

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

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 1025/MUM/2023 (A.Y: 2013-14)**

DCIT-15(1)(2) 459, Ayakar Bhawan M.K. Road, Mumbai- 40020	v.	Luxora Realtors Pvt. Ltd Unit No. 150, Avior Corporate Park Nirmal Galaxy LBS Road Mulund (W), Mumbai- 400080  <b>PAN: AABCO3197J</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri. K.P. Devani</b>
<b>Department Represented by</b>	<b>:</b>	<b>Ms. Smiti Samant</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>15.06.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>23.08.2023</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 01.02.2023 for the A.Y.2013-14.

**2.** Assessee has raised following grounds in its appeal: -

"1. Whether on the facts and in the circumstance of the case and in law, the CIT(A) justified in deleting the addition of Rs.15,86,06,125/- in respect of paid- up preference share capital treated as cash credit u/s 68 of the Act ignoring the fact that the assessee failed to produce the documentary evidence to prove the identity and creditworthiness of the investor as well as the genuineness of the transaction?"

2. Whether, on the facts and in the circumstances of the case and in law. the CIT(A) failed to appreciate the fact that the onus is on the assessee to explain and substantiate the genuineness and true nature of the transaction?"

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in not setting aside the order of the Assessing officer for de novo adjudication where the documents were filed by the assessee at the last stage of assessment Proceeding thereby preventing the AO from making due verification or rebuttal of evidences brought on record?"

4. The appellant prays that the order of Ld. CIT (A) on the above ground be set-aside and that of the assessing officer be restored.

5. The appellant craves leave to add, amend or alter any grounds of add new ground, which may be necessary."

**3.** At the time of hearing, Ld. AR brought to our notice that similar issue which Revenue has raised before the Coordinate Bench in ITA.No. 6202/Mum/2016 for the A.Y.2012-13 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee. He brought to our notice Para No. 5.2 and 5.3 of the order, copy of the order is placed on record. Further, Ld. AR of the assessee filed its written submissions, for the sake of clarity, same is reproduced below: -

*"Ground No.1 to 4: Addition u/s 68 at Rs. 15.86.06,125/-on account of Share Capital Contribution from Aanya Properties (1) Ltd., Mauritius.*

*A.O            Para 4                            Page 2 to 12*

*CIT(A)        Para 2.3                                Page 14 to 28*

*A) Issue in dispute covered in favour of assessee by decision of ITAT in the case of assessee in earlier Asstt. Year 2012-13 in ITA No 6202/M/2016 vide order dated 19/06/2019.*

*(P. 1-15) [Vol-1 (13, 14, 15)]*

*i) Addition made u/s 68 is for share capital contribution of same corporate share holder M/s. Aanya Properties (1) Ltd.*

*ii) Similar evidence to explain share capital contribution considered in order of ITAT to uphold deletion of addition by CIT(A)*

*iii) CIT(A) at page 15 & 24 recorded finding that facts and circumstances are identical to that in earlier year and followed the order of ITAT reproduced at pages 15 to 24.*

*iv) In grounds of appeal factual position as given hereinabove is not challenged or disputed.*

*B) Details of share application money received during the previous year along with certificates of Foreign Inward Remittance and other relevant details submitted before A.O. in regular assessment proceedings and appellate proceedings.*

*(P-1 to 315) [Vol.- II]*

*C) The legal evidences placed in respect to share capital contribution received from M/s Aanya Properties (1) Ltd. is as under.*

*1) Certificate of incorporation of Aanya Properties (1) Ltd.*

*(P. 1-2) [Vol.-II]*

*ii) Copy of the constitution of Aanya Properties (1) Ltd.*

*(P-3 to 17) [Vol-11]*

*iii) Statement of remittance received from M/s Aanya Properties (1) Ltd.*

*(P-18)[Vol.-II]*

*iv) Copy of Foreign Inward Remittance Certificates issued by bank indicating remittance is received towards share capital.*

*(P-19 to 30) [Vol.-II]*

*v) Copy of bank statement of assessee reflecting receipt of funds towards share capital.*

*(P-31 to 58) [Vol. - II]*

*vi) Copy of bank statements of Aanya Properties (1) Ltd. reflecting remittance of funds towards share capital Bank statement of Aanya Properties (1) Ltd. of HSBC Mauritius clearly depict transfer of money to assessee is towards share capital contribution with assessee company*

*(P-59to78)[Vol-11]*

*vii) Copy of financial statements of Aanya Properties (1) Ltd. reflecting investments made with assessee company Balance Sheet of Aanya Properties (1) Ltd. clearly depict investment in share capital of assessee company. Shareholding Pattern of Aanya Properties (1) Ltd. indicate that entire shareholding of Aanya Properties (1) Ltd is with another Mauritius based company namely Aanya Holding Ltd (AHL).*

*(P-79 to 111) [Vol-II] (P-87, 107, 110)*

*viii) Copy of Bank statement of M/s Aanya Holding Ltd. Bank statement of M/s Aanya Holding Ltd. of HSBC clearly depict source of investment made by M/s Aanya Properties (1) Ltd. in assessee company.*

*(P-112-135)[Vol - II]*

*ix) Copy of Financial statement of M/s Aanya Holdings Ltd. reflecting investment made in M/s Aanya Properties (1) Ltd.*

*(P-136-171) [Vol.-II]*

*x) Share Subscription cum Shareholder Agreement.*

*(P-172-315) (Vol.-II)*

*D) Proviso to section 68 of I.T. Act 1961 is applicable only in respect to share holder being resident of India. Share capital contribution received by assessee company is from non- resident share holder and proviso to section 68 of I.T. Act 1961 is inapplicable.*

*E) In respect to share capital contribution from non-resident share holders no addition can be made if the identity of share holder is established. Assessee has placed sufficient legal evidences on record to substantiate identity, creditworthiness and genuineness of share capital contribution by non- resident. Assessee has discharged onus lay on assessee u/s 68 of I.T. Act 1961 by placing legal evidences on record.*

*Reliance on:-*

*1) 159 ITR 0078 (SC)*

*CIT vs. Orissa Corporation (P) Ltd.*

*(P-32-38) [Vol.-1]*

*ii) 330 ITR 0298 (Delhi)*

*CIT vs. Dwarkadish Investment (P) Ltd.*

*(P. 39-48) [Vol.-1]*

*iii) 356 ITR 0065 (MP)*

*CIT vs People General Hospital Ltd.*

*(P-50-57) [Vol.-1]*

*iv) Hon'ble Supreme Court order in SLP*

*(Civil)/2014 CC 5997/2014*

*CIT vs Peoples General Hospital Pvt. Ltd.*

*(P-49) [Vol.-1]*

*v) 400 ITR 0439 (Bom.)*

*PCIT vs Paradise Inland Shipping Pvt. Ltd.*

*(P-58-63) [Vol.-1]*

*F) Share capital contribution is in compliance with directives of Reserve Bank of India. Receipt of share capital contribution. from non-resident share holder has been accepted on receipt of foreign remittance without inviting any adverse observation by Financial Institutions. On above factual position no addition in respect to share*

*capital contribution can be made by holding the same as unexplained cash credit.*

G) *Reliance on:-*

*i) ITA No.3276/Mum/2016, in the case of M/s Veritas (India) Ltd. vide order dated 10/01/2019. (P-64-88) [Vol.-1] (86, 87)*

*ii) ITA No.1090/Mum/2019 in the case of M/s Hinduja Realty Ventures Ltd. vide order dated 13/09/2019. (P-89-119) [Vol.-I] (108, 109)*

*H) Share subscription cum shareholders agreement is legal evidence on record to demonstrate identity, creditworthiness and genuineness of transaction of receipt of share capital. Corporate shareholder is holding shares as on date.*

*(P-172 to 315)*

**4.** On the other hand, Ld. DR relied on the order of the Assessing Officer.

**5.** Considered the rival submissions and material placed on record, we observe from the record that the assessee has received capital contribution from the non-resident corporate investors through the proper banking channels. The assessee has submitted Certificate of Incorporation, Copy of Registration / Constitution, Foreign Inward Remittance Certificate, Bank Statements and Financial Statements of the investments to establish the source of the funds. Further, it was also submitted the Share Subscription–cum–Shareholder Agreements to explain the share capital contribution from the foreign investors. The same documents were submitted before the Ld.CIT(A) and he has

considered the same in his order. Ld.CIT(A) has concluded that identity, creditworthiness and genuineness of the share capital contribution is established.

**6.** Since the facts and issue involved are similar in A.Y. 2012-13, wherein share capital contribution received from the same non-resident corporates. Before us, Ld.DR also has not controverted the factual position as placed on record. We observe that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y.2012-13 and decided the issue in favour of the assessee.

While holding so the Coordinate Bench held as under: -

*"5.2. We have heard rival submissions. The facts stated hereinabove and the arguments of the Id. AR remain undisputed and hence, the same are not reiterated for the sake of brevity. We are satisfied that the Id. AO had made several factual errors in his assessment order where incorrect assumptions of facts have been rightly pointed out by the Id. AR hereinabove. None of these arguments were controverted by the Id. DR before us. We find that money received in the form of preference share capital has come through FDI route with the proper approval of FIPB and RBI by filing requisite statutory forms and complying with the requisite conditions prescribed thereon. Hence, there is no question of doubting the genuineness of the said transactions. We find that the assessee has received preference share capital from Aanya Properties (I) Ltd. which is holding 31% equity in the assessee company which means the preference share capital is received from the existing share holder of the assessee company. The assessee has given various documentary evidences pertaining to the investor company i.e. Aanya Properties (I) Ltd. proving the identity and creditworthiness thereon. Hence the three necessary ingredients of Section 68 of the Act have been duly complied with by the assessee in the instant case. We are inclined to appreciate the contentions of the Id. AR that merely because the original documents were not submitted before the Id. AO, the photo*

*copy of the said documents cannot be summarily brushed aside and ignored in order to draw the adverse inference against the assessee company.*

*5.3. We also appreciate the fact that the key management personnel of Aanya Properties (I) Ltd. is stationed at Mauritius and merely because of his non-appearance before the Id. AO, no adverse inference could be drawn against the receipt of preference share capital by doubting the veracity of the same, without rebutting various documentary evidences that are already available on record. Since this is more of a factual issue, we do not deem it fit to adjudicate the various decisions relied upon by the Id. AR before us.*

*5.4. In view of these facts, there is no need for setting aside of this appeal to the file of the Id. AO as prayed by the Id. DR as it would only tantamount to giving second innings to the Id. AO, which in our considered opinion, would not serve any purpose, as no second view is possible in the instant case and as these details were already before the Id. AO. In view of the aforesaid observations, in the facts and circumstances of the case, we do not find any infirmity in the order of the Id. CIT(A) who had appreciated the entire facts and documentary evidences available on record, granting relief to the assessee. Accordingly, the grounds raised by the revenue are dismissed.”*

**7.** Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2012-13, we dismiss the grounds raised by the revenue.

**8.** In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 23<sup>rd</sup> August, 2023.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai / Dated 23/08/2023  
Giridhar, Sr.PS

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**