

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.1991/Kol/2016
Assessment Year :2008-09

M/s Esteem Tradecomm Pvt. Ltd., 90, Chakdah Anandpally Dhalipara, Nr. Anandpally, Autostand, Kolkata-93 [PAN No.AACE 5486 D]	V/s.	Commissioner of Income Tax (A)-6, 54/1, Rafi Ahmed Kidwai Road, Kolkata-16
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Miraj D. Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri S. Dasgupta, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	01-08-2018
घोषणा की तारीख/Date of Pronouncement	05-09-2018

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2008-09 arises against the Commissioner of Income Tax (Appeals)-6, Kolkata's order dated 20.07.2016, passed in case No.264/CIT(A)-6/Kol/2015-16, ex parte upholding the Assessing Officer's action adding its share capital / premium of ₹12,68,26, 851/- in assessment order dated 26.03.2014, involving proceedings u/s. 143(3)/263/143(3)/147 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. We advert to the relevant facts. This assessee is a company dealing with in shares and investments. It had filed its return on 16.10.2008 stating income of ₹13,681/-. The same stood processed. The Assessing Officer thereafter formed reasons to believe that assessee's taxable income liable to

be assessed had escaped assessment on account of the fact that some of its expenses claimed deserved to be disallowed. He therefore initiated section 148 / 147 proceedings finally culminating in the re-assessment dated 28.05.2010 enhancing the above taxable income to ₹30,680/-.

Case file suggests that all this followed CIT's revision directions u/s. 263 of the Act in his order dated 28.03.2013 directing the Assessing Officer to conduct through enquiry(ies) regarding assessee's share capital / premium hereinabove. There is no dispute that the said directions have attained finality.

3. We now advert to the impugned consequential proceedings. The Assessing Officer issued section 142(1) notice along with detailed questionnaire which stood served on 16.04.2017 asking the assessee to produce relevant details and documents pertaining to share capital / premium of investors. Assessment order states that all this failed to evoke any response. The Assessing Officer sent section 131 notice as well to all the shareholder companies in support of investments in question. There was again no response. The Assessing Officer therefore presumed that the assessee had nothing to explain in support of identity, genuineness and creditworthiness of its share application / premium money of ₹12,68,26,851/-. He accordingly added the same to be its unaccounted cash credits u/s. 68 of the Act. The CIT(A) confirms the Assessing Officer's action by his *ex parte* order under challenge.

4. We have given our thoughtful consideration to rival contentions against and in support of impugned addition of unexplained cash credits in the nature of share capital / premium. Suffice to say, it emerges at the outset that the CIT's section 263 directions (supra) incorporated in page 5 of the assessment order made it clear to the Assessing Officer that he shall examine genuineness and source of capital not on a test check basis but in respect of each and every shareholder by conducting independent enquiry not through assessee. That is besides the point that similar other directions regarding the process to be undertaken in consequential proceedings had also been issued

to the assessing authority. Learned Departmental Representative fails to dispute the fact that the Assessing Officer never conducted any such independent enquiries but shifted the relevant onus on assessee's shoulders. The same as escaped the CIT(A)'s consideration as well as evident from lower appellate discussion. We therefore find in similar circumstances that tribunal's order in *M/s Cemfil Enterprises Ltd. vs. ITO ITA No.1743/Kol/2017* decided on 29.08.2018 has remitted the very issue back to the Assessing Officer as under:-

"2. We notice at the outset that both the lower authorities have added assessee's share capital of ₹104,31,70,000/- received in the relevant previous year to be unexplained on account of its alleged failure in proving identity, genuineness and creditworthiness of the investors concerned. The Assessing Officer had earlier framed the re-assessment in question on 07.05.2011 assessing assessee's total taxable income at ₹1,21,521/- against the returned income of ₹96,051/-. The CIT exercised his revision jurisdiction vested u/s. 263 of the Act thereafter and issued directions dated 28.03.2013 to the Assessing Officer for framing the above assessment afresh after carrying out through detailed enquiries of the share application money concerned. He accordingly treated the earlier assessment to be lacking necessary enquiries to be a fit case for exercising revision jurisdiction as the same was erroneous causing prejudice to the interest of the Revenue.

3. We notice that the Assessing Officer thereafter took up consequential proceedings. He issued section 131 summons to both assessee as well as all the investor parties concerned. He alleged in assessment order dated 20.03.2014 that none of them appeared so as to satisfy the relevant parameters of identity, genuineness and creditworthiness of the share premium @ 990/- per share in issue. He therefore treated the above sum to be unexplained as well as its own money introduced in the garb of share capital including very hefty premium thereupon. Suffice to say, the CIT(A) has upheld the same in his lower appellate order passed ex parte.

4. Both the learned counsel reiterate their respective stands against and in support of impugned unexplained cash credits addition in the nature of share capital / premium. Learned Departmental Representative vehemently contends that assessee had received the above premium as a device for ploughing back its own money through very exorbitant premium @ 990/- per share. He highlights that the Assessing Officer as well as CIT(A) have finalized ex parte proceedings in the event of assessee not filing any details at all in support. We find no reason to concur with Revenue's instant arguments. It emerges first of all from page 1 to 3 that the assessee had changed its address as per the Ministry of Corporate Affairs details. Coupled with this, it emerges that assessee as well as its investors had very well responded to section 133(6) notice by filing their respective bank statements, balance-sheet, profit and loss account, income tax returns and confirmations through Inspector of Income Tax Department. The assessee has compiled all these details in paper book running into more than 180 pages. We find that all

these voluminous materials filed before the Assessing Officer have nowhere been considered in either of the lower proceedings. We therefore conclude that the assessee deserves one more innings before the Assessing Officer to prove identity, genuineness and creditworthiness of its share application / premium investors in question. We accordingly restore the instant lis back to the assessing authority for re-examination of the entire issue as per law after affording adequate opportunity of hearing to the assessee. We make it clear that it shall be very much open to the Assessing Officer to conduct his independent inquiries in tune with the CIT's u/s 263 revision directions (supra)."

We adopt the above reasons remand discussion mutatis mutandis herein as well and restore the instant sole issue back to the Assessing Officer for afresh adjudication strictly in light of CIT's revision directions (supra).

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

Order pronounced in the open court 05/09/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 05/09/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-M/s Esteem Tradecom Pvt. Ltd. 90, Chakdah Anandpally Dhalipara
Nr. Anandpally Autostand, Kolkata-93
2. प्रत्यर्थी/Respondent-cigta-6, 54/Rafi Ahmed Kidwai Road, Kolkagta-16
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।