

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

|   |     |   |
|---|-----|---|
| ITA NOS. 557 & 558/DEL/2017   |     |   |
| A.YRS. 2011-12 & 2013-14  |     |   |
| ASSISTANT COMMISSIONER<br>OF INCOME TAX, CENTRAL<br>CIRCLE-18, JHANDEWALAN,<br>NEW DELHI – 55 | VS. | M/S GOLDSOUK<br>INTERNATIONAL GEMS AND<br>JEWELLERY SEZ PVT. LTD.,<br>PLOT NO. 1, WEDDING SOUK<br>LOCAL SHOPPING CENTRE,<br>SHARDA NIKETAN, PITAMPUR,<br>NEW DELHI – 34<br>(PAN: AACCG80180P) |
| (RESPONDENT)  |     | (APPELLANT)   |

Assessee by : Sh. Rajeshwar Painuly, Adv.  
Department by : Sh. Dayainder Singh Sidhu,  
CIT-DR

Date of hearing : 11.12.2024

Date of pronouncement : 18.12.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Revenue filed these 02 appeals against the separate orders of the Ld. CIT(A)-27, New Delhi relating to assessment years 2011-12 & 2013-14 respectively.

2. The grounds raised in Revenue's appeal for assessment year 2011-12 read as under:-

1. In the facts and the circumstances of the case, the Id. CIT(A) has erred in holding the invoking the section 153C bad in law without appreciating the facts that the AO had properly applied his mind and carefully perused the seized material before issuing notice u/s. 153C.

2. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 8,59,12,500/- without appreciating the facts that since the assessee has not able to discharge its initial onus and has not been able establish the identity and creditworthiness of the share applicant and genuineness of transition as required under the provision of section 68 of the I.T. Act, 1961.

3. In the facts and circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs. 8,59,12,500/- without appreciating the facts that when there is material on record to show that the subscriber companies are not in existence as discussed in assessment order. Therefore, the Ld. CIT(A) is not justified in deleting the addition made by the AO.

4. (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b) The applicant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of hearing of the appeal.

3. The brief facts of the case are that the assessee is a Private Limited Company. Search, seizure and survey operations u/s. 132/132A of the Act were conducted by the department on the AGS group on 17.08.2011, after the search proceeding on 17.08.2011 in the AGS group it come to light that assessee

company has received accommodation entries in the form of share premium and share capital amounting to Rs. 8.6 crore during the previous year relevant to the assessment year under consideration from the companies which don't exist at their registered address Accordingly, AO proceeded to add the entire sum of Rs. 8,60,36,760/- as unexplained income of the assessee. Upon assessee's appeal, Ld. CIT(A) deleted the addition of Rs. 8,59,12,500/- by allowing the appeal of the assessee.

4. Against the above order, Revenue is in appeal before us.

5. Ld. DR relied upon the orders of the AO and reiterated the contents of grounds of appeal raised by the Revenue.

6. Per contra, Ld. AR on the issue of jurisdiction submitted that since there is no proper satisfaction recorded to warrant the assessment u/s. 153C of the Act. In this regard, he referred to the satisfaction note which reads as under:-

*“During the course of search and seizure operation u/s. 132 in the case of AGS Group it is noticed that as per page 37 of Annexure A-12 it is noticed that there is a land details of M/s Gouldsouk International Gems and Jewellery SEZ Pvt. Ltd. at Village Bhondsi Gurgaon.*

*I am therefore satisfied that the documents seized, as referred to above belongs / relates to M/s Goldsouk International Gems and Jewellery SEZ Pvt. Ltd. warranting action u/s. 153C in this case.*

*The case of M/s Goldsouk International Gems and Jewellery SEZ Pvt. Ltd. was centralized with this office vide letter CIT-IV/Centralization / 136/2012-13/2335 dated 23.11.2012 issued by the CIT-IV, Delhi.”*

6.1 Referring to the aforesaid satisfaction note recorded by the AO, Ld. AR submitted that the satisfaction note recorded u/s. 153C talks about the discovery of land details of the assessee during the course of search and seizure, however, addition has been made for unexplained share capital premium, hence, the

jurisdiction has been framed without proper satisfaction, hence, the assessment on this account is liable to be quashed. He further submitted that Ld. CIT(A) has rightly allowed this ground in favour of the assessee, which may be upheld.

7. We have heard both the parties and perused the records. We find that Ld. CIT(A) while dealing with jurisdictional issue has observed that before initiating the proceedings u/s. 153C of the Act the AO has an option of recording a proper satisfaction note, however, the AO had not done that, hence, he rightly held that the invoking of section 153C against the assessee was bad in law and accordingly allowed the ground. We further find considerable cogency in the contention of the Ld. AR that satisfaction note recorded u/s. 153C talks about the discovery of land details of the assessee during the course of search and seizure, however, addition has been made for unexplained share capital premium, hence, the jurisdiction has been framed without proper satisfaction, hence, the assessment on this account deserve to be quashed. In view of the aforesaid factual matrix, we affirm the action of the Ld. CIT(A) on this account and reject the ground no. 1 raised by the revenue.

8. As we have affirmed the Ld. CIT(A)'s order on jurisdiction, adjudication of other aspects is only academic. Hence, Revenue's appeal for AY 2011-12 stands dismissed.

**ITA NO. 558/DEL/2017 (AY 2013-14)**

9. The grounds raised in Revenue's appeal for assessment year 2013-14 read as under:-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,96,83,000/- by observing that the addition was made by the AO on account of share capital without appreciating the facts that the addition was made by the AO on account of long term outstanding explained liabilities of the*

*Rs. 3,96,83,000/- . Therefore, the Ld. CIT(A) was not justified in deleting the addition of Rs. 3,96,83,000/- made by the AO.*

2. *(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The applicant craves lave to add, alter or amend any / all of the grounds of appeal before or during the course of hearing of the appeal.*

10. The brief facts of the case are that the assessee is a Pvt. Ltd. Company. The assessee had filed original return of income declaring an total loss of Rs. 13,567/-. The same return was processed u/s 143(1) of the Income tax Act, 1961 thereafter the case was selected for scrutiny assessment proceeding us 143(3) of the Income Tax Act, 1961. During the assessment proceedings it came to light that assessee company has received advances the sum of Rs.4,38,33,000/- from M/s Aerens Goldsouk International Ltd., having PAN No. AAECA1782A, a closely held company during assessment proceedings. Additions has been made of Rs.3,96,83,000/- on this basis that the assessee company has shown other long term liabilities as on March,2013 of Rs.4,38,33,000/- whereas March, 2012 other long term liabilities was nil. Assessee appealed before Ld. CIT(A) who vide his findings has held as under:-

*“5. I have considered the appellant's contention, carefully gone through the order of ACIT and deliberated upon the case laws referred by the AR of the appellant. It is seen that in the instant case, without any trail of cash transaction, without any corroborative evidence, only on the basis of presumption, addition had been made, as it is seen that neither the assessing officer has made proper enquiry in this regard nor he has produced any trail of cash transactions on the basis of which the addition has been made.*

*In the relevant assessment year there is no restriction of share premium. Further, the genuineness of the transaction can also be accepted since the entire transaction has been done through the banking channels, duly recorded in the books of accounts of the assessee, duly reflected in the financial statement of the assessee and the bank statement in which the transaction relating to the allotment of shares are duly reflected. In the instant case, the capacity of the shareholders cannot be doubted.*

*5.1 As per provision of section 68 any unexplained credit found in the books of accounts of an assessee can be considered as income if the assessee cannot satisfactorily explain the nature and source of receipt of the sum represented by the said credit. And also, if the assessee is unable to establish the identity and existence of shareholders who contributed the share capital and premium whereas, in the said case the assessee has already submitted Income tax return, financial statement, Bank statement of relevant transactions from whom the assessee had received share capital and premium. As per the provided details and documents the assessee is able to establish the identity and existence of shareholders.*

*5.2 Accordingly, the addition of Rs.3,96,83,000/- is directed to be deleted. Ground No. 1 is accordingly allowed.”*

11. Against the above order, Revenue is in appeal before us.
12. Ld. DR relied upon the orders of the AO and reiterated the contents of grounds of appeal raised by the Revenue.
13. Per contra, Ld. AR relied upon the order of the Ld. CIT(A).

14. We have heard both the parties and perused the records. We find that AO has added the liabilities found in this case and Ld. CIT(A) has deleted the addition with regard to share capital and share premium. Hence, it is clear that Ld. CIT(A) has not properly appreciated the assessment order. Therefore, both parties later agreed that the instant issue may be remanded back to the file of the Ld. CIT(A) with the directions to pass a speaking order on the basis of addition made by the AO. Needless to add that the assessee should be granted adequate opportunity of being heard. Accordingly, this appeal of the Revenue is allowed for statistical purposes.

15 In the result, the Revenue's appeal for AY 2011-12 being ITA No. 557/Del/2017 is dismissed and Appeal No. 558/Del/2017 (AY 2013-14) stand allowed for statistical purposes in the aforesaid manner.

Order pronounced on 18/12/2024.

Sd/-

**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

SRBHATNAGAR

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar