

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA , ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 8775 /DEL/2019
A.Y. 2015-16**

ACIT, Circle 8(2), New Delhi.	<u>Vs</u>	M/s Experion Hospitality Pvt. Ltd., F-9, First Floor, Manish Plaza-I, Plot No. 7, MLU Sector-10, Dwarka, New Delhi-110075. PAN: AACCG5418P
APPELLANT		RESPONDENT
Assessee represented by	Shri Salil Kapoor, Adv.; and Shri Anuj Tiwari, CA	
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	18.09.2023	
Date of pronouncement	20.09.2023	

ORDER

PER ANUBHAV SHARMA, JM:

The Revenue has come in appeal challenging the orders dated 16.09.2019 passed by the Commissioner of Income Tax(Appeals)-34, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. 36/18-19, for the assessment year 2015-16, arising out of the assessment order dated 30.12.2017 u/s 144C read with section 143(3) of the Income-tax Act, 1961

(hereinafter referred as the “Act”), passed by the Asstt. Commissioner of Income-tax, Circle 8(2), New Delhi (hereinafter referred in short as “Ld. AO”).

2. Assessee formerly known as Gold Resorts & Hotels Private Limited, was incorporated on 06th March, 2006 and is engaged in the business of building, managing, investing, administering, owning and running of hotels, resorts, motels, inns, apartment, condominium, restaurants, caterers, entertainment places, boarding and lodging, guest houses, cottages etc. Company is a wholly owned subsidiary of Experion Holdings PTE. Ltd. Singapore (formerly known as Gold Hotels & Resorts PTE Ltd) ("Experion Holdings"). Experion Holdings, is company incorporated in Singapore and is wholly owned by another Singapore company being AT Holdings PTE. Ltd. ("AT Holdings"). Experion Hospitality has issued 585 equity shares at the rate of 52,740/- per share (having face value of INR 10). The Company received remittance on 05th March, 2014 i.e. in FY 2013-14 and shares were issued in FY 2014-15.

2.1 Ld. AO observed that an information was received from Jt. Sec. (FT& TR)-U, CBDT, from the first secretary (Economics) High Commission of India for AY 2008-09. In the said year, huge amount from its Singapore based holding company M/s. Experion Holding PTE Ltd was received and case was reopened u/s 148 against which a writ petition is filed and pending before Hon'ble High Court of Delhi, New Delhi. Therefore, to maintain continuity and consistency, amount of Rs. 3,08,52,900/- was added to the income, of the assessee as income from undisclosed sources as per provision of section 68 of the I.T. Act.

2.2 Ld. CIT(A) allowed the appeal of assessee with following relevant conclusion;

*“I have considered the facts of the case, finding of the AO and submissions of the appellant, Appellant company has allotted equity shares to M/s Experion Holding Pte Ltd. of Rs. 10/- each at a premium of Rs. 52,730/- for the amount of Rs. 3,08,52,900/-. The appellant has furnished complete details to prove identity, creditworthiness and genuineness of the transaction in respect of investor company. The AO has not considered those details and made the addition on the basis of the statement of Director of appellant company and report of FT&TR for the AY 2008-09. No reference was made to FT&TR with respect of investment received by the appellant company during the year from Experion Holding Pte Ltd. Singapore, the holding company of the appellant and therefore, no report received from FT&TR for the year under consideration. The appellant has furnished complete evidences to prove the identity, creditworthiness and genuineness of the transaction of the investor company as per the provisions of section 68. Appellant has furnished the detail of PAN of the investor, registered address, Unique Identity Number of Experion Holding Pte Ltd. in Singapore, certificate of incorporation, tax residency certificate and financial statement of the investor company. The appellant has also filed the copies of the bank statement of investor and investee company and foreign inward remittance certificate to prove the genuineness of the transaction. The appellant has also furnished evidences to prove the creditworthiness of the investor company through its financial statements for the FY 2012-13 to 2015-16. In the year under consideration, ultimate holding company for Experion Holding Pte Ltd. is A T Holdings Pte. Ltd. Singapore and source of funding is not from the tax heaven countries. AT Holdings shares are held by Sai Trust Management Pte Ltd. (STMPL) as trustee for and on behalf of Sai Charan Investment Holding Trust established in Singapore. Shares of STMPL are held by Mr. Arvind Tikku. The ultimate holding company of investor company AT Holdings had reported net profit at USD 54.19 million during the year ended 31st December 2014 and company is having positive cash flows from its operating activities. Appellant has enclosed the financial statement of ultimate holding company at page no. 306 to 483 of the **Paper Book ‘PB’**. Investor is a nonresident company and as per the proviso of section 68 it is not required to prove the source of source. Since appellant has proved the identity, creditworthiness and genuineness of the transactions and investment is received through banking channel as per the*

norms of RBI, requisites of section 68 are fulfilled. The addition on account of share capital received from the holding company on the basis of the report of FT&TR for 2008-09 could not be made in the year under consideration as the facts are different during the year. In the year 2008-09 ultimate holding company are based in tax heaven countries hence investment made by them creates suspicion about the source and genuineness of the transaction, whereas in the under consideration the investor company as well as ultimate holding company are based in Singapore and filing their return and showing investment in their return. They are having the financial capacities to make the investment in the subsidiary company and only on the basis of the statement of the Director addition could not be made ignoring the evidences furnished by the appellant in respect of share capital received during the year. Considering the above facts addition made by the AO at Rs. 3,08,52,900/- is not sustainable and it is hereby deleted.”

3. The Revenue is in appeal raising following grounds.

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,08,52,900/- made by the AO u/s 68 of the Income Tax Act, 1961.

2. The appellant craves leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

4. Heard and perused the record.

5. Learned DR took the Bench through various observations of learned AO and stressed on the fact that there were multiple companies on the address of the investor Company and that was foundation of doubting the investment.

5.1 Learned AR, however, supported the finding of learned CIT(A).

6. The ground as raised by the Revenue is primarily indicating that Revenue considers the order of learned CIT(A) erroneous for failing to consider the circumstances of the case. However, order of learned CIT(A), when taken into wholesome consideration, brings forth that in para 6.3 all the relevant facts have been discussed. The Revenue can not dispute that the appellant company had filed PAN of investor, which is none other than the holding company. Documents with regard to registered address of investor company, certificate of incorporation and tax residency certificates were filed. Learned AR has taken the Bench through the financials of the investor company, available at pages 125 to 183 of the paper book, to show the source of investor company. The learned AR has also referred to the documents on record in the form of share capital and fund flow of the investor company to establish the creditworthiness. It also comes up from the material on record that AT Holdings is tax resident of Singapore and has reported net profit of around Rs. 341 crores during the year ended 31st December, 2014. There is force in the contention of learned AR that in fact the investing company being foreign company, the source of source was not required to be established even after the amendment brought in Section 68 of the Act qua obligation to establish the source of source.

7. Learned AR has pointed out that for the same issue there was reopening of assessment u/s 147 for A.Y. 2012-13 and the assessment has been completed without any addition. It will be beneficial to reproduce relevant part of the said assessment order dated 22.4.2021 available at pages 818 to 821 of the paper book, which goes to show that in year subsequent to 2008-2009, which is followed on principle of consistency by Id. AO, the suspicion with regard to identity and

credibility of the investor has been met out by AO himself. Paragraphs 4 & 5 of the order are accordingly, reproduced below:

“4. During the course of assessment proceedings, the assessee-company was requested to substantiate the identity of the subscriber, genuineness of the transaction and to establish the capacity to subscribe the share capital or creditworthiness of the share subscriber. In compliance to the same, the assessee company has submitted their submission in their support.

4.1 Assessee was requested vide notice u/s 142(1) of the IT Act dated-14.04.2021 to explain the following:-

(i) As per report sent by High Commission of India, dated 31.10.2011, it is revealed during enquiries that M/s Experion Holdings PTE Ltd. (earlier known as Gold Hotels & Resorts PTE Ltd.), consists of just one room which was found closed most of times. In this regard, you are requested to explain as to how they are carrying out their business without any office or manpower. You are further requested to explain as to why M/s Experion Holdings PTE Ltd. should not be treated as bogus or shell entity.

4.1 In respect of query raised vide notice u/s 142(1) dated-14.04.2021, they explained that the office of the foreign entity has been shifted from earlier premises situated at 50, Raffles Place, #15-05/06, Singapore Land Tower, Singapore-048623 of M/s Gold Hotels & Resorts Pte. Ltd., to 3, Church Street, # 16-04/05, Samsung Hub, Singapore-049483. In support of their claim, they have submitted a copy of lease agreement with lessee & the copy of submission made before the Accounting and Corporate Regulatory Authority(ACRA), Singapore in respect of change of address to 3, Church Street, # 16-04/05, Samsung Hub, Singapore-049483.

5. During the assessment proceeding, a reference has been made to Singapore Tax Authority through FT & TR vide letter no. Pr.CIT-3/FT&TR/2019-20/2155 dated 23.12.2019, to verify the creditworthiness of subscriber of equity share capital raised by the assessee-company from M/s Experion Holding PTE Ltd. situated at 3, Church Street, Singapore. The reply from the Singapore Tax Authority is still awaited.”

8. Lastly, learned AR has pointed out that in fact the money in the form of investment was received not in the previous year but last financial year and reference for that was made in the order of learned CIT(A) itself at page no. 20, where the remittances received from the holding company have been shown of 5.3.2014 while the relevant financial year started from 1.4.2014. Just only because there is allotment of shares in the present year invoking of provisions of Section 68 is not sustainable. Reliance in this regard has been rightly placed by the learned AR on the judgment of Hon'ble Delhi High Court in the case of **CIT Vs. Usha Stud Agricultural Farms Ltd. [2008] 301 ITR 384 (Del.)**, which is also cited before learned CIT(A).

9. In the light of aforesaid, there is no doubt in the mind of the Bench that the grounds raised by the Revenue have no substance. Findings of learned CIT(A) require no interference. **Appeal of the Revenue is dismissed.**

Order pronounced in open court on 20.09.2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI