

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

I.T.A. No. 785/Kol/2019
Assessment Year: 2012-13

Income Tax Officer, Ward-1(2), Kolkata	Vs	M/s. Mangalvani Commercial Pvt. Ltd. 2B, Grant Lane Room No.-4K Kolkata - 700012 [PAN: AACCL2310D]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	None
Revenue by :	Shri Kiran Chatrapoty, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 01/02/2024
घोषणा की तारीख /Date of Pronouncement: 29/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The above captioned appeal is directed at the instance of the revenue against the order of the learned Commissioner of Income Tax (Appeals) - 1, Kolkata, (hereinafter the "ld. CIT(A)") dt. 15/01/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

2. None appeared on behalf of the when the case was fixed for hearing on 24/08/2022, 01/09/2022, 11/10/2022 and 01/08/2023. No compliance was made even when notices were sent through RPAD. Even today also there is no representation. It, therefore, seems that the assessee is not interested to pursue this appeal. We, therefore decide to adjudicate the issue raised in the instant appeal on the basis of the available records and hearing the departmental representative.

3. The assessee has raised the following grounds of appeal:-

"1. Whether on the facts and circumstances of the case and in points of law, the Ld. CIT(A) was unjustified in deleting the addition of Rs. 3,51,00,000/- made u/s 68, disregarding the principles delineated by Hon'ble Calcutta High Court in the case of Rajmandir Estate Pvt. Ltd. Vs. Pr. CIT(2016)?"

2. Whether on the facts and circumstances of the case and in points of law, the Ld. CIT(A) was unjustified in treating the transaction through shares as beyond the ambit of Section 68 of the Income Tax Act, ignoring that share tantamount to money here as medium of exchange?"

3. The appellant craves leave to amend, modify, alter or abrogate any ground of appeal during the course of hearing of this case."

4. Facts in brief are that the assessee is a private limited company engaged in shares and securities. Income of Rs. 390/- declared in the return filed for the first time as on 25/08/2012. Case selected for scrutiny on account of receipt of large share premium followed by issuance of notice u/s 143(2) and 142(1) of the Act. On going through the records, the ld. Assessing Officer observed that the assessee has received share capital of Rs.1,35,000/- and share premium of Rs.3,49,65,000/-. Assessee was asked to explain the source of the alleged sum. Summons u/s 131 of the Act to the Director, was not complied with. Thus, the ld. Assessing Officer was not able to examine the identity, creditworthiness of the share subscribers and genuineness of the transactions and further observing that no regular business was carried out during the year and even in the subsequent years the turnover was Nil and that the year under appeal being the first year, the ld. Assessing Officer failed to find any merit in the claim of share capital and share premium and both were added in the hands of the assessee.

4.1. Aggrieved the assessee preferred appeal before the ld. CIT(A) and stated that no amount has been received through banking channel during the year for the alleged sum and the transaction is of the nature

where on account of journal entry, on one hand, investment account has increased and on the liability side share capital has been issued. Thus, for lack of receipt of cash for issue of shares, the Id. CIT(A) deleted the impugned addition u/s 68 of the Act.

5. Aggrieved, the revenue is appeal before this Tribunal.

6. The Id. D/R submitted that Section 68 of the Act only refers to sum credited in the books even if the amount is not received through the banking channel/cash but through the journal entry, the same also needs to be examined in the light of Section 68 of the Act. Further he submitted that the assessee has not filed any details before the Id. Assessing Officer.

7. We have heard the Id. D/R and perused the record placed before us. Addition u/s 68 of the Act for unexplained share capital and share premium of Rs. 1,35,000/- and Rs.3,49,65,000/- is in challenge before us at the instance of the revenue. The Id. CIT(A) has deleted the addition only on observing that no cash has been received during the year. We, however, fail to find any merit in this observation. Section 68 of the Act, reads as under:-

“68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

***Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless –*

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of [section 10](#).

8. Now, the starting line of Section 68 of the Act is “Where any sum is found credited in the books of an assessee maintained for any previous year...” This line refers to a credit entry in the books. It is an admitted fact that the assessee is a private limited company and has to maintain its books of accounts on mercantile basis. In the system of mercantile system of accounting, the entries can be through cash book, bank book and journal book. Under the journal entries, fresh credits can be received during the year and there is no requirement of any receipt through banking/cash mode. For instance, a company receives money from ‘A’ company through banking channel and thereafter, during the year itself, through journal entry it transfers the balance from A to B and then B to C. If the Id. Assessing Officer wants to examine the credit entry in the name of C, one cannot take a stand that money has not been received from this party during the year. Similar is the case of purchase of goods on credit where no amount is received in cash/bank then also such creditor is subject to examination u/s 68 of the Act. Further even if cash is not received but through a journal entry liability is created on one hand and asset is increased on the other hand subsequently, against such credit balances amount is paid off in the subsequent period, it proves that the credit entry entered through journal book also needs to be examined under the lens of Section 68 of the Act. There is no mention in Section 68 of the Act that the sum should be credited only through banking channel. Once it is not specifically provided that sum should be received only through

banking channels and the mention is only about the credit entry then, it entails into all the credit entries and the Id. Assessing Officer is well within his jurisdiction to examine the same and it is incumbent upon the assessee to explain the nature and source of the transactions to the satisfaction of the Id. Assessing Officer.

9. Before us, no such details have been filed by the assessee and finding of the Id. CIT(A) is only to the extent of fund not received in cash form during the year. Neither any details have been filed before us by the assessee nor there is any specific finding of the Id. CIT(A) dealing with the evidence filed by the assessee to explain the nature and source of alleged sum. We also note that against the alleged credits in form of share capital and share premium, an equal amount of investment in equity of other entity has been made but there is no explanation about the said transactions. We thus fail to find any merit in the said finding of the Id. CIT(A). We, therefore, set aside the findings of the Id. CIT(A) and confirm the addition of Rs. 3,51,00,000/- made by the Id. Assessing Officer u/s 68 of the Act. Accordingly, all the grounds of appeal raised by the revenue are allowed.

9. In the result, appeal of the revenue is allowed.

***Order pronounced on 29.04.2024 in accordance with
Rule 34(4) of the Income tax (Appellate Tribunal) Rules, 1963.***

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 29/04/2024

SP SP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata