

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1226/DEL/2018 [A.Y. 2012-13]

M/s SKJ Buildwell Pvt. Ltd
KJ -81- Kavi Nagar
Ghaziabad

Vs.

The I.T.O
Ward - 2(3)
Ghaziabad

PAN: AAQCS 5310 N

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Somil Agarwal, Adv

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 08.11.2023
Date of Pronouncement : 10.11.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A), Ghaziabad dated 28.12.2017 pertaining to A.Y. 2012-13.

2. The grievance of the assessee is two-fold - firstly, the assessee is aggrieved by the addition of Rs. 1,29,35,000/- u/s 68 of the Income-tax Act, 1961 [the Act, for short] on account of share premium received during the year and secondly, by the addition of Rs. 30 lakhs on account of deemed u/s 2(22)(e) of the Act.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated the facts of the case are that the assessee filed its return of income on 30.03.2013 declaring NIL income. Return was selected for scrutiny assessment under CASS and accordingly, statutory notices were issued and served upon the assessee.

5. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has received total consideration of Rs. 130 lakhs from the following three parties which included share premium of Rs. 1990/- per share as against value of Rs. 10/- per share:

- (1) Rs. 30 lakhs - M/s Genius Portfolio Management Pvt Ltd
- (2) Rs. 50 lakhs - M/s Fast Tract Buildwell Pvt Ltd
- (3) Rs. 50 lakhs - M/s Abhimaan Marketing Services Pvt Ltd

6. Necessary enquiries were made from Axis bank, who vide letter dated 31.01.2015, furnished details of money received from M/s Abhimaan Marketing Services Pvt Ltd and by letter dated 29.01.2015, details of money received from M/s Fast Tract Buildwell Pvt Ltd and M/s Genius Portfolio Management Pvt Ltd furnished its reply and submitted the bank statement with Axis bank.

7. We find that the Assessing Officer has accepted the share application money from the aforementioned three parties fulfilling all the three conditions required to be fulfilled by provisions of section 68 of the Act, but surprisingly, did not accept the share premium from the same parties.

8. In our considered opinion, it is the prerogative of the Board of Directors to decide share premium amount and it is the wisdom of share applicant whether to purchase share at that premium or not. All that the Assessing Officer can question for the impugned A.Y is whether the assessee has discharged the initial onus cast upon it by

provisions of section 68 of the Act and if yes, then no further action needs to be taken for the impugned A.Y.

9. We are of considered view that prior to A.Y 2013-14 there is no onus on the assessee to justify the basis of premium on which shares are issued as held by the Hon'ble High Court of Bombay in the case of Green Infra Ltd 392 ITR 7 and Gagandeep Infrastructure Pvt Ltd. 80 Taxmann 272.

10. Facts on record show that the assessee has successfully discharged the initial onus cast upon it by provisions of section 68 of the Act. Therefore, no addition is called for u/s 68 of the Act. We, accordingly, direct the Assessing Officer to delete the addition of Rs. 1,29,35,000/-. Ground Nos. 1 and 2 are allowed.

11. Ground Nos. 3 and 4 relates to the addition of Rs. 30 lakhs.

12. Facts of this addition are very peculiar and strange. The Assessing Officer, at Para 4 of his order, has mentioned that the assessee had made advance of Rs. 30 lakhs to Shri Sunil Kumar Jain, Chairman cum Managing Director [CMD] of the company out of reserves

and surplus of Rs. 1,29,22,893/- and applied the provisions of section 2(22)(e) of the Act.

13. We fail to understand how the provisions of section 2(22)(e) of the Act are attracted in the hands of the payer. Moreover, the Assessing Officer himself, at para 2 of his order has given a finding that the assessee company was incorporated on 13.10.2011 i.e. during the F.Y. 2011-12, then can there be reserve and surplus on the date of giving the advance to the CMD? On such peculiar facts of the case, we do not find any merit in invoking the provisions of section 2(22)(e) of the Act. The Assessing Officer is directed to delete the addition of Rs. 30 lakhs. Ground Nos. 3 and 4 are allowed.

14. In the result the appeal of the assessee in ITA No. 1226/DEL/2018 is allowed.

The order is pronounced in the open court on 10.11.2023 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 10th NOVEMBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	