

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.757/Mum/2024
(Assessment Year :2011-12)**

Assistant Commissioner of Income Tax Circle 6(1)(2) Mumbai	Vs.	M/s. Futura Travels Ltd., Essar House 11, Keshavrao Khedye Marg, Tulsiwadi S.O., Mumbai-400 034
PAN/GIR No.AAACF1572F		
(Appellant)	..	(Respondent)

Assessee by	Shri Vijay Mehta
Revenue by	Shri Ankush Kapoor
Date of Hearing	18/07/2024
Date of Pronouncement	16/10/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the department against order dated 29/12/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 144C for the A.Y.2011-12.

2. In the grounds of appeal, the Revenue has raised following grounds:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in directing the AO to delete the addition of Rs.10,50,00,000/- without properly appreciating the facts of the case and the issues discussed in details by the Ld. AO in the assessment order?”*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in restricting the disallowance at 10% as against the disallowance made at 20% on account of guest house expenses made on ad-hoc basis on the fact that the assessee has not furnished any supporting documentary evidences to substantiate its claim and genuineness Incurred?*

3. Assessee Company is in the business of travel agency and other allied services and got engaged in booking of air tickets, train tickets, hotel, guest house, car hire, air craft handling and other related services. The return of income was filed on 30/11/2011 declaring ‘Nil’ income. The ld. AO noted that assessee company had introduced a sum of Rs.3,00,00,000/- and Rs.7,50,00,000/- and on account of share capital and share premium respectively. Without examining the nature of credit, AO proceeded with the assumption as if it is cash credit in the books of assessee during the year and accordingly he has made the addition of Rs.10,50,00,000/- u/s.68 on the ground that assessee was not able to discharge the onus.

4. Before the ld. CIT (A), it was clarified that assessee had issued FCDs in F.Y.2008-09 and 2009-10 of M/s. Essar Investments Pvt. Ltd., in the following manner:-

Series	Issued in	Name of Allottee	Number of FCD's	Amount
Series 1	FY 2008-09	EIL	14,21,260	14,21,26,000
Series II	FY 2009-10	EIL	8,76,483	8,76,48,300

Total			22,97,743	22,97,74,300
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5. Assessee has also referred to disclosures given in Note No.9 of audited financial statements for F.Ys. 2008-09 and 2009-10 for the abovementioned FCDs issued to EIL. The details of which have been incorporated in the appellate order in the following manner:-

“3.1.2 EIL subsequently sold 5,40,750 FCDs of Rs.100 each to Essar House Private Limited (EHPL) and 43,050 FCDs of Rs. 100 each to Imperial Consultant & Securities Private Limited (ICSPL) during FY 2010-11

3.1.3 The Terms and Conditions of the above mentioned FCDs as disclosed in the audited financials of the Appellant Company for FY 2010-11 (For copy of audited financials, kindly, refer, Annexure A to submission dated 11 November 2016) is reproduced as under

i.The debenture shall not carry any interest, shall be unsecured and shall not be listed on any stock exchange

ii. Each debenture, at the option of the holder, in full satisfaction of the debenture, shall be converted into equity shares of Rs/ 10 each at such premium as may be mutually agreed on 31.12.2015 in the case and on of Series I and on 31.12.2016 in case of Series II.

iii. Such option shall be exercised on or after 31.12.2010 in case of Series II.

3.1.4 Vide resolution dated 28/02/2011, 10,50,000 FCDs of Rs 100/- each fully paid up were converted into 30,00,000 Equity shares of Rs 10 each at a premium of Rs.25 as per mutual agreement between the Appellant Company and FCDs holders during FY 2010-11 relevant to AY 2011-12

3.1.5 Extract of Schedule 4 Unsecured Loans of Balance Sheet before conversion of FCDs as on 31.03.2010 is as under: (kindly, refer schedule 4 of Annexure-A enclosed above)

Sr.No.	Fully convertible FCDs of Rs.100/- each	Amount
1.	14,21,260 FCDs- Series I	14,21,26,000
2.	8,76,483 FCDs - Series II	8,76,48,300/-
	Total (A)	22,97,74,300/-

3.1.6 Extract of Schedule 4 'Unsecured Loans' of Balance Sheet after conversion of FCDs as on 31.03.2011 is as under ; (Kindly refer schedule 4 of Annexure-1 submitted vide submission dated 11.11.2016)

Sr. Wo.	Fully convertible FCDs of Rs.100 each	Amount
1.	12,47,743 FCDs- Series 1	12,47,74,300/-
2.	8,76,483 FCDs - Series II	-
	(B)	12,47,74,300/-
3.	2,23,740 FCDs - Series III (Fresh issue)	2,23,74,000/-
	Total	14,71,48,300/>

Difference FCDs (A-B) converted into equity shares ~ Rs. 10,50,00,000

3.1.7 The details of allotment of shares are tabulated as under-

As mentioned above, in terms of resolution dated 28/02/2011, 10,50,000 FCDs of Rs 100 were converted into 30,00,000 Equity shares of Rs 10 each at a premium of Rs.25 in the following manner in FY 2010-11 (relevant to AY 2011-12):

SNo	Name of the Allottee	No. of FCDs	Value	Value of FCDs	No. of Shares	Value	Total Including premium
1	Essar Investments Ltd. ('EIL')	466,200	100	4,66,20,000	13,32,000	35	4,66,20,000
2	Essar House Private Ltd. ('EHPL')	540,750	100	5,40,75,000	15,45,000	35	5,40,75,000
3	Imperial Consultants & Securities Private Ltd. ('ICSPLJ')	43,050	100	43,05,000	123,000	35	43,05,000

7. The Id. CIT (A) had deleted the addition after observing as under:-

The assessment order of the AO has been perused along with the submission of the Appellant and the remand report in grave detail. From the evidence produced before me, the following facts emerge:

- i. The appellant company had issued Foreign Convertible Debentures in Financial years 2008-09 & 2009-10. The same were converted into equity shares in the year under consideration.*
- ii. No payment against the conversion of FCDs into equity was received during the year under consideration.*
- iii. The appellant has produced all the details of the subscribers to such equity shares, including their financial statements and FORM-2 filed with ROC.*
- iv. The appellant has also produced the financial statements of the preceding years in which the FCDs were issued.*
- v. Copy of the resolutions have also been produced were the conversion was approved by the appellant.*
- vi. The assessments of financial years 2008-09 and 2009-10 have also been conducted and no adverse inference has been drawn on the issue of FCDs during that period.*

From the above, it is clear that, the issue of equity shares is only a conversion of the FCDs issued previously. There is no credit in the books of the appellant during the year under consideration, it is merely a journal entry. Even otherwise, provisions of Section 68 of the Act cannot be invoked as the appellant has duly discharged it's onus by proving the identity and creditworthiness of the subscribers and the genuineness of the transactions.

Another issue raised by the AO is the justification of premium charged on the issue of such shares during the year under consideration. In this regard, it is seen that for the year under consideration, the AO could not have questioned the excessive premium paid by the subscribers as long as the onus under Section 68 is discharged by the appellant. Further even the burden to prove the source of source has been introduced with effect from assessment year 2013-14 prospectively by way of proviso to section 68. Hence for the year under consideration, the appellant has duly discharged it's onus.

The law makers have also section 56(2) (viib) vide Finance Act 2012 where the taxability of excess premium is specifically dealt. This amendment is applicable on cases involving assessment 2013-14 onwards. Since, the said amendment is not applicable on the year under consideration, the excessive premium, if any, cannot be subjected to tax. The prospective application of the said section has also been clarified by the CBDT vide Circular No. 3, dated 12.06.2012. In view of the above, the addition of Rs 10,50,00,000/- on account of issue of share capital and share premium is, hereby deleted. Hence, Ground No. 3 is allowed.

8. After hearing both the parties and on perusal of the facts and material placed on record, it is seen that the ld. AO has made the addition without even examining the details and facts brought on record before him and held that the amount of Rs.10,50,00,000/- is to be added because assessee has not provided the details of shareholders and assessee was not able to justify the basis of valuation of premium on issue of shares. What has been brought on record and also noted by the ld. CIT (A) is that, assessee had issued FCDs in F.Ys. 2008-09 and 2009-10 which was converted into equity shares in the year under consideration and no payment against conversion of FCDs into equity shares was received during the year under

consideration and merely a journal entry was made as noted above. Thus, there is no question of any cash credit in the form of share capital and share premium being received during the year. If fully convertible debentures issued earlier have been converted into equity shares in this year, then there cannot be a case of any amount received during the year. Accordingly, the aforesaid finding of the ld. CIT (A) is confirmed and the grounds raised by the Revenue are dismissed.

9. Coming to the second issue relating to the adhoc disallowance of Rs.42,96,261/- of guest house expenses.

10. The brief facts are that assessee company was in the business of operating guest house and it has taken seven premises on rent where he provided guest house services. It has earned revenue of Rs.3,21,77,575/- from guest house services and has incurred expenditure of Rs. 2,14,81,307/-. The ld. AO without any basis has made adhoc disallowance of 20% of expenses incurred. Before the ld. CIT (A) it was stated that assessee had specifically given the details of the guest house expenses with the location and address and business activity of the assessee. It was submitted that AO never asked the assessee to substantiate the claim with any documentary evidences. Before the ld. CIT (A), all the details of expenses with the bifurcation was given which was as under:-

Guest House Expenses	Amount
Guest House Rent	12,500,000

Guest House Care taking Expenses	3,240,592
Guest House Electricity Expenses	1,225,405
Guest House Laundry Expenses	353,915
Guest House Telephone Expenses	231,890
Guest House Cable Expenses	173,903
Guest House Security Expenses	597,335
Guest House F&B Expenses	1,484,602
Guest House Other Expenses	276,021
Guest House Consumable	200,646
Guest House Maintenance Expenses	980,854
Guest House Gardening Expenses	24,019
Guest Cleaning Material	178,796
Guest House Conveyance	13,329
	21,481,307

11. Further, it was brought on record that immediately preceding year similar expenses were incurred which were not disputed. Accordingly, the ld. CIT (A) restricted the adhoc disallowance to 10% after excluding the rent expenses of Rs.1,25,00,000.

12. Since assessee has not challenged the said adhoc disallowance, therefore, we uphold the order of the ld. CIT (A) because in so far as guest house rent is concerned same is fully verified from the bank statement and other documentary evidences, and therefore, it cannot be taken for the purpose of adhoc disallowance. For other expenses ld. CIT (A) has reasonably applied 10% of adhoc disallowance, which cannot be interfered with. Accordingly, ground No.2 raised by the Revenue is dismissed.

13. In the result, appeal of the Revenue is dismissed.

Order pronounced on 16th October, 2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 16/October/2024
KARUNA, sr.ps

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,

ITA No.757/Mum/2024
M/s. Futura Travels Ltd.,

(Asstt. Registrar)
ITAT, Mumbai