

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.6213/Del/2018
(Assessment Year: 2012-13)**

ITO,
Ward-7(1),
New Delhi

Vs. Deccan Buildmart Pvt. Ltd,
94-G, apartment No. 1, 9th
Cross Road, Rajmahalvilas
Extension, Sadashiva
Nagar, Bangalore,
Karnataka-560080
(Respondent)

(Appellant)

PAN:AADCD7416M

**ITA No.6396/Del/2018
(Assessment Year: 2012-13)**

ITO,
Ward-7(1),
New Delhi

Vs. Delite Buildpro Pvt. Ltd,
34, I-O, New Qutab
Apartment, Ward No. 1,
Desu Road, Desu Road,
Mehrauli, Near Bhagwait
Hospital, New Delhi-110030
(Respondent)

(Appellant)

PAN: AADCD7412R

Assessee by :

Shri Mukesh Soni, Adv
Shri Prakul Khurana, Adv

Revenue by:

Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing

25/04/2024

Date of pronouncement

12/06/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 6213/Del/2018 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-3, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 178/15-16 dated 31.07.2018 against the order of assessment passed u/s 143(3) of

the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2015 by the Assessing Officer, ITO, Ward-7(1), New Delhi (hereinafter referred to as 'ld. AO').

2. The appeal in ITA No. 6396/Del/2018 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-3, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 179/15-16 dated 31.07.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2015 by the Assessing Officer, ITO, Ward-7(1), New Delhi (hereinafter referred to as 'ld. AO').

3. Identical issues are involved in both the appeals and hence, they are taken up together and disposed off by this common order for the sake of convenience.

4. The revenue has raised the following grounds of appeal in ITA No. 6213/Del/2018 for AY 2012-13 before us:-

"1. The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 5,17,50,000/- made by the AO on account of share capital & share premium & Rs. 22,20,000/- on account of notional interest on interest free loan given to sister concern."

5. We have heard the rival submissions and perused the material available on record. The assessee company was incorporated on 17.02.2011. The year under consideration is the 2nd year of operation. The ld AO observed that no business activity was carried out by the assessee during the year under consideration or in the immediately preceding year. The only source of the income of the assessee company was interest received on fixed deposits. During the year under consideration, 103500 equity shares of Rs. 10 each were issued by the

assessee to the corporate entities at a premium of Rs. 490 per share and the assessee received total sum of Rs. 5,17,50,000/- (103500X500). The Id AO observed that the monies collected were used by the assessee for making investment in the equity shares of Geetanjali Investech Holdings India Pvt. Ltd comprising of 82000 equity shares of Rs. 10 each at a premium of Rs. 490 for each share. The assessee's shareholdings are owned by Aggarwal Group of individuals. M/s. Geetanjali Holdings Pvt. Ltd is a group company in which Aggarwal family holds majority shareholding. Further, the assessee company also made interest free advance of Rs. 1,48,00,000/- to M/s. Pacific Industries Ltd. The assessee company was directed by the Id AO to justify the receipt of share premium. The assessee responded that amounts received towards share capital and share premium from corporate entities were pursuant to allotment of equity shares to the investors at a premium and the shares were allotted on 31.03.2012. Necessary statutory forms in the prescribed manner had already been filed with the Registrar of Companies in this regard. The assessee company also stated that the original promoters of the assessee company (i.e. Aggarwal family) were allotted shares at par and the monies received from outside shareholders were allotted shares at a premium as they are merely investors who are investing money in assessee company on the basis of face value of individual promoters and wanted to join hands in the business with the promoters of the assessee company. The assessee provided complete details of the shareholders by furnishing the requisite documents. Further, the Id AO on perusal of the bank statement of the investors furnished by the assessee company sought further details from the assessee in the form of details of immediate source of credit in the bank statement of the investor company. The Id AO issued notice u/s 133(6) of the Act to the corporate entities for examining the veracity of share capital and share premium invested by them. The Id AO observed

that there was no response from the corporate entities in this regard. The Id AO deputed his Inspector of Income Tax who reported that the investor company does not exist at the address given by the assessee. The Id AO directed the assessee to produce the authorized persons of corporate investors who had made investment in the assessee company. This remained un-complied by the assessee. Accordingly, the Id AO concluded that the monies received from the corporate entities towards share capital and share premium are merely accommodation entries and that the assessee had failed to prove the identity and creditworthiness of the investor and genuineness of the transaction and proceeded to treat the sum of Rs. 5,17,50,000/- as unexplained cash credit u/s 68 of the Act.

6. Before the Id CIT(A), the assessee filed additional evidence with an application under Rule 46A of the Income Tax Rules and produced the following documents:-

- a. Share application forms
- b. PAN details
- c. Bank statements of investors
- d. Income tax returns of the investors
- e. Audited financial statement of the investors
- f. List of investments in its books of account
- g. Ledger confirmations
- h. Copy of PAN Cards
- i. Certificate of incorporation along with Memorandum and Articles of Association
- j. Copy of minutes of meeting of Board of Directors authorizing the fact of making investment in the assessee company
- k. Copy of confirmation in respect of application of shares of investor company

7. The Id CIT(A) accepted these additional evidences and sought for remand report from the Id AO. The Id AO issued remand report on 06.07.2018 reiterating the findings recorded by him in the assessment order. The Id AO accepted the fact that assessee had filed certain documents but did not give any finding on the merit and merely stated that the documents filed by the assessee are not reliable. The said remand report of the Id AO was forwarded to the assessee by the Id CIT(A). The assessee filed a rejoinder to the said remand report. The assessee in the rejoinder report submitted that it had filed documents like PAN card, Memorandum of Association, Articles of Association, minutes of Board meeting, certificate of application of shares, certificate of registration of certain parties as NBFC, income tax returns, computation of income, audited balance sheet and profit and loss account, bank statements, list of investments in the books of account of the investors, ledger confirmation etc. All these documents collectively established the identity, creditworthiness of the share applicants and the genuineness of the transactions according to the assessee.

8. The Id CIT(A) on perusal of the all the documents, remand report of the Id AO and the written submission of the assessee granted relief to the assessee by observing as under:-

"2.5 I have gone through the facts and circumstances of the case, order of the assessing officer, material placed on record, documents filed by the assessee, submissions and judicial pronouncements submitted by the AR of the appellant, application under Rule 46A, Remand Report of AO and the rejoinder filed by the AR of the appellant. At the outset it is important to state the additional evidences filed by the AR go to the root of the matter and thus the same are accepted and being considered while passing this order.

I find that the AO has alleged that the transaction of acceptance of share capital and share premium by the appellant is bogus and a mere accommodation entry. In this respect the AR of the appellant has filed detailed submissions along with numerous documents. I find that the

onus of proving a transaction being genuine is with the person who enters into the transaction and the said onus needs to be discharged properly. The assessee in this case has accepted share capital and share premium amount from various parties. Thus it is the duty of the assessee to justify the identity and creditworthiness of the parties and to establish the genuineness of the transaction.

In this case the AR of the appellant has filed various documents during the course of assessment proceedings and along with application under, Rule 46A application of all parties from whom share capital/premium money has been received, like Share Application Forms, PAN Details, Bank Statements, Income Tax Returns, Audited Balance Sheets and Profit and Loss Account, List of Investments in its books of accounts, Ledger Confirmations, Copy of PAN Cards, Certificate of Incorporation along with Memorandum and Articles of Association, Copy of Minutes of Meeting of Board of Directors, Copy of Confirmation in Respect of Application of Shares etc. The appellant has given a specific investor wise list of documents filed by it in this respect which has been reproduced herein above in the portion of submissions of assessee. The AR also specifically highlighted Net Worth of each share applicant and compared the same with the amount invested by the said party. All these documents were forwarded to the AO for his comments on the same who has not given any specific comment and has merely stated that the same are not genuine. The AO has also not brought forward any specific fact to substantiate its case. The appellant has given plausible explanations to the queries of the AO specifically regarding non service of notices, non production of directors and charging of high premium. These have also been substantiated by relevant case laws. The same are forming part of submissions of the assessee quoted above. I find that by filing the above stated details/particulars the appellant has discharged the onus casted on it by the Act u/s 68 and has proved the identity and creditworthiness of the parties who have contributed the share capital along with the genuineness of the transaction beyond doubt. The AO has merely given his findings that the details submitted by appellant are not relevant but has failed to point out any specific mistake in the same. The appellant has further submitted specific submissions against all allegations of the AO and has substantiated the same with relevant case laws, which have been reproduced hereinabove. If the AO had some doubts with respect to the genuineness of the parties who have contributed to the share capital of the appellant he is free to make inquiries in their case but the appellant has duly discharged its onus beyond doubt and cannot be asked to further substantiate its case. The fact that these parties are existing and they have their PAN identities is known to the AO, The AO cannot allege the appellant of not having discharged its onus. The onus of an assessee is to prove the source of a transaction and not the source of source which in this case has been explained by the assessee.

2.6 On the basis of the above discussion I find that the transaction done by appellant has been duly explained within the factual and legal tenets and appellant has been able to justify the genuineness of the amount received by it on account of share capital/premium. The numerous case laws relied by the appellant further strengthen its case. The appellant has produced a chart of all judgments relevant for the same and the same are found relevant to reach conclusion. Since the same have been specifically stated herein above in the portion of submission filed by the appellant they are not being reproduced for the sake of brevity. Accordingly I hereby delete the addition made by the AO of Rs. 10,35,000/- on account of share capital and Rs 5,07,15,000/- on account of share premium received by the appellant from various parties. Grounds of appeal 1 to 4 are accordingly allowed and the addition is hereby deleted."

9. We find that the additional evidences submitted by the assessee before the Id CIT(A) were duly admitted by the Id CIT(A) vide para 2.5 of his order reproduced supra. It is a fact that the assessee had received share capital and share premium from certain investors during the year. Hence, primary onus cast on it is to establish the genuineness of the transaction together with identity and creditworthiness of the investors. On perusal of the order of the Id CIT(A), the assessee again in the rejoinder to the remand report had submitted the list of documents submitted before the Id CIT(A) investor wise. Each of the investors have sufficient net worth in its financial statements which clearly prove their creditworthiness and the investors are duly assessed to income tax and have been regularly filing their income tax returns and returns with Registrar of Companies. Hence, their identity is also proved beyond doubt. The transactions of investments made by the investors in assessee company were made through regular banking channels and duly reflected in the balance sheet of the investors. Share application forms coupled with minutes of the Board meeting and share certificates in addition to the aforesaid documents proved the genuineness of the transaction. No deficiencies whatsoever were pointed out by the Id AO on the elaborate documents submitted by the assessee. Further, the assessee had duly

justified the fact of issuance of shares at a premium to these investors despite the fact that the shares were allotted to the original promoters were at par. It is very reasonable for any company to issue shares to the outside investors at a premium in order to ensure that the promoter's stake in the company does not get diluted. Investors come forward with accepted mindset to make investment at a premium seeing the growth potential prevalent in the investee company. The proviso to section 68 mandating the assessee to prove the source of source was introduced in the statute only from AY 2013-14 and cannot be made applicable for the year under consideration. The assessee had duly discharged its primary onus cast on it by furnishing the requisite documents before the Id AO. Merely because the notice u/s 133(6) of the Act had not been replied or not served by the investors and directors of the investors company were not produced coupled with less income shown by the investors in their ITR, the transaction of making investment by the investors in the assessee company cannot be doubted. If the Id AO had entertained any doubt on the documents submitted by the assessee, nothing prevented him from issuing summons to the investors company and if none complied, take the proceedings further in the manner known to the law. Hence, the primary onus has been duly discharged by the assessee, the burden of proof therefore shifts to the Id AO. The assessee cannot be faulted after furnishing the requisite documents. Further, we find that some of the investors had duly responded directly before the Id AO in response to the notice issued u/s 133(6) of the Act. Hence, there is absolutely no reason for the Id AO to draw adverse inference on the documents submitted by the assessee. In fact once the response is given by the investors in response to the notice issued u/s 133(6) of the Act directly before the Id AO, there is no reason for the Id AO to state in the assessment order that the parties does not exist in the addresses given by the assessee. The Id

AO had also stated that cash was deposited by the investors before making investment in the assessee company, which fact was found to be incorrect on perusal of the bank statements. In view of the aforesaid observations, the Id CIT(A) had rightly deleted the addition made u/s 68 of the Act.

10. With regard to notional interest added in the sum of Rs. 22,20,000/- by the Id AO, we find that the same had been added completely on notional basis without having any support from the provisions of the Act. The assessee had indeed given interest free loans of Rs. 1.48 crores to M/s. Pacific Industries Ltd. The assessee had not claimed any deduction for interest payment on its borrowings. The Id AO's case is that there is no business connection between the assessee and M/s. Pacific Industries Ltd. Even then, there cannot be any addition towards notional interest. It is trite law that only real income should be brought to tax as has been held by the Hon'ble Supreme Court in the case of CIT Vs. Shoorji Vallabhdas and Co. reported in 46 ITR 144 (SC). Hence, we find that the Id CIT(A) had rightly deleted the addition.

11. Accordingly, ground No. 1 of the revenue is dismissed.

12. Ground No. 2 raised by the revenue is general in nature and does not require any specific adjudication.

13. In the result, the appeal of the revenue in ITA No. 6213/Del/2018 is hereby dismissed.

ITA No. 6396/Del/2018 – AY 2012-13

14. All the grounds raised by the assessee are identical to grounds raised for in ITA No. 6213/Del/2018 except variance in figures. Hence the

decision rendered by us in ITA No. 6213/Del/2018 shall apply mutatis mutandis in ITA No. 6396/Del/2018 also.

15. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 12/06/2024.

-Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:12/06/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi