

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

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.5220/Del/2017

Assessment Year: 2012-13

ITO Ward- 7 (3) New Delhi	Vs.	Direct Trading Co. P. Ld. G-33A, New No G-36, Laxmi Nagar, Delhi-110092 PAN No.AADCD9167F
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Vivek Kumar Upadhyay, CIT DR
Respondent by	Sh. Ved Jain, Advocate Sh. Aman Garg, CA

Date of hearing:	06/11/2023
Date of Pronouncement:	8 /11/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-3, Delhi dated 05.05.2017 pertaining to A.Y.2012-13.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.2,30,22,000/- made by the AO on account of unexplained share capital and share premium and Rs.2,30,00,000/- on account of unexplained investment.

3. Briefly stated the facts of the case are that the assessee filed its original return of income on 22.09.2012 declaring income of Rs.414170/- which was subsequently revised on 11.01.2013 with the same income.

4. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

5. During the course of the scrutiny assessment proceedings the AO noticed that the assessee has received share premium of Rs.2,0340000/-. The assessee was asked to justify the share premium received by it. In its reply the assessee claimed that issue of shares at a premium is a prerogative of the directors of the company who decide the premium and it is the wisdom of the share holder whether he want to subscribe the shares at a premium or not. The AO found that the following persons have paid share premium to the assessee :-

a) M/s Saras Developers Pvt. Ltd.

b) M/s Domain Enterprises Pvt. Ltd.

c) M/s Ram Rahim Trading Co. Pvt. Ltd.

d) M/s Raj Trading Co. Pvt. Ltd. e) M/s Legacy Mercantile Co. Pvt. Ltd.

f) M/s Kabir Enterprises Pvt. Ltd. g) M/s Nachiketa Agrotech Pvt. Ltd.

h) M/s Rockhard Infrastructures Pvt. Ltd.

i) M/s Satkar Finlease Pvt. Ltd.

6. The AO issued notices u/s. 133(6) of the Act but received no plausible reply thereafter the AO proceeded by analyzing each and every applicant company and came to the conclusion that the assessee has failed to explain the source of credit

entries in its books in the form of share capital of Rs.22.60 lacs and share premium of Rs.2.03 crores credited in its books of accounts in terms of section 68 of the Act and completed assessment by making addition of Rs.2,30,22,000/- .

7. Proceeding further the AO noticed that the assessee has shown figure of non current investment of Rs.2.47 crores. The assessee was asked to furnish the details. The assessee and furnished list of investment in 13 companies totaling to investment of Rs.2,47,50,000/-. On the basis of the information supplied by the investigation wing the AO formed a belief that Yellow Sapphire Enterprises Pvt. Ltd. is over and above the investment shown in the list of investment and treated investment of Rs.1.25 crores as unexplained investigation. The AO further made addition of Rs.1.05 cores in respect of other investments mentioned at para -18 of his order.

8. Assessee carried the matter before the CIT(A) and vehemently stated that all the credit entries have been explained but the AO has not considered the explanation, in their true perspective. The assessee explained that each applicant has filed confirmations, bank statements and other documentary evidences and confirmed the transaction. Since before the AO no reasonable time was given to produce the directors of the share applicant companies, the CIT(A) gave fresh opportunity to produce the directors and director of each and every company appeared before the CIT(A) and the CIT(A) examined each and every person who confirmed the transaction. Basis the confirmation from each and every director of share applicant company the CIT(A) deleted the addition made u/s. 68 of the Act.

9. We have given a thoughtful consideration to the factual findings of the CIT(A) we find that it is not the case of the revenue that the share applicant companies are providing accommodation entries. We find that the CIT(A) has examined each and every director before deleting the addition and the revenue could not point out

any error or infirmity in the findings of the CIT(A), therefore, we do not find any reason to interfere with the findings of the CIT(A) the addition of Rs.2,30,22,000/- stand deleted.

10. In so far as the next addition is concerned the factual findings of the CIT(A) are very relevant and the same read as under :-

“4.1 Having gone through the submissions of the appellant, order of the assessment made by the Assessing Officer and the material evidences placed on the record, it emerges from the factual matrix of the case that the Assessing Officer has made the addition of

Rs.2,30,00,000 by observing in the order assessment that the assessee has made the undisclosed investment Rs.1,25,00,000 in the company M/s Yellow Sapphire Enterprises Pvt. Ltd Assessing Officer noted that the assessee has made the non current investment of R2,47,50,000. The ADIT(Inv.). Faridabad sent Information to the Assessing Officer that the assessee has made investment in the shares of M/s Yellow Sapphire Enterprises Pvt.Ltd. for Rs.1,25,00,000 including the premium. This was confronted to the assessee on 09.03.2015. The assessee vide letter dated 23.03.2015 explained that the assessee has vide submission dated 30.12.2014 submitted the details of the investments, however, on rechecking the factual details, it has been noted that the auditor has wrongly mentioned the names of the parties whose accounts were squared during the year under consideration The appellant was directed under Rule 46A(4) by this office to file the complete details of the investments made by the company in M/s Yellow Sapphire Enterprises Pvt.Ltd. The assessee filed the copy of the ledger account of M/s Yellow

Sapphire Enterprises Pvt. Ltd. for the financial year 2011-12 which is as follows:-

Direct Trading Company Pvt.Ltd. A-22, Ground Floor, Gurunanakpura, Laxmi Nagar, New Delhi-110092.

Yellow Sapphire Enterprises P.Ltd.

Ledger Account

1-Apr-2011 to 31-Mar-2012

<u>Date</u>	<u>Particulars</u>	<u>Vch.Type</u>	<u>Vch No.</u>	<u>Debit</u>	<u>Credit</u>
16-12-2011	To Axis Bank Ltd.(Geeta Colony)	Payment	33	20,00,000.00	
17-12-2011	To Axis Bank Ltd.(Geeta Colony)	Payment	38	15,00,000.00	
21-12-2011	To Axis Bank Ltd.(Geeta Colony)	Payment	42	12,50,000.00	
	To Axis Bank Ltd.(Geeta Colony)	Payment	45	<u>57.50.000.00</u>	
By	Closing Balance			<u>1.05.00.000.00</u>	<u>1.05.00.000.00</u>

The transactions were cross verified with the bank statement of Axis Bank Ltd. The closing balance of the investment shows the amount of Rs.1,05,00,000. It is worth mentioning here that the amount of total investment by the two group companies in M/s Yellow Sapphire Enterprises PVELES Remains the same R7,15,00,000 and M/s Direct Mercantile Company PVC LIB. has made the Investment of Rs 1,10,00,000 and not Rs.90,00,000 as held by the Assessing Officer. The details adduced during the appellate proceedings show that the following accounts of the parties to whom advances were given by the company for other business activities were squared during the year-

1. M/s Girdharilal Aggarwal Contractors Pvt.Ltd.

2. M/s HVS Buildcon P.Ltd.
3. M/s R.V.Electrotech P.Ltd.
4. M/s Samman Trading P.Ltd.
5. M/s Swastik Realtech P.Ltd.
6. M/s Welyn Impex P.Ltd.

The details were filed during the assessment proceedings, however, the Assessing Officer has not rebutted the contention raised by the assessee. The payments to these companies have been made from the declared bank account of the assessee as discussed above, which has not been doubted by the Assessing Officer and cannot be said to be the investment made outside the books of accounts. There is no evidence on the record to suggest that the amounts paid to these companies is undisclosed income of the assessee. The Assessing Officer has not identified any investment which has not been recorded in the books of accounts. The amount of non current investments made by the assessee remain the same at Rs.2,47,50,000/-.

4.2 In view of the above discussion, the addition of Rs.2,30,00,000 made by the Assessing Officer is deleted and the Assessing Officer is directed to modify the order of assessment accordingly.”

10. A careful perusal of the aforesaid findings show that the assessee has explained the investment duly reflected in its bank statement and such reflection in the bank statements have not been doubted by the AO, therefore, it cannot be said that the investments have been made outside the books of accounts. We find that the AO has not mentioned any investment which is outside the books of accounts, therefore, we do not

find any reason to interfere with the findings of the CIT(A). The addition of Rs.2.30 crores also stands deleted.

11. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 08.11.2023.

Sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA

Date:- .11.2023 Copy
forwarded to:

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

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI