



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.5612/Mum./2016
(Assessment Year : 2011-12)

M/s. Zeltzin Trading Pvt. Ltd.
C/o VSS & Associaes, C.A.
306, Dalamal Chambers
New Marine Lines
Mumbai 400 020
PAN – AAACZ3725A

..... Appellant

v/s

Income Tax Officer
Ward-9(3)(4), Mumbai

..... Respondent

Assessee by : Shri Prakash Jhunjunwala a/w
Shri Vishnu Agarwal
Revenue by : Shri Ram Tiwari

Date of Hearing – 17.04.2018

Date of Order – 25.04.2018

ORDER

PER SAKTIJIT DEY, J.M.

This appeal by the assessee is against order dated 4th March 2016, passed by the learned Commissioner (Appeals)-21, Mumbai, for the assessment year 2011-12.

2. There is a delay of 68 days in filing the present appeal. The assessee has filed petition seeking condonation of delay being

supported by an affidavit of the director of the company Shri Ajay Chauhan. Explaining the cause for delay, it is submitted that during the relevant period the directors of the company were very much disturbed in defending the recovery proceedings initiated by the State Bank of India. It was submitted, due to default in re-payment of bank loans by the Group companies, the office premises of the assessee and the residential house of the directors were attached and taken in possession by the State Bank of India. It is submitted, due to closing down of office premises of the company there were no staff available to compile the details and appoint a Chartered Accountant to file the appeals before the Tribunal. Further, the old director resigned from the directorship of the company and the newly appointed directors were not aware of the facts of the case relating to the earlier period. It is submitted, these factors led to the delay in filing the appeal. The learned Authorised Representative submitted the delay in filing the appeal being for bonafide reasons may be condoned.

3. The learned Departmental Representative opposed condonation of delay.

4. We have considered the submissions of both the parties on the issue of delay condonation. As could be seen from the material placed before us, during the relevant period assessee was subjected to

recovery proceedings initiated by the State Bank of India and there was a forced closure of the business of the assessee as the State Bank of India with the help of Police took over the possession of the business premise of the company. Thus, we are satisfied that the delay in filing the appeal was due to a reasonable cause. Accordingly, we condone the delay and admit the appeal for adjudication.

5. The major issue raised in the appeal pertains to addition of an amount of ₹ 5 crore as unexplained cash credit under section 68 of the Act. Of course, the assessee has also challenged an addition of ₹ 6,65,902, due to mismatch in the income shown in the Profit & Loss account and income as per 26AS.

6. Brief facts are, the assessee a company is engaged in the business of brokerage and commission job. For the assessment year under dispute, assessee filed its return of income on 29th September 2011, declaring total income of ₹ 6,03,220. During the assessment proceedings, the Assessing Officer on verifying the Balance Sheet of the Company found that an amount of ₹ 4,86,00,000, has been shown as share premium. Therefore, he called upon the assessee to furnish complete details of share premium received with the name and address of the concerned party, PAN details, copy of the return of income filed for assessment year 2011-12 by that party along with

Balance Sheet, relevant Bank Statement, valuation report, if any, to justify the share premium value. In response to the query raised by the Assessing Officer assessee furnished certain details vide letter dated 12th February 2014. After verifying the details furnished by the assessee, the Assessing Officer raised doubts with regard to shares issued by the assessee and their value. Therefore, vide letter dated 9th March 2014, he called upon the assessee to produce the nine parties from whom the share premium was received with the relevant details such as return of income filed by them, Balance Sheet, Bank Statements, etc. As alleged by the Assessing Officer, since, the assessee did not respond to the query raised by him, a final opportunity was given to the assessee to furnish the details on 19th March 2014. However, neither anyone appeared on behalf of the assessee on the said date nor furnished the details called for. Thus, in the absence of the required evidence called for, the Assessing Officer treated the share premium received of ₹ 4.86 crore as unexplained cash credit under section 68 of the Act and added to the income of the assessee. The assessee challenged the addition before the first appellate authority.

7. However, the learned Commissioner (Appeals) not only sustained the addition made by the Assessing Officer but further enhanced it by

an amount of ₹ 14 lakh with the allegation that the assessee neither appeared before him nor filed any evidence to explain and prove the genuineness of the credit. He also alleged that the assessee even did not reply to the notice for enhancement of income. Accordingly, he dismissed the appeal filed by the assessee.

8. The learned Authorised Representative submitted that due to the severe difficulties faced by the assessee as a result of attachment and taking over possession of assessee's business premises by the State Bank of India the assessee was not in a position to furnish the details called for either before the Assessing Officer or before the learned Commissioner (Appeals). The learned Counsel for the assessee submitted that now the assessee has been able to collect and is in possession of the documentary evidences called for by the Departmental Authorities in respect of the persons who paid the share premium and sought to furnish them as additional evidences and requested for admitting them under rule 29 of the Income Tax (Appellate Tribunal) Rule, 1963. The learned Authorised Representative submitted that due to genuine difficulties the assessee was unable to furnish these evidences before the Departmental Authorities and which are now being furnished as additional evidence. The learned Counsel submitted that since the additional evidences

furnished by the assessee are crucial for proving the genuineness of the share premium, the matter may be restored back to the Assessing Officer for fresh adjudication after considering the additional evidences.

9. The learned Departmental Representative, though, defended the order of the learned Commissioner (Appeals) and submitted that the assessee despite being given sufficient opportunity did not furnish supporting evidence to prove the share premium receipt, however, he does not have any serious objection if the matter is restored back to the Assessing Officer for deciding afresh after considering the additional evidences furnished by the assessee.

10. We have considered rival submissions and perused materials on record. As regards the major issue relating to the addition of the credit appearing in the Balance Sheet towards share premium, it is evident from the assessment order that in the course of the assessment proceedings, the Assessing Officer to verify the genuineness of the share premium had called upon the assessee to produce the parties who have paid share premium and furnish certain documentary evidences relating to them which assessee failed to produce. Even, before the first appellate authority also the assessee failed to furnish the required documentary evidences to prove the genuineness of the

share premium. Thus, it is evident due to lack of supporting evidence addition of share premium under section 68 was made. However, from the materials placed before us, it is noticed that the assessee company and its directors during the relevant period were facing recovery proceedings initiated by State Bank of India for default in re-payment of loan by Group Companies. It is also a fact that various coercive measures were taken by the Bank for recovery of its dues as a result of which the business premises of the assessee as well as the residential houses of the director were attached and the Bank took over the possession of the business premises of the assessee with the help of Police. Thus, as could be seen from the facts on record, there appears to be a valid reason for inability of the assessee in producing supporting documentary evidences to prove the genuineness of the share premium which the assessee has now sought to produce before us by way of additional evidences under rule 29 of the Rule, 1963. Considered in the aforesaid perspective, we are inclined to admit the additional evidences produced by the assessee, since, in our view such evidences may have a crucial bearing for deciding the issue in dispute. However, considering the fact that these additional evidences were not filed either before the Assessing Officer or before the learned Commissioner (Appeals), the Department must also be given a fair chance to examine and verify the authenticity of the additional

evidences furnished by the assessee for deciding the genuineness of the share premium received. In view of the above, we restore the issue to the file of the Assessing Officer for de novo adjudication after considering the evidences brought on record.

11. As regards the issue relating to addition of ₹ 6,65,902, on account of difference in income as shown in the Profit & Loss account and as per 26AS, in our view this issue also requires to be restored to the Assessing Officer for enabling the assessee to reconcile the difference. In view of the aforesaid, grounds no.2 and 3, raised by the assessee are allowed for statistical purposes. Needless to mention, the Assessing Officer must afford reasonable opportunity of being heard to the assessee before deciding the issues.

12. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 25.04.2018

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 25.04.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Asstt. Registrar/Sr.P.S)
ITAT, Mumbai