

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष
एवं
श्री रakesh मिश्रा, लेखा सदस्य
के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1262/KOL/2023
Assessment Year: 2014-15**

***M/s. Yashoda Inn Private Limited.....Appellant
[PAN: AABCT 5191 K]***

Vs.

DCIT, Circle-7(1), Kolkata.....Respondent

Appearances:

Assessee represented by: C. Roy, A.R.

Department represented by: Arup Chatterjee, Addl. CIT, Sr. DR.

Date of concluding the hearing : October 3rd, 2024

Date of pronouncing the order : November 20th, 2024

ORDER

Per Rakesh Mishra, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short, the 'Act') by Id. Commissioner of Income-tax (Appeals)- 20, Kolkata [in short Id. 'CIT(A)'] dated 27.09.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 22.12.2016.

1.1. Ground nos. 1 & 2 relate to the addition of Rs. 81,03,000/- under the head of bogus share capital out of which relief of Rs. 54,00,000/- was granted by the Id. CIT(A) and balance amount of Rs. 27,03,000/- had been confirmed.

1.2. Brief facts of the case of the assessee are that the return declaring loss of Rs. 16,66,772/- was filed on 30.09.2014, the case was selected for scrutiny and an addition of Rs. 81,03,000/- was made on account of bogus share capital. Aggrieved with the addition, the assessee filed an appeal before the Id. CIT(A) who confirmed the addition of Rs. 27,03,000/- and allowed relief of Rs. 54,00,000/-. Aggrieved with the confirmation of addition of Rs. 27,03,000/-, the assessee has filed an appeal before us.

2. Rival contentions heard and paper book, documents and submissions made have been considered.

2.1. The brief facts as culled out from the assessment order are that during the previous year relevant to the AY 2014-15, the assessee claimed to have allotted 1,24,550 shares at the face value of Rs. 10/- each along with share premium of Rs. 80/- per share and had received a sum of Rs. 1,12,29,500/-. The assessee was required to provide the details of parties from whom the share application money was received, which was provided by the assessee to the Assessing Officer (hereinafter referred to as the Id. 'AO'). Notices u/s 133(6) of the Act were issued to the parties of the first layer and second layer, as the transactions were found to be layered. Letters from 5 parties in the second layer were returned back with the remark 'not known'. On being confronted with the fact, the assessee provided correct addresses of M/s. Cupid Developers Pvt. Ltd., M/s. Capricon Infraprojects Pvt. Ltd. and M/s. Superior Infracon Pvt. Ltd. but could not provide any explanation in respect of notices issued to M/s. Zip Tradecom Pvt. Ltd. and M/s. Nirman Infratech Pvt. Ltd. nor did it take the plea of incorrect addresses of these 2 parties from whom as well the notices were received back unserved. The Ld. AO has given a flow chart of the first layer and second layer at page 3 of the assessment order for receipt of Rs. 81,03,000/- in respect of the 2 parties namely M/s. Zip Tradecom Pvt. Ltd. and M/s. Nirman Infratech Pvt. Ltd. for amounts of Rs. 20,00,000/- & Rs. 65,00,000/- respectively and treated the sum of Rs. 81,03,000/- as bogus share capital as the source from the first layer was found to be unjustified and no further reply was received from the assessee in respect of the show cause notice issued.

2.2. In the first appeal before the Id. CIT(A), it was submitted by the assessee that the promoter directors decided to raise additional fund for business exigencies as the appellant company was running hotel business at different locations and on personal approach of the promoter director, various parties agreed to subscribe to shares with premium from time to time. The appellant pointed out that out of the total amount of Rs. 81,03,000/-, an amount of Rs. 54,00,000/- mentioned in the assessment order in the name of Cheer Infrastructure Pvt. Ltd. was received in the preceding year as Rs. 25,00,000/- was received on 05.09.2012 and Rs. 29,00,000/- was received on 25.09.2012. Before the Ld. CIT(A), the appellant relied upon the decision of Hon'ble Jurisdictional High Court in the case of *Exoimp Resources (India) Ltd. -vs- CIT* reported in (2005) 276 ITR 87 (Cal) wherein it is held that “if the assessee furnishes an explanation in respect of cash credit u/s 68 of the Act, it is incumbent upon the Assessing Authority to examine the explanation and arrive at a conclusion as to whether the explanation was satisfactory. In case the explanation of the assessee is considered as not satisfactory, Assessing authority has to communicate his view point in arriving at such conclusion. If thereupon the assessee submits any comments or furnishes further information, in that event, the Assessing Authority has to examine the same and arrive at his own conclusion.” Further reliance was also placed upon the decision in the cases of *Green Infra Ltd. Vs. ITO, 145 ITD 240 (ITAT Mumbai)* and *CIT Vs. Anshika Consultants Pvt. Ltd. 62 taxmann.com 192 (Delhi HC)*. Ld. CIT(A) held that the amount of Rs. 54,00,000/- was received in the preceding year and not in the current year and only shares were allotted to Cheer Infrastructure Pvt. Ltd. within the year but money was received in the preceding year, therefore, a sum of Rs. 54,00,000/- was deleted out of the addition of Rs. 81,03,000/-.

2.5. As regards the other amounts, the Id. CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of *PCIT, Central-1 vs. NRA Iron and Steel Pvt. Ltd.* reported in (2019) 412 ITR 161 (SC) and confirmed the addition of Rs. 27,03,000/- by giving his finding as under:

“3.3(d) The case laws discussed above clearly tell that furnishing only paper documents to justify genuineness of transactions for the purpose of section 68 of the IT Act are not enough. Assessee has to establish real identity and creditworthiness of the creditor and also the genuineness of transactions. In the current case AO has pointed out that parties at second layer of the fund flow are not traceable. Their identity could not be established and assessee has also not furnished any explanation in this regard. Under the circumstances, funds routed through share applicants in the books of the assessee company remain unexplained. Under the circumstances, AO has rightly held that share application money received from Blueprint Securities Ltd., amounting to Rs. 12,00,000/- and share application money received from Splendid Vintrade Pvt. Ltd., amounting to Rs. 15,03,000/- remain unexplained. Hence, in view of the facts and case laws discussed above, additions to the extent of Rs. 27,03,000/- only are confirmed.”

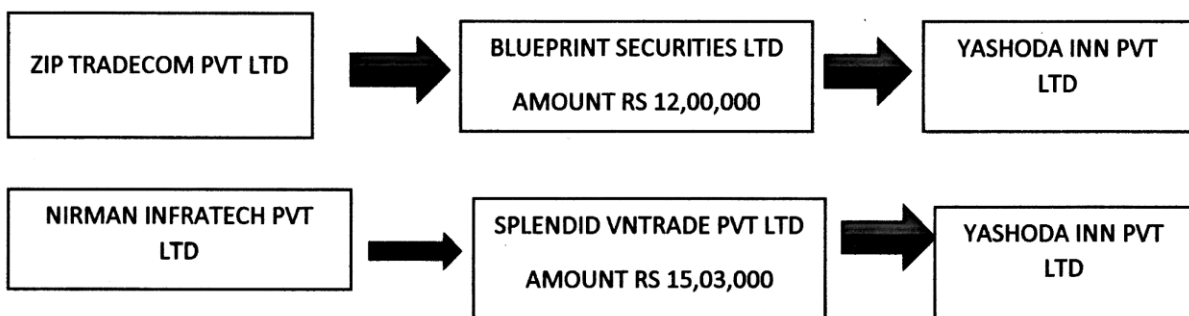
3. The assessee has filed written submission before us. Our attention has been drawn to page 4 of the paperbook and it was submitted that the amounts of Blueprint Securities Ltd. were not received from M/s. Zip Tradecom Pvt. Ltd. and in support of the same the bank statement was filed. As regards the written submission filed, an extract from the same is as under:

“In the matter of M/s Blue Print Securities Ltd the Ld. AO had added a sum of Rs. 12,00,000/- as share capital considering the source of fund as Zip Tradecom Pvt Ltd whereas the same money was received from two parties: 1) NU HIRAMOTI KITCHENWARE PVT LTD Rs. 7,00,000/- dated 17.02.2014 2) E C SHARMA Rs. 5,00,000/- dated 22.02.2014 which can be verified from the bank statements, So additions made of Rs. 12,00,000/- considering Zip Tradecom Pvt Ltd as source is erroneous and bad in laws as facts is ignored by the Ld. AO and a Copy of the Source of Fund of M/s Blue Print Securities Ltd which was submitted during the time of Assessment is attached herewith for your ready reference.

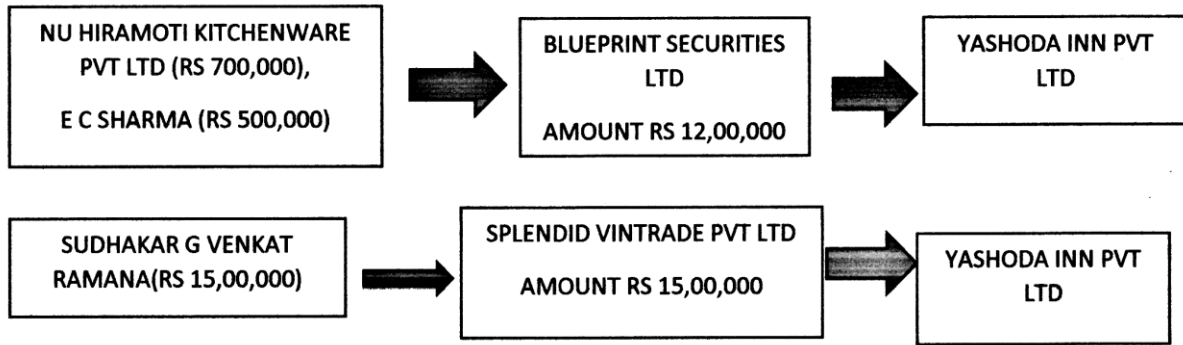
In the Matter of M/s Cheer Infrastructure Pvt Ltd. As it can be seen from the Assessment Order itself the Ld. AO has written and accepted that the money from M/s Cheer Infrastructure Pvt Ltd was received in earlier years i.e. M/s Cheer Infrastructure Pvt Ltd had paid Rs. 25,00,000/- on 05.09.2012 Rs. 29,00,000/- on 25.09.2012 to the appellant company (M/s Yashoda Inn Private Limited). As per provisions of the Act and various case laws any additions can only be made in the respective year only, here the Ld. AO had added the money received in the earlier years which is bad in law. So the respective amount received from M/s Cheer Infrastructure Pvt Ltd should not be added in this Financial Year (AY 2014-15). Copy of the Source of Fund of M/s Cheer Infrastructure Pvt Ltd which was submitted during the time of Assessment is attached herewith for your ready reference.

In the Matter of Splendid Vintrade Pvt Ltd had added a Sum of Rs. 15,03,000/- which was received by the appellant company as share application money, the source for the said was not M/s Nirman In fra tech Pvt Ltd however this can be seen from the Aseessment order that the Ld. AO had added the same while considering M/s Nirman Infra tech Pvt Ltd as source but the fact was that the source for the same is from Mr. G Sudhakar G Venkat Ramana which was not considered by the Ld. AO. The money received by M/s Splendid Vintrade Pvt Ltd was from Mr. G Sudhakar G Venkat Ramana Rs. 15,00,000/- on 05.10.2013 and they paid the same amount to appellant company on 07.10,2013 whereas the Ld. AO as in light of the assessment order is considering the source of 05.09.2012 which was not correct and bad in law. So additions made of Rs. 15,00,000/- considering Nirman Infratech Pvt Ltd as source is erroneous and bad in laws as facts is ignored by the Ld. AO and a Copy of the Source of Fund of M/s Splendid Vintrade Pvt Ltd which was submitted during the time of Assessment is attached herewith for your ready reference.”

3.1. The assessee further stated that in the assessment order the ld. AO had added the share application amount received from Blueprint Securities Ltd. and M/s. Splendid Vintrade Pvt. Ltd. as unexplained share capital since the parties at the second layer of fund flow were not traceable. At the time of appellate proceeding, the appellant had brought to the notice of ld. CIT(A) that ld. AO had completely erred regarding the source of fund and the same is clearly evident from pages 3 & 4 of the written submission filed before the ld. CIT(A). The assessee had also produced bank statement and confirmation from the parties to elucidate the matter. Ld. AO had treated the transaction as under:



3.2. The correct transaction is as under:



3.3. Our attention was also drawn to pages 57 and others in the paper book. It was submitted that a sum of Rs. 15,00,000/- received by the assessee was not doubted by the ld. AO and a sum of Rs. 12,00,000/- attributed to M/s. Zip Tradecom Pvt. Ltd. was not from the said company. Ld. AR requested that the matter may be set aside to the file of ld. CIT(A) so that proper explanation can be filed before him.

3.4. Ld. DR relied upon the order of the ld. CIT(A) and requested the addition may be confirmed.

4. We have considered the rival submissions. The ld. AO accepted part of the transaction being a sum of Rs. 15,00,000/-. The assessee contends that the amount of Rs. 12,00,000/- was not attributable to M/s. Zip Tradecom Pvt. Ltd. which was received from Blueprint Securities Ltd. but the money had been received by Blueprint Securities Ltd. from NU Hiramoti Kitchenware Pvt. Ltd. and E C Sharma. Similarly the amount of Rs. 15,00,000/- received from M/s. Splendid Vintrade Pvt. Ltd. was actually received from Mr. G. Sudhakar G. Venkat Ramana by the applicant. Prima facie there appears to be an error on the part of the ld. CIT(A) while confirming the addition as the correct transactions could not be appreciated. Therefore, in the interest of justice and as requested by the ld. AR, the appeal order is hereby set aside for re-considering the submission in respect of the impugned addition of Rs. 27,00,000/-. The assessee shall file necessary evidence including the bank accounts before the ld. CIT(A) for justifying the genuineness of the transaction and the source of fund, who shall consider the same and decide the appeal in

accordance with law on the basis of submissions made by the assessee.
Hence, both the grounds of appeal are allowed for statistical purposes.

4.1 Ground No. 3 is general in nature and does not require any separate adjudication.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 20th November, 2024.

Sd/-
[Rajpal Yadav]
Vice-President

Sd/-
[Rakesh Mishra]
Accountant Member

Dated: 20.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **M/s. Yashoda Inn Private Limited, 16, Ganesh Chandra Avenue, 7th Floor, Kolkata, West Bengal, 700013.**
2. **DCIT, Circle-7(1), Kolkata.**
3. CIT(A)-20, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata