

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1209/KOL/2023
(Assessment Year: 2012-13)**

DCIT, Central Circle 3(1),
Room No.411, 4th Floor, Aaykar
Bhavan Poorva,
110 Shantipally, Kolkata-700
107, West Bengal

(Appellant)

Dream Gateway Hotels Pvt. Ltd.
44/2A, Hazra Road, Near
Panditya More, Kolkata-700019,
West Bengal

Vs.

(Respondent)

PAN No. AADCD0692H

Assessee by : Shri Sunil Surana, FCA

Revenue by : Shri Abhijit Kundu, CIT

Date of hearing: 18.11.2024

Date of pronouncement : 27.11.2024

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the Revenue against the order of the Id. Commissioner of Income-tax (Appeals), Kolkata-21 (hereinafter referred to as the "Ld. CIT(A)") dated 24.08.2023 for the AY 2012-13.

02. The only issue raised by the Revenue is against the order of the Id. CIT (A) deleting the addition of ₹10,62,50,000/- as made by the Id. AO on account of share capital and share premium raised during the year.
03. The facts in brief are that the assessee filed its return of income on 02.11.2012, declaring total income as nil. The case of the assessee was selected for scrutiny and the statutory notices were duly served upon to the assessee. The Id. AO during the course of assessment

proceedings observed that the assessee company has raised share capital including share premium of ₹10,62,50,000/- from companies/ non-corporate entities by issuing share of face value of ₹10 at a premium of ₹490/- thereby, issuing equity shares at ₹50 times higher than the book value. The Id. AO called for the necessary details and evidences from the assessee and also, issued summons u/s 131 of the Act on 30.01.2015 to the assessee, asking the assessee to produce the investors with their books of account. Accordingly, the assessee furnished all evidences before the Id. AO and also produced the directors of the investor companies on 10.2.2015. The AO noted that though the assessee produced the directors, however, one of the directors Smt. Pramila Jain was not produced, nor the books of accounts were furnished and thus the assessment was completed u/s.144 of the Act on ex-party basis by making an addition of ₹10,62,50,000/- to the total income of the assessee.

04. Aggrieved, assessee preferred an appeal before the Id. CIT (A). The Id. CIT (A) in the appellate proceedings, allowed the appeal of the assessee after taking into consideration the written submissions and arguments of the assessee. The assessee also filed before the Id. CIT (A) some additional evidences to which the remand was called from the AO and the remand report were also furnished before the appellate authority by the AO. The Id. CIT (A) found that the share subscribers were all related parties and they were engaging in real estate projects. The Id. CIT (A) recorded the findings of fact that all these were group concerns which have huge income and net worth. According to their returns of income, the Id. CIT (A) found that they have the capacity and thus discussed the source of source at page no.15 of the appellate order. The Id. CIT (A) found that the assessments were framed in the case of share subscribers also u/s 143(3) of the Act and even the summons were complied with and the

statements were duly recorded. At page no.38 in the appellate order Id. CIT (A) recorded the findings that the assessee has furnished all evidences comprising details of share applicant, audited reports, profit and loss account, balance sheet of the assessee company as well as the investors entities/companies etc besides filing the bank statements and compliance to the summons issued u/s 131 of the Act. At page no.39 of the appellate order, the Id. CIT (A) noted that in the remand report submitted by the Id. AO, it was observed that assessee has even provided the source of source and even the assessments were framed in the case of subscribers the details whereof were provided at page no.39 to 49 in the appellate order. Thereafter, the Id. CIT (A) on page no. 56 dealt with the books of accounts produced by the assessee before the Id. AO and noted that the assessee has failed to point out which part of the books of accounts is not produced by the assessee. The Id. CIT (A) even noted that the assessments were made in the case of subscriber's u/s 143(3) of the Act for the same assessment year and tabulated the details of assessments having been framed at page nos. 57 to 60 of appellate order comprising the details of the assessment of the subscribers, their directors, partners etc. Having observed all these facts, the Id. CIT (A) allowed the appeal of the assessee by passing a very speaking and reasoned order.

05. We have heard the rival contentions and perused the materials available on record. We find that the assessee is a company engaged in the business of Hotel in Kolkata. In order to fund the said project, the assessee raised the share capital/ share premium from the related entities, which were group entities, comprising group companies as well as other related entities.

06. It is not the case of the Revenue that these are the bogus share companies/entities but the money received by the assessee by issuing equity shares on a very high premium. The assessee relied on the decision of Hon'ble Calcutta High Court in the case of PCIT vs. M/s Indus Realty Pvt. Ltd. in ITAT/191/2004, IA No. GA/2/2024 vide order dated 8th November, 2024, wherein the Hon'ble Court has observed as under:-

"The revenue has raised the following substantial questions of law for consideration:-

(a) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal has committed substantial error by not considering the addition made by the Assessing Officer on account of share capital / share premium of Rs.3,00,00,000/- made u/s 68 of the IT Act, 1961, without considering the fact that there is accommodation entry in the instant case?

(b) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal has committed error by not considering the judgment of the Hon'ble Division Bench, High Court at Calcutta dated April 23, 2024 in ITAT/67/2024 (IA No: GA/2/2024) in the case of The Principal Commissioner of Income Tax, (Central)-2, Kolkata Vs. M/s BST Infratech Limited?

We have heard Ms. Smita Das De, learned senior standing counsel assisted by Mr. Prithu Dudheria, learned advocate for the appellant.

The revenue was in appeal before the Learned Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi dated 25th March 2023 by which the assessee's appeal was allowed and the addition made under Section 68 of the Act was set aside. The Learned Tribunal has extensively quoted the factual findings recorded by the CIT(A) upon appreciation of the documents which were placed by the assessee as well as the group companies. The Tribunal after referring to the finding recorded by CIT(A) has on its part re-examined the factual position and found that no case has been made out for addition under Section 68 of the Act.

Thus we find there is no substantial question of law arising for consideration in this appeal."

07. We note that during the course of the assessment proceedings, the assessee has filed all the details qua the share subscribers as called by the Id. AO and even notices were issued/s 131 of the Act, the assessee company as well as to the subscribers duly complied with and the statements were recorded u/s 131 of the Act. The Id. AO has mentioned in the assessment order that assessee company did not produce Smt. Pramila Jain as well as other details and books of accounts which is vague finding by the Id. AO which has been negated by the Id. CIT (A) in the appellate order itself by making a comprehensive observation by recording that the directors/subscribers as well as subscribers duly appeared before the Id. AO and their statements were recorded. We note that all the share subscribers were engaged in the real estate project and have huge income from the business and even the source of source was also duly explained by the assessee and the Id. CIT (A) has recorded a very comprehensive finding in the appellate order giving the details as to source of income as well as the worth of the companies/ subscribers and their capacity to invest in the assessee company. Considering all these facts and a very detailed and speaking appellate order passed by the Id. CIT (A), we are inclined to uphold the same by dismissing the appeal of the Revenue.

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

Order pronounced in the open court on 27.11.2024.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 27.11.2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata