

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DLEHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 2258, 2259, 2260 & 2261/Del/2018
Assessment Years: 2011-12, 2012-13, 2014-15 & 2015-16**

ACIT, Central Circle-15,
New Delhi.

(Appellant)

Versus Heritage Beverages Pvt. Ltd.,
177F, Indl. Area-1,
Chandigarh.

PAN: AAACH9402L

(Respondent)

Revenue by: Shri V.K. Aggarwal, AR &
Shri Piyush Jain, Advocate

Revenue by: Shri J.S. Minhas, CIT/DR

Date of hearing : 03.05.2023

Date of pronouncement : 16.05.2023

ORDER

PER SAKTIJIT DEY, J.M.:

Captioned appeals by the Revenue in respect of the same assessee arise out of separate orders of learned Commissioner of Income-tax (Appeals)-XXVI, New Delhi, pertaining to assessment years 2011-12, 2012-13, 2014-15 and 2015-16.

2. In so far as appeals for assessment years 2011-12, 2012-13 and 2014-15 are concerned, factually, they stand on identical footing and

involve common issue of deletion of addition made of various amounts on account of unexplained share capital and share premium. Even, the grounds raised by the Revenue are identical, except, variation in figures.

3. Briefly, the facts relating to these issues are, the assessee is a resident corporate entity. Pursuant to a search and seizure operation conducted u/s. 132 of the Act on the Assessee on 28.03.2015, proceedings u/s. 153A of the Act were initiated against the Assessee in different assessment years. In pursuance to notices issued u/s. 153A of the Act, assessee filed its returns of income. As observed by Assessing Officer in the assessment order, in pre-search inquiries, it was found that the Assessee had received substantial amount of share capital from various shell companies, which did not have any creditworthiness. It was found that they subscribed the shares of the assessee with high premium. Assessing Officer also noted that in course of search and seizure operation, in case of M/s. MSD Finance India Pvt. Ltd. and some other persons, statement was recorded from Mr. Pradeep Kumar Shastri, Director in Kandhari group companies, wherein, he stated that part of share premium received by M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd. , in turn, were given to the

assessee, which are nothing but its own unexplained income. Based on aforesaid statement, Assessing Officer proceeded to treat the share application money and share premium received as unexplained cash credit u/s. 68 of the Act and added back to the income of the assessee. The assessee contested aforesaid additions before Id. Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, Id. Commissioner (Appeals) noted that the Assessing Officer has made additions merely on the basis of appraisal report of the Investigation Wing. He observed that the assessee has furnished various documentary evidences not only to establish the identity but creditworthiness of the creditors and the genuineness of transactions. He observed, without examining and meeting the evidences furnished by the assessee on the touchstone of section 68 of the Act, the Assessing Officer simply accepted the appraisal report and made the additions. Learned Commissioner (Appeals) also observed that no material was found during the search, based on which, a conclusion could be drawn that they are in the nature of unexplained cash credit. Thus, holding that no adverse corroborating evidence has been brought on record by the Assessing Officer to establish applicability of

section 68 of the Act, Id. Commissioner (Appeals) deleted the additions in all the assessment years under dispute.

4. Before us, learned Departmental Representative strongly relying upon the observations of the Assessing Officer, submitted that in course of search and seizure operation conducted in case of another entity, statement was recorded u/s. 132(4) of the Act, wherein, the concerned person admitted that out of the share premium received by M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd., investments were made in the assessee company. He submitted, the Assessing Officer has specifically recorded the fact that investments made by the two entities in assessee company were out of unaccounted money of the investors. However, on a specific query made by the Bench, Id. Departmental Representative fairly submitted that the Assessing Officer has not referred to any incriminating material found during the search and seizure operation in case of assessee with reference to the additions made.

5. Per contra, Id. Counsel for the Assessee strongly relying upon the observations of Id. Commissioner (Appeals) submitted that no incriminating material was found as a result of search and seizure

operation conducted in case of the assessee, which could have led the Assessing Officer to make additions. He submitted, the entire basis of the additions is statement recorded u/s. 132(4) of the Act from a third party. He submitted, it is trite law, statement u/s. 132(4) is not an incriminating material in absence of any other corroborative evidence. In support of said contention, he relied upon following decisions :

- (i). PCIT vs. Best Infrastructure Pvt. Ltd., 397 ITR 82 (Delhi)
- (ii). CIT vs. Harjeev Aggarwal, 290 CTR 263 (Delhi).

6. Further, he submitted, the proposition that in absence of any incriminating material, no addition can be made in assessment u/s. 153A of the Act, is no more res integra in view of decision of Hon'ble Supreme Court in case of PCIT vs. Abhisar Buildwell P. Ltd. (Civil Appeal No. 6580 of 2021 and others - judgment dated 24.04.2023).

7. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Undisputedly, the dispute in the aforesaid three assessment years relates to addition of investments made on account of share capital and share premium by two entities with the assessee company. On a careful reading of the assessment orders, it is very much clear that the sole basis for the

additions made u/s. 68 of the Act at the hands of the assessee company is the statement recorded from one, Mr. Praveen Kumar Shastri, stated to be the director of Kandhari group of companies. On a perusal of the observations made by the Assessing Officer in the assessment order, it can be seen that in the statement recorded, the concerned person has stated that the share capital and share premium received by M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd., and in turn, invested with assessee company, were nothing but these two entities income from undisclosed sources, which are introduced in the names of other entities. He has also stated that the concerned person admitted to offer certain amount of income at the hands of M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd. Aforesaid facts recorded by the Assessing Officer clearly demonstrate that, at best, the share capital and share premium invested in assessee company were unexplained income of M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd.. However, as far as the Assessee is concerned, the source of investment stands explained, as the investment has come from M/s. MSD Finance India Pvt. Ltd. and M/s. Indo Gulf Infrastructure Investment Pvt. Ltd., even, assuming that such

investments were out of unexplained income of these two entities. On a reading of the order of ld. Commissioner (Appeals), it is observed that in course of assessment proceedings, the assessee had furnished various documentary evidences, as enumerated in para 5.2 of ld. Commissioner(Appeals)'s order for the assessment year 2011-12, to prove the genuineness of the transactions. However, the Assessing Officer has not brought any material on record to controvert the claim of assessee or falsify the evidences furnished before him. As rightly observed by ld. Commissioner (Appeals), without factually examining the evidences furnished by the Assessee through proper enquiry, the Assessing Officer has placed much reliance on the appraisal report and judicial precedents. Reading of the assessment orders reveal, the Assessing Officer has not referred to any incriminating material found as a result of search and seizure operation conducted in case of the Assessee, which could have even remotely linked to the additions made. In this regard, following observations of ld. Commissioner would be of much relevance :

“5.6 Respectfully following the above judgment, which is on identical factual matrix, it can be reasonably inferred that since, no material was found during the search in respect of the equity share capital, it cannot lead to the conclusions drawn by

*the AO. No specific corroborative evidence has been brought on record by Assessing Officer to prove that the equity subscription is an accommodation entry. Besides, appellant has also discharged its onus and submitted all the documentary evidence in respect of the investment. The details submitted in this regard by the appellant have also been made part of order by Assessing officer. It is also undisputed fact that the director of the appellant companies have never made any statement regarding the share capital / share premium / share application money and no disclosure have been made with regard to share capital / share premium / share application money / unsecured loan. As such, the addition made by the Assessing officer is unsustainable on the various legal grounds and on facts of the case. The addition made in the case of the appellant is deleted. Therefore, **ground no. 3 is allowed.**"*

8. Thus, considering the fact that the additions made are not based on any incriminating material found during the search and seizure operation conducted in case of the Assessee and moreover, the additions are not based on any conclusive evidence brought on record to demonstrate that investors did not have any creditworthiness or the transactions are not genuine, we do not find any compelling reason to disturb the factual finding of Id. Commissioner (Appeals), while deleting the addition. In view of the aforesaid, grounds are dismissed and the appeals for assessment years 2011-12, 2012-13 and 2014-15 are dismissed.

9. In so far as ITA No. 2261/Del/2018 for assessment year 2015-16 is concerned, the dispute is relating to deletion of addition made of

Rs.3,30,55,000/- u/s. 68 of the Act. The facts relating to issue in dispute are more or less identical to the other three assessment years dealt by us in the earlier part of the order.

10. Before us, ld. Departmental Representative has placed strong reliance upon the observations of Assessing Officer, whereas, ld. Counsel for the assessee submitted that the addition u/s. 68 of the Act cannot be made in the impugned assessment year under any circumstance, as the assessee had received the amounts in dispute in the preceding assessment years and what the Assessing Officer has added in the impugned assessment year, is the opening balances.

11. Having considered rival submissions, we find that certain entities had invested sum of Rs.3,30,55,000/- in the share capital of the assessee company. Investments were made between the period 2011 to March 2014. As can be seen from the aforesaid facts on record, the investments in share capital and share premium, which were added as income of the Assessee u/s. 68 of the Act in the impugned assessment year, were made in preceding assessment years. The investments made were converted into equity shares in the impugned assessment year. However, considering the fact that the credit entries relevant to the investment in

share capital and share premium do not relate to the impugned assessment year, provisions of section 68 of the Act cannot be invoked in the year under consideration. Therefore, we do not find any reason to interfere with the decision of Id. Commissioner (Appeals) on the issue. Grounds raised are dismissed. In the result, the appeal is dismissed.

10. To sum up, all the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 16/05/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 16/05/2023

*aks/-