

**IN THE INCOME TAX APPELLATE TRIBUNAL “D”, BENCH KOLKATA  
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A. L. SAINI, AM**

**ITA No.2561/Kol/2017**

(Assessment Year: 2012-13)

<b>ITO, Ward-10(2), Kolkata</b>	Vs.	<b>Chetak Vyapar Pvt. Ltd.</b>
P-7, Chowringhee Square, 3 <sup>rd</sup> Floor, Kolkata – 700 069.		166B, Shyama Prasad Mukherjee Road, Kolkata – 700 026.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCC 8429 N</b>		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>

Appellant by : Shri C.J. Singh, Sr. DR  
Respondent by : Shri R. Jain & B.C. Jain, Ld. AR

सुनवाई की तारीख / **Date of Hearing :** 15/11/2018

घोषणा की तारीख/**Date of Pronouncement:** 07/12/2018

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2012-13, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-4, Kolkata in Appeal No.752/CIT(A)-4/W-10(2)/15-16, dated 18.10.2017, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’), dated 30.03.2015

2. The grievances raised by the Revenue are as follows:

*“(i) The Ld. CIT(A) has erred in deleting the addition made u/s. 68 of the I. T. Act, 1961 ignoring the decision of the Hon'ble Apex Court in the case of Sumati Dayal Vs. CIT 214 ITR 801 wherein the Hon'ble Court held that the revenue authorities to consider the surrounding circumstances and apply the test of human probability*

*(ii) The Ld. CIT(A) has erred in rejecting the findings of the AO when assessee company failed to prove the creditworthiness of the investors.*

*(iii) The Ld. CIT(A) has erred in accepting the contention of the assessee-company that it was able to raise the share capital with unusually high premium as shares of the appellant company would increase once the construction was complete, which is purely speculative and not based on reason facts and not supported by the book value of such shares.*

*(iv) That the appellant craves to add, delete or modify any, of the grounds of appeal before or at the time of hearing.”*

3. At the outset itself, the ld DR for the Revenue submitted before us, that the ld CIT(A) did not ask the remand report from the AO in respect of the documents and explanations submitted by the assessee during the appellate proceedings. The Ld. CIT(A) was erred in accepting the contention of the assessee-company that it was able to raise the share capital with unusually high premium as shares of the assessee company would increase once the construction was complete, which is purely speculative and not based on reasons and facts and not supported by the book value of such shares.

The ld. DR for the Revenue further pointed out that ld. CIT(A) accepted the contention of the assessee without taking any remand report from the Assessing Officer. The assessee company submitted Form No.2 and Form 5 of all the corporate shareholders during the appellate proceedings and also submitted the return of shareholders which are group company of the assessee. Apart from this, the assessee submitted the supplementary partnership deed before the ld. CIT(A), the same has been considered by the ld. CIT(A) without giving an opportunity to the Assessing Officer to examine the genuineness partnership deed. Apart from this, the ld. DR has also pointed out that at assessment stage, the assessee has not proved the identity, genuineness and creditworthiness of the transaction and did not submit all the papers which he has submitted before the ld. CIT(A) during the appellate proceedings. The ld DR for the Revenue further pointed out that partnership deed is dated as 01.04.2013, whereas, the assessee's case under appeal pertains to A.Y.2012.-13, therefore, partnership deed belongs to subsequent year and not the assessment year under consideration, hence the same should not be relied for the purpose of giving relief to the assessee. Therefore, the ld. DR prayed the Bench that the matter should be remitted back either to the file of ld. CIT(A) or to the Assessing Officer to examine the documents, written submissions, papers/partnership deed, Form No.2 and Form 5, submitted by the assessee during the appellate proceedings.

4. On the other hand, Ld Counsel for the assessee begins by pointing out that partnership deed belongs to the assessment year under consideration. The firm has executed the supplementary partnership deed as on 01.04.2013 and terms and conditions of the old partnership deed would continue to apply to the firm. The ld Counsel pointed out that during the assessment proceedings, the assessee submitted before the assessing officer, a copy of audit report, Balance Sheet, Profit and Loss Account and computation of total

income. The assessing officer did not find and irregularity and mistake in the Balance Sheet, Profit and loss account and audit report. For justification of higher premium, that is, why the loss making assessee company issued the shares at a very higher premium, the Id Counsel submitted before the Bench that the assessee company will earn profit in future. The Company has a lot of accumulated work-in-progress in its Balance Sheet and the same would get converted into Revenue, in years to come.

5. We have heard both the parties on this primarily issue. We note that assessing officer framed the assessment order under section 143(3) of the Act, observing the following:

*“It was found from the records that the assessee raised capital at a huge share premium during the year. But the assessee failed to corroborate the high value and creditworthiness of receipt of such share premium. There was no such business activity or book value/EPS which could substantiate the value of premium of unquoted shares. All the letters issued u/s. 133(6) to the investor companies were returned ‘un-served’. Addresses of the registered offices of almost all the companies are same with common directors. All these proved the connivance of the assessee with the investor company. A summon u/s 131 of the Act was also issued to the directors of assessee company to examine the basis of premium and the assessee was also requested to produce directors of the investor company for their examination of identity, genuineness of transaction and their creditworthiness for such investments. One of the directors of assessee company appeared in compliance of summon u/s.131 and his statement was recorded on oath, which is placed on record. The assessee also produced one of the common director of the investor companies and his statement was also recorded on oath which are placed on record. The share application with huge and unjustified share premium was received from corporate entities through banking channel does not justify the creditworthiness of the shareholder. It is for the assessee to prove its claim of share capital introduction and its affairs in respect of its accounts. Merely dumping of papers and documents on the table does not in any way mean compliance. The burden of proof cannot be shifted by filing loads of documents. The documents submitted should be properly explained and summon must be appropriately complied. The Hon'ble Apex Court in the case of Sumati Dayal vs. CIT 214 ITR 801 has expounded that revenue authorities are also supposed to consider the surrounding circumstances and apply the test of human probability. Apparently, there was no reason as to why the share of this company would command so much share premium. Any normal prudent person who makes investment in shares would make the investment in accordance with the fair market value of the shares.*

*Considering the above discussion and facts, it is evident that the assessee failed to justify the high value of share premium and also failed to corroborate the creditworthiness of the investors despite reasonable opportunity. Therefore, share premium received during the year for Rs.3,09,15,000/- and Share Capital issued, subscribed and paid up amounting to Rs.16,25,000/- are treated as unexplained cash credit and added to the total income of the assessee. Penalty Proceedings u/s. 271(1)(c) of the I. T. Act will be initiated separately for concealment of income.”*

From the findings of the assessing officer, as noted above, it is abundantly clear that assessee did not explain the documents so submitted before the AO. The assessee knows the intricacy of its books of accounts, therefore, it is the primary duty of the assessee to cooperate with the assessing officer and explain the accounting entries and details in the books of accounts. If the books of accounts and documents are not explained, to the assessing officer, in that situation, the assessing officer does not have any option but to take a view as per his own wisdom and knowledge. Therefore, merely dumping of papers and documents on the table of the AO does not in any way mean compliance. The burden of proof cannot be shifted by filing tons of documents unless these are properly explained by the assessee. The documents submitted should be properly explained and summon must be appropriately complied with. We note that assessee has failed to perform his primary duty, in assessment proceedings, to explain the documents and details.

6. We note that assessee has submitted certain documents before the Id. CIT(A), first time such as copy of Form No.2 & 5 along with their paid ROC challans, partnership deed containing subsequent date etc and said documents had not been sent to the AO for his examination. Apart from this, the paper book submitted by the assessee before the Bench, contains the following remark:

*“Certified that the above papers/ orders/documents have been filed before the authorities below except papers at Sl.No.1”*

Therefore, the papers at serial No.1 have not been examined by the assessing officer at all. These are additional evidence before the Bench.

7. Besides, the assessee submitted before the Bench a copy of written submissions. Vide page 1 and para 2 of the written submissions, which reads as under:

*“Before CITA, it was submitted for the first time that appellant company and the share subscribing companies all belong to the Merlin Group, leading promoter and builder of the West Bengal”*

Therefore, we note that assessing officer has not been given an adequate opportunity to examine the first- time information submitted before the Id CIT(A). The Id CIT(A) ought to have given an opportunity to assessing officer to examine these new information and documents. At assessment stage also, the assessee had not explained the details and documents submitted to assessing officer. Before us, the assessee has submitted additional evidences, which are mentioned in para 6 of this order. In these

circumstances, we do not wish to comment on the merits of the grounds raised by the assessee.

Therefore, we think it appropriate to remit the issue back to the file of the Id. CIT(A), hence we set aside the order of Id CIT(A) and remit the issue back to the file of the Id. CIT(A), with a direction to take the proper remand report and to give adequate opportunity to the Assessing Officer to examine the documents and evidences submitted by the assessee and after taking proper remand report, adjudicate the issue in accordance with law. Therefore, we allow this appeal for statistical purposes.

8. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 07/12/2018.

Sd/-  
(S. S. Viswanethra Ravi)  
न्यायिक सदस्य / JUDICIAL MEMBER  
कोलकाता /Kolkata;  
Dated:07/12/2018  
RS, Sr.PS

Sd/-  
(A. L. Saini)  
लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant- ITO, Ward-10(2), Kolkata
2. प्रत्यर्थी / The Respondent.- Chetak Vyapar Pvt. Ltd.
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.