

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'H': NEW DELHI)**

**BEFORE SHRI KUL BHARAT JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No:- 8394/Del/2019  
(Assessment Year: 2015-16)**

M/s Watchood Properties Pvt. Ltd., 1555, S.P. Mukherjee Marg, New Delhi.	Vs.	ITO, Ward-27(2), New Delhi.
<b>PAN No:</b> AAACW1109K		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : None  
**Revenue by** : Shri Gurpreet Shah Singh, Sr. DR

**Date of Hearing** : 08.06.2023  
**Date of Pronouncement** : 27.06.2023

**ORDER**

**PER KUL BHARAT, JM**

This appeal by the Assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)-I, New Delhi vide order dated 05.09.2019 for Assessment Year 2015-16. Assessee has raised the following grounds of appeal:

- "1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*
- 2. (i) On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the addition of Rs. 1,00,00,000/- made by A.O. on*

*account of sale consideration received by the assessee, on sale of shares during the year under consideration.*

*(ii) That the above-said additions was made ignoring the material and evidences brought on record by the appellant in support of its contention and without bringing any adverse material on record.*

*3. (i) On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the above said addition rejecting the explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of the payer and genuineness of the transaction.*

*(ii) That the addition was made without pointing out any error or defect in the evidences filed by the assessee.*

*4. On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the above said addition despite the same having been made on the basis of material collected at the back of the assessee, without giving him an opportunity to rebut the same in violation of the principle of natural justice.*

*5(i). On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the addition of Rs. 1,30,055/- made by A.O. on account of commission under section 69C of the Act.*

*(ii) that the addition has been confirmed despite the same having been made without there being any basis for the same.*

*6. The appellant craves leave to add, amend or alter any of the grounds of appeal. "*

2. At the time of hearing, no one attended the proceeding. It is seen from the record that the assessee has not been attended the hearing after filing the present appeal. The notices sent by the Registry through speed post are returned back with remarked "no such firm in this add." However, the another notice sent was returned with remarked left. Under these facts, when the assessee has not provided current address, appeal is taken up for hearing in the absence of the assessee and being decided on the basis of the materials available on record.

3. **Ground No.1** is general in nature, needs no separate adjudication.

4. **Ground No.2(i) and 2(ii)** are against the addition made in respect of bogus share transaction.

5. Facts leading to the present appeal are that the assessee is a company filed its return of income declaring income of INR 4,36,200/-. The case of the assessee was selected for limited scrutiny under CASS and the assessment was framed U/s 143(3) of the Income Tax Act, 1961 ("hereinafter referred to as "the Act"), whereby, the Assessing Officer made addition by making disallowance under the provision of Section 14A of the Act, of INR 8,85,181/-, addition in respect of bogus share transaction of INR 1,00,00,000/- and commission paid out of undisclosed source at INR 1,30,055/-, he assessed income at INR 1,14,51,436/-.

6. Aggrieved against this, the assessee preferred this appeal before the Ld. CIT(A), who after considering the submissions, partly allowed the appeal. Thereby, he deleted the addition made by invoking the provision of section 14A of the Act. Rest of the additions was sustained.

7. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before the Tribunal.

8. Apropos to the ground of appeal, the Ld. Sr. DR supported the orders of the authorities below and submitted that there is no infirmity into the order of the Ld. CIT(A), the same is deserve to be affirmed, as the assessee has failed to explain and place on record the materials suggesting that the share transaction was genuine. He

submitted that in the absence of any credible evidence, the impugned addition deserves to be sustained.

9. We have heard the Ld. Sr. DR and perused the material available on record. We find that the Ld. CIT(A) has decided the issue by observing as under:

**"7.2 Decision on Ground No. 2 in respect to addition of Rs 1 crore us 68 :**

*In this ground of appeal the appellant has stated the Assessing Officer has erred in treating the sale proceeds of shares amounting to Rs 1 crore as undisclosed funds and making additions u/s 68. In the assessment order the AO observed that search & seizure operations u/s 132 of the Income tax Act, 1961 were carried out on 17.12.2015 at the premises of the erstwhile Directors of M/s BRR Securities Pvt. Ltd, viz Mr. Naresh Jain and his brother Mr Anand Kr Jain (Jain Brothers). The AO has noted that the search and subsequent investigation revealed that bogus companies run by Jain brothers were controlled by them through dummy directors who as mere name lenders. These shell entities were utilized by Jain brothers to provide accommodation entries. The AO further noted that the name of M/s BRR Securities Pvt. Ltd appears in the list of such shell companies utilized by the Jain Brothers. Signed and un-signed cheques of IDBI Bank CA No 0201102000018577 belonging to M/s BRR Securities Pvt Ltd along with bank a/c statements were found from the premises of the Jain brothers Several summons u/s 131 of the Income Tax Act, 1961 dated 02.11.2017, 13.11.2017 and 22.11.2017 were issued and duly served on M/s BRR Securities Pvt Ltd requiring the personal deposition of the Director. However, there was no compliance. The appellant company has confirmed the above transactions. The appellant has stated that it has given unsecured loan of Rs 1,00,00,000 to M/s BRR Securities Pvt Ltd which was returned back by M/s BRR Securities Pvt. along with interest of 9% p.a. In the assessment order the AO has further observed that profit & A/C M/s BRR Securities Pvt Ltd reveals that as*

*on 31.03.2014 said company had fixed assets and against share capital of Rs 2.60,00,000/- it had share premium reserves of Rs. 2,50,00,000/-. It had gross turnover Rs 1.07,507 as compared nil as 31.03.2013 The has made following analysis (i) income is solely interest unsecured loans (ii) It has no fixed assets i.e. it is mere paper entity, (iii) these transactions, lacks or creates right or obligations which resulting in the abuse of Income Act, (iv) There is no commercial substance in the transactions other than benefit and funds are merely transferred amongst parties to the arrangement & the transaction having the above characteristics have Round trip financing. The AO has further noted that M/s BRR Securities Pvt Ltd is a dummy company has not undertaken any genuine business activity and is merely involved in round tripping/ layering of funds.-The AO has noted that the reason why the appellant company was tempted to give unsecured loan of Rs 1.00.00.000/ to it without maintaining any security deposit itself raises suspicion The AO has noted that the dubious nature of the above transaction gets further murky when the fact that the appellant company paid a commission of Rs 3,50.000/- to M/s Kapoor Securities Pvt. Ltd for introducing M/s BRR Securities Pvt Ltd comes to light Against this expenditure the appellant company merely earned Rs. 2.19.945/- as interest from M/s BRR Securities Pvt. Ltd. There is no rationale behind such a transaction. The IDBI Bank Ltd, CA 037102000024480 bank a/c statement of the appellant company reveals that the source of Rs. 1,00,00,000/- given by them (two tranches of Rs 50,00,000/- each) to M/s BRR Securities Pvt. Ltd. ON 09.12.2014 is receipt of an aggregate sum of Rs. 1,00,00,000/- on the same day from M/s APMV commodities Pvt. Ltd The appellant company vide letter dated 09.11.2017 has merely claimed before the AO that above sum received from M/S APMV Commodities Pvt. Ltd was the sale proceeds of shares of M/s HB Financial Consultants Ltd. However, the appellant company failed to submit photocopies of the share certificate and the Transfer Memo in respect of shares sold by it to M/s. APMV Commodities Pvt.Ltd. The AO has further noted that despite repeated opportunities the appellant company and M/s APMV Commodities Pvt Ltd did not furnish copies of share Certificate and the Transfer Meme before the AO.*

*The AO has concluded that the undisclosed funds of the appellant company to the tune of Rs. 1,00,00,000/- have been brought back into their books of accounts through bogus share sale proceeds received from M/s APMV Commodities Pvt Ltd on 09.12.2014. To lend further credibility to the transaction the appellant company has on the same day transferred the same amount of funds to M/s BRR Securities Pvt. Ltd in the guise of unsecured loan. The same sum has been returned back to the appellant company between 06.1.2015 to 13.01.2015. In view of the above factual matrix, the AO has held that the appellant company has not offered any explanation regarding the source of Rs one crore and has failed to discharge its onus to explain the source of the above sum as prescribed u/s 68. Accordingly, the AO has held that the appellant company received accommodation entries in the guise of sale proceeds of unlisted share. Accordingly a sum of Rs 1,00,00,000/- has been added back as income from undisclosed sources as per provisions of sec 68 of the Income Tax Act, 1961 rws 115BBE. I have carefully considered the facts of the case. Shares of M/s HB Financial Consultants Ltd are illiquid stocks and cannot be sold in the market. The appellant has taken accommodation entry of Rs 1.00.00,000/- from M/S APMV Commodities Pvt Ltd. by showing bogus sale of shares of M/s HB Financial Consultants Ltd. Thus, the appellant has introduced its unaccounted fund of Rs one crore by way of bogus sale of shares of M/s HB Financial Consultants Ltd to M/s APMV Commodities Pvt Ltd. Accordingly, the addition of Rs one crore u/s 68 is upheld in the present case. This ground of appeal is decided against the appellant."*

10. Before us, the assessee has not controverted the above finding of Ld.CIT(A) by placing any contrary materials on record. Therefore, we do not see any reason to disturb the finding of the Ld. CIT(A) and sustained the Ground No. 2(i) & 2(ii) of the appeal. Ground No. 2 (i) & (ii) of the assessee's appeal are thus, rejected.
11. **Ground Nos. 3(i), 3(ii) and 4** are in respect of non consideration of the explanation and not providing opportunity to the assessee.

12. Ld. Sr. DR supported the orders of the authorities below. He submitted that the adequate opportunity was granted to the assessee. He submitted that non-appearance before this Tribunal in testimony of negligence of the assessee.

13. We have heard the Ld. Sr. DR and perused the material available on record. It is seen from the record that the sufficient opportunity was given to the assessee and the Assessing Authority duly discussed the relevant facts in the assessment order. Moreover, the assessee even before the Tribunal failed to rebut the finding of the authorities below. Therefore, Ground Nos. 3(i), 3(ii) and 4 raised by the assessee are hereby, dismissed.

14. **Ground No. 5 (i) & 5 (ii)** are related to sustaining of addition at Rs. 1,30,055/- made on account of commission under Section 69C of the Act.

15. Ld. Sr. DR submitted that the Assessing Officer has given a finding that the assessee company paid a commission to M/s Kapoor Securities Pvt. Ltd.

15.1. During the course of assessment, the assessee was called upon to explain why the difference amounting to INR 1,30,055/- should not be treated as commission expenses borne by the assessee company for obtaining accommodation entry. This fact is not rebutted by the assessee, therefore, no fault can be found in the finding of the authorities below. He hereby, placed reliance on the impugned order.

16. We have heard the Ld. Sr. DR and perused the material available on record. The assessee has not placed any material on record rebutting the finding of the authorities below regarding payment of unexplained commission, in the absence of any

material, we do not see any reason to interfere in the finding of the authorities below;  
appeal of the assessee is dismissed.

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

Order pronounced in the open court on 27<sup>th</sup> June, 2023.

**Sd/-**

**(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

Dated: 27/06/2023.

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI