

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
[Before Shri S. S. Godara, JM & Shri M. Balaganesh, AM]

I.T.A. No. 1419/Kol/2017
Assessment Year: 2008-09

M/s. Ramdoot Tradelink Pvt. Ltd. (PAN:AADCR8724L)	Vs.	Income-tax Officer, Wd-6(1), Kolkata
Appellant		Respondent

Date of Hearing	14.06.2018
Date of Pronouncement	20.06.2018
For the Appellant	Shri M. D. Shah, AR
For the Respondent	Shri A. K. Tiwari, CIT

ORDER

Per Shri M. Balaganesh, AM

This is an appeal filed by assessee directed against the order passed by the Ld. CIT(A)-6, Kolkata vide appeal No. 397/CIT(A)-6/Kol/2015-16 dated 09.03.2017. Assessment was framed by ITO, Ward-6(1), Kolkata u/s. 143(3)/263/147/148 of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2008-09 vide his order dated 31.03.2014.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the addition made u/s 68 of the Act towards share application money in the sum of Rs 7,93,70,000/- , in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is an investment company . The return of income for the Asst Year 2008-09 was filed on 28.3.2009 declaring total loss of Rs 317/-, which was duly processed u/s 143(1) of the Act. Later the assessment was reopened by issuance of notice u/s 148 of the Act and re-assessment was completed u/s 147/143(3) of the Act on 14.5.2010 determining total income at Rs 15,883/-. This re-assessment was subjected to revision proceedings u/s 263 of the Act by the Id CIT on the ground that the Id AO had not properly enquired and verified the genuineness and source of share application money / share capital as well as the identity and creditworthiness of the shareholders who had applied for

shares of the company. Hence the Id CIT passed the revision order u/s 263 of the Act on 30.3.2013 by setting aside the order passed by the Id AO u/s 147/143(3) of the Act dated 14.5.2010 with certain specific guidelines regarding investigation to be carried out while assessing the assessee de novo. The Id AO in the consequential proceedings giving effect to the order of Id CIT u/s 263 of the Act, had reproduced the relevant portion of the Id CIT's directions. The Id AO observed that the assessee had raised share capital to the tune of Rs 7,93,70,000/- by issuing shares at a premium. A notice u/s 142(1) of the Act calling for certain details was issued on the assessee asking it to produce and submit certain details and documents. There was no response from the assessee to this notice. Later a summons u/s 131 of the Act was issued to the assessee directing the assessee to produce the shareholders who had invested in the shares of the assessee company. There was no response to this summons from the assessee. The Id AO accordingly observed that the transactions of share capital are not genuine one in as much as the assessee had failed to produce the shareholders for verification of share capital investments obtained from them. Therefore, the entire share application money of Rs 7,93,70,000/- was added to the total income of the assessee by the Id AO. The Id CITA upheld the action of the Id AO. Aggrieved, the assessee is in appeal before us.

4. We have heard the rival submissions. According to the Id AR, the shareholders of the assessee had duly responded to notices issued u/s 133(6) of the Act directly to the Id AO by giving proper replies with regard to details called for by the Id AO in the first round. Therefore, according to assessee, the identity of shareholders stands proved. We find that the Id CIT in her section 263 order dated 30.3.2013 had directed the Id AO to make independent enquiries with the shareholders of the assessee company in the manner known to law and not through the assessee. This is very clear from the directions of the Id CIT which is also reproduced by the Id AO in page 6 of his order. In response to this, the Id DR vehemently opposed this plea of the assessee and contended that the assessee company was very well aware of the revisional order passed by the Id CIT and should have brought all evidences before the Id AO to substantiate the identity, genuineness and creditworthiness of share subscribers. The Id AO has noted that the assessee did not co-operate with the assessment proceedings and ,

therefore, the assessee cannot be given another innings. We note that the Id CIT's exercise of revisional jurisdiction u/s 263 of the Act setting aside the 147/143(3) order was passed on 30.3.2013. The Id AO while giving effect to the order of the Id CIT has noted that he had issued summon u/s 131 of the Act to the assessee company directing the assessee company to produce the shareholders of the assessee company for examination of their creditworthiness and genuineness of transactions. The Id AO after noticing that none appeared on behalf of the assessee, concluded that the assessee had not co-operated and, therefore, according to him, the identity and genuineness of the shareholder subscriber companies could not be established beyond doubt and, therefore, he made the addition of Rs 7,93,70,000/- . We note that the Id CIT invoked the revisional jurisdiction u/s 263 of the Act and found that the assessee company in its Balance Sheet has shown to have infused equity share capital of Rs 7,93,70,000/- including share premium and since the Id AO had not enquired into the source of the share capital and premium infused into the assessee company by verifying the identity, genuineness and creditworthiness of the shareholders, the Id CIT found the AO while doing assessment did not exercise the role of investigator and, therefore, the order of Id AO is erroneous so far as prejudicial to the interest of the revenue and directed the Id AO to make fresh assessment after taking into consideration the pernicious practice of converting black money by the modus operandi as described by the Id CIT. We also note in the said backdrop, the Id CIT has given certain guidelines which were given in order to facilitate deep investigation into the case and for that, we note that the Id CIT had given the following directions:-

“Examine the genuineness and source of share capital, not on a test check basis, but in respect of each and every shareholder by conducting independent enquiry not through the assessee. The bank account for the entire period should be examined in the course of verification to find out the money trail of the share capital.

Further the AO should examine the directors as well as examine the circumstances which necessitated the change in directorship if applicable. He should examine them on oath to verify their credentials as director and reach a logical conclusion regarding the controlling interest.

The AO is directed examine the source of realization from the liquidation of assets shown in the balance sheet after the change of directors, if any.

After conducting the inquiries & verification as directed above, the AO should pass a speaking order providing adequate opportunity of being heard to the assessee.

The impugned order u/s. 148 is accordingly set aside the assessment should be done afresh.”

5. With the aforesaid direction, the Id CIT set aside the order of the Id AO which was passed u/s 147 / 143(3) of the Act. We also note that similarly placed assessees had challenged the exercise of revisional jurisdiction u/s 263 of the Act before this tribunal in those cases , one of it of Subhalakshmi Vanijya Pvt Ltd vs CIT in ITA No. 1104/Kol/2014 dated 30.7.2015, wherein the Tribunal was pleased to uphold the order passed by the Id CIT passed u/s 263 of the Act , which we learn to have been confirmed by the Hon'ble Jurisdictional High Court and the SLP preferred against the decision of the Hon'ble Jurisdictional High Court has been dismissed by the Hon'ble Supreme Court. We note that the shareholders had duly replied during the original re-assessment proceedings confirming the factum of investments before the Id AO . We find that it is not in dispute that the entire transactions of share capital and share premium was the subject matter of verification in the re-assessment proceedings by the Id AO, wherein the shareholders had duly responded to notice u/s 133(6) of the Act by confirming the fact of making investments in the assessee company. The shareholders had also duly furnished their income tax assessment particulars. Pursuant to directions of the Id CIT u/s 263 of the Act, the Id AO was mandated to make direct verifications about the genuineness of the transactions and creditworthiness of the shareholders by making necessary specific enquiries as listed out supra. The Id CIT had specifically directed the Id AO to make enquiries directly from the shareholders and not through the assessee. Hence non-appearance of the assessee before the Id AO and non-production of the shareholders of the assessee company before the Id AO, intentionally or unintentionally does not make any relevance here. The Id AO admittedly did not resort to make enquiries in the manner stated by the Id CIT u/s 263 of the Act inspite of the fact that all the necessary details were very much available before him. The Id CIT had directed the Id AO to investigate into multiple layers of the investment in shares made by respective shareholders and identify the ultimate person holding controlling interest including the change in shareholding, directorship etc and then take the entire matter to its logical conclusion to bring out the facts on record. From the perusal of the assessment order, we find that this has not been done by the Id AO. In this regard, we would like to place reliance on the decision of *Hon'ble Delhi High Court in the case of CIT vs Jansampark Advertising & Marketing Pvt Ltd in ITA No. 525/2014 dated 11.3.2015* wherein after noticing inadequate enquiry by authorities below, the court had held as under:-

“41. We are inclined to agree with the CIT(Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.

42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT(Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the fact of the allegations of the Revenue that the account statements reveal uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a 'further enquiry' in exercise of the power under Section 250(4). His approach not having been adopted, the impugned order of ITAT, and consequently that of CIT(Appeals), cannot be approved or upheld.”

5.1. In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the decision of Hon'ble Delhi High Court supra, we deem it fit and appropriate, in the interest of justice and fairplay, to remand the matter back to the file of the Id AO for de novo assessment and to decide the matter as mandated by the Id CIT in section 263 order, after giving sufficient opportunity of being heard to the assessee. Accordingly, the Grounds raised by the assessee are allowed for statistical purposes.

6. The Ground No. 5 raised by the assessee is general in nature and does not require any specific adjudication.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 20.06.2018

Sd/-
(S. S. Godara)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated :20th June, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – M/s. Ramdoot Tradelink Pvt. Ltd., C/o Kumar & Giri, Chartered Accountants, 8-2-686/B/1, 12 Vyjayanthi, flat No. 3 & 4, 2nd floor floor, Road 12, Banjara Hills, Hyderabad-500034.
- 2 Respondent –ITO, Ward-6(1), Kolkata.
3. The CIT(A)-6, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Asstt. Registrar.