

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 3795/DEL/2017 [A.Y. 2012-13]

ITA No. 3797/DEL/2017 [A.Y. 2012-13]

The Dy. C.I.T  
Central Circle  
Ghaziabad

Vs. M/s MGI Infracon Pvt Ltd  
[Earlier M/s Bigmoon Buildcon Pvt Ltd  
A- 554/3, Ground Floor, A- Block, A  
Ashok Nagar, New Delhi

PAN - AAECB 6946 R

(Applicant)

(Respondent)

Assessee By : None  
Department By : Shri Subhra Jyoti Chakroborty, CIT-DR

**Date of Hearing : 13.02.2024**

**Date of Pronouncement : 13.02.2024**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

The above captioned two separate appeals by the Revenue are preferred against two separate orders of the CIT(A)-4, Kanpur dated 31.03.2017 pertaining to A.Y. 2012-13.

2. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. None appeared on behalf of the assessee inspite of several notices.

4. We heard the ld. DR at length and have carefully perused the orders of the authorities below.

5. ITA No. 3795/DEL/2017 is an appeal against the deletion of addition of Rs. 11,35,40,000/- made u/s 68 of the Income-tax Act, 1961 [the Act, for short] on account of share premium money.

6. While scrutinizing the return of income, the Assessing Officer noticed that the assessee company has issued 22,70,800 equity shares of Rs. 10/- each at a premium of Rs. 40/- per share and collected Rs. 2,27,08,000/- as face value of shares and Rs. 9,08,32,000/- on account of share premium, aggregating to Rs. 11,35,40,000/-.

7. The Assessing Officer found that the entire shares have been applied by KDP Buildwell Pvt Ltd, a company of KDP Group which group

was covered under search and seizure proceedings. The assessee was asked to justify the share transaction in light of provisions of section 68 of the Act and on receiving no plausible reply, the Assessing Officer made addition of Rs. 11,35,40,000/-.

8. Addition was challenged before the Id. CIT(A) and before the Id. CIT(A), additional evidences in the nature of confirmation of account by investor, share certificate issued, copy of ITR and computation of income of investor, audit report, balance sheet, profit and loss account of investor and bank statements of investor.

9. The Id. CIT(A) called a remand report from the Assessing Officer who did not object for the admission of additional evidence.

10. On the contrary, in the remand report, the Assessing Officer mentioned that the addition u/s 68 of the Act has been made in the case of KDP Buildwell Pvt Ltd., therefore, no addition is to be made on this ground in the case of the assessee u/s 153C /143(3) of the Act.

11. The Id. CIT(A) was of the opinion that since the addition has been made in the hands of the investor company KDP Buildwell Pvt Ltd, the

same becomes available source in the hands of the investor to invest in the appellant company. Therefore, no addition is called for.

12. After giving thoughtful consideration to the afore-stated findings of the ld. CIT(A), which is based upon the remand report and proper appreciation of facts, we do not find any reason to interfere with it. Appeal of the Revenue is dismissed.

13. Since the quantum has been deleted, penalty levied u/s 271(1)(c) of the Act has no legs to stand. The findings of the ld. CIT(A) cannot be faulted with.

14. In the result, the appeals of the Revenue in ITA Nos. 3795 and 3797/DEL/2023 are dismissed.

The order is pronounced in the open court on 13.02.2024.

**Sd/-**

**[KUL BHARAT]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 13<sup>th</sup> FEBRUARY, 2024

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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Date on which the approved draft comes to the Sr.PS/PS	
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