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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decision delivered on: 13.09.2023**

+ **ITA 520/2023 & CM No.47073/2023**

PR. COMMISSIONER OF INCOME TAX-1 Appellant
Through: Mr Sanjeev Menon, Standing
Counsel.

versus

M/S APRIL COTTAGE FARMS PVT LTD Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.47073/2023 [Application filed on behalf of the appellant seeking
condonation of delay of 435 days in re-filing the appeal]

1. This is an application moved on behalf of the appellant/revenue,
seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 435 days.

2. Given the nature of delay involved and the reasons stated in the
application, the delay is condoned.

3. The application is disposed of, in the aforesaid terms.

ITA 520/2023

4. This appeal concerns Assessment Year (AY) 2013-14.

5. Via the instant appeal, challenge has been laid to the order dated
07.07.2021 passed by the Income Tax Appellate Tribunal [in short,
“Tribunal”].



6. The singular issue, even according to Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the appellant/revenue, which arose for consideration before the Tribunal was whether deletion of the addition of Rs.4,08,60,000/- under Section 68 of the Income Tax Act, 1961 [in short, “Act”] was sustainable?

7. The record shows that the Assessing Officer (AO) had added the aforementioned amount primarily on account of the respondent/assessee’s alleged failure to explain as to why the subject shares which had a face value of Rs.10/- were issued at a premium of Rs.90/- per share.

7.1 This issue was framed in the context of the fact that the respondent/assessee was incorporated on 05.12.2012 and that certain other investors, including those who had paid premium for shares to the respondent/assessee, had been allotted shares at the face value of Rs.10/-.

8. We may note that the record also discloses that the respondent/assessee had received, in the form of loans/deposits, Rs.4,52,00,000/-. These loans and deposits were received on 15.03.2013.

8.1 The respondent/assessee converted the aforementioned loans and deposits into share capital by allotting 4,64,000 shares out of which 10,000 shares were issued to the directors of the respondent/assessee and other persons at par while the remaining 4,54,000 shares were issued to the directors, other individuals and group companies at a premium of Rs.90/- per share.

9. What is also not in dispute is that the loans and advances received by the respondent/assessee were utilised for purchasing a parcel of land located at village Rewla, Khanpur, Delhi for a consideration of Rs.4,21,00,000/-.

10. Insofar as the aforesaid aspects are concerned, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] has returned a finding of fact.



The details of the lenders/depositors both with regard to their name and the amount received and utilisation of the amount is set forth hereafter:

DATE OF RECEIPT	NAME OF DEPOSITOR	AMOUNT RECEIVED	DATE OF PAYMENT	PURPOSE OF UTILISATION	AMOUNT UTILISED
16/10/2012	Mr. Naval Kisore	3,7,00,000.00			
16/10/2012	Sri Durga Automobiles	1,70,000.00	19/10/2012	Purchase of Land	3,500,000.00
17/10/2012	India wire General Mills Pvt. Ltd.	1,800,000.00	19/10/2012	Purchase of Land	3,500,000.00
07/11/2012	Mr Naval Kishore	1,000,000.00	12/11/2012	Purchase of Land	1,000,000.00
07/11/2012	India wire General Mills Pvt. Ltd.	1,000,000.00	12/11/2012	Purchase of Land	1,000,000.00
26/11/2012	Atrica Automobiles Pvt. Ltd.	1,000,000.00	26/11/2012	Purchase of Land	1,000,000.00
26/11/2012	Mr Naval Kishore	1,000,000.00	26/11/2012	Purchase of Land	1,000,000.00
03/12/2012	Avia Auto Services Pvt. Ltd.	3,500,000.00			
03/12/2012	India wire General Mills Pvt. Ltd.	6,500,000.00	03/12/2012	Purchase of Land	10,000,000.00
07/12/2012	SA Alloys Pvt. Ltd.	3,500,000.00	07/12/2012	Purchase of Stamp Paper	2,526,000.00
07/12/2012	SA Alloys Pvt. Ltd.	3,500,000.00	07/12/2012	Payment of Registration Charges	422,200.00
07/12/2012	SA Alloys Pvt. Ltd.	3,000,000.00	08/12/2012	Purchase of Land	5,050,000.00
07/12/2012	SA Alloys Pvt. Ltd.	3,500,000.00	08/12/2012	Purchase of Land	5,050,000.00
07/12/2012	SA Alloys Pvt. Ltd.	3,500,000.00	08/12/2012	Purchase of Land	3,500,000.00
07/12/2012	Avia Auto Services Pvt. Ltd.	3,500,000.00	08/12/2012	Purchase of Land	3,500,000.00
07/12/2012	Sri Durga Automobiles	1,500,000.00	08/12/2012	Purchase of Land	3,500,000.00
07/12/2012	India Wire General Mills Pvt.Ltd.	2,000,000.00	03/01/2013	SA Alloys Pvt. Ltd.-Amount returned	5,500,000.00



31/12/2012	Mr Naval Kishore	4,500,000.00	03/01/2013	SA Alloys Pvt. Ltd.-Amount returned	5,500,000.00
31/12/2012	Mr Naval Kishore	4,500,000.00	05/01/2013	SA Alloys Pvt. Ltd.-Amount returned	3,000,000.00
03/01/2023	Mr Naval Kishore	3,500,000.00	05/01/2013	SA Alloys Pvt. Ltd.-Amount returned	3,00,000.00
03/01/2023	Mr Naval Kishore	4,500,000.00			

11. The CIT(A) has also returned a finding of fact that except for the amounts that were returned to an entity going by the name S.A. Alloys Pvt. Ltd., the loans and deposits received from other persons and entities were converted into share capital.

12. Insofar as S.A. Alloys Pvt. Ltd. was concerned, the loan received was repaid between 03.01.2013 and 05.01.2013.

13. In repayment of this loan, the amount of Rs. 1,70,00,000/- received from Mr Naval Kishore on 31.12.2012 and on 03.01.2013 was utilized.

14. The CIT(A) also records that the respondent/assessee had purchased the afore-mentioned parcels of lands and had the same registered in its name on 13.12.2012.

15. This apart, the CIT(A) in his order noted that the AO had issued a notice under Section 133(6) of the Act to all those persons/entities who had converted their loan into share capital, *albeit*, after factoring in the premium.

16. It is further noted by the CIT(A) that all such persons/entities confirmed that money lent by them was converted into shares, *albeit*, at a premium.

17. Therefore, the only issue that arose before the AO concerned due diligence which, according to us, the CIT(A) correctly answered by observing that the persons who had loans converted into share capital were



either directors of the respondent company or directors of a group of companies and therefore, there was no requirement for carrying out due diligence.

18. The other aspect which the AO had flagged concerned valuation of the subject shares.

18.1 According to the AO, the share premium was arrived at in a collusive manner. It is in this context, the AO had sought copies of the valuation certificate from respondent/assessee's chartered accountant in terms of Rule 11UA of the Income Tax Rules, 1962 [in short, "Rules"] with regard to share premium.

19. Furthermore, the AO also put the respondent/assessee to notice as to why the share premium received by it with respect to subject shares should not be treated as income in accordance with the provisions of the Section 56(2) read with Section 2(24) of the Act.

20. The CIT(A), in our view, correctly understood the said aspects of the matter.

21. We may also note that the AO had made an observation to the effect that share capital and share premium received prior to 29.11.2012 was not covered by Rule 11UA of the Act. This view was taken as said provision was inserted in the Rules only on 29.11.2012.

22. What is not contested is that the respondent/assessee did submit the valuation report concerning the subject shares. In valuing the subject shares, in particular, in arriving at the component concerning premium, it had utilized the Discounted Cash Flow Method [in short, "DCF Method"].

23. This report, however, was submitted before the CIT(A) and it was admitted by him as additional evidence.

24. As per the valuation carried out by the chartered accountant of the



respondent/assessee in terms of Rule 11UA, which permitted utilization of DCF Method, the value of subject shares as on 31.07.2012 was Rs. 101 per share.

25. As indicated above, the respondent/assessee had factored in only Rs.90 per share as share premium component, the rest being the face value.

26. Thus, total value of per share was Rs. 100 which was well below the value arrived at as per the valuation report.

27. Given this position, the CIT(A), in our view, correctly observed that it was not a sham transaction contrary to conclusion arrived at by the AO.

28. Insofar as the other aspect is concerned as to whether Sub Rule (2)of Rule 11UA would be applicable even to those transactions which occurred prior to 29.11.2022, we are in agreement that no such distinction could have been drawn. Once the amended rule kicked-in, it would apply to transactions which were carried out both before and after the amended Rule became operable.

28.1 We may note in this particular case that the loans were converted into share capital after 29.11.2022.

28.2 The conversion of loan to equity occurred pursuant to Board of Directors Resolution, passed on 06.03.2013.

28.3 It is in this backdrop that the CIT(A) deleted the addition. The Tribunal *via* the impugned order sustained the deletion of the addition.

29. The rationale adopted by the CIT(A) has received the approval of the Tribunal.

30. However, Mr Menon says that the Tribunal lost sight of the fact that the addition was made under Section 68 of the Act and therefore, the discussion with regard to the provisions of Section 56(2) of the Act was not called for in the instant matter.



31. We are unable to agree with this submission of Mr Menon, for the reason that although the addition was sought to be made under Section 68 of the Act, it was in fact the AO, who had referred to Rule 11UA and Section 56(2) of the Act.

31.1 The AO, as indicated above, proceeded to enquire into the receipt of share premium by the respondent/assessee by adverting to parameters contained in Section 56(2) of the Act.

31.2 As noted above, the AO in fact had asked for a valuation report. Although the respondent/assessee, was remiss in not providing the valuation report to the AO, it had submitted the same to the CIT(A), who examined the said report in great detail.

32. The valuation, as observed above, was carried out under the DCF Method, which is permissible under clause (viib) of Rule 56(2) read with the Rule 11UA.

33. Therefore, for the foregoing reasons, we find that this is not a fit case for interference as no substantial question of law arises for our consideration.

34. The appeal is, accordingly, closed.

35. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

SEPTEMBER 13, 2023/R.Y *Click here to check corrigendum, if any*