

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

BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2457/MUM/2023 (A.Y: 2014-15)

DCIT 15(1)(2) Room No. 126-B, 1 st Floor Aayakar Bhavan, M.K. Road Mumbai- 400020	v.	M/s. Luxora Realtors Private Limited Unit No. 150, Avior Corporate Park Nirmal Galaxy LBS Road Mulund (W), Mumbai- 400080 PAN: AABCO3197J
(Appellant)		(Respondent)

Assessee Represented by	:	Shri. K.P. Dewani
Department Represented by	:	Shri Ajay Chandra
Date of Conclusion of Hearing	:	14.03.2024
Date of Pronouncement	:	20.03.2024

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the revenue against order of Learned Commissioner of Income-Tax (Appeals)-48, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 18.05.2023 for the A.Y.2014-15.

2. Revenue 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.4,62,74,975/- in respect of paid-up preference share capital treated as cash credit u/s 68 of the Act ignoring the fact that the assessee filed to produce the documentary evidence to prove that identity and creditworthiness of the investor as well as the genuineness of the transaction?

2. Whether, on the facts and 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. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the AO be restored.

4. The appellant craves leave to amend or alter any or to submit additional new ground which may be necessary."

3. Brief facts relating to the appeal are, assessee filed its original Return of Income for A.Y.2014-15 on 29.11.2014 declaring total income of ₹.1,42,88,950/- and current year's loss of ₹. 60,71,072/-. A search seizure action u/s. 132(1) of Income-tax Act, 1961 (in short "Act") was carried out in the case of M/s. Luxura Infrastructure Pvt. Ltd. and its Group Companies & Executives on 19.03.2015 has resulted in detection of undisclosed income amounting to ₹.149,03,66,361.

4. During the course of the search proceedings at the residential premises of Shri Swapnesh Agarwal, the key Finance Controller of Soham Group, a Pen drive was found and seized which contained an

excel sheet in the name of 'LPRL TDR on analysis of the excel sheet named 'LRPL TDR' it was seen that the sheet contained details of the payments made by assessee to various parties for the purchase of 'Transfer Development Rights (TDR). It was also seen that there was another table in this excel sheet which contained details of certain payments received by Shri Chaitanya Parekh. Shri Swapnesh Agarwal was confronted with this sheet and he was asked to explain the contents of the same. In his reply, Shri Swapnesh Agarwal stated that the sheet contains details of payments made by assessee to various parties on account of advances given for purchase of TDRs.

5. Search action u/s. 132(1) of the Act was conducted on 19.03.2015 at the residences of Shri Chaitanya Parekh, Director of M/s. Luxora Infrastructure Pvt. Ltd, Group companies during which the cash amounting to Rs. 32,00,000/- was found. Shri Chaitanya Parekh stated that the cash found at his residential premise belonged to M/s.Luxora Realtors P Ltd, the assessee and the same was duly reflected in the books of M/s Luxora Realtors P Ltd. Shri Chaitanya Parekh furnished a copy of the cash in hand of M/s Luxora Realtors P Ltd as on 19.03.2015 wherein the cash balance was duly reflected.

6. Thus, the provisions of section 153C were attracted. M/s. Luxora Realtors Pvt Ltd., the assessee, is assessed with Income Tax Officer – 15(2)(2) Mumbai which subsequently was centralized to the charge of DCIT-Central Circle 2(4), Mumbai. Thereafter this case was assigned to the charge of DCIT - Central Circle 2(1), Mumbai vide Pr.CIT(Central)-I, Mumbai's order u/s. 127 of the I. T. Act.

7. Consequently, notice u/s. 153C dated 16.11.2017 was issued and served on the assessee. In response to the notice u/s. 153C of the Act, the assessee company has filed its return of income on 24.11.2017 declaring total income of ₹.1,42,88,950/- and current year's loss of ₹.60,30,173/-.

8. Accordingly, notices under section 143(2) and 142(1) along with the questionnaire were issued and served on the assessee. In response, Authorised Representative of the assessee attended and submitted the relevant information as called for.

9. During the course of the assessment proceedings, Assessing Officer observed from the balance sheet of the assessee that assessee has issued 29375 equity shares to M/s. Aanya Properties (I) Ltd., a

Mauritius based company of ₹.42,59,375/- at a face value of ₹.1/- each and premium at ₹.145. Further, it was noticed that the assessee had also issued 46,68,400/- preference shares to Aanya Properties (I) Ltd., a Mauritius based company of ₹.4,20,15,600/- for a face value of ₹.1/- and premium at ₹.9/. The assessee during the course of the assessment proceedings was asked to explain the creditability of the said subscribers of the shares and the genuineness of the transaction. The assessee, in regards to the creditworthiness and the genuineness of the subscribers M/S. Access Investment India and M/s Aanya Properties (I) Limited has vide submission dated 22.12.2017 stated as below: -

"As regard to your query of share holding of LIPL we submit as under:

- i. LIPL has two foreign shareholders and one Indian share holder.*
- ii. The Indian Share Holder is Luxora Projects Pvt. Ltd. the details of Identity, capacity genuineness and creditworthiness have already been furnished,*
- iii. The foreign shareholder comprise of two shareholders names (a) Ananya Properties (2) Ltd. and (b) Access Investments India*
- iv. The details of Identity, capacity, genuineness and creditworthiness of Aanya Properties (2) Ltd and Access Investments Indio have already been furnished.*
- v. The 100% shares of Aanya Properties (2) was held by Aanya Holdings Ltd.*
- vi. The list of ultimate beneficiaries of Aanya Holdings Ltd have already been furnished*

vii. As far as second foreign shareholder namely, Access Investments India, is concerned, it may be kindly noted that the ultimate beneficiary of Access Investments India was the Bank of Scotland Pic (a large listed bank in United Kingdom)

10. After considering the submissions of the assessee, Assessing Officer rejected the same and observed that assessee has failed to prove the creditworthiness of the subscribers and the genuineness of the transaction as not acceptable. In regards to shares issued to M/s. Aanya Properties (I) Ltd., it was observed that assessment in the case assessee was completed for AY 2013-14 and the share application money received by the assessee was added to the total income of the assessee, the facts of the case for AY 2013-14 are discussed in the assessment order at Page No. 3 to 8, for the sake of brevity the same are not reproduced below.

11. During the course of assessment proceedings, Assessing Officer observed that in the case of the assessee and in its reply against the show cause notice, the assessee has given name of Ultimate Beneficial Owners (UBO) of the investor holding company, which are nothing but name and address with their brief antecedent. The main issue here was to verify the source of the funds invested and the details of the same was failed to be submitted. By submitting these details, only the

non- residency status of all the above UBO was placed on record, but without any supporting evidence of their stated tax-residency in other countries, viz. South Africa, UK, Dubai, Singapore, Spain, Hong Kong and USA. The details don't prove whether the source of the funds was transferred to the investor's holding company from any Tax haven or it was hot money or tax paid money. The concluding trail of the funds going back to the last leg seems to have been withheld and hence the genuineness & creditworthiness of the source is not conclusively proved by the assessee.

12. Assessing Officer observed that assessee has failed to prove the source of M/s. Aanya properties (I) Ltd since the source of the ultimate Beneficiary Owner was not explained by the assessee. The said facts goes to prove that the source and the creditworthiness of the subscriber are not proved by the assessee. From the same, it can be seen that the investor company were only acting as front to invest unaccounted money of the assessee company and the contention of the assessee that Ld. CIT(A) 24 has granted relief on the addition on the same ground for AY 2012-13. However, Assessing Officer rejected the same as the issue is still alive, as the Revenue has preferred an appeal against this appellate order before Hon'ble ITAT and has not reached its finality.

13. Assessing Officer came to the conclusion that, creditworthiness of M/s Aanya Properties (I) Ltd and the genuineness/correctness of the transaction are not proved by the assessee. Thus the investment made by M/s. Aanya Properties (I) Ltd. amounting to ₹.4,62,74,975/- is held as cash credit within the meaning of section 68 of the Act and the same is added to the assessee's total income.

14. Further, Assessing Officer observed that the business loss of the assessee is not be set off against the addition made u/s. 68/69 since the same are headless income as they do not fall under any particular head. In this regards, reliance is placed on the Hon'ble Gujarat High Court judgment in the case of Fakir Mohammad Haji Hasan (247 ITR 209). Moreover, since such income is headless, it cannot be set off against loss under any other head of income, because under section 71 only income under one head can be set off against loss under a different head. No deduction in respect of any expenditure or allowance for set off of any loss] shall be allowed to the assessee in computing his income referred to in clause (a) of sub-section (1) of Section 115BBE. Accordingly, no set off of loss is allowed.

15. Aggrieved with the above order, assessee preferred an appeal before the Ld. CIT(A). Ld. CIT(A) after considering the submissions of the assessee and finding of the Assessing Officer, deleted the addition made by the Assessing Officer following the order of the ITAT in assessee's own case for the A.Y. 2012-13 and observed as under: -

"6.1 It is observed that the A.O has made the impugned addition of Rs. 4,62,74,975/- on account of share capital received from M/s.Aanya Properties (I) Ltd. The A.O at para 5.1 of the assessment order has noted that the appellant has issued 29,375 equity shares of face value of Rs. 1/- each on premium of Rs. 145/- per share. Thus, the share premium amount has been worked out to Rs. 42,59,375/-. Apart from that the appellant Co. had issued 46,68,400 shares to M/s. Aanya Properties (1) Ltd. of face value of Rs. 1/- at premium of Rs. 9/- per share, which works out to Rs.4,20,15,600/-. The aggregate of the two sums Rs. 4,62,74,975/- (Rs. 42,59,375/- Rs. 4,20,15,600/-) has been subjected to the addition in AY. 2014-15.

6.2 In this regard, apart from various documentary evidences regarding genuineness of M/s. Aanya Properties (I) Ltd. and the said transaction, brought on record by the appellant, the important argument of the Ld. AR, to which, I agree, are

6.2.1 It has been submitted that the appellant Co. in addition to shares issued to M/s. Aanya Properties (1) Ltd. had issued 36561 equity shares. The aggregate value of equity shares and share premium issued computes at Rs. 53,37,906/-. Receipt of this amount has been accepted by the A.O without making any adverse comment in the assessment order. Thus, the A.O has accepted part share capital issued to same share holder while making addition with respect to part of the amount. Such divergent view taken by the A.O for the same entity is unacceptable.

6.2.2 Based on the ledger account of M/s. Aanya Properties (1) Ltd. for AY. 2013- 14, it is submitted that various amounts were received during FY. 2012-13, to the tune of Rs. 15,86,06,125/-, out of which Rs. 11,68,79,574/- was appropriated towards share capital allotment and balance Rs. 4,17,26,611/- was closing balance, kept as share application money pending allotment. In the assessment order for A.Y 2013-14, entire amount of gross receipts at Rs. 15,86,06,125/- was added u/s 68 of the Act, which included share

application money pending allotment of Rs. 4,17,26,611/-. The very same amount Rs. 4,17,26,611/- has again been subjected to addition u/s 68 of the Act during impugned A.Y 2014- 15. This amounts to double addition, apart from the fact that it was not the credit received during F.Y. 2013-14 but in earlier years.

On verification, I find the above argument of the appellant, as factually correct.

6.2.3 In this regard, the appellant has submitted foreign inward remittance certificate and bank statement of M/s. Aanya Properties (I) Ltd. in respect of two trenches of USD 1,49,000 (Rs. 80,53,450/-) and USD 6,23,000 (Rs. 3,36,73,150/-) received on 14.03.2013 aggregating to Rs. 4,17,26,611/-. It is further brought on record that these evidences were on record for A.Y 2013-14, based on which Ld. CIT(A), NFAC vide order dated 01.02.2023 has accepted the receipt of the above two sums to be explained credit by deleting addition made u/s. 68 for A.Y 2013- 14. Copy of the Ld. CIT(A), NFAC is produced for verification of the undersigned. The relevant findings incorporated in page no. 9 (as part of the appellant's submission) of this order.

6.2.3 From the order of Ld. CIT(A), NAFC, I find that there is mention of identical addition of share capital contribution received from M/s. Aanya Properties (I) Ltd. during F.Y 2011-12 relevant to A.Y 2012-13 too, wherein Ld. CIT(A)-24 had allowed the appeal of the appellant. The appeal filed by the Department before Hon'ble ITAT in ITA no. 6202/Mum/2016 for A.Y 2012-13 was decided vide order dated 19.06.2019, wherein the department's appeal has been dismissed by holding that the share capital contribution received from M/s. Aanya Properties (I) Ltd. was not liable to be assessed u/s. 68 of the IT Act as the assessee has given various documentary evidences establishing the investor company identity and creditworthiness. The relevant portion of the order of Hon'ble ITAT is reproduced as under-

"5. We have heard rival submissions. We find that the Ld. DR apart from reiterating findings given in the order of the Ld. AO prayed for setting aside of the entire appeal to the file of the Ld. AO for de novo adjudication. Per contra, the Ld. AR vehemently objected for setting aside of this issue in as much as the entire details were duly furnished by the assessee before the Ld. AO and before the Ld. CIT(A) and the Ld. AO had not bothered to even mention the list of documents submitted to explain the main three ingredients of Section 68 of the Act and the veracity of the transactions. He vehemently objected for giving second innings to the Ld. AO for looking into the very same set of documents. He also

argued that the Id. CIT(A) had duly appreciated the entire documents together with its supporting evidences that were before him on record. He placed reliance on the finding of the Id. CIT(A) in para 2.4.9 that the assessee in this case had also explained source of source. The Ld. AR argued that the entire evidences submitted by the assessee explaining the credentials, identity and genuineness of the transactions of the investor company were simply brushed aside by the Ld. AO on the ground that the same were merely photo copies and not originals. Even the funds which had come under the Foreign Direct Investment (FDI) route after obtaining proper clearances and approval from Foreign Investment Promotion Board (FIPB) and statutory form filed with Reserve Bank of India (RBI) in form FCGPR were completely ignored by the Ld. AO. He vehemently argued that how can a foreign investor who had only 31% stake in the assessee company during the relevant time produce the original documents of its memorandum of association, bank statement and all other particulars as above. He specifically drew our attention to the following factual incorrect statements made by the Ld. AO in his order:

a. Aanya Properties (I) Pvt. Ltd. was not holding 99% shares of the assessee company during the relevant time. It was holding only 31% as is evident from FIPB approval enclosed in pages 97 to 101 of the paper book.

b. Aanya Properties (1) Ltd., shares were held by Aanya Holding Ltd, which again a Mauritius based company. The Ld. AO had recorded in his order by wrongly mentioning the fact that assessee had given vide its letter dated 24/03/2015 that Aanya Properties (1) Ltd., was holding 100% shares of Aanya Holding Ltd., and that the holding and subsidiary companies are one and the same. This is completely factually incorrect statement made by the Ld. AO. In support of this, the Ld. AR drew our attention to page 59 of the paper book wherein the subject mentioned letter dated 24/03/2015 was placed on record. In the said letter, it has been specifically mentioned by the assessee that Aanya Holding Ltd. was holding 100% shares of Aanya Properties (1) Ltd. The Ld. AR argued that the Ld.AO had deliberately recorded false facts in his order in order to reach a pre-conceived destination to make an addition towards the receipt of preference share capital somehow.

The Ld. AR also stated that previous name of the assessee M/s. Opulent Realtors Pvt. Ltd. The said name was changed to Luxora Realtors Pvt. Ltd. w.e.f. 21/02/2011 and also drew our attention to fresh certificate of incorporation consequent upon change of name was obtained from Registrar of Companies, Maharashtra, Mumbai d. The Ld. AR stated that correspondingly the name changed from Opulent Realtors Pvt Ltd to Luxora Realtors Pvt. Ltd. was not effected by the assessee with its bankers. Hence the bank accounts were continued in the old name of the assessee company ie. Opulent Realtors Pvt. Ltd. Accordingly, the receipt of preference share capital was also received and credited in the bank account of Opulent Realtors Pvt. Ltd. He stated that there could not be any infirmity in the said action thereby leading to drawing adverse inference in the hands of the assessee company. The Ld. AR defended the arguments of the Ld. DR that money was received only from Aanya Properties (1) Ltd., and not from Opulent Realtors Pvt. Ltd., as wrongly understood by the Ld. AO and by the Ld. DR.

The Ld. AR further argued that no deficiencies whatsoever were found on the documentary evidences as illustrated supra were found by the Ld. AO. The Ld. AR further placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd. reported in 394 ITR 680; PCIT vs. Paradise Inland Shipping P., Ltd. reported in 400 ITR 439(Bom) and decision of Hon'ble Delhi High Court in the case of CII vs. Russian Technology Centre (P) Ltd. 300 CTR 501 which in turn approved the two Tribunal decisions of Delhi Tribunal reported in 155 TTJ 316 and 193 TTJ 565 among other decisions.

5.2. We have heard rival submissions. The facts stated hereinabove and the arguments of the Ld. AR remain undisputed and hence, the same are not reiterated for the sake of brevity. We are satisfied that the Ld. AO had made several factual errors in his assessment order where incorrect assumptions of facts have been rightly pointed out by the Ld. AR hereinabove. None of these arguments were controverted by the Ld. 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 (1) 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 (1) Ltd. proving the identity and creditworthiness thereon. Hence the three necessary ingredients of Section 68 of the Act have been duly compelled with by the assessee in the instant case. We are inclined to appreciate the contentions of the Ld. AR that merely because the original documents were not submitted before the Ld. 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 Ld. 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 Ld. AR before us."

7. Considering the totality of the facts and circumstances of the issue involved and respectfully following the decisions of Hon'ble ITAT and Ld. CIT(A), I do not have any reason to doubt the genuineness of share capital contribution received from M/s. Aanya Properties (1) Ltd. and hence the addition of Rs. 4,62,74,975/- deserved to be deleted. Thus, the grounds of appeal no. 1 to 4 are Allowed.

8. As far as ground no. 5 is concerned, the A.O is directed to verify the current year business loss and allow the credit as per the provisions of the Act. Hence, ground no. 5 is treated as Partly Allowed.

9. In effect, the appeal of the appellant for AY 2014-15 u/s 153C r.w.s 143(3) is partly allowed."

16. At the time of hearing, Ld. DR brought to our notice relevant facts of the case and relied on the orders of the Assessing Officer by

submitting that there are substance in the findings given in the assessment order.

17. On the other hand, Ld.AR of the assessee submitted the issue in dispute is covered in favour of assessee by decision of Coordinate Bench in assessee's own case for the A.Ys. 2012-13 in ITA No. 6202/MUM/2016 order dated 19/06/2019 and ITA Nos. 1025/Mum/2023 for A.Y.2013-14 order dated 23/08/2023 (copies of the orders are placed on record.). Ld.AR of the assessee filed its written submissions and prayed to sustain the order of the Ld. CIT(A). For the sake of clarity, the written submissions filed by the Ld. AR are reproduced below: -

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

ii) Similar evidence to explain share capital contribution considered in order of ITAT to uphold deletion of addition by CIT(A) in Asstt. Year 2012-13 & 2013-14.

iii) CIT(A) at page 16 to 20 recorded finding that facts and circumstances are identical to that in earlier year and followed the order of ITAT reproduced at pages 17 to 20.

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

B) CIT(A) at para 6.2.2 has recorded finding that Rs.4,17,26,611/- has been received in earlier year and was opening balance in previous year. Above sum was added u/s 68 in Asstt. Year 2013-14 and is part of addition considered in Asstt. Year 2013-14 at Rs. 15,86,06,125/-. It is thus double addition and it was not the credit received during Asstt. Year 2014-15. Finding of fact

is not disputed in grounds of appeal. Addition made in Asstt. Year 2013-14 is held to be unjustified on merits in appellate proceedings by CIT(A) and Hon'ble ITAT.

C) CIT(A) at para 6.2.1 has recorded finding that A.O. has accepted part share capital issued to same share holder. A.O. ought not to have made addition by taking divergent view. Finding of fact is not disputed in grounds of appeal.

D) 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 assessment proceedings and appellate proceedings.

(P-1 to 296) [Vol.-I]

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

i) Certificate of incorporation of Aanya Properties (I) Ltd. (P-279 to 280) [Vol.- I]

ii) Copy of the constitution of Aanya Properties (1) Ltd. (P-281-296) [Vol.-I]

iii. Statement of remittance received from M/s Aanya Properties (1) Ltd. (P-1)[Vol.-I]

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

(P-4 & 5) [Vol.1]

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

(P-2 & 3) [Vol.1]

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-6 & 7) [Vol.- I]

vii) Copy of financial statements of Aanya Properties (I) Ltd. reflecting investments made with assessee company. Balance Sheet of Aanya Properties (1) Ltd. clearly depict investment in share capital of assessee company.

(P-8-37) (30 & 31) [Vol.-I]

Shareholding Pattern of Aanya Properties (I) Ltd. indicate that entire shareholding of Aanya Properties (I) Ltd. is with another Mauritius based company namely Aanya Holding Ltd. (AHL).

(P-37) [Vol.-I]

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 (I) Ltd. in assessee company

(P-38-39)[Vol.- I]

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

(P-40-69)) [Vol.1] (62)

x) Share Subscription cum Shareholder Agreement. (P-102-278) (Vol. -II) (254)

F) 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.

G) 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:

i) 159 ITR 0078 (SC)

CIT vs. Orissa Corporation (P) Ltd. (P-32-38) [Vol.-III] (38)

ii. 330 ITR 0298 (Delhi) *CIT vs. Dwarkadish Investment (P) Ltd. (P-39-48) [Vol.-III] (40,46)*

iii. 356 ITR 0065 (MP) *CIT vs People General Hospital Ltd.*

(P-50-57) [Vol.-III] (51, 57)

iv) *Hon'ble Supreme Court order in SLP (Civil).../2014 CC 5997/2014 CIT vs Peoples General Hospital Pvt. Ltd. (P-49) [Vol.-III] (59)*

v) 400 ITR 0439 (Bom.) *PCIT vs Paradise Inland Shipping Pvt. Ltd. (P-58-63) [Vol.-III]*

(H) 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.

I) 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. III] (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. III] (108, 109)*

J) 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-102 to 278) [Vol.-I]

K) *Assessment framed is pursuant to notice issued u/s 153C of I.T. Act 1961. Addition made is not with reference to any seized material found during the course of search. No incriminating material is referred in assessment order or found for share capital contribution received. Addition unsustainable.*

Reliance on:

i) *397 ITR 344 (SC) Sinhgad Technical Education Society vs. ACIT*

ii) *Supreme Court order in Civil Appeal No.4264 of 2018 in in the case of Abhisar Buildwell P. Ltd. vide order dated 24/04/2023."*

18. Considered the rival submissions and material placed on record, we observe that the coordinate bench has considered the similar issue under consideration and gave relied to the assessee in ITA No. 1096/Mum/2020 relating to AY 2013-14, for the sake of clarity the same is reproduced below:

"10 Considered the rival submissions and material placed on record, we observe that the original assessment u/s. 143(3) of the Act was completed on 09.03.2017 and the assessment was framed and business loss was determined at ₹.2,27,16,947/-, subsequent to search notice u/s. 153C of the Act was issued and served on the assessee. We observed from the notice u/s.153C of the Act that the issues raised in the notice and the additions made by the Assessing Officer in assessment order are not the same, in the Assessment Order Assessing Officer analysed the financial statements and disallowed certain expenditures which according to the Assessing Officer should have been charged to work-in-progress accordingly, he made addition. After careful consideration of the order passed by the Ld.CIT(A) and Ld.CIT(A) gave a finding that the addition made by the Assessing Officer in the Assessment Order are not based on any incriminating material found during the search it is in line with the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Continental Warehousing & All Cargo Global logistics (supra). Further we observe that revenue has raised Ground No. 2 with the submission that revenue has not accepted the decision of the Hon'ble Jurisdictional High Court in the

case of CIT v. Continental Warehousing & All Cargo Global logistics (supra). However, the above decision is binding on this jurisdiction and we do not find any reason to interfere with the finding of the Ld.CIT(A) as per which Assessing Officer has not made the addition based on any incriminating material found during search. Therefore, ground raised by the revenue is dismissed.

19. Similarly in ITA No. 1025/MUM/2023 (A.Y. 2013-14)

"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."

20. Since the issue raised by the revenue are exactly similar and transaction is of the same origin, therefore, respectfully following the

decision of coordinate bench, we are inclined to dismiss the grounds raised by the revenue.

21. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 20th March, 2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 20.03.2024
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