

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 709/Kol/2023
Assessment Year: 2014-15

Sapphire Trade Associates Pvt. Ltd. (PAN: AAQCS 3345 B)	Vs.	ITO, Ward-8(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	12.06.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	24.06.2024
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 07.06.2023 for the AY 2014-15.

2. The only issue raised in the various grounds of appeal is against the confirmation of addition of Rs. 2,91,60,000/- by the Ld. CIT(A) as made by the AO u/s 68 of the Act on account of unexplained share capital /share premium.

3. Facts in brief are that the assessee filed return of income on 29.09.2014 declaring total income of Rs. Nil. The case of the assessee was selected for scrutiny through CASS and statutory notices were duly issued and served on the assessee. The assessee is engaged in the business of investment in shares/securities. The AO during the assessment proceedings called for various documents and evidences qua the issue of share capital/ share premium which were accordingly filed comprising the copies of ITRs, audited accounts, share application forms, share allotment letters, bank statements, memorandum of articles of associations etc. in respect of each of the share holders. Besides the AO issued notice u/s 133(6) of the Act in all the eleven (11) share holders which were duly replied by furnishing the requisite information. In most of the cases, the intimation u/s 143(1) of the Act were also furnished by the subscribers. The AO issued summons u/s 131 of the Act to six parties which were complied with by registering their personal appearances and confirming these transactions before the AO. The AO in the assessment order noted in para 2.1 that the summon issued u/s 131 were duly complied with and that the assessee company was incorporated in AY 2014-15. The AO also observed and noted that it issued shares at face value of Rs. 10/- each at a premium of Rs .90/- per share thereby routing the funds were in the garb of share capital as issue of shares at premium of Rs. 90/- per share lacked justification and thereafter by relying on the decision of Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) held that the these transactions have to be ascertained on the basis of surrounding circumstances and thus treated the amount of share capital/share premium of Rs. 2,97,61,000/- as unexplained investment u/s 68 of the Act and added the same to the income of the assessee in the assessment framed u/s 143(3) of the act dated 27.12.2016.

4. In the appellate proceedings, the Ld. CIT(A) simply affirmed the order of AO by noting that the assessee has not controverted the findings of the AO and also the bank statements and other evidences were not filed to prove the creditworthiness of the parties.

5. The Ld. A.R vehemently submitted before us that the assessee has filed all the evidences qua these shares/share premium before the AO as stated hereinabove proving the identity and the source of money thereby proving the creditworthiness and genuineness of the transactions. The Ld. A.R referred to that notice issued u/s 133(6) which were duly replied by all the parties confirming the transactions with the assessee. Thereafter the A.R also pointed out that the summons were also issued u/s 131 to six parties who duly appeared before the AO and confirmed the transactions and also furnished the information/details as desired by the AO. The Ld. A.R submitted that neither the AO nor the Ld. CIT(A) has pointed out any specific defect/deficiency as to how the share capital/ share premium received by the assessee during the year fulfills the conditions as laid down in section 68 of the Act. The Ld. A.R submitted that Id CIT(A) after reproducing the AO's finding in assessment order simply affirmed the same by noting that the assessee has not controverted the finding of the AO and has not filed any evidences whereas as a matter of fact all the evidences were before the authorities below. The Ld. A.R also submitted that in AY 2016-17 the shares were also issued to the same parties and the revenue has accepted the transactions to be genuine. The A.R in order to corroborate his arguments referred to Page 786 to 788 of PB which comprised the assessment order for AY 2016-17 passed u/s 143(3) of the Act. The Ld. A.R also submitted that the assessee has duly got the valuation of equity shares done from M/s SDP Associates who valued the shares at Rs. 95.27/- on the basis of audited financial statement for AY 2013-14 and thus the value was calculated for the purpose of section 56 read with Rule 11UA at Rs. 95.27/-. The Ld. A.R stated that shares were issued at face value of Rs. 10/- and premium of Rs. 90/- per share realizing Rs. 100/- per share whereas AY 2016-17 shares were issued at a premium of Rs. 96.79/- per share which were accepted by the Department. The Ld. A.R submitted that the assessee company has justified the investment on the ground that it was going to invest in M/s Delsey (I) Pvt. Ltd and the said company is a joint venture between M/s Delsey SA France and M/s Sapphire Trade Associates Pvt. Ltd. with 51% and 49% partnership respectively. The Ld. A.R also referred to page 12 which contained the details of investment in schedule VI in unquoted investment in

the equity shares of M/s Delsey India Pvt. Ltd. amounting to Rs. 1,96,00,000/- . The Ld. A.R also controverted the findings recorded by AO at page 2 para (i) of the assessment order that the assessee was incorporated in AY 2014-15 whereas as a matter of fact the assessee was already a existing company. The Ld. A.R therefore prayed that the order passed by the Ld. CIT(A) is wrong and against the facts on record because of all the details were available before the Ld. CIT(A) which were ignored completely and the Ld. CIT(A) just relied by the conclusion recorded by the AO which is devoid of any merit and substance.

6. The Ld. D.R, on the other hand, stated that there is no creditworthiness of the investors though the source was available with them. The Ld . D.R therefore requested the bench that these are nothing but transactions entered into by the assessee to route its money into the books of account through these investments and therefore the same may kindly be affirmed. The Ld. D.R has relied on the decision of Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj in IA NO. GA/2/2022 in ITAT/6/2022 & Ors. Dated 14.06.2022.

7. After hearing the rival contentions and perusing the material on record, we find that undisputedly the assessee has filed the evidences comprising the copies of ITRs, audited accounts, share application forms, share allotment letters, bank statements, memorandum of article of associations etc. in respect of each of the subscribers before the AO as well as Ld. CIT(A). We note that the AO has also issued notice u/s 133(6) which were duly replied by subscribers furnishing all the details as called for by the AO. Besides we note that summons were issued u/s 131 to six subscribers who duly complied with all the summons and confirmed the transactions/ investments by them. We note that in AY 2016-17 the shares were also issued to the same parties which were accepted by the revenue to be genuine in the assessment proceeding which culminated in the assessment order u/s 143(3) a copy of which is filed at page 786 to 788 of PB. We have also examined the valuation of shares as made by SDP& Associates for the purpose of section 56 read with Rule 11UA of the Rules and note that the premium has been computed at Rs. 95.27/- per equity shares whereas as a

matter of fact the shares were issued at premium of Rs.90/- each. We also note that the assessee has justified the issuance of share capital at a premium as the money collected were to be invested in M/s Delsey India Pvt. Ltd. which was a joint venture between M/s Sapphire Trade Associates pvt. Ltd. and M/s Delsey India Pvt. Ltd. with 49% & 51% share respectively. We find that the AO has made the addition on basis of observations that the assessee is a new company formed in AY 2014-15 as recorded in page 2(i) in the assessment order whereas is wrong as the assessee is an old company. Besides these the general observations given by the AO without pointing out any specific defect or deficiency on the evidences and explanation furnished by the assessee is wrong. We note that the AO has made detailed investigation/enquiry even by issuing notice u/s 133(6) and 131 of the Act which were duly responded and complied with by all the subscribers. As the assessee has proved the identity, creditworthiness and genuineness of the transactions besides the fact that the revenue itself has accepted the issuance of equity shares to these parties to be genuine in AY 2016-17. Under the circumstances, we are unable to agree with the conclusion drawn by the Ld. CIT(A) upholding the order of AO by completely ignoring the facts on record and consequently we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

8. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 24th June, 2024

Sd/-

(Sanjay Garg /संजय गर्ग)
Judicial Member/न्यायिक सदस्य

Sd/-

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 24th June, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sapphire Trade Associates Pvt. Ltd., C/o, SDP & Associates, 46C, Chowringhee Road, Flat-14G-700071
2. Respondent – ITO, Ward-8(2), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata