

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA

[Before Shri J. Sudhakar Reddy, AM and Shri S.S.Viswanethra Ravi, JM]

I.T.A. No. 380/Kol/2017
Assessment Year: 2012-13

ITO, Ward 15(3) Kolkata.....Appellant
Aayakar Bhawan, Poorva,
110, Shanti Palli,
Kolkata - 700 107.

M/s. Manchest Finpro Pvt. Ltd.....Respondent
C/o. RSVPC & Company,
Chartered Accountants,
41A, A.J.C. Bose Road, Suite No. 613,
Kolkata - 700 017.
[PAN: AADCM 4546 R]

C.O. No. 79/Kol/2018
(Arising out of ITA No. 380/Kol/2017)
Assessment Year: 2012-13

M/s. Manchest Finpro Pvt. Ltd.....Cross-Objector
C/o. RSVPC & Company,
Chartered Accountants,
41A, A.J.C. Bose Road, Suite No. 613,
Kolkata - 700 017.
[PAN: AADCM 4546 R]

ITO, Ward 15(3) Kolkata.....Respondent
Aayakar Bhawan, Poorva,
110, Shanti Palli,
Kolkata - 700 107.

Appearances by:

Shri P.K. Srihari, Addl. CIT appearing on behalf of the Revenue.
Shri Vinod Kumar Jain, FCA appearing on behalf of the Assessee.

Date of concluding the hearing : October 8th, 2018
Date of pronouncing the order : October 31, 2018

ORDER

Per S.S. Viswanethra Ravi, JM

The aforesaid appeal and cross-objection by the revenue and assessee respectively against the common order dated 30.12.2016 passed by the CIT(A) - 5, Kolkata for A.Y. 2012-13.

2. First we shall take up appeal of revenue in ITA 380/Kol/2017.
3. Ground No. 1 to 3 are identical questioning the order of CIT(A) in deleting the addition made on account of share capital including premium on shares in facts and circumstances of the case.
4. Heard both the parties and perused the material available on record. The AO, during the course of scrutiny proceedings verified accounts of the assessee and found an amount of Rs. 7,76,96,000/- was introduced as fresh share capital of face value of rupees and premium at 22 to each share to two companies. The A.O. issued summons u/s 131 of the Act to the Director of the assessee-company as well as allottee companies. For non-explanation the A.O. treated the said amount as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee. A contention was raised before the CIT(A) that the said amount was not received by the assessee during the Financial Year to the relevant year under consideration and addition made u/s 68 is not maintainable. The CIT(A) considering the said submission and by examining the assessment record held that the A.O. is totally silent on the said claim. The CIT(A) further placing reliance on the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of Jatia Investment Co. deleted the addition made by the A.O. For better understanding the relevant portion of CIT(A) is reproduced hereunder below:

“After perusing the assessment folder and the papers filed in appeal it is seen that the two allottee companies being Shakti Vanijya and Parakram Tradecom do bear all the hallmarks of a typical “jamakharchi” company which is used to pass accommodation entries as is clear from various papers and the A.O.’s observations. This is apparently the reason that the

directors involved did not appear in response to the A.O.'s requisitions and summons are noted by the A.O. has added share capital including the premium allotted to the two allottee companies. The appellant's case on the point is that no money was involved in the assessment year by the two, which have dues against them and that the money of Rs. 7,76,96,000/- was received by the appellant in the following year being Financial Year 2012-13. It is not the A.O.'s case that the moneys involved were received during the current year. The A.O. is totally silent on the said claim of the appellant. Thus as the money was not received in the current year (Financial Year 2011-12) the addition of this amount cannot be made in the current year as per law laid down by the Hon'ble Calcutta High Court in the case of Jatia Investment Company – as discussed in para 12 above. Following the said decision of the Hon'ble Court the A.O.'s addition u/s 68 is deleted."

5. In view of the above, we find no infirmity in the order of CIT(A), therefore, Ground Nos. 1 to 3 raised by the revenue are dismissed.
6. Ground No. 4 is relating to deletion of addition made on account of Section 14A of the Act. No arguments were advanced by the learned DR and therefore, Ground No. 4 raised by the revenue is dismissed.
7. Now, we shall take up C.O. 79/Kol/2018 filed by the assessee.
8. Since we decided the issue in favour of the assessee in the aforementioned appeal filed by the revenue and in our opinion, grounds raised in cross-objection by the assessee become academic and hence, requires no adjudication. Ground No. 1 and 2 raised by the assessee are dismissed.

9. In the result, the appeal of the revenue and cross-objection of the assessee both are dismissed.

Order Pronounced in the Open Court on 31 October, 2018.

Sd/-

J. Sudhakar Reddy
ACCOUNTANT MEMBER

Sd/-

S.S. Viswanethra Ravi
JUDICIAL MEMBER

Dated: 31/10/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Manchest Finpro Pvt. Ltd., C/o. RSVPC & Company, Chartered Accountants, 41A, A.J. C. Bose Road, Suite No. 613, Kolkata – 700 017.
2. ITO, Ward 15(3), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata