

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

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

ITA No.1650/Kol/2017
Assessment Year:2008-09

Sadabahar Vyapaar Pvt. Ltd., 58/6, Dr. Jiban Ratan Dhar Road, Flat No.8, 2 nd Floor, Kolkata-28 [PAN No.AAKCS 5575 K]	बनाम/ V/s.	Income Tax Officer, Ward-5(1), P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri M. Tiwari, AR
प्रत्यर्थी की ओर से/By Respondent	Shri A. Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	23-07-2018
घोषणा की तारीख/Date of Pronouncement	31-07-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2008-09 arises against Commissioner of Income Tax (Appeals)-2, Kolkata's order dated 08.02.2016 passed in case No.1755/CIT(A)-2/2014-15, upholding Assessing Officer's action in adding share capital / premium of ₹3,20,15,000/- u/s 68 as unexplained cash credits in assessment order dated 30.03.2014, involving proceedings u/s 143(3)/263/147 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties reiterating their respective stands against and in support of the impugned addition. Case file perused.

2. It emerges at the outset that the CIT(A)'s lower appellate order share capital / premium addition of ₹3,20,15,000/- has been passed whilst affirming Assessing Officer's action making the impugned addition of unexplained share application / premium. The instant *lis* has emanated from the CIT's direction dated 28.03.2013 in revision proceedings u/s. 263 of the Act restoring the assessment / re-assessment in question dated 11.03.2013 for the purpose conducting detailed enquiries regarding the above share capital / premium. The Assessing Officer issued u/s/ 133(6) notices to various investor entities. The assessment order dated 30.03.2014 suggests that none of them appeared. All this made the Assessing Officer to doubt genuineness / creditworthiness of the above share capital and premium amounting to ₹3,20,15,000/- in view of hon'ble apex court's decision in *Sumati Dayal vs. CIT* 214 ITR 801 (SC) and other judicial precedents.

3. Needless to say, the CIT(A) has affirmed the above stated addition in his lower appellate order passed *ex parte*.

4. Learned counsel representing assessee submits during the course of hearing CIT(A) hearing notice was admittedly not served on account of instant taxpayer's alleged insufficient address. He take us to assessment order Form 36 attached with the present instant appeal to submit that assessee's address throughout has remained unchanged and therefore, the lower appellate order has been wrongly passed *ex parte* whilst affirming the impugned addition u/s. 68 of the Act. The Revenue on the other hand vehemently supports both the lower authorities action on merits. It fails to dispute the fact that CIT(A)'s notice of hearing lower appellate proceedings had not been served on the taxpayer's his address which remains the same right from assessment till date in the instant second appellate stage. We therefore are of the view that the assessee deserves one more innings before CIT(A). We accordingly restore the instant *lis* back to

the CIT(A) for afresh adjudication as per law after affording adequate opportunity of hearing.

5. This assessee's appeal is accepted for statistical purpose.

Order pronounced in open court on 31/07/2018

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

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

*Dkp-Sr.PS

दिनांक:- 31/07/2018 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-Sadabahar Vyapaar Pvt. Ltd., 58/6, Dr. Jiban Ratan Dhar Road, Flat No.8, 2nd Floor, Kolkata-28
2. प्रत्यर्थी/Respondent-ITO Ward-5(1), P-7, Chowringhee Square, Kolkata-69
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