

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA*

Before **Shri P.M.Jagtap, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1037/Kol/2015
Assessment Year:2012-13

Income Tax Officer, Ward-2(1), Aayakar Bhawana, 'B' Wing, Paribahan Nagar, Matigara, Siliguri, Dist. Darjeeling-734010	बनाम/ V/s.	M/s O.S.A.S. Developers Pvt. Ltd., Shidhi Vinayak Complex (Gr Fl) Iskan Mandir Road, Siliguri- 734001 [PAN No.AABCO 6224 E]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sallong Yaden, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Subash Agarwal, Advocate
सुनवाई की तारीख/Date of Hearing	10-05-2018
घोषणा की तारीख/Date of Pronouncement	06-07-2018

आदेश /O R D E R

PER S.S.Viswanethra Ravi, Judicial Member:-

This appeal by the Revenue against the order dated 27.05.2015 passed by the Commissioner of Income Tax (Appeals)-Siliguri for assessment year 2012-13.

2. After hearing both the parties we find that Assessing Officer determined the total income of the assessee at ₹2,00,00,000/- as against nil income. The Assessing Officer treated a sum of ₹2,00,00,000/- said to have been found credited in the books of assessee as unexplained credit u/s 68 of the Income Tax Act, 1961 in short 'the Act'. It is also noted that AO issued notice u/s. 133(6) of the Act to three entities i.e., Dewdrops Mercantile (P) Ltd, Pragya Commodities (P) Ltd and Samrat Finvestors (P) Ltd. to verify share application money and share premium thereof. It is noted that

details such as PAN, Acknowledgement of IT returns, relevant portion of bank statement, copy of audited accounts regarding the said three entities were filed before AO during the course of assessment proceedings and on examination of such details the AO asked the assessee to produce directors of the said companies for explaining account statements and their creditworthiness. The AO added said sum in the hands of assessee for non production of directors of investing companies and by doubting the creditworthiness. The contention of the Ld. AR is that the AO did not provide sufficient time to produce the directors of investing companies and referred to note sheet of AO placed at page 6&7 of paper book and submitted that the AO recorded the statement of director of the assessee on 17-03-2015 and issued notice u/sec 131 of the Act on 19-03-2015. The AR of the assessee sought adjournment on 26-03-2015 by stating that the director of the assessee i.e. Sri Sunil Kumar Lohia was unwell and referred to page no-7 of paper book and argued that the AO without considering same and basing on the Inspector's report passed assessment order on 30-03-2015 and there was no opportunity for the assessee in the assessment proceedings and prayed to remand the matter to the file of AO for his fresh consideration. The Ld DR did not controvert the same. On perusal of the record we find force in the arguments of the Ld AR and in the interest of justice, we deem it proper to remand the matter to the file of AO for his fresh consideration and the assessee is liberty to file evidences, if any, before the AO. Therefore, order of CIT(A) is set aside. Grounds raised by the revenue are allowed for statistical purposes.

3. In the result, Revenue's appeal is allowed for statistical purpose.

Order pronounced in open court on 06/07/2018

Sd/-
(लेखा सदस्य)
(P.M.Jagtap)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 06/07/2018

कोलकाता / Kolkata

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO, Ward-2(1), Aayakar Bhawan, 'B Wing' Paribahan Nagar, Matigara, Siliguri, Dist. Darjeeling-734010
2. प्रत्यर्थी/Respondent-M/s OSAS Developers Pvt. Ltd., Shidhi Vinayak Complex (Gr.FI) Iskan Mandir Road, Siliguri-734001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता