

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।

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

श्री शैलेंद्र कुमार यादव, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM
AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./ITA No. 3645/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2007-08)

Income Tax Officer-10(2)(4)

Room No. 431, 4th Floor

Àayakar Bhavan, M.K. Road

Mumbai 400020

अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Superline Construction P. Ltd.

A-20, A Wing, 1st Floor

Satyam Shopping Centre, M.G. Road

Ghatkopar (E), Mumbai 400077

स्थायी लेखा सं./PAN - AAICS6463J

प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 3644/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2006-07)

Income Tax Officer-10(2)(4)

Room No. 431, 4th Floor

Àayakar Bhavan, M.K. Road

Mumbai 400020

अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Sitara Properties Pvt. Ltd.

103, 1st Floor, Nand Kutir

Milind Nagar, Himalaya Society

Ghatkopar (W), Mumbai 400086

स्थायी लेखा सं./PAN - AABCS6464L

प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 3646/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2006-07)

Income Tax Officer-10(2)(4)

Room No. 431, 4th Floor

Àayakar Bhavan, M.K. Road
Mumbai 400020

अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Samsung Builders & Developers P. Ltd.

101, Vallabh Vihar, M.G. Road

Ghatkopar (E), Mumbai 400077

स्थायी लेखा सं./PAN - AAFCS3366K

प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 3647/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2006-07)

Income Tax Officer-10(2)(4)

Room No. 431, 4th Floor

Àayakar Bhavan, M.K. Road
Mumbai 400020

अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Soumya Trading & Finance P. Ltd.

101, Vallabh Vihar, M.G. Road

Ghatkopar (E), Mumbai 400077

स्थायी लेखा सं./PAN - AAFCS6479B

प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 3648/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2007-08)

Income Tax Officer-10(2)(2)

Room No. 463, 4th Floor

Àayakar Bhavan, M.K. Road
Mumbai 400020

अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Prarup Properties P. Ltd.

401, 4th Floor, Sai Siddhi Appt.

Plot No. 220, 11th Road

Chembur, Mumbai 400071

स्थायी लेखा सं./PAN - AAFCS3366K

प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 3650/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2007-08)

Income Tax Officer-10(2)(2)

Room No. 463, 4th Floor

Àayakar Bhavan, M.K. Road

Mumbai 400020

अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Roop Darshan Real Estate P. Ltd.

401, 4th Floor, Sai Siddhi Appt.

Plot No. 220, 11th Road

Chembur, Mumbai 400071

प्रत्यर्थी/Respondent

स्थायी लेखा सं./PAN - AACCR2661K

आयकर अपील सं./ITA No. 3651/Mum/2014
(निर्धारण वर्ष/Assessment Year: 2007-08)

Income Tax Officer-10(2)(2)

Room No. 463, 4th Floor

Àayakar Bhavan, M.K. Road

Mumbai 400020

अपीलार्थी/ Appellant

बनाम/ Vs.

M/s. Sumangal Builder & Developers P. Ltd.

4th Floor, Sai Commercial Complex

BKC, Devshi Marg, Govandi (E)

Mumbai 400079

प्रत्यर्थी/Respondent

स्थायी लेखा सं./PAN - AACCR2661K

अपीलार्थी की ओर से / Appellant by: Shri A. Ramachandran

प्रत्यर्थी की ओर से / Respondent by: Dr. P. Danial

सुनवाई की तारीख /Date of Hearing : 18.11.2015

घोषणा की तारीख /Date of Pronouncement : 30.11.2015

आदेश / ORDER

PER SHAILENDRA KUMAR YADAV, JM:-

These appeals by the Revenue are directed against respective orders of the CIT(A)-22 Mumbai in respect of seven different assesseees. Since these appeals involve common issues, these were heard together and are being disposed of by this consolidated order for the sake of convenience.

2. **ITA No. 3645/Mum/2014 - AY 2007-08:** This appeal has been filed by Revenue against the order of CIT(A) on following grounds:-

- “1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting addition of Rs.40,00,000/- made under section 68 of I T Act in respect of share application money without appreciating the fact that addition was based on specific information provided by the Investigation Wing of Income Tax Department that the investor companies had issued cheques towards the alleged share application money in return of cash.
2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not appreciating the fact that the assessee has failed to discharge the onus cast upon it to prove the credit entries of share application money as required under the statute.”

2.1 Assessee is in the business of builder and developer. Assessment was completed under section 143(3) r.w.s. 147 of the Income Tax Act. During the year, the assessee-company received

share application money to the tune of Rs.85 lakhs from eight companies out of which Rs.40 lakhs was received from three companies viz. Mihir Agencies Pvt. Ltd., Alpha Cehmie Trade Agencies Pvt. Ltd. and Talent Infoway Ltd. The stand of the assessee has been that the reasons recorded did not whisper about any tangible material which triggered re-opening u/s 147. The re-assessment proceedings were initiated on the basis of information received from Directorate of Income-tax (Investigation) without recording Assessing Officer's own satisfaction and the information was accepted in a mechanical manner. In support of this, the assessee relied upon the recent ITAT decision in the case of India Terminal Connector System Ltd. However, the Assessing Officer did not agree with the above contention of the assessee and after completing the assessment u/s 143(3), the Assessing Officer received detailed report from the investigation wing alongwith copies of statement recorded from both Shri Mukesh C. Choksi and Shri Jayesh Sampat. Thus, a tangible material in the form of statement recorded from the above individuals were available before the Assessing Officer after the assessment was completed.

After receiving the report and the statements, the Assessing Officer had gone through the contents and then he formed an independent opinion and after satisfying himself had recorded the reasons for reopening.

2.2 After reopening of assessment u/s 147 of the Income-tax Act, the Assessing Officer made addition of Rs.40 lakhs received by the assessee from various corporate entities. Addition was made by the Assessing Officer on account of bogus share application money under the provisions of Section 68 of the Act, which was deleted by CIT(A) by following various judicial pronouncements in similar facts and circumstances. Same has been opposed on behalf of the Revenue inter alia submitted that the CIT(A) erred in deleting the addition made by the Assessing Officer in respect of share application money without appreciating the fact that addition was made based on specific information provided by Investigation Wing of Income Tax Department. That investor companies have issued cheques towards alleged share application money in return of cash. Assessee failed to discharge the onus cast upon it to prove the credit entries of share application money as required under statute.

Accordingly, the order of CIT(A) be set aside and that of Assessing Officer be restored. Before us the stand of the ld. Authorized Representative for the assessee has been that the facts of this case are similar to the following decided cases and pleaded that the ratio decided in those cases may be applied to this as well as the matter is covered the following decisions of ITAT.

- i) ITO (10(2)(3) vs. J.J. Multitrade Pvt Ltd, in ITA No.2158/Mum/2014 : AY 2007-08, J-Bench & ITA No.2159/Mum/2014 : AY 2008-09, J-Bench

The relevant paragraph Nos. 8 & 9 are reproduced herein below:

“Applying to the facts of instant case to the proposition laid down by the co-ordinate bench, as discussed above, we do not find any merit in the addition so made by treating the sale proceeds of shares as undisclosed income of the assessee. Accordingly, the Assessing Officer is directed to delete the same.

In the result, appeal of the assessee is allowed in part, in terms indicated hereinabove.”

- ii) ITAT E Bench in M/s. SDB Estate Pvt Ltd vs. ITO-(5)(3)(2) in ITA No. 584/Mum/2015: AY 2008-09 has decided similar issue by observing as under:-

“In view of the above stated legal position and in the light of reliable evidences brought on record by assessee to substantiate identity, genuineness and creditworthiness of shareholders, which have not been controverted by the Revenue, the additions made solely on the basis of general

statement of Shri Mukesh Chokshi cannot be held to be justified and the same are accordingly ordered to be deleted.

In the result, the appeal of the assessee is partly allowed."

iii) It was further pointed out that ITAT-"D" Bench has decided the following cases in favour of the assessee on similar issue.

- a) ITO - 10(2)(1) vs. M/s. Deep Darshan Properties Pvt Ltd in ITA No. 2117/Mum/2014 : AY 2006-07 and ITA No.2118/Mum/2014 : AY 2007-08
- b) ITO -10(2)(3) vs. Aajivan Computers Pvt Ltd in ITA No.2160/Mum/2014 :AY 2006-07
- c) ITO -10(2)(3) vs. Dignity Securities Trading Pvt Ltd in ITA No.2157/Mum/2014 :AY 2006-07
- d) ITO -10(2)(1) vs. M/s. Blue Hill Properties Pvt Ltd in ITA No.2119/Mum/2014 :AY 2006-07

2.3 It was also pointed out in the case of CIT vs. M/s. Lovely Exports (Pvt) Ltd, reported in [2008] 216 CTR 195 (SC), it was held as under:-

"If the share application money is received by the assessee company from alleged bogus share holders who's name are given to the AO then the department is free to proceed to reopen their individual assessments in accordance with law but it cannot be regarded as undisclosed income of assessee company."

2.4 In this background, it was submitted on behalf of the assessee that the Assessing Officer failed to appreciate that there is no

documentary evidence against the assessee-company to support such impugned additions. It was further submitted by the assessee that the Assessing Officer failed to appreciate that the statements of any person recorded u/s 143(3) r.w.s. 147, the assessee-company has fully discharged the burden of proof, onus of proof and explained the source of share capital and advances received by established the identity, creditworthiness and genuineness of transaction by banking instruments with documentary evidences. The further stand of the assessee has been that the assessee-company substantiated the details with the documentary evidences as extracted from the website of Ministry of Corporate Affairs, Government of India before the Assessing Officer. These facts have not been rebutted on behalf of the Revenue.

2.5 In view of the facts and circumstances of the present case as well as considering the decisions as discussed above on the similar issue, we are not inclined to interfere with the findings of the CIT(A) who has rightly deleted the entire impugned additions of Rs.40 lakhs made by the Assessing Officer u/s 68 of the Act on

account of share capital subscription received by the assessee-company.

2.6 Accordingly, the appeal filed by the Revenue is dismissed.

3. **ITA No. 3644/Mum/2014 : AY 2006-07:** In this case, i.e. ITO vs. M/s. Sitara Properties Pvt. Ltd., the Assessing Officer made total addition of Rs.1,15,47,169/- under section 68 of the Act, out of this amount Rs. 85 lakhs was made in respect of share application money and remaining amount of Rs.30,47,169/- was made on account of unsecured loan. Both the aforesaid additions amounting to Rs.1,15,47,169/- was deleted by CIT(A).

3.1 The first issue in this appeal regarding the addition in respect of share application money of Rs.85 lakhs is similar to the issue we decided above in case of M/s. Super Construction Pvt. Ltd. in ITA No. 3645/Mum/2014 for A.Y. 2007-08 vide para 2.1 to 2.5 of this order. Therefore, facts and issues being similar, so following same reasoning we are not inclined to interfere with the findings of CIT(A) who has rightly deleted the

addition of Rs.85 lakhs made by the Assessing Officer on account of share application money. The same is upheld.

3.2 The next issue in this appeal is with regard to addition of Rs.30,47,169/- made by the Assessing Officer on account of unsecured loan which was deleted by the CIT(A). The Assessing Officer made this addition on account of unsecured loan as the assessee was not explained the source of cash credit. The Assessing Officer came to this conclusion mainly on the ground that the assessee-company failed to prove that the statement recorded from Shri Mukesh C. Choksi and Shri Jayesh Sampat by the Investigation Wing was incorrect. According to the Assessing Officer, the genuineness of the transaction could not be proved. In appeal, the CIT(A), having considered the submission of assessee-company, has rightly deleted the addition on both accounts (i.e. Rs.85 lakhs on account of share application money and Rs.30,47,169/- on account of unsecured loan) by holding that the assessee-company had duly discharged the initial burden in respect of identity, creditworthiness and genuineness of all transactions by relying on various judicial pronouncements. Moreover, similar issue was adjudicated by him

in the case of M/s. Superline Constructions Pvt. Ltd for AY 2007-08 vide appeal No.CIT(A)-22/IT-10(2)-4/IT-63/2013-14 wherein having considered all ingredient of Sec. 68 of IT Act, granted relief to assessee which has been approved by us in paragraph 3 of this order. Thus, this addition is not justified under the provisions of Section 68 of the Act. Therefore, we do not see any reason to interfere with the findings of the CIT(A) who has rightly deleted the amount of Rs.30,47,169/- on account of unsecured loan which was made by the Assessing Officer u/s 68 of the Act.

3.3 Accordingly, this appeal filed by the Revenue is dismissed.

4. **ITA No. 3646/Mum/2014 : AY 2006-07:** In this case, i.e., ITO vs. M/s. Samsung Builders & Developers P. Ltd., the Assessing Officer made addition of Rs.25,23,426/- under section 68 of the Act in respect of share application money of Rs.10 lakhs and on account of unsecured loan of Rs.15,23,426/- which was deleted by CIT(A). The issue in this appeal is similar to the issue we decided above in case of M/s. Super Construction Pvt. Ltd. in ITA No. 3645/Mum/2014 for A.Y. 2007-08 and in the case of M/s. Sitara

Properties Pvt Ltd in ITA No. 3644/Mum/2014 (supra) in this order itself. Facts and issues being similar, so following same reasoning we are not inclined to interfere with the order of the CIT(A) who has rightly deleted the additions on both account i.e. Rs.10 lakhs (share application money) and Rs.15,23,426/- (unsecured loan) under the provisions of Section 68. This view is fortified by our decision in M/s. Sitara Properties Pvt Ltd (supra) vide para 3.1 to 3.3 of this order. The same is upheld.

4.1 In the result, appeal of Revenue is dismissed.

5. **ITA No. 3647/Mum/2014 : AY 2006-07:** In this case i.e., ITO vs. M/s. Soumya Trading & Finance P. Ltd., also the Assessing Officer made addition under section 68 in respect of share application money of Rs.35 lakhs and on account of unsecured loan of Rs.45,70,686/- which was deleted by CIT(A). The issue in this appeal is also similar to the issue we decided above in case of M/s. Super Construction Pvt. Ltd. in ITA No. 3645/Mum/2014 for A.Y. 2007-08 , in ITA No. 3644/Mum/2014 (supra) in the case of M/s. Sitara Properties Pvt Ltd and in ITA No.3646/Mum/2014 in the case of M/s. Samsung Builders & Developers Pvt Ltd, wherein

we have decided the issue in favour of assessee on both accounts. Facts and issues being similar, so following same reasoning we are not inclined to interfere with the order of the CIT(A) who has rightly granted relief to the assessee on both accounts. This view is fortified by our decision in M/s. Sitara Properties Pvt Ltd (supra) vide para 3.1 to 3.3 of this order. The same is upheld.

5.1 In the result, appeal of Revenue is dismissed.

6. **ITA No. 3648/Mum/2014 : AY 2007-08:** In this case, i.e. ITO Vs. M/s. Prarup Properties P. Ltd., the Assessing Officer made addition of Rs. 75 lakhs under section 68 in respect of share application money which was deleted by the CIT(A). The issue in this appeal is identical to the issue we decided above in case of M/s. Super Construction Pvt. Ltd. in ITA No. 3645/Mum/2014 for A.Y. 2007-08, wherein the order of CIT(A) granting relief to the assessee under same facts has been approved by us. Therefore, facts and issues being similar, so following same reasoning we are not inclined to interfere with the order of the CIT(A) who has rightly deleted addition of Rs.75 lakhs made by the Assessing Officer u/s

68 of the Act on account of share application money. The same is upheld.

6.1 In the result, appeal of Revenue is dismissed.

7. **ITA No. 3650/Mum/2014 : AY 2007-08:** In this case i.e., ITO vs. M/s. Roop Darshan Real Estate P. Ltd., Assessing Officer made addition of Rs. 70 lakhs under section 68 in respect of share application money which was deleted by the CIT(A). Identical issue was raised before us in ITA No. 3645/Mum/ 2014 in the case of Super Construction Pvt. Ltd. (supra) wherein we dismissed the appeal of the Revenue. Since the facts and circumstances are similar in this appeal, so following the same reasoning we are not inclined to interfere in the finding of the CIT(A) who has rightly deleted the addition of Rs.70 lakhs made by the Assessing Officer on account of share application money. Same is upheld.

7.1 In the result, this appeal of Revenue is dismissed.

8. **ITA No. 3651/Mum/2014:** In this case, i.e., ITO vs. M/s. Sumangal Builder & Developers P. Ltd.. the Assessing Officer made addition of Rs.1,00,00,000/- under section 68 in respect of share

application money which was deleted by the CIT(A). Identical issue was raised before us in ITA No. 3645/Mum/ 2014 in the case of Super Construction Pvt. Ltd. (supra) wherein we dismissed the appeal of the Revenue. Since the facts and circumstances are similar in this appeal, so following same reasoning we are not inclined to interfere to interfere in the finding of CIT(A) who has rightly deleted the addition of Rs.1,00,00,000 made by the Assessing Officer u/s 68 of the Act. Same is upheld.

8.1 In the result, this appeal of Revenue is also dismissed.

9. In the result, all these appeals filed by the Revenue are dismissed as indicated above.

परिणामतः राजस्व की अपीलें खारिज की जाती है।

Order pronounced in the open court on 30th November, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30.11.2015 को की गई।

Sd/-

Sd/-

(RAJESH KUMAR)

(SHAIENDRA KUMAR YADAV)

लेखा सदस्य/ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai, दिनांक Dated 30th November, 2015

*bt

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A) - 22, Mumbai
4. आयकर आयुक्त / The CIT - 10, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, "A" Bench ITAT, M
6. गार्ड फाईल / Guard file.

आदेशानुसार/ By Order

सत्यापित प्रति //True Copy//

सहायक पंजीकार / Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ITAT, Mumbai