Nil	200,000.00
30/03/2012	ARBIND SHAW	28/A, MADAN BISWAS LANE, 11, HOWRAH MUNICIPAL CORP., GOLABARI, HOWRAH-711106	Business	10.00	Nil	20000	Nil	Nil	200,000.00
30/03/2012	SANJAY KUMAR GUPTA	28/11, MADAN BISWAS LANE, SALKIA, HOWRAH-711106	Business	10.00	Nil	20000	Nil	Nil	200,000.00
		TOTAL				100000			1,000,000.00

5. The second class of share subscribers comprises of two companies to whom shares were issued at face value of Rs.10/- each and share premium of Rs.4,990/- per share was charged. Details in this respect are tabulated as under:-

Dt. Of Allotment	Name of Allottees in Full	Address	Occupation	Nominal Amount per share (in Rs.)	Premium Amount per share (in Rs.)	No. of Share			Total Amount Paid (in Rs.)
						Equity	Preference Shares other than Redeemable Preference Shares	Redeemable Preference Shares	
31/03/2012	ASTBHUJA MERCANTILE PRIVATE LIMITED	242, RABINDRA SARANI, 2ND FLOOR, KOLKATA-700007	BUSINESS	10.00	4990	5,400	NIL	NIL	26,946,000.00
31/03/2012	MIDAS SECURITIES LTD.	3, BENTICK STREET, KOLKATA-700001	BUSINESS	10.00	4990	1,700	NIL	NIL	8,483,000.00
		TOTAL				7,100	NIL	NIL	35,429,000.00

5.1. In respect of the above two classes, Id. Assessing Officer analyzed the facts in the light of preponderance of probability of human behavior and observed that assessee had been recently incorporated without any proven track record which does not justify the hefty premium of Rs.4,990/- raised by the assessee from the two share subscribing companies. Since nothing was placed on record to establish the basic ingredients of identity, creditworthiness of share subscribers and the genuineness of the transactions. Id. Assessing Officer completed the assessment by making an addition of Rs.3,65,95,419/- as unexplained cash credit u/s 68 of the Act in respect of fresh amount of share application money along with premium raised during the year. Aggrieved

assessee went in appeal before Id. CIT(A), who sustained the addition made by the Assessing Officer and dismissed the appeal.

6. Aggrieved, assessee is in appeal before the Tribunal.

7. Ld. Counsel for assessee furnished written submission containing five pages along with a compilation as annexure to the written submission to corroborate the transactions of share capital and share premium for which addition has been made. On a query raised by the Bench in respect of valuation of shares arrived at for charging premium of Rs.4,990/-, more particularly in the very first year of the incorporation, Id. Counsel submitted that assessee had made its first allotment of share capital of Rs.10,00,000/- to five individuals. All these individuals were engaged in dealing of land and the capital was, therefore, proportionately divided between them. Assessee made investment in land by raising share capital for which cost of land was very low and would fetch good sale price at high profits after its development, claimed Id. Counsel. It was also stated that assessee is having investment activities in land and has reported loss because it is the first year of its operation and no activities have been noted for generating income.

7.1. On these submissions made by Id. Counsel for assessee, reference was made to object clause contained in Memorandum of Association of assessee company which is reproduced as under:-

“(A) THE MAIN OBJECTS OF THE COMPANY TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:

1. *To carry on the business as distributors, agents, traders, merchants, contractors, brokers and otherwise deal in merchandise and articles of all kinds including clearing agents, freight contractors, forwarding agents, licensing agents, general brokers, and to carry any kind of commercial business. To carry on all of any of the business as buyers, sellers, suppliers, growers, processors, traders, merchants, indentures brokers, agents, assemblers, stockiest of goods and commodities of any kind to work as commission agents, brokers, contractors, processors order suppliers and dealing agents.”*

7.2. In the said main object clause of assessee, there is no reference to the activities of development of land or dealing in land as claimed by Id. Counsel in his submissions. The main object as stated above is in respect of dealing with merchandise and articles of all kinds but has no reference to dealing/development of land activities. Further, from details of share subscribers referred by Id. Counsel in the course of hearing and details of which are tabulated above, it was questioned as to why no premium was charged on the issue of shares to five individuals to whom the shares were allotted on 30/03/2012 as compared to the two share subscribing companies from whom share premium of Rs.4,990/- was charged when shares were allotted to them on the very next day i.e., 31/03/2012.

7.3. The submissions made by Id. Counsel in this respect was in reference to land claimed to have been procured during the year for which nothing except some tabulated details were placed on record. From those details, it was submitted that assessee had acquired 690.51 decimals of land area. There is nothing on record to demonstrate as to how these lands were acquired in terms of their conveyance deeds. In the written submissions furnished by assessee it is submitted that investment of assessee is in land and at the time of transactions and in view of huge quantity of land, cost of lands was very low but after the development of same, price of the same would be very high and profitable. It is also stated that *“assessee is valuing investments at books value, whereas, the intrinsic or fair market value is much more. While issuing shares, fair market value of the shares has to be taken into account and the person paying the premium has factually benefitted from the purchase of shares at premium.”*

7.4. Assessee also submitted that in order to justify its fair market value had made an attempt to furnish the submissions before Id. Assessing Officer for

which it is stated in the written submission "*assessee had during the course of assessment, approached to Ld. Assessing Officer and tried to provide the fair market value of the investment held which proves the reasonableness of the premium, but Ld. Assessing Officer was not interested to do so.*" Ongoing through these submissions, we find them to be general and vague in nature and in no way establishes the identity, creditworthiness of the share subscribers and the genuineness of the transaction.

8. It is difficult to comprehend the reason for the investment in the assessee company by the share subscribers when there is no track record for the assessee, this being the broken year and the very first year of incorporation. Preponderance of probabilities weighs in favour of Revenue when the fact on record is that shares have been issued on two consecutive dates, first being on 30/03/2012 to five individuals from whom no share premium has been charged and on the very next date on 31/03/2012, a hefty premium of Rs.4,990/- has been charged from two share subscribing companies. It is also important to note in this case that none appeared before Ld. Assessing Officer to discharge the onus casted u/s 68 of the Act so as to enable the Assessing Officer to make the necessary enquiries for establishing the identity and creditworthiness of share subscribers as well as genuineness of transactions.

8.1. It is also observed that the main object clause contained in the Memorandum of Association does not fall in line with the activity of land dealing claimed to have been undertaken by assessee during the year. Also, from perusal of financial statements of two share subscribing companies, it is observed that source of investment by these two companies are also from the share capital and share premium raised by them while issuing their own shares to other closely held companies, for which reference may be made to page 98

and 147 in the compilation placed on record. Further, the assessee itself has claimed that there is no noticeable business activity during the year.

9. Considering all these facts and circumstances discussed hereinabove, which suggest that assessee has failed to establish the basic ingredients of Section 68 of the Act, we do not find any reason to interfere with the observations and findings given by Id. Assessing Officer and Id. CIT(A). Accordingly, addition made is sustained. Grounds taken by the assessee are dismissed.

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 04.05.2023.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Kolkata, Dated: 04.05.2023
SC. Sr. P.S.

Copy to:

1. The Appellant:
2. Respondent :
3. The CIT(A)- Kolkata
4. The CIT , Kolkata.
5. The DR ITAT, Kolkata.

// True Copy //
By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata