

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &
MS PADMAVATHY S, AM**

**I.T.A. No. 3198/Mum/2025
(Assessment Year: 2017-18)**

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| Airport Retail Private Ltd., B-7, Om Parshwanath Apartments, Desai and Sheth Nagar, Saibaba Nagar, Borivali (West), Mumbai-400092. PAN: AAFCA9796H | Vs. | ACIT, Circle-12(1)(1), 223, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020. |
| Assessee) | : | Revenue) |

Assessee by : Ms. Hirali Desai, Shri Hardik
Nirmal & Ms Nidhi Agarwal, AR

Revenue by : Shri Rajesh Kumar Yadav, CIT-DR

Date of Hearing : 20.11.2025

Date of Pronouncement : 02.12.2025

ORDER

Per Padmavathy S, AM:

This appeal by the by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 03.01.2025 for Assessment Years (AY) 2017-18. The assessee raised the following grounds of appeal:

1. *On the facts and in the circumstance of the case and in law, the order dated 03 January 2025 passed under section 250 of the Income-tax Act, 1961 ('the Act') by the National Faceless Appeal Centre (NFAC) is in violation of the principles of natural justice, invalid, bad in law and is therefore, liable to be quashed.*
2. *On the facts and circumstances of the case and in law, the NFAC has erred in upholding the action of the Assistant Commissioner of Income-tax Circle 12(1)(1), Mumbai ('Assessing Officer') in treating the receipt of share capital of INR 56,00,00,000 as unexplained cash credit under section 68 of the Act and thereby, taxing the same under section 115BBE of the Act.*

Accordingly, the Appellant prays that NFAC be directed to delete the addition of INR 56,00,00,000 under section 68 of the Act.

3. *Without prejudice to the above, on the facts and in circumstances of the case and in law, the NFAC erred in upholding the action of the Assessing Officer in treating the receipt of share capital of INR 56,00,00,000 as unexplained cash credit under section 68 of the Act without appreciating that the share application money to the tune of INR 28,00,00,000 from Alpha Airport Retail Holdings Private Limited (one of the existing shareholders) was received in AY 2008-09.*
4. *On the facts and in the circumstances of the case, the NFAC erred in upholding the action of Officer of levying consequential interest under section 234B of the Act of INR 13,44,67,707.
The Appellant prays that the Assessing Officer be directed to delete/recompute the interest to be levied under section 2348 of the Act.*
5. *On the facts and circumstances of the case and in law, the Assessing Officer erred in initiating, penalty proceedings under section 271AAC of the Act.
The Appellant prays that the Assessing Officer be directed to drop the penalty proceedings initiated under section 271AAC of the Act."*

2. The assessee is a company engaged in the business of retail trade and operations of duty-free shops. The assessee filed the return of income for AY 2017-18 on 16.10.2017 declaring loss of Rs. 3,24,85,063/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) noticed that the assessee during the year under consideration has allotted shares to the tune of Rs. 56 crores to two parties namely

WDFG UK Holdings Ltd. and Alpha Airport Retail Holdings Pvt. Ltd. The AO called on the assessee to furnish complete details to prove the identity, creditworthiness and the genuineness of the parties from whom the assessee has received money towards share application. The AO concluded the assessment by treating the entire amount of Rs. 56 crores as unexplained u/s. 68 of the Act stating that the assessee has not filed any details except the copy of FIRC in the case of WDFG UK Holdings Ltd. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A) the assessee submitted additional evidences with regard to the impugned receipts. The assessee submitted before the CIT(A) that the AO did not give sufficient time for the assessee to file the details called for and prayed for admission of additional evidence and the CIT(A) called for a remand report from the AO with regard to the various details filed by the assessee. The assessee submitted the following details before the AO during the remand proceedings.

| <i>SN</i> | <i>Description of the Documents</i> |
|------------------|--|
| <i>1</i> | <i>Audited financial statements of the Company for FY 2016-17 evidencing issue of shares during the year</i> |
| <i>2</i> | <i>Relevant extract of the bank statements of the Company evidencing receipt of funds for share capital from banking channels</i> |
| <i>3</i> | <i>Copy of the share certificates issued to Alpha and WDFG UK on issue of shares</i> |
| <i>4</i> | <i>Certificate of foreign inward remittance issued by the bank on receipt of share capital from WDFG UK</i> |
| <i>5</i> | <i>Copy of acknowledgement of form FC-GPR filed by the Company with RBI on issue on shares to WDFG UK (non-resident shareholder)</i> |
| <i>6</i> | <i>Relevant bank statement of Alpha evidencing payment of share capital to us and their capacity to subscribe to the shares</i> |
| <i>7</i> | <i>PAN of Alpha to prove the identity of the resident shareholder</i> |

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| 8 | <i>Return of income filed by Alpha for AY 2008-09 to prove the identity of the shareholder</i> |
| 9 | <i>Audited financial statements of Alpha for the year ended 31 March 2008 evidencing financial strength and credit worthiness of the shareholder</i> |
| 10 | <i>Relevant bank statement of WDFG UK evidencing payment of capital to us and their capacity to subscribe to the shares</i> |
| 11 | <i>PAN of WDFG UK to prove the identity of the non-resident shareholder</i> |
| 12 | <i>Return of income filed by WDFG UK for the year ended 31 December 2016 in accordance with UK laws to prove the identity of the shareholder</i> |
| 13 | <i>Audited financial statements of WDFG UK for the year ended 31 December 2016 evidencing financial strength and credit worthiness of the shareholder</i> |
| 14 | <i>Consolidated financial statements of the ultimate parent Company (i.e., Dufry AG) listed on the Switzerland stock exchange reflecting that the shareholders are identifiable and genuine</i> |

3. The assessee submitted that the amount from Alpha Airport Retail Holdings Ltd. was received during the Financial Year (FY) relevant to Ay 2008-09 and the same is reflected in the financial statements as share application money until the year under consideration during which time the shares have been allotted. As regards the money received from WDFG UK Holdings Ltd. the assessee submitted the relevant details. The AO after perusing the details submitted by the assessee stated in the remand report that –

“6.1 As seen from the submission made by the assessee, post July, 2010 there is no business activity and as per the financials, the assessee company has been incurring loss year-after year. It is seen from Balance Sheet of the assessee for the F.Y. 2016-17 that the Reserves and Surplus of the assessee-company is a negative figure of (-) Rs. 121,47,00,892/- (F.Y. 2015-16 disputes with indirect and direct tax authorities the management could not wind up the (-) Rs.117,66,59,744]. As per the assessee, owing to company. Admittedly, as per the financials of M/s WDFG UK Holdings Ltd., the holding company, the assessee company is "dormant". The amount of Rs.

28,00,00,000/- is claimed to have been received from M/s WDFG UK Holdings Ltd. in the F.Y. 2016-17 towards capital infusion and accordingly equity shares of Rs. 28,00,00,000/- is claimed to have been issued by the assessee to the holding company. However, taking into consideration the statement of affairs of the company, no prudent businessman would have invested such a huge sum of money in a company which is admittedly in the process of winding up coupled with the fact that seemingly the return on investment is virtually Zero.

6.2 With respect to amount of Rs. 28 crores received from M/s Alpha Retail Holdings Pvt. Ltd., as per the assessee the said sum was received by it during the financial year relevant to A.Y. 2008-09. It is seen on verification that for the A.Y. 2008-09, M/s Alpha Retail Holdings Pvt. Ltd. has filed return of income declaring business loss of (-) Rs. 27,69,714/- Further, as per the copy of the Balance Sheet of M/s Alpha Retail Holdings Pvt. Ltd. the company's Reserve & Surplus was "NIL" As per the copy of the statement of bank account submitted by the said party, prior to transfer of fund of Rs. 26,00,00,000/- to the assessee-company on 20/02/2008, a sum of Rs 28,26,60,814/- (Equivalent of USD converted into INR) has been credited to its bank account on the very same day i.e. 20/02/2008 In the Balance Sheet as on 31/03/2008, the amount of Rs 28,00,00,000/- paid to the assessee has been shown under the head "Loans & Advances". It is further noticed from the Balance Sheet an Rs. 28,26,60,814/- has been shown under the head "Current Liabilities & Provisions" against M/s Alpha Overseas Holding Ltd., which according to the return of income filed is the holding company of the assessee. No proof regarding the foreign inward remittance has been submitted by the said party to substantiate the source of funds and the name of remitter of the funds. It will not be out of place to mention here that after receiving the alleged share application money of Rs. 28,00,00,000/-, the equity shares were allotted by the company to M/s Alpha Retail Holdings Pvt. Ltd., after a long gap of 8 years. No reason whatsoever has been given by the assessee what prevented it from allotting the equity shares over the years to the party concerned. It is also pertinent to mention here that M/s Alpha Retail Holdings Pvt. Ltd. is also not doing any business activity for a long time and has been declaring loss year after year and is also a dormant company. It may be further stated that M/s Airport Retail Pvt. Ltd [the assessee) was a loss making and in the AY. 2008-09 the company had declared a huge business loss of Rs.34,75,37,986/- The assessee-company is also not carrying out any business activity since July, 2010 and is a "dormant company".

4. The CIT(A) upheld the addition made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A). There is a delay of 36 days in filing the appeal before the Tribunal and the assessee filed an affidavit in this

regard praying for condonation of the delay. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 36 days in filing the appeal and admit the appeal for adjudication.

5. The ld. AR submitted that the assessee is not having any business activity since 2010 and is having a negative net worth due to the loss made year on year. The ld. AR submitted that the assessee before the lower authorities have submitted all the relevant details to prove the identity, creditworthiness and genuineness of the parties and thus has discharged the onus. The ld. AR also submitted that the lower authorities after considering the details have upheld the addition merely for the reason that no prudent businessman would invest in a loss making company and that the assessee has taken long period of time to allot shares against the share application money. The ld. AR with regard to the addition made towards Alpha Airport Retail Holdings Ltd. submitted that the money was received way back in AY 2008-09 and the same was reflected in the financial statements of the assessee as share application money for the year ended 31.03.2008. In this regard the ld. AR drew our attention to the financial statements of the assessee (page 1 to 24 of PB). The ld. AR argued that the assessee not only submitted the relevant details pertaining to the money received but has also submitted the details source of source i.e. the source from where Alpha Airport Retail Holdings Ltd has received the money which was in turn given to the assessee as share application money. The ld AR further argued that WDFG UK Holdings Ltd. is a profit making company which transferred money towards share application and the same is utilized to repay the loan taken from Kotak Mahindra Bank by the assessee. The ld AR in this

regard drew our attention to the no-due certificate the said Bank. The ld. AR also took the bench through the various documents submitted before the lower authorities such as the bank statement, share certificate, the income tax return of the parties, the financial statements of the parties etc. The ld. AR accordingly submitted that in the case of Alpha Airport Retail Holdings Ltd no addition u/s. 68 since the amount is not received during the year under consideration and even otherwise the assessee has discharged the onus by submitting all the details including the source of source. With regard to money received from WDFG UK Holdings Ltd. the ld AR submitted that the assessee has proved the identity (ITR & PAN details), credit worthiness (Financial statements) and genuineness (utilisation of the amount received for settling bank loan) and therefore the AO is not correct in making an addition u/s.68. The ld AR also submitted in this regard that the AO has accepted the money from the same party in the subsequent AY.

6. The ld. DR vehemently argued that the AO has given a detailed submission in the remand report which states that the assessee has not proved the genuineness of the money received. Accordingly, the ld. DR supported the order of the lower authorities.

7. We heard the parties and perused the material on record. The assessee has received share application money from two parties to the tune of Rs. 28 crores from each. The share application money received from Alpha Airport Retail Holdings Ltd. was received during the FY relevant to AY 2008-09. This fact is substantiated by the bank statements of the party which is in page 119 of Paper Book. We further notice that the assessee has submitted the income tax return (page 123 of PB) financial statements of the company (page 151 of PB). We also notice that the assessee has submitted that details of source of source with regard

to this party, which fact has been admitted by the AO in the remand report (refer the relevant part of the remand report as extracted in the earlier part of this order). The primary contention of the assessee with regard to addition made towards share application money from Alpha Airport Retail Holdings Ltd. is that the money is not received during the year under consideration and therefore the no addition can be made u/s.68. In this regard we will look at the provisions of section 68 which reads as under:

*“68. Where **any sum is found credited in the books of an assessee maintained for any previous year**, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :*

***Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

***Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”*

8. From the plain reading of the above section, it is clear that the addition u/s.68 can be made only towards the amount credited in the books of accounts during the previous year relevant to the AY. It is an undisputed fact that in the case Alpha Airport Retail Holdings Ltd. from the perusal of facts as explained hereinabove, it is clear that the amount towards share application money is not received during the year under consideration and that the assessee has only allotted

shares to the said company against the share application money. The AO in the remand report has admitted the said fact and has also admitted the fact that the source for the share application money is the money received from Alpha Overseas Holding Ltd. We further notice in this regards that the share application money is reflected in the financial statements of the assessee as on 31.03.2008 and the bank statement of Alpha Airport Retail Holdings Ltd also reflects the source from where the company has received the money which is utilized for share application in assessee-company. We also notice from the perusal of the document submitted by the assessee before the lower authorities, clear that the assessee has submitted all the relevant details to prove the identity, creditworthiness and genuineness of the loan and therefore even on that count the addition made by the AO u/s. 68 towards share application money from Alpha Airport Retail Holdings Ltd cannot be sustained.

9. With regard to the share application money from WDFG UK Holdings Ltd., we notice that the assessee has submitted the details such as the bank statement, PAN copy, return of income, financial statements, etc. (page 155 to 179 of PB). We further notice from the financial performance as reflected in the annual report of the company as per which the company has made a profit before tax of £ 93.4 Million (page 181 of PB) and therefore there is merit in the argument of the ld. AR that the assessee has established the credit worthiness and identity. We also notice that the assessee has submitted the details utilisation of the amount received i.e. to settle the loan borrowed by the assessee. This fact is supported by the financial statements of the assessee and no-due certificate issued by Kotak Mahindra Bank (page 221 of paper book) and supports the contention that the genuineness of the amount received is established. From the perusal of the orders of the lower authorities, we notice that the reason for treating the amount received as

unexplained is that a prudent businessman would invest in a loss making company and that the assessee has taken a long time to allot shares against the application money received. We further notice that other than this reason, the lower authorities have not recorded any adverse findings regarding the various documents submitted by the assessee. In view of this discussion, we are of the view that the lower authorities are not correct in making the addition u/s. 68 without appreciating the various details submitted by the assessee merely on the ground that the assessee is a loss making company with whom no prudent businessman would make an investment. Accordingly, we hold that the addition made u/s. 68 cannot be sustained and direct the AO to delete the same.

10. In result, the appeal of assessee is allowed.

Order pronounced in the open court on 02-12-2025.

Sd/-
(SAKTIJIT DEY)
Vice-President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai