

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.1954/Del/2023  
Assessment Year: 2017-18

Jt. CIT(OSD), Central Circle-16, New Delhi	<b>Vs.</b>	M/s. Nidra Hospitality P. Ltd., 32/7, Plot No. 9, Samalka, NH-8, New Delhi
<b>PAN :AACCN9116H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Ms. Jyoti Narula, CA Ms. Himani Chauhan, CA
Department by	Sh. Akhilesh Kumar Yadav, Sr. DR

Date of hearing	05.12.2024
Date of pronouncement	18.12.2024

**ORDER**

**PER SATBEER SINGH GODARA, JM**

This Revenue's appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)-26 [in short, the "CIT(A)"], New Delhi's order dated 17.04.2023 passed in case no. 10688/2016-17 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties at length. Case file perused.
3. The Revenue raises the following substantive grounds:

1. *Whether on facts of the case and in law, the Ld. CIT(A) was right in deleting the addition on account of share capital and premium of Rs. 6,47,79,691/- even when the assessee failed to establish the genuineness of the transaction.*
2. *Whether the Ld. CIT(A) has erred in ignoring the fact that the assessee failed to satisfy the conditions laid down in Section 68 with respect to the identity, creditworthiness and genuineness of the transaction before the AO.*
3. *Whether on facts of the case and in law, the Ld. CIT(A) was right in deleting the addition by holding that the subsidiaries of the assessee were doing business, while ignoring the fact that the onus to prove the genuineness of the transaction lies on the assessee who has received the share capital and premium, and not its subsidiaries.*
4. *The order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*
5. *The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.*

4. Both the learned representatives next invited our attention to the CIT(A)'s lower appellate discussions reversing the Assessing Officer's action making section 68 addition of unexplained cash credits amounting to Rs.6,47,79,691/- as under:

*"5. Ground no. 1: This ground of appeal has been raised on the issue of addition made by the assessing officer on account of share premium received u/s 68 of the Income Tax Act, 1961. During the assessment proceedings, the Assessing Officer concluded that the assessee has received share capital and share premium totalling to Rs.6,47,79,691/- during the year from M/s Nidra Holdings Pte. Ltd., Singapore. From the financials of said company it is noticed that there is no income accruing to said company from F.Y. 2014-15 to F.Y. 2016-17. In fact, there is no business activity in the said company. The source of share capital/premium given to the assessee company stated by M/s Nidra Holdings Pte. Ltd. was interest free loan received from M/s Lion South East Asia Holding Pte Ltd., Singapore. Receipt of interest free loan from M/s Lion South East Asia Holding Pte Ltd., Singapore by the investor company viz. M/s Nidra Holdings Pte. Ltd. which has no real business activity and further investment by M/s Nidra Holdings Pte. Ltd. in assessee company which is making huge losses and there is no real application of funds received in the form of share capital/premium to further its main business activities rather the share capital received was diverted to its other sister concerns by way of loans, advances and share subscriptions mainly to M/s Nidra Hospitality Gujarat Pvt. Ltd. and M/s Nidra Hospitality Amritsar Pvt.*

*Ltd., another loss making companies. In ordinary course no person of prudent mind will make such investment on which there is no return for the last many years and also there is no hope of any return in near future as there is no investment on the part of the assessee company to develop its business. The above facts raise suspicion about the genuineness of the share capital and huge share premium @Rs. 790/- per share received by the assessee company. Therefore, share capital/premium amounting to Rs. 6,47,79,691/- received by the assessee is treated as unexplained and added to income as unexplained credits u/s 68 of the IT Act, 1961.*

*5.1 The appellant has submitted that the assessee company was established to carry out the business of running, managing and operating hotels, restaurants spas and resorts etc. The assessee company had incorporated its subsidiary companies i.e., M/s Nidra Hospitality Gujarat Private Limited (wholly owned) and M/s Nidra Hospitality Amritsar Private Limited(91.67% shareholding) as further expansion to its business activities. The assessee company had raised its own capital fund to make investments in the subsidiary companies. The assessee company had incorporated its subsidiary company to enter in participatory business ventures. Both the subsidiary Companies are Special Purpose Vehicle (SPV) of the assessee company, through which the assessee company had been operating its hospitality business. Moreover, it is worth to note the fact that M/s Nidra Hospitality Gujarat Private Ltd. owns and operates a hotel in the city of Vadodara, Gujarat.*

*Further, it was explained that the assessee company had not diverted any funds while lending or investing funds to its subsidiaries. The word 'diversion' means that the funds which were brought for specific purposes but had not used or utilized such funds for that specific purpose. In the captioned case, the assessee company has own funds which were introduced by raising its own share capital and the assessee company was free to utilize the same and funds were used only for construction of hotels or for buying lands for constructing hotels. Therefore, there was no diversion of funds as alleged in the assessment order.*

*5.2 I have considered the facts of the case and submissions filed by the appellant and impugned assessment order. It is observed that the issue involved is that AO has added Rs. 6,47,79,691/- (share capital Rs. 8,09,740/- & share premium Rs. 6,39,69,951/-) under section 68 of the Income Tax Act, 1961 on account of the fact that the appellant has failed to prove the creditworthiness of the investor company and genuineness of the transaction. The AO had requested for justification for the same, which as per AO, the appellant failed to provide convincingly. However, the appellant claims that provisions of section*

68 of the Income Tax Act, 1961 are not applicable in this case as money has come from overseas from a foreign company (Non-Resident) and it has supplied all the relevant information as was required from him and has proved genuineness of the transaction in accordance of the provisions of the Act.

5.3 From the details submitted it has been found that Nidra Holdings Pte. Singapore has been investing in shares of the appellant company every year since AY 2012-13 to 2018-19. The appellant company is a wholly owned subsidiary of Nidra Holdings Pte. Ltd. and Nidra Holdings Ltd. From the facts of the case, it is apparent that the appellant company was incorporated to run the business of managing and operating hotels, restaurants spas and resorts etc. The assessee company had incorporated its subsidiary companies i.e., M/s Nidra Hospitality Gujarat Private Limited (wholly owned) and M/s Nidra Hospitality Amritsar Private Limited (91.67% shareholding) as further expansion to its business activities. The assessee company was assessed to tax in the assessment year 2012-13, 2013-14, 2014-15 and 2018-19 and in all these years the returned income was accepted and during the course of the assessment proceedings in all these assessment years copies of FIRC's, Form PAS-3, Form FCGPR, copies of challans respecting filing of form. PAS-3 showing the allotment of shares to the holding company were submitted and the same was accepted during the course of assessment proceedings. In the relevant year too the investment in share capital was received from the holding company for furtherance of its business activities in India. Since the appellant company is 100% subsidiary of its holding companies investment in shares of the subsidiary company at the rate decided by the holding company cannot be questioned since it is the prerogative of the businessman as to how much capital is to be raised based on its long term and short term funding requirements for the running of its business. The evaluation of share at a higher price in no way affecting the interest of any other party and there is no instance of any tax evasion can be found since the appellant company is a wholly owned subsidiary of its holding companies.

In the case of S.A Builders Vs. CIT(A) [2007] 288 ITR 1 (SC), and CIT Vs. Panipat Woollen and General Mills Company Ltd. [1976] 103 ITR 66 (SC), the Hon'ble Supreme Court held that the Income Tax Department cannot jump into the armchairs of the business to decide what is profitable and how the business should be carried out. In the instant case the appellant has explained the sources of money received as share capital/share application and the Assessing Officer had just concluded that the genuineness and creditworthiness of the investor company was not proved. From the facts on record, it has been found that the investment in the share capital was received through banking channel from Nidra Holdings Pte. Ltd, Singapore and

*the sources of such investment found to be explained. Thus, the claim of the appellant is genuine and bonafide and the appellant has proved that the investing company which is non-resident and the holding company of the appellant has regularly been infusing share capital since assessment year 2012-2013. Also, for the sake of repetition, the investing company which is a non-resident has subscribed to the share capital during the relevant financial year, out of funds remitted by it from outside India through proper banking channels which is duly substantiated. Therefore, the Income Tax Department cannot judge the prudent mind of making investment and cannot raise suspicion about the genuineness of the share capital raised by the assessee company.*

*5.4 In view of the above facts, I am of the view that the sources of investment made of the appellant company is found to be explained. Therefore, the addition made by the assessing officer is not found sustainable and hence deleted. Therefore, this ground of appeal is allowed.”*

5. Mr. Yadav vehemently argues during the course of hearing that the Assessing Officer herein had rightly made the impugned section 68 addition of unexplained cash credits in the assessment dated 25.05.2021 since the assessee could not plead and prove the clinching twin tests of genuineness and creditworthiness of the share premium received in the relevant previous year amounting to Rs.6,47,79,691/- and, therefore, we ought to revive the same in light of Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC), CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC) and PCIT Vs. NRA Iron & Steel Co. (2019) 412 ITR 161 (SC).

6. Learned counsel for the assessee has chosen to file its detailed paper-book running into 155 pages comprising of the written

submission filed in the lower appellate proceedings, details of share application money received submitted to the Assessing Officer during scrutiny, copies of assessment orders for assessment years 2012-13 to 2014-15; 2018-19 & 2022-23 regarding share allotment since incorporation, copies of foreign inward remittance certificate(s) along with other supporting documents etc.

7. We have given our thoughtful consideration to the foregoing vehement rival submission and see no merit in the Revenue's instant sole substantive grievance. We wish to make it clear that there is no dispute between the parties about the clinching fact that the assessee indeed received the impugned share capital/share premium amounting to Rs. 6,47,79,691/- in the relevant previous year from its related parties.

8. Learned counsel takes us to the assessee's share stock holding wherein M/s. Nidra Hospitality Pvt. Ltd. (NHPTE), Singapore; M/s. Nidra Holdings Limit, Mauritius and individual shareholders held its stake to the tune of 70.02%, 28.56% and 1.42%; respectively. She next quotes the corresponding regular section 143(1) processing as well as 143(3) regular assessments right from assessment year 2010-11 onward and submits that this

is not the first year of having received such share capital/share premium. Her case is that it was in assessment year 2012-13, the assessee had allotted 122794 shares to M/s. NHPTE @ Rs.1,000/- each; 17130 shares at the very rate in assessment year 2013-14; 12778 shares @ Rs.767/- each in assessment year 2014-15; 62003 units @ Rs.1,000/- each in assessment year 2015-16 and 88522 shares @ Rs.800/- each in the preceding assessment year 2016-17; respectively which have all along been accepted.

9. Learned counsel's next submission is that the departmental authorities herein had also made a reference to the Foreign Tax Division (FTD) for necessary verification wherein no adverse report came from the latter's side. It is in light of all these relevant facts that we are of the considered view that the assessee's impugned share capital/premium realized from holding its group or holding companies; as the case may be, could not have been treated as unexplained cash credits under section 68 of the Act once it had duly satisfied the relevant parameters of identity, genuineness and creditworthiness thereof.

10. We lastly find that this tribunal's coordinate bench order's in Hinduja Realty Ventures Limited Vs. DCIT in ITA No.1090 &

2569/Mum/2019, dated 13.09.2019 has already rejected the Revenue identical contentions as under:

*“5. We have heard rival submissions and perused the materials available on record. The primary facts stated hereinabove together with various documentary evidences placed on record before the lower authorities remain undisputed and hence, the same are not reiterated for the sake of brevity. We find from the perusal of the aforesaid narrated facts supported with documentary evidences that M/s.Rabna Holdings Ltd., a Mauritius based entity, a group company of Hinduja group had invested in share capital of the assessee company. M/s.Rabna Holdings Ltd. had received loan from M/s. Amas Ltd., a company incorporated in Bahamas. This loan was utilised by M/s.Rabna Holdings Ltd. to make investment in share capital of the assessee company. Hence, the source of funds for the assessee company is established beyond doubt. The assessee is required to explain the nature and source of credit appearing in its books in the form of share capital and share premium in the light of provisions of Section 68 of the Act. The nature of credit is in the form of share capital and share premium. The source of credit is money received from M/s.Rabna Holdings Ltd., a Mauritius based entity. In the instant case, the assessee has also proved the source of source i.e., source of funds for M/s.Rabna Holdings Ltd. being loan received from M/s. Amas Ltd., Hence, the source of source is also proved in the instant case by the assessee. We find that the ld CITA had upheld the addition on the ground that the assessee had not proved the source for Amas Ltd i.e source of source of source, which is not required to be proved by the assessee company herein, as per law. It is very pertinent to note that all these documents were collected by FT & TR division of CBDT from Mauritius tax authorities under exchange of information in terms of Section 90 of the Act and relevant DTAA provisions. It is not in dispute that FT & TR division had indeed submitted a report wherein all these documentary evidences were forwarded to the ld AO. The identity of the share subscriber is proved by the assessee as the amount received from M/s.Rabna Holdings Ltd. which is also confirmed by FT & TR division in their report and also by Mauritius tax authorities. From the financials of M/s.Rabna Holdings Ltd. as on 31/03/2014, as confirmed by Mauritius tax authorities and FT & TR division of CBDT, the investment made by M/s.Rabna Holdings Ltd. in the shares of assessee company are duly reflected in their balance sheet. The monies had been received by the assessee company from M/s.Rabna Holdings Ltd. through normal banking channels under FDI route after obtaining proper approvals from FIPB & RBI. The relevant statutory forms in this regard have been duly filed by the assessee with FIPB and RBI, on which there is*

*absolutely no dispute. Hence, it could be safely concluded that the receipt of monies in the form of share capital and share premium by the assessee from M/s.Rabna Holdings Ltd., Mauritius based entity had got the blessings of FIPB and RBI and more so the monies were received through normal banking channels. This proves the genuineness of the transactions carried out by the assessee. It is not in dispute that M/s.Rabna Holdings Ltd. had borrowed loan from M/s. Amas Ltd., a company incorporated in Bahamas, which fund has been used for making investments in shares in assessee company. This fact is duly confirmed by Mauritius tax authorities and FT & TR division of CBDT on which fact there is no dispute. This proves the creditworthiness of the share subscriber i.e., M/s.Rabna Holdings Ltd. Hence, it could be safely concluded that assessee had duly established the three necessary ingredients of Section 68 of the Act i.e., identity of the share subscriber, genuineness of the transaction and creditworthiness of the share subscriber.*

*5.1. We are unable to persuade ourselves to accept to the argument of the ld. DR that assessee had not furnished the copy of income tax return for the relevant year and the intimation, if any, issued by Mauritian tax authorities to M/s.Rabna Holdings Ltd. for the relevant year and hence, the source of funds and creditworthiness of M/s.Rabna Holdings Ltd. cannot be accepted. In this regard, we hold that merely because the investor had not filed its income tax returns, it does not make the entire transactions bogus or the said investor non-existent. If an investor company in Mauritius had not filed its income tax return, then it is for the Mauritian tax authorities to take necessary action against the said company and assessee cannot be faulted for the same. With regard to another observation made by the ld. CIT(A) that the letters filed in page 65 & 66 of the paper book by M/s.Rabna Holdings Ltd. and M/s. Amas Ltd., duly confirming the entire loan transactions and investment in share transactions had some deficiencies in the form of not submitting the same in letterhead, not having the address, not mentioning the name of the person who had signed the said letter etc., we find that contents in the said letter have been otherwise duly confirmed by both Mauritian tax authorities as well as by FT & TR division of CBDT. It is not in dispute that Mauritian tax authorities had indeed confirmed the fact that M/s. Amas Ltd., had given loan to M/s.Rabna Holdings Ltd. and M/s.Rabna Holdings Ltd. had used the same for making investment in shares in assessee company. The same fact is also confirmed by FT & TR division of CBDT. When these facts are staring on us, we are not inclined to accept to the finding of the ld. CIT(A) with M/s.Rabna Holdings Ltd. is only a mere pass through entity and M/s. Amas Ltd., being incorporated in Bahamas is found to be a tainted entity. All these observations of the ld. CIT(A) are purely without any basis and not supported by any material evidences brought on record. This is a*

*classic case of the ld. CIT(A) disbelieving the information obtained by CBDT, FT & TR division from Mauritian tax authorities under exchange of information in terms of Section 90 of the Act and relevant DTAA Article. The ld. AR placed on record various case laws in support of its contentions. Since this is purely a factual matter, we do not find it necessary to look into those case laws as in our considered opinion, assessee had duly established three necessary ingredients of Section 68 of the Act of facts and on merits duly supported by all documentary evidences. In view of the aforesaid observations, we direct the ld. AO to delete the addition made in the sum of Rs.155 Crores u/s.68 of the Act. Accordingly, the ground Nos.1 to 4 raised by assessee are allowed.”*

11. We conclude in the light of this fact that learned CIT(A) has rightly deleted the impugned section 68 unexplained cash credits addition made by the Assessing Officer in assessee’s hands. His lower appellate findings herein stand upheld therefore.

12. No other ground or argument has been pressed before us.

13. This Revenue’s appeal is dismissed.

***Order pronounced in the open court on 18<sup>th</sup> December, 2024***

***Sd/-***  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 18<sup>th</sup> December, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi