

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1157/Del/2016 : Asstt. Year : 2012-13

Dy. Commissioner of Income Tax, Circle-12(2), New Delhi	Vs	M/s International Land & Developers Pvt. Ltd., B-418, New Friends Colony, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCI5518F		

Assessee by : Sh. Rushabh Mehta, CA

Revenue by : Sh. S. N. Meena, Sr. DR

Date of Hearing: 12.03.2020

Date of Pronouncement: 14.05.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-4, New Delhi dated 28.12.2015.

2. Following grounds have been raised by the revenue:

"1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the disallowance made on account of share capital loss of Rs. 1,27,35,000/- u/s 68 of the Act.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in disregarding the fact that worth of the assessee, share capital and other long term liabilities were negative and that the assessee had no assets on which premium of shares can be valued at Rs. 90/- as against face value of Rs. 10.

3. On the facts and circumstances of the case, Ld. CIT(A) erred in not appreciating the fact that the assessee does not have any valuation report to

substantiate value of premium of shares at Rs. 90/- as against face value of Rs. 10.

4. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition made u/s 2(22)(e) of the Act amounting to Rs. 1,27,00,000/-.

5. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in not appreciating the facts that assessee had taken advances from M/s ALM Infotech City Pvt. Ltd. & M/s ALM Housing & Construction Pvt. Ltd. amounting to Rs. 1,27,00,000/- against purchase of land and construction of immovable property, however, assessee did not purchased any property.

6. On the facts and circumstances of the case, Ld. CIT(A) disregarded the fact that the advance giver companies i.e. M/s ALM Infotech City Pvt. Ltd. & M/s ALM Housing & Construction Pvt. Ltd. are not engaged in the business of lending and that both the companies had sufficient accumulated profit and the fact that Sh. Alimuddin is the common director in all the three companies (including assessee company) having substantial interest more than the prescribed limit."

Addition u/s 68:

3. The Assessing Officer made addition on account of "share premium" on the grounds that the assessee has not filed the valuation report pertaining to the value of the land for which share premium @ Rs.90/- per share has been received. The relevant part of the assessment order is as under:

"During the course of assessment proceedings, it is noticed that the assessee company had issued 1,41,500 shares of face value of Rs.10/- each at a premium of Rs.90/- per share. The assessee was asked to explain on what basis it has valued its

share with reference to assets and liabilities of the assessee company. The assessee was also asked to prove the identity, creditworthiness and genuineness of the parties who have subscribed the above share premium. In response, the assessee vide letter dated 11.02.2015 has submitted as under:

"During the year under consideration assessee company had issued 1,41,500 shares of face value of Rs.10/- per share at a premium of Rs.90/- per share. In fact during the year under consideration assessee company had purchased agricultural land for the cost of Rs.3,19,87,955/- at village Kherki Daula, Further, it had ventured into a project for construction of a multi storied residential project in village Dudaera and Harihera in Haryana for this purpose a sum of Rs.4,77,00,000/- were paid by the assessee company for collaboration of the same. In view of the value of the projects ventured and increase in agricultural land, particularly in view of the future prospects of the business venture, the company had entered into the value of assessee company shares were estimated at Rs.100/- per share inclusive of Rs.90/- per share as premium".

The above submission of the assessee has been considered but not found to be tenable in view of the fact that the worth of the assessee before taking this premium, share capital and other long term liabilities was negative. Therefore, the assessee has no assets on which premium of shares can be valued at Rs. 90/- as against face value of Rs. 10/-. Further, the assessee has also not furnished any valuation report in its support. Therefore, the assessee has taken higher premium value. The assessee's case is squarely covered within the meaning of Section 68 of the IT Act and the explanation offered by the assessee is not acceptable. Therefore, the premium taken by the assessee is added u/s 68 of the IT Act. Therefore, the amount of Rs. 1,27,35,000/- is hereby disallowed and added to the total income of the assessee."

4. The Id. CIT (A) deleted the addition on the grounds that the identity, creditworthiness and genuineness of the transaction has been proved by the assessee and there was no material before the revenue to assume that it was the assessee's own money that has come back to the system in the form of share premium.

5. Before us, the Id. DR relied on the order of the Assessing Officer while the Id. AR supported the order of the Id. CIT (A).

6. Heard the arguments of both the parties and perused the material available on record.

7. We find that the share premium of Rs. 90/- per share has been contributed by the share holders owing to various facts that the company had purchased the land for a cost of Rs.3,19,87,955/- and also ventured into a project for construction of multistoried residential project and paid an amount of Rs.4,77,00,000/- to the collaborator. For the said multistoried residential project, the approvals have been given on 04.06.2013 and on 23.10.2013 vide Licence No. 44/2013 and 89/2013. Thus, it can be conveniently held that the premium paid by the share holders is not without a proper reasons. The company is in possession of the land and also going ahead with development of residential complex which are reasons sufficient for payment of the premium. Hence, we are unable to concur with the finding of the Assessing Officer that the worth of the assessee at the time of issue of shares was negative. The AO has ignored the fact on record that the assessee has purchased land at the cost of Rs.3.19 crores at Village Khirki Daula which adequately supports the share premium raised by the assessee.

There is no *iota* of evidence about the concealment or plough back of undisclosed income to the assessee. Further, the Assessing Officer has not disputed the identity, genuineness and creditworthiness of the share holders. Hence, the invocation of the provisions of Section 68 of the Income Tax Act, 1961 for the simple reason of non filing the valuation report by the assessee and by not referring the cost of the land to the DVO, and without bringing any material on record to fulfill the criteria of Section 68, cannot be justified in this case.

Addition u/s 2(22)(e):

8. During the year under consideration, it was observed by the AO that the assessee company has received an amount of Rs. 1,13,00,000/- and Rs. 14,00,000/- from M/s AIM Infotech City Pvt. Ltd. and M/s AIM Housing Construction Pvt. Ltd respectively as advance against purchase of Land and for the purpose of construction. Against these transactions, the above companies have executed agreements. The AO noticed that the assessee did not purchase any property nor started any construction activity. It was noticed that both the above companies are related companies to the assessee company by the virtue of a common director share holder. From the perusal of the share holding pattern of the assessee company and the above two companies, the AO noticed that one of the Director Sh. Alimuddin is the common director in all the three companies having substantial interest and held that the amount received from the two companies is liable to be taxed u/s 2(22)(e) of the Act.

9. The Id. CIT (A) deleted the addition on the grounds that the advances were made purely for commercial consideration and commercial exigencies.

10. Before us, the Id. DR relied on the order of the Assessing Officer while the Id. AR supported the order of the Id. CIT (A).

11. Heard the arguments of both the parties and perused the material available on record.

12. The provisions of Section 2(22)(e) reads as under:

"(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits."

13. As per the provisions of the Act it needs to meet the conditions in the instant case that Sh. Allimudin should have been a share holder in the companies paying the amount and also he should have been having a substantial interest in the assessee company. Section 2(32) refers to person who has a substantial interest in the company in relation to a company means a person who is the beneficial owner of the shares not

being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits carrying not less than 25% of voting power. Further, in order to tax the receipt, it has to be proved that the amounts received has been utilized by the assessee company could have been distributed as dividend by the lending company. We find that this is not the fact in the case of the instant assessee. Coupled with this fact, since, it has been proved that the advances are given for the business purpose, we hold that the provisions of Section 2(22)(e) of the Act are not attracted in the case of the assessee.

14. In the result, the appeal of the revenue is dismissed.
Order Pronounced in the Open Court on 14/05/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 14/05/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR