

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3847/MUM/2024
(Assessment Year: 2018-19)**

Income Tax Officer-5(1)(1)

570, 5th floor, Aayakar Bhavan,
Churchgate, Mumbai- 400020.

..... **Appellant**

Vs

BKC Dwellings Private Limited

394-C, Lamington Chambers, Lamington
Road, Grant Road, Mumbai- 400004
[PAN: AADCB6567H]

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri K.P.Dewani
For the Respondent/Department : Shri S. Srinivasu

Date

Conclusion of hearing : 09.09.2024
Pronouncement of order : 24.09.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 05/06/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had allowed the appeal preferred by the Assessee against the Assessment Order, dated 27/05/2021, passed by the Assessing Officer, under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The Revenue has raised following grounds of appeal :
 - "1. *On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition u/s 68 of the Act for Rs. 18,37,68,000/- and levy of tax u/s 115BBE vide u/s 143(3) of*

the Act.

- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition by accepting additional evidence submitted by the assessee during appellate proceedings which was not submitted during the assessment proceedings.*
 - 3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on the basis of assessee's submission but without giving opportunity to the AO as per sub-rule (3) of rule 46A of IT rules 1962 by calling for remand report.*
 - 4. The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO."*
3. The relevant facts in brief are that the Assessee, a private limited company, filed return of income for the Assessment Year 2018-19 on 27/09/2018, declaring 'Nil' income. The case of the Assessee was selected for limited scrutiny since there was substantial increase in the share capital during relevant previous year. Assessing Officer noted that the Assessee had received INR.18,37,68,000/- on account of subscription of capital from Tracstar Investment Private Limited. Treating the aforesaid amount as unexplained cash credit in the books of account of the Assessee, the Assessing Officer made an addition of INR.18,37,68,000/- in the hands of the Assessee under Section 68 of the Act.
 4. In appeal preferred by the Assessee, the CIT(A) deleted the above addition vide order, dated 05/06/2024.
 5. Being aggrieved by the above order passed by the CIT(A), the Revenue has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
 6. We have heard both the sides and perused material on record.

7. We note that CIT(A) has deleted addition by placing reliance on the decision of the Tribunal in the case of BKC Abode Private Limited [ITA No. 1587/Mum/2023, dated 08/09/2023, Assessment Year 2018-19] The CIT(A) noted that BKC Abode Private Limited is an associate company of the Assessee. Both, the Assessee and its associate company, had received funds from Tracstar Investments Pvt. Ltd. by way of subscription to preference share capital. In identical facts and circumstances, the funds received from Tracstar Investments Pvt. Ltd. as preference share capital were taxed in the hands of BKC Adobe Private Limited as unexplained cash credit under Section 68 of the Act by the Assessing Officer. The CIT(A) confirmed the aforesaid addition. However, the Tribunal deleted the addition holding as under:

"011. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that the assessee has issued the preference share capital of ₹2,73,46,200/- non-cumulative redeemable preference share of ₹10 each to M/s Tracstar Investment Private Limited. During assessment proceedings, the assessee submitted the confirmation of the investors, confirmation of accounts of the investors, balance sheet of the assessee and the investor company showing the transaction and bank statement of the assessee disclosing details of the above transaction and showing the trail of the fund. The learned Assessing Officer issued notice under Section 133(6) of the Act to the investor, which was replied to by submitting the balance sheet, confirmation and income tax return. The learned Assessing Officer says that assessee did not file the bank account of the investor and therefore, looking at the return of income, the addition was made under Section 68 of the Act. Before the learned CIT (A), the assessee submitted the bank statement of investor also. The learned CIT (A) dealt with this issue in paragraph no.4.5 and 4.6 that the bank statement of the assessee with the Punjab National Bank was available and further the bank statement submitted of the investor is merely supporting the facts stated by the assessee available and both

the bank accounts in the same bank are showing complete trail of the funds from assessee and to assessee through the investor. Undisputedly, M/s Tracstar Investment Private Limited has paid unsecured loan to the assessee which was outstanding in F.Y. 2016-17 amounting to ₹27,26,96,805/- after adjustment on 31st March, 2017, the above amount was repaid. This fact is demonstrated in note number 11 of the annual accounts of the assessee company. At page no.26 of the paper book, the Punjab National bank Account of the assessee in Account No.4046 is placed for the year 2017, which shows that the amount of unsecured loan paid by the assessee company and the amount of investment in preference share received by the assessee company to and from M/s Tracstar Investment Private Limited is 8th November, 2017. Therefore, assessee repaid the unsecured loan on 8th November, 2017 and on the same date received the sum from the same entity for which preference shares were issued. Thus, investor converted its unsecured loan with the assessee company into redeemable preference shares with the same funds which were available with it on repayment of unsecured loan of the assessee of the investor company. The facts are also corroborated by the bank statement of M/s Tracstar Investment Private Limited with Punjab National Bank of account no. 79831, also shows that on 8th November, 2017, the investor received unsecured loan and converted the same in preference share capital. The source of the funds of the investor also shows at ₹196 crores as per the balance sheet as on 31st March, 2018 and As on 31st March, 2017, it was Rs. 193 crores. It is not the case of the Revenue that the amount of unsecured loan received by the assessee is not genuine, because same is accepted without any enquiry for the year ended on 31st of March 2017. The facts before the lower authorities also do not suggest that there is any enquiry to show that the transaction of borrowing of unsecured loan or the preference share capital is not genuine. In fact, the investor company and the assessee company are both having

the same address. Both are disclosed as related parties in the annual accounts transactions of both the parties. Even in response to notice under Section 133(6) of the Act, the investor submitted the bank statement to the learned Assessing Officer. The return of income was also available of the investor, the learned Assessing Officer has also recorded the income of the investor. The Revenue, does not dispute that the source of funds invested by the investor in the assessee company is not the repayment of the share capital. Further, the bank statement of the investor as held by the learned CIT (A) was merely supporting the claim of the assessee which is adequately evidenced from the bank statement of the assessee itself showing the date wise flow of fund to the investor on account of repayment of loan and receipt of the funds on the same day on account of issue of preference share capital. In view of this, we do not find any infirmity in the order of the learned CIT (A) in deleting the addition under Section 68 of the Act of ₹27.34 crores. Accordingly, the ground nos. 4 to 6 of the appeal are dismissed."

8. In the present case the CIT(A) took note of the fact that identical transaction for subscription for preference share capital was examined by the Tribunal in the case of BKC Abode Private Limited (supra) which was found to be genuine. The Tribunal was also satisfied that the identity as well as creditworthiness of the Tracstar Investments Pvt. Ltd. stood proved, and returned a finding that the source of investment as well as source of source stood proved in the case of BKC Abode Private Limited. Thus, addition made in the hands of BKC Abode Private Limited under Section 68 of the Act was deleted by the Tribunal. The CIT(A) noted that in the present case also the facts and circumstances were identical. The board resolutions passed by Tracstar Investments Pvt. Ltd. for approving subscription of preference share capital included name of the BKC Abode Private Limited as well as the name of the Appellant. In the present case also the Assessee has furnished relevant documents and details to prove source as well as source of source. In

response to notice issued under Section 133(6) of the Act, Tracstar Investments Pvt. Ltd. had submitted a confirmation from Oriental Radios Pvt. Ltd., another associate company, stating that it had repaid loan taken from Tracstar Investments Pvt. Ltd. In reply to notice issued under Section 133(6) of the Act, Tracstar Investments Pvt. Ltd. had stated that the aforesaid amount was used by for making investment in preference share capital of the Assessee. The relevant extract of decision of CIT(A) reads as under:

"5.5 **Decision:** *The submissions made by the appellant and the case laws relied upon are duly considered. It is seen that part of written submission reproduced in the assessment order at pages 11 to 13 clearly explains the transaction of receipt of share capital contribution from investor Company along with its bank statement. It not only explains source of contribution of preference share capital but also source of source of share capital contribution. In reply to notice u/s 133(6) the investor company had submitted confirmation from Oriental Radios Pvt. Ltd. as to amount refunded by the aforesaid company towards loan to investor company through proper banking channel. The aforesaid confirmation indicating address, Permanent Account Number, acknowledgement of Income Tax Return, ledger account of M/s Oriental Radios Pvt. Ltd. in the books of account of investor company and same are at pages 103 to 105 (Annexure-A). The aforesaid company is again associate company indicating same address as that of investor company as well as appellant company. In view of above, observation of A.O. at page 13 that appellant did not submit any document to prove genuineness and creditworthiness of fund received from M/s. Oriental Radios Pvt. Ltd. by investor company is factually incorrect and contrary to evidence on record. In the case of appellant source of source of capital contribution stands explained with evidences. In fact A.O. has ignored the evidence on record and made adverse observation without any valid justification. It is to be noted that The Hon'ble ITAT, Mumbai in the case of **BKC Abode Private***

Limited which is another associated company like the appellant in identical issue of share capital received from M/s. Tracstar Investment Pvt. Ltd. has decided in favour of the assessee. The relevant portion of decision is reproduced for ready reference:-

"We have carefully considered"

- 5.6 In my considered view and from the submissions of the appellant, the assessee has adduced evidences to prove the identity, genuineness and creditworthiness of the investing company and also established the source of source of the investing company. Thus the case of the appellant is not attracted by the first proviso under section 68 of the act. Further the AO has not recorded any note or brought any evidence in the assessment order for his belief through investigation to establish that the share capital amount received is the unaccounted income of the appellant or the loan transaction with regard to the source to source is to be treated as unexplained or not genuine. Mere suspicion and non-acceptance of the legally valid evidences like bank statements, audited financials and registration with Govt authorities as submitted by the appellant to prove the identity, genuineness and creditworthiness of the investing company will not make the case of the AO to jump into a conclusion that the transaction is unexplained. It is seen from the order of Hon'ble ITAT hereinabove that the investor in the case of appellant company M/s. Tracstar Investments Pvt. Ltd. was same for which it has been concluded that no addition u/s 68 of I.T. Act 1961 was justified. **Nature of transaction being on the same date in the same bank account between the associate companies is similar/identical to the facts in the case of appellant company. Resolution submitted by investor company in response to notice u/s 133(6) which is at pages 10 & 11 (Annexure-A) indicates names of appellant company as well as M/s BKC Abode Pvt. Ltd. in respect to investment made by**

investor company in Preference Share Capital of the appellate company as well M/s BKC Abode Pvt. Ltd. which was for consideration before Hon'ble ITAT, Mumbai Bench, Mumbai. The facts and circumstances being identical respectfully following the same I am of the considered opinion that addition made in the case of assessee is unjustified and unsustainable.

5.7 Considering the facts and evidence on record I am of the considered opinion that assessee has established by placing legal evidence on record to prove the identity, creditworthiness and genuineness of transaction of receipt of preference share capital. There remains no scope for making any addition u/s 68 of I.T. Act, 1961. Respectfully following the ITAT, Mumbai order cited supra, it is held that the addition made by the AO is not sustainable.

6. *In the result, the appeal is allowed.” (Emphasis Supplied)*

9. On perusal of above, we find that in the present case, the CIT(A) was satisfied that the Assessee was able to prove not only the source of money received as preferential capital but also the source of source. The CIT(A) has noted that the Assessing Officer has failed to point out any infirmity in the transaction and/or the documents filed by the Assessee. The findings returned by the CIT(A) have gone uncontroverted during the appellate proceedings before us. It is not the case of the Revenue that there were any cash deposits in the accounts of any of Tracstar Investments Pvt. Ltd. or Oriental Radios Pvt. Ltd. All the transactions were made through banking channels amongst the associate companies. The Revenue has failed to bring any material on record to controvert the factual findings returned by the CIT(A) or to show that the same are contrary to the material on record. Accordingly, we do not find any infirmity in the order passed by the CIT(A) deleting addition of INR.18,37,68,000/- under Section

68 of the Act. Accordingly, Ground No. 1 raised by the Revenue is dismissed.

10. As regards, Ground No. 2 and 3 raised by the Revenue are concerned, the same are dismissed as being misconceived. Since on perusal of the paper book submitted by the Assessee we find that all relevant documents were filed before the Assessing Officer on 8/5/2021 and the Assessing Officer had passed the Assessment Order after considering the same on 27/05/2021.
11. In view of the above, all the grounds raised by the Revenue are dismissed.
12. Accordingly, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 24.09.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.09.2024
Y.S.Patil, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai