

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER**

ITA No. 6657/DEL/2018 [A.Y. 2015-16]

The A.C.I.T.
Circle - 2
Noida

Vs.

M/s Presidency Infraheights Pvt Ltd
Unit No. 2201, IInd Floor,
Tower No. 2, Express Trade Tower
Plot No. 36, Block B, Sector - 132
Noida (U.P)

PAN - AAGCP 5711 L

CO No. 40/DEL/2023
[A/o ITA No. 6657/DEL/2018 [A.Y. 2015-16]

M/s Presidency Infraheights Pvt Ltd
Unit No. 2201, IInd Floor,
Tower No. 2, Express Trade Tower
Plot No. 36, Block B, Sector - 132
Noida (U.P)
PAN - AAGCP 5711 L

Vs.

The A.C.I.T.
Circle - 2
Noida

(Applicant)

(Respondent)

Assessee By : Shri Shiv Kumar, CA
Shri Piyush Kesarwani, CA

Department By : Shri Prakash Nath Baranwal, CIT- DR

Date of Hearing : 15.01.2024

Date of Pronouncement : 17.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned appeal by the Revenue and cross objection by the assessee are directed towards the very same order of the CIT(A) - I, Noida dated 28.06.2018 pertaining to A.Y. 2015-16.

2. Since the appeal and cross objections were heard together, they are disposed of by this common order for the sake of convenience and brevity.

3. Grievances of the Revenue read as under:

"1. That the Ld.CIT(A) has erred in law and on facts by deleting the addition made by AO without appreciating the fact that the addition was made by the A.O. correctly treating the interest income as income from other sources as assessee has not recognized the revenue during the year under consideration as per real estate Accounting Standard-s, (AS-g).

2. That the Ld. CIT(A) has erred in law and on facts by deleting the addition made by A.O. without appreciating the fact that the addition u/s 68 of the Act was made due to failure on part of assessee to submit the confirmation from the lender, proof of source of income outside India, proof of residential status or copy of passport of the lender for proving identity, genuineness and creditworthiness of the lender to pay the huge money.

3. The appellant craves to leave, add, alter and amend any of the grounds of appeal on or before hearing.

4. That the order of the Ld. CIT(A) deserves to be set-aside and the order of the AO be restored."

4. Cross objections by the assessee are as under:

"BECAUSE the notice dated 08.04.2016 Rs.43,79,93,8411- issued under section 143(2) by the Income Tax Officer, Ward-II(2), Allahabad IS without jurisdiction, therefore assessment order dated 27.12.2017 passed by the Deputy Commissioner of Income Tax, Circle-2, Noida without assuming jurisdiction by issue of notice under section 143(2) got vitiated and liable to be annulled."

5. 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.

6. The underlying facts in the first issue are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has received Rs. 81,06,247/- as interest on bank deposits and the same was shown under the head "Business Income", setting off the same against business expenses.

7. The Assessing Officer was of the firm belief that the assessee has not commenced its business. Therefore, interest earned on bank deposits was liable to be charged to Income tax as income from other sources. The Assessing Officer, accordingly, added Rs. 81,06,247/-.

8. Proceeding further, the Assessing Officer noticed that the assessee has received Rs. 1,69,48,50,000/- as long term borrowings from Shri Owais Usmani who happens to be a 100% share holder of the assessee company. Money was received against issue of compulsory convertible debentures of face value of Rs. 125/- each, at discounted price of Rs. 100/- each.

9. The assessee explained that Rs. 1,69,48,50,000/- is actually face value of debentures and the assessee has actually received Rs. 1,35,58,80,000/- out of which only Rs. 1,28,09,10,000/- has been received during the year under consideration.

10. The assessee was asked to submit evidences under the light of provisions of section 68 of the Act.

11. On receiving no plausible reply, the Assessing Officer made addition of Rs. 1,28,09,10,000/-.

12. The assessee challenged the addition before the ld. CIT(A).

13. In so far as commencement of business is concerned, it was explained that the said business was commenced in the earlier A.Y and, therefore, addition of Rs. 81,06,247/- is unwarranted.

14. The ld. CIT(A) verified the commencement of business and found that the business was already commenced and, therefore, allowed the appeal relating to the addition of Rs. 81,06,247/- and deleted the same.

15. In so far as addition u/s 68 of the Act is concerned, the ld. CIT(A) analyzed the documentary evidences furnished by the assessee and found the same were also furnished before the Assessing Officer. The ld. CIT(A) observed that the assessee has submitted the necessary details duly authenticated by the resident Embassy of India in UAE. Being convinced, the ld. CIT(A) deleted the addition of Rs. 1,28,09,10,000/-.

16. Before us, the ld. DR strongly supported the findings of the Assessing Officer and read the operative part.

17. The ld. counsel for the assessee reiterated what has been stated before the lower authorities.

18. We have given thoughtful consideration to the orders of the authorities below and have also gone through the relevant documentary evidence brought on record in light of Rule 18(6) of ITAT Rules.

19. A perusal of the balance sheet show that the assessee was having inventories of Rs. 37.88 crores as on 31.03.2014 which was increased to Rs. 80.50 crores as on 31.03.2015. The assessee has purchased a land situated at GH-F 2, SDZ, Sector - 25, Jaypee Greens Sports City, Gautam Budh Nagar measuring 222.58 sq. yds. for construction of group housing duly approved by the Yamuna Expressway on 12.12.2012, which means that the business of the assessee commenced in F.Y. 2012-13. Therefore, the observation of the Assessing Officer that the assessee has not commenced its business is factually incorrect and on

proper appreciation of facts, we decline to interfere with the findings of the Id. CIT(A). Ground No. 1 is dismissed.

20. In so far as deletion of addition u/s 68 is concerned, we have carefully perused the bank statement of Kotak Mahindra Bank belonging to Shri Owais Usmani and we find that Shri Owais Usmani is having more than sufficient balance in his bank account to make the impugned investment.

21. Since he is 100% share holder in the company, there is no question of doubting his identity. The entire money has been remitted through proper banking channel with the approval of RBI. Therefore, the same can be safely concluded to have established the genuineness of the transaction and bank statements are showing the capacity of Shri Owais Usmani.

22. Considering the facts in totality, we could not find any error or infirmity in the findings of the Id. CIT(A).

23. As a result, the appeal of the Revenue is dismissed.

24. Since we have dismissed the appeal of the Revenue, the cross objections become otiose.

25. In the result, the appeal of the Revenue in ITA No. 6657/DEL/2018 is dismissed and the Cross objection in CO No. 40/DEL/2023 is dismissed as having become otiose.

The order is pronounced in the open court on 17.01.2024.

Sd/-

[YOGESH KUMAR U.S.]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 17th JANURARY, 2024

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	