

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM &DR. A.L.SAINI, AM

SA No.4/Kol/2018

(Arising out of ITA No.1803/Kol/2017)

(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. Dhanvarsha Properties Pvt. Ltd. 7A, Poonam Building, 5/2, Russel street, Kolkata – 1.	Vs.	ITO, Ward-8(2), Kolkata Aayakar Bhawan, P-7, Chowringhee Square, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AADCD 1419 J		
(Appellant)	..	(Respondent)

&

ITA No.1803/Kol/2017

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(Appellant)	..	(Respondent)

Appellant by :Shri R. K. Tripathi, Advocate

Respondent by :Shri Arindam Bhattacharjee, Addl. CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 09/02/2018

घोषणाकीतारीख/Date of Pronouncement : 14/03/2018

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

S.A.No.04/Kol/2018 is a Stay Application filed by the assessee praying for an order of stay of recovery of outstanding demand of a sum of Rs.1,18,65,630/- in relation to A.Y.2012-13. Assessee's appeal in ITA

No.1803/Kol/2017 is an appeal by the assessee against the order dated 29.03.2017 of CIT(A)-16, Kolkata relating to A.Y.2012-13.

2. When the Stay Application came up for hearing it was agreed by the parties that the stay application as well as the appeal can be decided together as the issue involved in the appeal lies a very narrow compass.

3. The assessee is a private limited company. For A.Y 2012-13, the assessee company filed its return of income declaring total income at Rs.Nil. The assessment was completed by the AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). During the assessment proceedings, the assessee submitted the details regarding the fresh share capital (including security premium) of Rs.3,30,40,000/- consisting shares at a face value of Rs.10/- each with a premium of Rs.50/-. As the assessee company failed to produce the Directors of the subscriber companies, therefore, notice u/s 131 of the Act was issued to all subscriber companies requesting their personal appearance. But none of the subscriber companies chose to comply with the summon issued. However, in response to the summon issued to the subscriber, Shri Rahul Bansal, A/R of the assessee company appeared and submitted copies of returns, audited accounts, share application forms etc. in respect of all subscriber companies. The AO noted that the subscriber companies choose not to appear in response to summon u/s 131 of the Act, and even the assessee company could not produce them, therefore, the identity of the share subscribers remained unexplained. Under Section 68 of the Act the onus is on the assessee to prove the three ingredients, i.e. identity and creditworthiness of the person from whom the monies were taken and the genuineness of the transactions. Since, the assessee company had failed to prove the identity and genuineness of the transactions, therefore, the AO noted that it was the bogus share capital and unaccounted cash was deposited in account of different persons. The AO noted that the modus operandi of introduction of such bogus share capital is that unaccounted cash is generally deposited in account of different

persons/companies and from these accounts, cheques are issued to various other companies and after rotating in 3 to 4 layers, the money is introduced as share capital in other companies and this cycle continues till the time unaccounted money reaches its intended destination. Since, the assessee company has failed to prove the identity, genuineness and creditworthiness of the share subscriber, therefore, the Assessing Officer made the addition u/s 68 of the Act to the tune of Rs.3,30,40,000/-.

4. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Id. Commissioner of Income Tax(Appeals) who has confirmed the addition made by the Assessing Officer. Before the Id. Commissioner of Income Tax(Appeals), none appeared therefore, the Id. Commissioner of Income Tax(Appeals) passed the ex parte order and confirmed the addition made by the Assessing Officer.

5. Aggrieved by the order of the Id. Commissioner of Income Tax(Appeals), the assessee is in appeal before us.

6. Before us, the assessee has submitted that he could not appear before the Id. Commissioner of Income Tax(Appeals) and could not plead his case before the Id. Commissioner of Income Tax(Appeals), therefore, the Id. Commissioner of Income Tax(Appeals) has not adjudicated the issue in accordance with law and merit. The Id. Counsel also submitted that the assessee has submitted the relevant documents to prove the identity, creditworthiness and genuineness of the share subscribers before the Assessing Officer who has not considered the documents and explanations submitted by the assessee in right perspective. On Appeal to the Commissioner of Income Tax(Appeals), the assessee could not appear because of certain exceptional circumstances and, therefore, he could not plead the case before the Id. CIT(A). The Id. Counsel for the assessee stated that the said issue of the assessee should be remanded back to the file of the Id. CIT(A) to adjudicate the issue afresh. Therefore, the Id. Counsel prayed that the order of CIT(A) may be set aside and the issue raised by the

assessee on the addition of Rs. 3,30,40,000/- should be remanded back to the file of the Id. CIT(A) for fresh adjudication. The Id. CIT(A) shall examine the matter in depth after due compliance by the assessee. The Id. DR for the Revenue, opposed the prayer of the assessee for grant of an order of stay of recovery of outstanding demand. With regard to the prayer seeking for setting aside of order of CIT(A) and remand to the CIT(A), the Id. DR placed reliance on the order of the Assessing Officer.

7. We have given a very careful consideration to the rival submissions and we are of the view that the assessee's non appearance before CIT(A) was not willful and there was sufficient cause for his non appearance. We also find that the AO has framed the assessment ex parte order. We note that Id. CIT(A) fixed the assessee's case for hearing only once on dated 10.01.2017, therefore, Id. CIT(A) did not send notice to assessee further to fix hearing. We are of the view that one more opportunity ought to be given by CIT(A) to hear the assessee. In these circumstances we are of the view that it would be in the interest of justice to set aside the order of CIT(A) and remit the matter back to the file of the Id. CIT(A). The CIT(A) shall afford opportunity of being heard to the assessee thereafter decide the issue in accordance with law. For statistical purposes the appeal of the assessee is treated as allowed. In view of the decision, in the appeal, the Stay Application does not require any consideration and the same is dismissed as infructuous.

8. In the result the appeal filed by the assessee is allowed while the stay application for grant of stay was dismissed as infructuous.

Order is pronounced in the open court on 14.03.2018.

Sd/-
(N.V. VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 14/03/2018

[RS SPS]

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee –M/s. Dhanvarsha Properties Pvt. Ltd.
2. प्रत्यर्थी/ The Respondent- ITO, Ward-8(2), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.