

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

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.4353/Del/2015
(ASSESSMENT YEAR 2012-13)**

Income Tax Officer Ward-3(1) New Delhi	Vs.	M/s Apple Iron Enterprises Pvt. Ltd. 63, New Rajdhani Enclave New Delhi-110092 PAN-AAHCA8642G
(Appellant)		(Respondent)

Assessee by	Sh. Amit Goel, CA & Sh. Pranav Yadav, Adv.
Respondent by	Ms. Mayuri, Sr. DR
Date of Hearing	24/04/2024
Date of Pronouncement	03/05/2024

ORDER

PER S.RIFAUH RAHMAN, AM:

This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-I, New Delhi [“Ld. CIT(A”, for short], dated 29/05/2015 for Assessment Year 2012-13.

2. The grounds raised by the Revenue are as under:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance u/s 14A of expenditure of Rs.17,604/- by ignoring the fact that there was material to establish the direct nexus

between the expenditure incurred and the income not forming part of total income.

2. Deleting the addition of Rs.7,40,40,000/- made by disallowing share application money & share premium and added back by the AO u/s 68 when the assessee had failed to discharge its onus of proving the genuines of the transaction by not giving any justification in respect of share premium charged.

3. Deleting the addition of Rs.5,550,300/- made by disallowing commission paid for obtaining the above bogus share application money & Share premium and added back by the AO u/s 68 when the assessee had failed to discharge its onus of proving the genuineness of the transaction.

4. The appellant craves leave for reserving the right to amend, modify, alter and or forego and ground(s) of appeal at any time before or during the hearing of this appeal.”

3. At the time of hearing, the Ld. DR brought to our notice the facts of the case involving disallowance u/s 14A and addition of share application money and share premium received by the assessee u/s 68 of the Income Tax Act, 1961 ('the Act' for short). The Ld. DR submitted that no doubt the funds were received by the assessee through Banking Channel from overseas. However, she submitted that the funds received by the assessee from foreign entities, whether these are assessee's own money were retransferred or genuine investments were made by the foreign entities were not investigated by the then AO. On Bar, she agreed that Assessing

Officer has not verified due to various constraints existed at that point of time. She objected to the fact that Ld CIT(A) has given relief to the assessee and prayed that this issue has to be decided considering the peculiar facts on record and allow the grounds raised by the revenue.

4. On the other hand, Ld AR brought to our notice that the issue under consideration is 14A disallowance and additions u/s 68 of the Act made u/s 143(3) are passed on 25/03/2015 and against the above order, assessee preferred an appeal before the Ld. CIT(A)-1, New Delhi. In the result, the Ld. CIT(A) has allowed the appeal filed by the assessee vide order dated 29/05/2015. Against the same, the revenue is in appeal before ITAT at present. Further, the Ld. AR also brought to our notice that subsequently, a search and seizure operation u/s 132 of the Act was conducted on 11/11/2014 on the premises of the assessee and its group concerns. Based on the above search, a notice u/s 153C of the Act was issued on 14/12/2016 and served on the assessee. Subsequent to proceedings initiated u/s 153C similar addition was made in the hands of the assessee and the same was appealed before the Ld.

CIT(A)-4, Kanpur (the assessee company was amalgamated with M/s M.G. Metalloy Pvt. Ltd.). In the above proceedings, the Ld. CIT(A) decided the issue in favour of the assessee vide appellate order dated 07/01/2019 and held that there is no incriminating material found during the search. In further appeal by the Revenue before the Hon'ble ITAT, the ITAT decided the issue in favour of the assessee and dismissed the grounds raised by the Revenue on technical issue that there is no incriminating material found during the search.

6. On merits, the Ld. AR submitted that the AO has made the addition based on the following reasons:

- a) That the assessee has not been able to explain the "source" of "source".
- b) The shares have been issued at premium.
- c) That as per information received from DDIT(Inv), search and seizure operations was carried out in Apple Group of cases on 11/11/2014 and as per preliminary search report, it was found that Apple Group has introduced bogus Share Capital/ Share Premium.

3. With regard to 'source' of 'source' it is submitted that requirement of explaining 'source' of 'source' is applicable only where the shareholder is a 'resident'. In the present case of assessee, the shareholder is a foreign company and not a resident.

Moreover, the requirement of explaining 'source' of 'source' is applicable from A.Y. 2013-14 (that too from resident shareholder)

and not for earlier year. Reliance in this regard is placed on the Bombay High Court decision in the case of **Principal Commissioner of Income Tax Vs Apeak Infotech 2017 (9) TMI 1590 Bombay High Court.**

4. With regard to issue of share at premium, it is submitted that restriction on quantum of premium has been brought in the Act in section 56(2)(vii b) which applicable from A.Y. 2013-14. Reliance in this regard is placed on the Bombay High Court decision in the case of **Principal Commissioner of Income Tax Vs Apeak Infotech 2017 (9) TMI 1590-Bombay High Court.”**

5. Considered the rival submissions and material available on record. We observed that the issue under consideration on which the original assessment order was passed on 25/03/2015 and subsequent order passed by the Ld. CIT(A) on 29/05/2015 allowing the grounds raised by the assessee on merits of the case. However, in the subsequent proceedings initiated u/s 153C, the exactly similar additions were made by the AO and against the same, on appeal before first appellate authority and coordinate bench has decided the issue in favour of the assessee that there is no incriminating material found during the search as well as subsequent satisfaction recorded by the AO. Since in the appellate proceedings, the issue was decided on the technical issue that there is no incriminating material found during the search proceedings.

In the impugned appeal, the revenue has raised the grounds on the merits, which has not reached finality. Therefore, we proceed to address the issue on merits.

6. We observe from the record that the AO has made the addition u/s 14A of the Act and noticed that the assessee has not received any tax free income during this year. There are plethoras of decisions in which the addition cannot be made u/s 14A when there is no exempt income earned by the assessee. In this case also, the assessee has not earned any exempt income. Therefore, the issue raised by the revenue in this regard is dismissed.

7. Coming to the next issue of addition made by the AO u/s 68 alleging that the assessee has received accommodation entry by way of share capital and share premium from the overseas entity namely Global Land Enterprises Ltd. Hongkong of USD 150000. The AO observed that the assessee has issued shares to the directors without any premium whereas the same shares issued to the foreign entity for such huge share premium. He came to the

conclusion based on the findings in the search proceedings initiated in the group entities. However, before Ld CIT(A), the assessee submitted that the assessee has submitted all the relevant documents before AO substantiating the identity, capacity and genuineness of the transaction. With regard to genuineness, the assessee has submitted the foreign remittance, FIRC for such remittances, compliances to FDI and RBI guidelines. Further it was submitted that shares were issued and return of allotment of shares before ROC were duly furnished before AO and also submitted, there was no requirement for proving source of source before AO and also there were no restrictions on issue of share premium at that point of time. Considering the above facts on record, Ld CIT(A) has allowed the grounds raised by the assessee. Against which, the revenue is in appeal before us.

8. We observe from the record that the assessee has issued the shares with premium and submitted the relevant information before the AO to prove the onus on it towards the identity, capacity and genuineness of the transaction. There is no red flag raised by any

other authorities including the RBI and all the approvals are obtained within the norms of FDI. Further at that point of time, there was no requirement for the assessee to prove the source of source, the relevant amendment was came into effect from AY 2013-14. Similarly the issue of restriction on issue of share premium also came into books on the insertion of section 56(2) of the Act effective from AY 2013-14. There was no such prohibition in the impugned assessment year under consideration. Therefore, after considering the findings of the Ld CIT(A), we do not see any reasons to disturb the same. The above views are supported by the decision of Hon'ble Bombay High Court in case of Apeak Infotech 2017 (9) TMI 1590(Bom) (supra). Accordingly the grounds raised by the revenue in this regard are dismissed.

9. Similarly, the other addition was commission on issue of such share capital and AO has presumed that the assessee has taken accommodation entry from the operators and with the above presumption, he has added the undisclosed commissions on the above issue of shares for taking accommodation entry. Since we

have decided the issue in favour of the assessee, the decision of the Ld CIT(A) in this regard is upheld. Accordingly the relevant ground no 3 is dismissed. The ground no 4 is general in nature, not adjudicated.

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

Order pronounced in open Court on 3rd May, 2024.

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 03/05/2024
Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI