

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri S.S. Godara, JM & Shri M.Balaganesh, AM]

I.T.A No. 1524/Kol/2017

Assessment Year : 2008-09

M/s Daffodil Dealers Pvt. Ltd.

-vs-

ITO, Ward-8(2), Kolkata

[PAN: AACCD 6956 D]

(Appellant)

(Respondent)

For the Appellant : Shri S. Jhajharia, AR
Shri Sujoy Sen, AR

For the Respondent : Shri Md. Usman, CIT DR

Date of Hearing : 26.07.2018

Date of Pronouncement : 03.08.2018

ORDER

Per M.Balaganesh, AM

1. This is an appeal by the assessee directed against the order passed by the Learned Commissioner of Income Tax (Appeals) - 16, Kolkata [in short the Id CITA] in Appeal No. 633/CIT-(A)-16/Kol/2015-16/W-8(2) dated 31.1.2017 against the order of assessment framed by the Learned Income Tax Officer, Ward 8(2), Kolkata [in short the Id AO] under section 144/263/143(3)/147 of the Income Tax Act, 1961 (in short “the Act”) dated 14.03.2014 for the Assessment Year 2008-09.

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 capital in the sum of Rs 10,31,00,000/- , in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is an investment company . The assessment for the Asst Year 2008-09 was framed u/s 143(3) / 147 of the act on 12.5.2010 determining total income of Rs 35,777/- as against the returned income of Rs Nil. 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 capital and share premium 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 12.3.2013 by setting aside the order passed by the Id AO u/s 147/143(3) of the Act dated 12.5.2010 with certain specific guidelines regarding investigation to be carried out while assessing the assessee de novo. The Id AO observed that the assessee had raised share capital to the tune of Rs 10,31,00,000/- by issuing shares at a premium. A notice u/s 142(1) of the Act dated 15.11.2013 calling for certain details was issued on the assessee asking it to produce and submit certain details and documents. The said notice could not be served on the assessee. Later the Inspector of Income Tax was deputed to serve the notice which went invain and accordingly the said notice was served by affixture at the last recorded address of the assessee. There was no response from the assessee to this notice. Later a summons u/s 131 of the Act was issued to the directors of the assessee company as well as of the subscriber companies. All the summons were returned back by the postal authority with remarks 'moved / not found/ not known / no such company in this address' etc. Accordingly the summons u/s 131 of the Act was served by affixture. There was no response to this summons either from the assessee or from the subscriber companies. 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 capital and share premium money of Rs 10,31,00,000/- 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 12.3.2013 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. 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. The Id AO after noticing that none appeared on behalf of the assessee and on behalf of the subscriber companies, 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 10,31,00,000/- . 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 10,31,00,000/- 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. The ld AO cannot remain quiet after issuing summons u/s 131 to the share subscriber companies. The same when went unanswered, the ld AO should have resorted to other actions available as per law, which was not done in the instant case. Without resorting to such further verification / investigation / action as per law, the ld AO ought not to have drawn any adverse inference against the assessee company.

5. At the cost of repetition, we would like to state that the ld CIT had specifically given the manner in which investigation and further enquiries are to be carried out by the ld AO to understand the genuineness of share capital raised by the assessee company in his order passed u/s 263 of the Act, wherein it is specifically mentioned that the enquires and investigation should be carried out independently by the ld AO and not through the assessee. 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 ld 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 ld 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 ld 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 ld CIT u/s 263 of the Act, the ld 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 in the revision order u/s 263 of the Act. 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 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 face 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 fair play, 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 pronounced in the Court on 03.08.2018

Sd/-

[S.S. Godara]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 03.08.2018

SB, Sr. PS

Copy of the order forwarded to:

1. M/s Daffodil Dealers Pvt. Ltd.,C/o, Salarpuria Jajodia & Co. 7, C.R. Avenue, Kolkata-700072.
2. ITO, Ward-8(2), Kolkata, 54/1, Rafi Ahmed Kidwai Road, Kolkata-700016.
- 3..C.I.T.(A)- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches