

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

[Before Hon’ble Shri S.S. Godara, JM & Shri A.L. Saini, AM ]

I.T.A No. 2013/Kol/2017

Assessment Year : 2009-10

M/s Ancient Nirmaan Pvt. Ltd. -vs- ITO, Ward-6(2), Kolkata  
[PAN: AAHCA 2016 L] (Appellant) (Respondent)

I.T.A No. 2014/Kol/2017

Assessment Year : 2009-10

M/s Swift Tracom Pvt. Ltd. -vs- ITO, Ward-5(1), Kolkata  
[PAN: AAMCS 0353 B] (Appellant) (Respondent)

I.T.A No. 2015/Kol/2017

Assessment Year : 2009-10

M/s Devraj Sales Pvt. Ltd. -vs- ITO, Ward-6(1), Kolkata  
[PAN: AADCD 0233 G] (Appellant) (Respondent)

I.T.A No. 2016/Kol/2017

Assessment Year : 2009-10

M/s Simplex Commotrade Pvt. Ltd. -vs- ITO, Ward-5(1), Kolkata  
[PAN: AAMCS 3520 J] (Appellant) (Respondent)

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

Assessment Year : 2009-10

M/s Protex Commercial Pvt. Ltd. -vs- ITO, Ward-5(2), Kolkata  
[PAN: AAACP 6929 J] (Appellant) (Respondent)

I.T.A No. 2018/Kol/2017

Assessment Year : 2009-10

M/s Prabhakar Vanijya Pvt. Ltd. -vs- ITO, Ward-5(2), Kolkata  
[PAN: AAACP 76663 H] (Appellant) (Respondent)



10,07,50,000/- and 12,20,00,000/-; respectively treated as unexplained in assessments as upheld in the lower appellate proceedings. Some cases also challenge correctness of section 14A read with Rule 8D disallowance / additions. We thus take I.T.A. No. 2013/Kol/2017 as the lead case for both condonation as on merits.

**I.T.A. No. 2013/Kol/2017 – M/s Ancient Nirman Pvt. Ltd.**

We come to delay in issue of 300 days first of all. The assessee has filed its condonation petition stated therein that although it had received the CIT(A)'s order under challenge dated 29.08.2016 well within limitation on 16.09.2016, it could not institute the instant appeal on account of various reasons mainly owing to the fact that the person-in-charge in its accountant's office met with a serious accident resulting in severe disability. He is also stated to have undergone hospitalization for many months. The assessee's case is that it had filed Section 264 petition in the mean time which was not maintainable. We are informed the said revision petition also stood dismissed. All these solemn averments have gone unresulted from the Revenue's side. We therefore condone the delay in question of 300 days in filing of the instant appeal being neither intentional nor deliberate because of reasons beyond the tax payer's control. Lead case I.T.A. No. 2013/Kol/2017 is taken up for adjudication on merits.

3. We now advert to the relevant facts on record. The assessee company is engaged in investment business. It filed its return declaring loss of Rs. 11,545/- which stood summarily processed. The Assessing Officer thereafter formed reasons to believe that its income liable to be assessed had escaped assessment on account of fact that certain claims had been omitted to be disallowed. He accordingly framed reassessment on 01.11.2011 determining total taxable income at Rs. 27,416/-.

4. Case file suggests that the CIT initiated Section 263 revision proceedings alleging non-application of mind by the Assessing Officer whilst framing the above

assessment/reassessment. He passed his order dated 11.03.2014 directing the Assessing Officer to examine inter alia the source and genuineness of the assessee's share capital/premium amounting to Rs. 14.51 crores not on test check basis but in respect of each and every share holder after a thorough independent enquiry not through the assessee, examine bank accounts in the entire period, its directors as well as their credentials and source of utilization their liquidation of assets shown in balance sheet after change in directors etc. The CIT above Section 263 revision order has attained finality .

5. The Assessing Officer took up consequential proceedings. He appears to have issued notice to the assessee and also took recourse to section 131 read with Section 133(6) process to call for investors. He records in his assessment order dated 27.03.2015 that none of them appeared in response to the same. The Assessing Officer then framed the impugned reassessment on 27.03.2015 treating the assessee's share balance/ premium in issue of Rs. 14,51,00,000/- to be unexplained cash credits.

6. The assessee preferred appeal challenging correctness of the said Section 68 addition. We find that its authorized representative filed a letter dated 10.08.2016 through post seeking to withdraw appeal on the ground that the taxpayer wanted to exercise its section 264 revision squarely before the Commissioner. The CIT(A) has made a detailed discussion that such a revision is not maintainable. He then upholds the impugned addition with a following non-speaking discussion : "The assessee has not made any oral or written submission in support of the grounds of appeal. Hence, the order of the AO is upheld and the appeal of the assessee is dismissed."

The assessee has filed the instant appeal in these facts.

7. We have given our thoughtful consideration to rival contentions. Learned CIT DR vehemently contends during the course of hearing that both the lower authorities have

rightly added the impugned share application/ premium money as it could not satisfy the relevant parameters of identity, genuineness and creditworthiness in support thereof either during assessment or CIT(A)'s proceedings. He emphasizes that the assessee has adopted a dubious method of routing its own unaccounted money through entry operators which forms the subject matter of the impugned addition. He quotes various case laws supporting the Assessing Officer's action holding the share balance/premium in issue to be a case of unexplained cash credits. The assessee is accused of not appearing before the Assessing Officer and the CIT(A). We find no merit in all these arguments. We make it clear that the assessee had indeed filed its letter before the CIT(A) seeking to avail revision remedy which was admittedly not maintainable as per section 264(4) of the Act. The fact also remains that the CIT(A) has not adjudicated the correctness of the impugned share balance / premium issue on merits at all. He has simply confirmed the Assessing Officer's action as extracted hereinabove without even dealing of voluminous evidence filed at the assessee's behest running into 306 pages before us. It emerges that the assessee had filed very material before the Assessing Officer as well who simply invoked best judgment assessment while making the impugned addition without even referring to a single evidence. We make it clear that the assessee filed audited accounts, bank statement, income tax endorsement and source of funds as well as copy the confirmation (s) before the assessing authority in response to section 131 notices. All this voluminous material stands brushed aside in both the lower proceedings without even a slight reference. We therefore deem it appropriate in these peculiar facts and circumstances that the Assessing Officer needs to reexamine the entire issue afresh as per law strictly in tune with the CIT's section 263 directions (supra). The assessee's other substantive ground challenging section 14A read with Rule 8D disallowance of Rs. 11,545/- is also sent back to the CIT(A) to be decided afresh as per the settled legal and factual position. All the other issues section 234B interest etc. are treated as mere consequential in nature. Lead case appeal I.T.A No. 2013/Kol/2017 is treated as partly accepted for statistical purposes in above terms.

8. Same order to be followed in remaining six appeals I.T.A. Nos. 2014 to 2019/Kol/2017 as both the learned representatives all ad idem that these cases also suffer from delay in filing of 300 days as well as raise challenge to section 68 addition(s) involving a similar backdrop of the relevant facts. We partly allow all these remaining six cases for statistical purposes in above terms.

10. These seven assessee's appeals are partly allowed for statistical purposes in above terms. The copy of this common order are placed all the respective case file(s).

**Order pronounced in the Court on 28.09.2018**

Sd/-

[A.L. Saini]  
Accountant Member

Sd/-

[ S.S.Godara ]  
Judicial Member

Dated : 28.09.2018

SB, Sr. PS

Copy of the order forwarded to:

1. i) M/s Ancient Nirman Pvt. Ltd,  
ii) M/s Swift Tracom Pvt. Ltd.  
iii) M/s Devraj Sales Pvt. Ltd.  
iv) M/s Simplex commotrade Pvt. Ltd.  
v) M/s Protex Commercial Pvt. Ltd.  
vi) M/s Prabhakar Vanijya Pvt. Ltd.  
vii) M/s Lifeline Projects Pvt. Ltd.  
having address at Salarpuria Jajodia & Co., 7, C.R. Avenue, 3<sup>rd</sup> Floor, Kolkata-700072.

2. i) ITO, Ward-6(2), Kolkata,  
ii) ITO, Ward-5(1), Kolkata  
iii) ITO, Ward-1(2), Kolkata  
iv) ITO, Ward-5(2), Kolkata

v) ITO, Ward-6(2), Kolkata  
having address at Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.

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