

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

**BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.9401/Del/2019
(ASSESSMENT YEAR 2016-17)**

Income Tax Officer Ward-20(1) New Delhi	Vs.	Ms Pragati Infraplanners (P) Ltd. F-268, New Rajinder Nagar Delhi-110 060 PAN-AAHCP 7905M
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	08/02/2024
Date of Pronouncement	08/02/2024

ORDER

PER M. BALAGANESH AM:

This appeal of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-7, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] dated 11/09/2019 against the order passed by Income Tax Officer, Ward-20(1), Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income

Tax Act (hereinafter referred to as 'the Act'), for the Assessment Year 2016-17.

2. None appeared on behalf of the assessee despite issuance of notice by RPAD and also in email through the Assessing Officer. Hence, we proceed to dispose of this appeal by hearing the Ld. DR and based on materials available on record.

3. The Revenue has raised the following grounds of appeal:-

"1. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in deleting the addition of Rs.3,03,66,000/- without appreciating the fact that the assessee company has failed to explain and substantiate the transaction to the satisfaction of the Assessing Officer.

2. The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of his appeal."

4. We have heard the Ld. DR and perused the materials available on record. The return of income for AY 2016-17 was filed by the assessee company on 27/03/2017 declaring loss of Rs.24,901/-. The assessee is engaged in the business of construction and construction related activities. The Ld. AO on perusal of the details available in ITBA noticed that M/s Cosmic Structure Limited invested Rs.3,03,66,000/- in assessee company. The assessee filed confirmation and detailed reply explaining the entire transactions before the Ld. AO. The Ld. AO, however, not convinced with the

reply concluded that since Cosmic Structure Limited had not filed its return of income for AY 2016-17 and the assessee company was incorporated on 08/08/2014 and in that scenario, it is not possible for M/s Cosmic Structure Limited to have made payments in July, 2012 on behalf of the assessee company which was not even existent at that time. With these observations, the Ld. AO added a sum of Rs.3,03,66,000/- as income of the assessee u/s 68 of the Act.

5. Before the Ld. CIT(A), the assessee submitted that entire factual matrix again and stated that the Ld. AO had not understood the facts of the case properly. The Ld. CIT(A) examined the entire facts of the case and observed as under:

“4. I have carefully considered the order passed by the AO and the submissions made by the appellant.

4.1 In the Balance sheet of Pragati Infraplanners (P). Ltd. a sum of Rs. 3,03,66,000/- is appearing as long term borrowing from Cosmic Structure Ltd. which also happens to be its holding company. This amount is payable to Cosmic Structure Ltd. on account of transfer to certain property rights in favour of Pragati Infraplanners (P). Ltd. from Cosmic Structure Ltd. The AO has added back this amount u/s 68 of the Income Tax Act.

4.2 It was submitted that Pragati Infraplanners (P). Ltd. was incorporated as a subsidiary company of M/s Cosmic Structure ltd. on 08.08.2014 to conduct real estate business.

4.3 Unfortunately, due to recession in real estate market and liquidity problems, the business of the Holding Company, Cosmic Structure Ltd. severely suffered. Due to financial liquidity issues, Cosmic Structure Ltd. failed to honour its business commitments. This led to various civil and criminal complaints

against the management (directors) of Cosmic Structure Ltd., the Holding Company of Pragati Infraplanners (P). Ltd. The High Court of Delhi found both the directors guilty of breach of trust. As a result, both the directors were arrested on 21.09.2016. As on date, they are still serving their prison term at Tihar Jail, New Delhi.

4.4 After both the directors were arrested by Police on 21.09.2016, the business operations of the company collapsed. No other person in the absence of both the directors could handle the business of Cosmic Structure Ltd. Under these very special circumstances and absence of both the directors, Cosmic Structure Ltd. further defaulted - the filing of Income Tax and ROC returns.

4.5 While active in business, Cosmic Structure Ltd. had acquired some property rights from Mr. Rajiv Sharma and his associates/companies (Anand Singh, B. R Buildhome & Yojna Apartments). The details of these property rights are placed in the table below.

S. No.	Details of Property	City	Amount (Rs.)
1	Flat No. F3 & F7 at Village Bharuwala, Grant Dehradun	Dehradun	45,25,000.00
2	Flat No. F4 & F8 at Village Bharuwala, A Grant Dehradun	Dehradun	45,25,000.00
3	Flat No. F5 & F6 at Village Bharuwala, Grant Dehradun	Dehradun	40,60,000.00
4	Flat No. G5 & G6 at Village Bharuwala, Grant Dehradun	Dehradun	40,60,000.00
5	Flat No. G7 & G8 at Village Bharuwala, Grant Dehradun	Dehradun	40,60,000.00
6	Flat No. S5 & S6 at Village Bharuwala, Grant Dehradun	Dehradun	40,60,000.00
7	Flat No. F 2, First Floor, Plot No II C/ 17, Sector 2, Vaishali Ghaziabad	Ghaziabad	40,00,000.00
8	Expenses (Schedule 6 of Balance Sheet)		16,08,000.00
	Total		3,08,98,000.00

Copies of agreements in respect of above properties were also filed.

4.6 As an advance consideration towards the acquisition of aforesaid property rights, Cosmic Structure Ltd. had paid the following sums to Mr. Rajiv Sharma and his associates.

<i>Dated</i>	<i>Amount</i>	<i>Mode of Payment</i>	<i>RTGS No.</i>
<i>31.07.2012</i>	<i>1,00,00,000.00</i>	<i>RTGS from Kotak Bank</i>	<i>KKBKH12213729561</i>
<i>21.08.2012</i>	<i>2,10,00,000.00</i>	<i>RTGS from Kotak Bank</i>	<i>KKBKH12234688762</i>
<i>Total</i>	<i>3,10,00,000.00</i>		

Copy of Bank Statement of Cosmic Structure Ltd. were also filed at Page No. 209 to 210 of Paper Book.

4.7 Mr. Rajiv Sharma and his associates/companies (Anand Singh, B. R. Buildhome & Yojna Apartments) failed to deliver the properties mentioned herein above in "Paragraph 10" in time and as per the agreement with Cosmic Structure Ltd. In consultations with all constituents and due to the delays and business necessities, Cosmic Structure Ltd. transferred the above mentioned (Paragraph 10) property rights in favour of its subsidiary company i.e. Pragati Infraplanners (P). Ltd.

4.8 It was also mutually decided by Mr. Rajiv Sharma and his associates/companies (Anand Singh, B. R. Buildhome & Yojna Apartments) and Cosmic Structures Ltd. directors, that, as and when the contracted properties are ready for registration, the sale deed will be executed in favour of Pragati Infraplanners (P). Ltd. instead of Cosmic Structure Ltd.

4.9 These transactions were also accounted in the books of Cosmic Structure Ltd. and Pragati Infraplanners (P). Ltd. through accounting entries. Cosmic Structure Ltd. debited Pragati Infraplanners (P). Ltd. by Rs. 3,03,66,000/-. This amount is also reflected in the Balance Sheet of Cosmic Structure Ltd under the head Loans & Advances (Note No. 14 of Balance Sheet, Page NO. 220 of paper book). Balance sheet of Cosmic Structure Ltd. for the F.Y. 2014-15 was also filed (page no. 211 to 223 of paper book).

4.10 Pragati Infraplanners (P). Ltd. also accounted for the transaction and credited a sum of Rs. 3,03,66,000/- in its account books to Cosmic Structure Ltd. This amount is also reflected in the Balance Sheet of Pragati Infraplanners (P). Ltd. on page 40 under the head Long Term Borrowing. Copy of balance sheet for the F.Y. 2015-16 was also filed (Page no. 31 to 41 of paper book).

4.11 In course of time, the following sale deeds have been executed in favour of Pragati Infraplanners (P). Ltd. by Mr. Rajiv Sharma and his associates/companies (Anand Singh, B. R. Buildhome & Yojna Apartments).

<i>Dated</i>	<i>Property details</i>	<i>Amount</i>
15.02.2016	<i>Flat No. F3 & F7 at Village Bharuwala, Grant Dehradun</i>	<i>45,25,000.00</i>
15.02.2016	<i>Flat No. F4 & F8 at Village Bharuwala, Grant Dehradun</i>	<i>45,25,000.00</i>
15.02.2016	<i>Flat No. F5 & F6 at Village Bharuwala, Grant Dehradun</i>	<i>40,60,000.00</i>
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15.02.2016	<i>Flat No. G7 & G8 at Village Bharuwala, Grant Dehradun</i>	<i>40,60,000.00</i>
15.02.2016	<i>Flat No. S5 & S6 at Village Bharuwala, Grant Dehradun</i>	<i>40,60,000.00</i>
21.01.2016	<i>Flat No. F2, First Floor, Plot No. II C/17, Sector 2, Vaishali Ghaziabad</i>	<i>40,00,000.00</i>
	<i>Expenses (Schedule 6 of Balance Sheet)</i>	<i>16,08,000.00</i>
	<i>Total</i>	<i>3,08,98,000.00</i>

4.12 As the directors of Cosmic Structure Ltd. are not in office due to imprisonment, the amount of Rs. 3,03,66,000/- is still standing in the books of Pragati Infraplanners (P). Ltd. Various issues with regard to transaction are also required to be settled.

4.13 The AO in his order has pointed out the following reasons as justification for his addition of Rs. 3,03,66,000/-. Being the amount given by Cosmic Structure Ltd. (Holding Company) to Pragati Infraplanners (P) Ltd. (Subsidiary Company) u/s 68 of the Income Tax Act.

- i. Notice u/s 133(6) could not be served to the directors of Cosmic Structure Ltd.
- ii. Cosmic Structure Ltd. has not filed its Income Tax and ROC Returns after 31.03.2014.
- iii. Pragati Infraplanners (P). ltd. was incorporated after 31st March, 2013.
- iv. Documents are executed by Mr. Anand Singh instead of Rajiv Sharma and associates.

4.14 It was submitted that notice u/s 133(6) could not be served to the directors of Cosmic Structure Ltd. because it is on record that both the directors are serving their prison term since 21.09.2016. They are not in office. In such circumstances, how one can receive the notices from the Income Tax Department and appear before the AO. Considering the circumstances, this cannot be a valid ground for the addition.

4.15 It was also submitted that M/s Cosmic Structure Ltd. had been regularly filing its Income Tax and ROC Returns till the A.Y. 2014-15 (advances were made during A.Y. 2013-14). It only stopped these compliances after the arrest and imprisonment of both the directors. In the absence of both the directors, it was not technically possible for the company to continue with these compliances. Absence of directors from office cannot make the past business questionable. All returns have been filed for the period (F.Y. 2012-13) when business was actually executed. Returns were also filed in subsequent years (upto F.Y. 2013-14).

4.16 Further Pragati Infraplanners (P). Ltd. was incorporated on 08.08.2014 as a subsidiary company of Cosmic Structure Ltd. to undertake real estate projects. To initiate the business, some of the existing business in the hands of Cosmic Structures Ltd was shifted to its subsidiary i.e. Pragati Infraplanners (P) Ltd. The AO has not taken note of the business technicalities and management action. The accounting entries have been made both in the books of the holding company and subsidiary company. The period has no relevance u/s 68.

4.17 Regarding the fact that documents are executed by Mr. Anand Singh instead of Rajiv Sharma and associates -it was submitted that it is a common practice around the world that, the property owner is one party and property developers is another party. Both come together and develop the property. Buyers of the property negotiate with the developers of the property and advance the money to the developers. The sale deed in favour of buyers can only be executed by the owner of the property. In this case Mr. Anand Singh is the owner of the property and Mr. Rajiv Sharma and his associates are the developers of the property. Copy of the agreement between Mr. Rajiv Sharma and Mr. Anand Singh was also filed, (page no. 232 to 237 of paper book).

4.18 I have carefully considered the assessment order and the submissions filed by the Ld. AR. Section 68 of the Act is an anti-tax evasion provision and was incorporated into Act to obviate the possibility of introduction of unaccounted / undisclosed money in the books of account in the names of relations or third parties The object behind insertion of Section 68 is to assess such income when it surfaces and assess it in the hands of the person in whose book it surfaces. Section 68 casts an onus upon an assessee to prove the identity and creditworthiness of the Depositors and the genuineness of the transactions.

4.19 In the light of the above, the various limbs of Section 68 of the Act and the extent to which they stand satisfied in the instant case are being discussed hereinafter:-

A. IDENTITY: In order to prove the identity of the Depositor an Assessee is required to prove, on the basis of a concrete documentary evidence, that the depositor exists and is uniquely identifiable on the basis of certain characteristic/distinct features. In common parlance, identity of a person/entity refers to a quality that makes someone or something what they are and how they are different/unique from other people/entities.

B. CREDITWORTHINESS: In common, as well as financial parlance, credit worthiness of a depositor refers to an assessment of his ability to lend money based on an analysis of his/their financial' other parameters. The said meaning when extrapolated in the context of the Act would refer to the ability of the depositor to deposit money and justification of his source.

C. GENUINENESS OF THE TRANSACTION: The third limb of Section 68 viz. onus to prove the genuineness of the transactions seeks "to ensure that the substratum/pivot of the transaction stands on a firm edifice and is not a camouflage in any manner."

4.20 In the instant case identity as well as creditworthiness and genuineness of the party is established as it is the holding company of the appellant company. The problems were faced due to peculiar circumstances of the Directors of the holding company being in jail.

4.21 Onus was on the appellant to prove genuineness of the transactions shown by them and from the points discussed above it appears to be business settlement agreement between a holding company and its subsidiary and necessary accounting entries have been made for this purpose. In view of the facts of the case, I am of the considered view that this is not a fit case of disallowance under section 68.

5. In the result, the appeal is allowed."

6. None of the factual findings recorded by the Ld. CIT(A) herein above were controverted by the Revenue before us with cogent evidence. As submitted earlier, addition was made by the Ld. AO without understanding the facts of the case. We find that the Ld. CIT(A) had duly appreciated the facts together with the relevant materials on record and had granted relief to the assessee, on which we do not find any infirmity. Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 8th February, 2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 08/02/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI