

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 234/MUM/2021  
(Assessment Year: 2010-11)**

**ITO-11(2)(1), Mumbai,**  
Room No. 425, 4<sup>th</sup> Floor,  
Aayakar Bhawan, Maharishi Karve Marg,  
Mumbai – 400020

..... **Appellant**

**M/s Sigrun Holdings Ltd.,**  
(formerly known as Gee Kay Finance &  
Leasing Co. Ltd.)  
B-12, Shree Devagida Co-op. Hsg. Soc.,  
Om Nagar Sahar, Andheri (East),  
Mumbai - 400099  
[PAN: AABCG6725A]

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Ajay Singh  
For the Respondent/Assessee : Shri Biswanath Das

**Date** : 16.05.2023  
Conclusion of hearing : 25.05.2023  
Pronouncement of order

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 25/02/2020, passed by the Ld. Commissioner of Income Tax (Appeals) 28, New Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2010-11, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 25/03/2013, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised the following grounds of appeal:

- "1 *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 9,09,63,631/- made by the AO on account of short term capital gain accruing to the assessee company on account of issue of shares to the share holders of M/s Sigrun Realities Limited.*
2. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in limiting the disallowance u/s 14A which was computed as per Rule 8D of I.T. Rules 1962 to the extent of exempt income deleting.*
3. *The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the AO restored."*

3. The relevant facts in brief are the Assessee filed original return of income for the Assessment Year 2010-11 on 28/09/2010. The case of the Assessee was selected for scrutiny and assessment was completed under Section 143(3) of the Act vide order, dated 25/03/2013, at assessed income of INR 11,22,38,800/- after making, inter alia, addition of INR 9,09,63,631/- holding the same to be Short Term Capital Gains arising from share swap transaction undertaken by the Assessee to acquire 100% shareholding in Singroli Reality Limited. The Assessing Officer also made disallowance of INR 106,18,532/- made under Section 14A of the Act by invoking the computation mechanism specified in Rule 8D of the Income Tax Rules, 1962.

4. Being aggrieved, the Assessee carried the issue in appeal before the CIT(A). Vide order, dated 25/02/2020, the CIT(A) granted relief to the Assessee by deleting the aforesaid addition of INR 9,09,63,631/- made by the Assessing Officer, and restricted the amount of disallowance of INR 12,754/- being amount of exempt income earned by the Assessee during the relevant previous year.

5. Being aggrieved, the Revenue has preferred the present appeal on the grounds reproduced in paragraph 2 above which are taken up hereinafter in seriatim.

**Ground No. 1**

6. The relevant facts in brief are by way of share swap transaction, shares of the Assessee-company were issued to the existing shareholders of Singroli Realities Limited (**SRL**) in swap of their shareholding in SRL. In the process, the Appellant acquired 100% shareholding in SRL in exchange of issue of its shares. The exchange ratio determined on the basis of independent valuation was 1 equity share and 1 Optionally Convertible preferences Shares (OCPS), both, having face value of INR 10 each and issued at a premium of INR 78.25 for 7 shares of SRL valued at INR 25.25 per equity shares of SRL. On perusal of the Balance Sheet of the Appellant the Assessing Officer noticed that the Appellant had issued 1,44,10,083 fresh equity share and 1,44,10,083 OCPS to the shareholders of SRL in exchange of 36,38,54,524 equity shares of SRL. The Assessing Officer sought explanation from the Appellant regarding the exchange ratio and directed the Appellant to furnish the statutory approvals and sanctions relating to the share swap transaction. On the basis of the documents and information furnished by the Appellant, the Assessing Officer concluded that effectively exchange consideration of INR 176.50/- [*1 share x (INR 10 per share + INR 78.25 per share) plus 1 share x (INR 10 per share + INR 78.25 per share)*] was paid by the Appellant for acquiring shares of SRL worth INR 176.75 [*7 shares of SRL x INR 25.25 per share of SRL*]. Therefore, there was a difference of INR 0.25/-. According, the Assessing Officer shares swap transaction,

being exchange of shares, amounted to transfer in terms of Section 2(47) of the Act. Therefore, the Assessing Officer brought to tax INR 9,09,63,631/- [*INR 0.25 per share of SRL x 36,38,54,524 shares of SRL*] as short term capital gains in the hands of the Assessee vide Assessment Order dated 25/03/2013.

7. In appeal preferred by the Assessee, the CIT(A) deleted that above addition vide order dated 25/02/2020 holding as under:

*"5.3 I have considered the fact of the case, submissions of the appellant and records. Similar issue arose in A.Y. 2009-10 also and the CIT(A) while deciding this issue has held as under:*

*"6. I have gone the above submissions of the appellant and have perused the AO's order and considered the facts and evidences on record. It is seen that the appellant has issued its own shares on exchange basis to the shareholders of "Sigrun Realities Ltd. (SRL). Therefore at the very outset, I am in agreement with the appellant's argument that there is no sale of any capital asset. Further, it is also seen that when the valuations of shares and allotment of shares are done as per SEBI guidelines and certified by an independent person and the shares have been issued and exchanged at that value than in my humble view there is no germination of any capital gain.*

*It is further noticed that in the appellant's financial statements, the value of investments in SRL and the value of shares issued are at the same value on the assets and liabilities side, thus, there is no question of earning of any capital gain. Thus, in view of the above discussion, the addition made by the AO is wrongly done and therefore deserves to be deleted."*

*5.4 It is observed that the facts and circumstances, during the year under consideration on this issue are exactly same as the AY 2009-10, with the only difference that the swap ratio in the preceding year was in favour of shareholders of SRL and in this year it is in favour of the appellant. It is strange that the AO has choosen to make addition in both the years on this transactions, which are financially opposite in nature to each other. I fully endorse the view expressed by the*

CIT(A) in AY 2009- 10 that

- There is no sale of any capital asset
- The valuations of shares and allotment of shares are done as per SEBI guidelines and certified by an independent person and the shares have been issued & exchanged at that value then there is no germination of any capital gain.
- The value of investments in SRL and the value of shares issued are reflected at the same value on the assets and liabilities side, thus, there is no question of earning of any capital gain.

In these facts and circumstances of the case, the addition made by the AO on account minor difference in swap ratio valuation as STCG is not sustainable. Accordingly, the addition of Rs.9,09,63,631/- made by the AO is deleted and this ground of appeal is allowed.”  
(Emphasis Supplied)

8. We concur with the findings returned by the CIT(A) that during the relevant previous year there was no transfer of capital asset by the Appellant and therefore, the question of taxability of capitals gains income in the hands of the appellant does not arise. The Appellant has acquired shares of SRL and in consideration issued fresh Equity Shares and OCPS. The provisions of Section 56(viia) of the Act, which came into effect from 01.06.2010, would also not apply for the assessment year before us. Accordingly, we do not find any merit in Ground No.1 raised by the Revenue and the same is dismissed.

**Ground No. 2**

9. Ground No. 2 raised by the Revenue is directed against the order of CIT(A) restricting disallowance under Section 14A of the Act to INR 12,754/-, being amount the exempt income earned by the Assessee during the relevant previous year, as against disallowance of INR 106,18,532/- made by the Assessing Officer under Section 14A of

the Act read with Rule 8D of the Income Tax Rules, 1962. We find that the CIT(A) has granted relief by placing reliance upon the judgment of the Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax -2 Vs. Caraf Builders & Constructions (P.) Ltd: [2019] 414 ITR 122 (Delhi)[13-11-2018]. We find that the Special Leave Petition preferred by the Revenue against the aforesaid judgment of the Hon'ble Delhi High Court has been dismissed by the Hon'ble Supreme Court vide order, dated 30/08/2019 reported in (2020) 268 Taxman 317 (SC). It has been held that disallowance under Section 14A of the Act cannot be exceed the amount of exempt income for the relevant previous year. To the same effect is the judgment of the Hon'ble Bombay High Court in the case of Nirved Traders Private Limited vs. Deputy Commissioner of Income Tax, Circle 1(2), Mumbai [Income Tax Appeal No.149 of 2017, 23.04.2019]. The CIT(A) has restricted the disallowance under Section 14A to the amount of exempt income of INR to INR 12,754/-. Accordingly, we do not find any infirmity in the order passed by the CIT(A). Ground No. 2 raised by the Revenue is, therefore, dismissed.

10. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 25.05.2023.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 25.05.2023  
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.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