

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **231/Chny/2019**
निर्धारण वर्ष / Assessment Year: 2009-10

Assistant Commissioner of
Income Tax,
Corporate Circle 4(1),
Chennai – 600 034.

M/s. Luncar Finance Private
v. Limited,
Plot A-21, III Phase,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 600 032.
[PAN: AAACL-5165-C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. R. Mohan Reddy, CIT
: Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 18.07.2023

घोषणा की तारीख/Date of Pronouncement

: 26.07.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-8, Chennai, dated 16.11.2018 and pertains to assessment year 2009-10.

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

"1. The order of the Id.CIT(A) is contrary to law and facts of the case.

2. The Ld. CIT(A) erred in holding the reopening of the assessment suffered procedural irregularity. The notice u/s.148 was issued on 31/03/2016 and was served by affixture . After obtaining the whereabouts of the assessee, the copy of the said notice was re-served on the assessee on 24/08/2016. Hence there is no procedural irregularity.

2.1 The Ld. CIT(A) failed to appreciate that the Assessing Officer had duly recorded the reasons for reopening of the assessment and the order was a speaking order.

2.2 The Ld. CIT(A) erred in holding that the Assessing Officer has not followed the guidelines given by Apex Court in the case of GKM Driveshafts.

2.3 Before filing a return of income in response to notice u/s.148 and requesting reasons thereof, the assessee had prima facie objected the reopening the assessment on receipt of notice.

3. The Id. CIT(A) erred in deleting the addition of Rs.15,45,81,700/- on unexplained share premium receipt based on evidences produced before him during appellate proceedings.

3.1 The Id.CIT(A) has admitted fresh evidence in the form of copy of application filed by M/s. RPP Infra Projects Ltd. before Settlement Commission which was not produced by the assessee during the assessment proceedings.

3.2 Under sub rule (3) to rule 46A, a condition was imposed that such evidence shall not be taken into account by the CIT(A) unless the AO was confronted with the same. The order of the Id.CIT(A) violates Rule 46A.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."

3. The brief facts of the case are that, the appellant M/s. Luncar Finance Pvt Ltd, filed its return of income for the assessment year 2009-10 on 09.11.2018, admitting total income of Rs. 9,130/-. The assessment has been completed u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The case has been subsequently, reopened u/s. 147 of the Act, on the basis of reasons, as per which income chargeable to tax had been escaped assessment in terms of provisions of section 147 of the Act and thus, notice u/s. 148 of the Act dated 31.03.2016 was duly served on the assessee. Since, the notice had been returned, the inspector went to the premises of the assessee company and served the notice by affixing the notice. Further, on verification with AST Module new address was found from the latest Income tax returns filed by the assessee and hence the notice u/s. 148 and 143(2) of the Act, was also issued on 24.08.2016. In response to the notice, the assessee replied that notice issued u/s. 148 is beyond the due date specified under the Act and thus, requested to drop the proceedings. The Assessing Officer, rejected the objections of the assessee and taken up the case for assessment. During the course of assessment proceedings, it was noticed that search u/s. 132 of the Act was

conducted in group case of M/s. RPP Infra Projects Ltd on 26.03.2016 and during the course of search, it was found that M/s. Luncar Finance Pvt Ltd appears to be an investment company without much of business activities. The Assessing Officer, further noted that during the financial year relevant to assessment year 2009-10, the assessee has issued fresh share capital with a huge premium. Therefore, the Assessing Officer called upon the assessee to file necessary evidences including explanation for issue of shares on premium. Since, the assessee could not explain the premium on issue of shares, the Assessing Officer has made addition towards share premium u/s. 56(2)(viib) of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has challenged serving of notice by affixing to official premises and argued that notice issued u/s. 148 of the Act, dated 31.03.2016 is beyond the due date prescribed under the Act and consequently, the assessment order passed in pursuance to invalid notice is liable to be quashed. The assessee had also filed necessary evidences to prove that addition made by the Assessing Officer towards share premium

u/s. 56(2)(viib) of the Act for Rs. 15.38 crores has been offered to tax by the assessee group before the Settlement Commission and the Settlement Commission has accepted the income declared by the assessee towards investment with M/s. Luncar Finance Pvt Ltd. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of fact that, the assessee has admitted a sum of Rs. 15.38 crores additional income before Settlement Commission on account of investment with Luncar Finance Pvt Ltd, deleted addition made by the Assessing Officer. The relevant findings of the Id. CIT(A) are as under:

"12. The objections filed are examined. The assessee company has also submitted a copy of the application filed by M/s RTP infra projects ltd., before the Hon'ble Settlement Commission. In the said application, M/ s RTP infra projects ltd has owned up the undisclosed investment in the assessee company to extent of Rs. 15,38,00,000/-. This application before Settlement Commission has also been examined and reported under Rule 9 by PCIT, Central2, Chennai vide letter dt. 8.5.2018. To this extent, it is seen that the central issue in this appeal has been admitted as taxable income by the assessee group substantively in the hands of M/s RTP infra projects ltd. There is no further reason to agitate this matter any further considering the fact that the incomes have been admitted by the assessee group itself. In view of the cumulative facts & circumstances as above, the grounds of appeal of the assessee are allowed on both technical grounds as regards incorrect assumption of the jurisdiction as well as on merits of the case."

5. The Id. CIT-DR, Shri. R Mohan Reddy, submits that the Id. CIT(A) erred in deleting addition made by the Assessing Officer towards share premium u/s. 56(2)(viib) of the Act by admitting additional evidence contrary to Rule 46A of I.T. Rules, 1962.

6. The Ld. Counsel for the assessee, Shri. S. Sridhar, Advocate, referring to application filed by the assessee before the Income-tax Settlement Commission, Chennai Benches and order of the Settlement Commission submits that, the assessee group company M/s. RPP Infra Projects Ltd, has offered additional income towards investment with M/s. Luncar Finance Pvt Ltd, amounting to Rs. 15.38 crores and the Settlement Commission has accepted income declared by the assessee and has also allowed capitalization of such investment. The Id. CIT(A), after considering relevant facts has rightly allowed relief to the assessee and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that

the assessee company has received security premium of Rs. 15.87 crores for issue of fresh share capital during the financial year relevant to assessment year 2009-10. The Assessing Officer has made additions towards security premium u/s. 56(2)(viib) of the Act, on the ground that consideration for issue of shares that exceeds the face value of such shares and thus, consideration received for said shares which exceeds the fair market of the shares needs to be treated as income of the assessee. We find that the assessee is part of M/s. RPP Infra Projects Ltd, and said case was subjected to search proceedings u/s. 132 of the Act. M/s. RPP Infra Projects Ltd has filed application before the Income-tax Settlement Commission, Chennai Bench and offered additional income towards investment with share capital of M/s. Luncar Finance Pvt Ltd. The Income-tax Settlement Commission, Chennai Bench vide their order dated 20.06.2019, accepted application filed by the assessee and income disclosed therein and also allowed capitalization with respect of amount invested in M/s. Luncar Finance Pvt Ltd. From the above, it is very clear that addition made by the Assessing Officer towards security premium in the hands of the assessee was already subjected to tax in the hands of M/s.

RPP Infra Projects Ltd, which is evident from the order passed by the Income-tax Settlement Commission. Therefore, further addition towards very same income cannot be made in the hands of the assessee. The Id. CIT(A), after considering relevant facts has rightly deleted addition made by the Assessing Officer and thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the revenue.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 26th July, 2023 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/**Judicial Member**

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 26th July, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF