

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.497/Kol/2024
Assessment Year: 2012-13

Dream Valley Barter Pvt. Ltd.....Appellant
C/o Narendra Goyal & Co,
16, N.S. Road, 2nd Floor,
Kolkata – 1.
[PAN: AAECD1016E]

vs.

ITO, Ward-7(3), Kolkata..... Respondent

Appearances by:

Shri Giridhar Dhelia, Advocate, appeared on behalf of the appellant.
Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : March 19, 2024

Date of pronouncing the order : April 30, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 26.10.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1) For that the learned CIT (Appeals) erred in confirming the addition of Rs. 12,25,33,500/-assessed by Ld. Assessing Officer (A O) under Assessment Order u/s. 143(3) of the Income Tax Act, 1961 (The Act) dated 23/03/2015 on account of unexplained cash credit being share capital and premium u/s 68 of the Act on irrelevant considerations and arbitrary grounds thus the same be deleted.

2) For that the Ld. AO erred in forming his opinion for making the above said addition only on the ground of non-appearance of Directors of the Company in compliance to notice issued u/s. 131 of the Act.

3) For that the learned CIT (Appeals) erred in confirming the above said addition in disregard of the binding judgments of Hon'ble High Court, Hon'ble ITATs which directly lays down ratio on the merits in case of addition on account of share capital raised by the assessee company thus the same be deleted.

4) For that the Assessment order passed is bad in law and on facts of the case and is full of biased and preconceived notions regarding share capital raising and its modus operandi.

5) For that the Ld A O erred in overlooking the explanation filed by all the subscribers of capital in pursuance to notice under section 133(6) which find no mention at all in the order.

6) For that the Ld AO erred in applying proviso to section 68, which is applicable from AY2013- 14.

7) For that the learned CIT (Appeals) erred in confirming the interest us 234 A/B/C the same was unjustified and hence the same be deleted.

8) The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.

9) The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”

3. A perusal of the above grounds of appeal would reveal that the assessee has agitated the addition of Rs.12,25,33,500/- made by the Assessing Officer treating share capital and share premium received by the assessee as unexplained income of the assessee u/s 68 of the Act.

4. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to submit that the only observation made by the Assessing Officer in the impugned order is that the assessee during the year had received share capital/share premium of Rs.12,25,33,500/- from 9 share-subscribers and he treated the said amount as unexplained income of the assessee by way of a

non-speaking order and in a mechanical manner. That the assessee had duly furnished all the details such as ITRs, PANs, copies of audited financial statement for the A.Y 2012-13, copies of bank statement of the allottee companies, copy of Form 5 along with receipt filed with ROC, details of source of funds relating to the identity and creditworthiness of the creditors and genuineness of the transaction. Apart from that, it was submitted that the identity of the share subscriber was duly proved, transactions were carried out through banking channel, the source of funds of the share subscriber was duly furnished. He has further submitted that the subscribing companies were having adequate reserves and surpluses to invest in the assessee company. Further, that all these subscribers were income tax assesseees and further that all the investor companies were duly incorporated with the Registrar of Companies. That there were no paper companies involved in the transactions. The Ld. Counsel has further contended that the Assessing Officer, instead of examining all the relevant documents, insisted for the personal presence of the directors of the subscribers and did not point out any defect, discrepancy or infirmity in the evidences furnished by the assessee and made the impugned addition in a mechanical manner. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the assessee had made detailed submissions before the CIT(A), which have also been reproduced in the impugned order. However, the ld. CIT(A), without considering any of the submissions and evidences furnished by the assessee, confirmed the addition in a mechanical manner. The ld. counsel has further submitted that even during the appellate proceedings, the assessee furnished the relevant documents to prove the identity, creditworthiness of the share-subscribers and genuineness of transaction and the ld. CIT(A) has referred those documents to the

Assessing Officer and called for remand report. That even during the remand proceedings, the Assessing Officer did not bother to examine any of the documents furnished by the assessee and he has further submitted that the ld. CIT(A) confirmed the additions on the basis of such a non-speaking and vague remand report without pointing out any defect or error in the documents furnished by the assessee. The ld. counsel inviting our attention to para 7 of the impugned order of the CIT(A) has submitted that even in the remand report, the Assessing Officer has categorically admitted that in compliance to the notices issued u/s 133(6) of the Act, the respective shareholder companies had duly sent the confirmations which were duly received before completion of assessment proceedings and were duly placed on record. He has submitted that even neither the CIT(A) nor the Assessing Officer have bothered to even examine any of the documents either furnished by the assessee or received from the share-subscriber companies. Even in the remand report, the Assessing Officer without pointing out any defect, infirmity, inadequacy in any of the specific document furnished by the assessee in relation to the 9 share-subscriber companies have simply made a general observation that though the assessee has furnished the relevant documents including copy of return filed, bank statement and account copy of the allottee companies etc. However, on perusal of these documents, it was not very much clear as to whether the existence of the allottee companies were in order and that the source of investment to the assessee company were not fully verifiable. The ld. counsel further pointing out to the concluding para of the ld. CIT(A) has submitted that the ld. CIT(A) has dismissed the appeal in a mechanical manner with a two-line observation, "On this issue, the remand report from the A.O was called and these documents were sent to him for his comments. The Ld. A.O adhered to his earlier views. The addition made

by the Ld. A.O is confirmed and grounds of appellant are dismissed.”
The ld. counsel, therefore, has pleaded that the impugned additions were not sustainable in the eyes of law and the same may be set aside.

5. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

6. We have heard the rival contentions and gone through the record. We find that the only contention raised by the lower authorities is that the director of the subscriber company did not appear in response to the summons issued u/s 131 of the Act. The ld. counsel, in this respect, has submitted that the directors of the share subscriber companies though had shown their inability to appear personally on the date fixed, however, he had duly responded to the summons issued and sent the required details and evidences to the Assessing Officer. The Assessing Officer has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The ld. counsel, in this respect, has explained that the share application money including share premium during the year was received from the following 9 share applicants, the details of which are as under:

| Sl. No. | Name of the shareholder |
|---------|---|
| 1 | Aditi Sanchar Suvidha Private Limited |
| 2 | Centak Distributors Private Limited |
| 3 | Gajbadan Barter Private Limited (Presently: Aeric Ventures Private Limited) |
| 4 | Goldline Comtrade Private Limited |
| 5 | J.P Engineering Corpn Private Limited |
| 6 | Nutshell Vyapaar Private Limited |
| 7 | Omega Ventures Private Limited |
| 8 | Paridhi Finvest Private Limited |
| 9 | Fresh Vyapaar Private Limited |

6.1 The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company. He has further submitted that following 5 companies out of the 9 investor companies are Non-Banking Finance Companies duly regulated by Reserve Bank of India. He in this respect placed reliance on the certificates issued by Reserve Bank of India:

- i) Aditi Sanchar Suvidha Private Limited
- ii) Centak Distributors Private Limited
- iii) J.P Engineering Corpn Private Limited
- iv) Nutshell Vyapaar Private Limited
- v) Paridhi Finvest Private Limited

The ld. counsel has further relied upon assessment orders passed u/s 143(3) of the Act in case of 3 investor companies namely (i) Paridhi Finvest Private Limited, (ii) Goldline Comtrade Private Limited, (iii) Gajbadan Barter Private Limited.

6.2 That the Assessing Officer, however, did not examine any of the documents furnished by the assessee to prove the identity, creditworthiness of the share-subscribers and genuineness of the transaction. The Assessing Officer, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the Assessing Officer, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders

before the Assessing Officer. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" reported in [2013] 35 taxmann.com 432 (Calcutta) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

7. So far as the reliance of the Ld. DR on the decision of the hon'ble Supreme Court in the case of "PCIT v/s NRA Iron & Steel (P) Ltd." reported in [2019] 103 taxmann.com 48(SC) has taken note of the observations made by the Supreme Court in the "the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-

worthiness, then the Assessing Officer must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”

8. Thereafter the hon'ble Supreme court summed up the principles which emerged after deliberating upon various case laws as under:

“11. *The principles which emerge where sums of money are credited as Share Capital/Premium are:*

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has

not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra), the impugned additions are not warranted in this case.

9. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the Assessing Officer and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the order of the Assessing Officer in mechanical manner. The order of the ld. CIT(A) is a non-speaking order and the same is not sustainable as per law.

10. In view of the above discussion, we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

11. In the result, the appeal of the assessee stands allowed.

Kolkata, the 30th April, 2024.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 30.04.2024.

RS

Copy of the order forwarded to:

1. Dream Valley Barter Pvt. Ltd
2. ITO, Ward-7(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches