

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (A), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri A.T. Varkey, Judicial Member]**

**I.T.A. No. 55/Kol/2016
Assessment Year: 2008-09**

**ITO Ward 4(1), Kolkata.....Appellant
P-7, Chowringhee Square,
Kolkata - 700 069.**

**M/s. Rameshwar Commercial Pvt. Ltd.....Respondent
38, N.S. Road, 2nd Floor,
Kolkata - 700 001.
[PAN: AADCR 7585 H]**

Appearances by:

*Radhey Shyam, CIT (DR) appearing on behalf of the Revenue.
Shri Subash Agarwal, Advocate appearing on behalf of the Assessee*

Date of concluding the hearing : January 07, 2019

Date of pronouncing the order : January 16, 2019

ORDER

Per P.M. Jagtap, Vice President

This appeal is preferred by the Revenue against the order of Ld. CIT(A) - 2, Kolkata dated 22.09.2015 whereby he deleted the addition made by the A.O. u/s 68 by treating the share capital and share premium amount received by the assessee during the year under consideration as unexplained cash credit.

2. The assessee in the present case is a company which is engaged in the business of investment and trading in shares. In the assessment originally completed u/s 147/143(3) vide an order dated 30.06.2010, the total income of the assessee was determined by the A.O. at Rs. 8,496/-. The said order was subsequently set aside by the concerned Ld. CIT vide an order dated 26.03.2013 passed u/s 263 for making the assessment afresh as per following directions:

“The A.O. is directed to : (i) Examine the genuineness and source of share capital, not on a test checkbasis, but in respect of each and every

shareholder by conducting independent enquiry not through the assessee. The bank account for the entire period should be examined in the course of verification to find out the money trail of the share capital.

(ii) Further the A.O. should examine the directors as well examine the circumstances which necessitated the change in directorship if applicable. He should examine them on oath to verify their credentials as director and reach a logical conclusion regarding the controlling interest.

(iii) The A.O. is directed to examine the source of realization from the liquidation of assets shown in the balance sheet after the change of directors, if any."

3. During the course of assessment proceedings initiated by the A.O. in pursuance to the direction given by the Ld. CIT u/s 263, some relevant details were filed by the assessee in respect of share capital and share premium received during the year under consideration. There was however no compliance on the part of the assessee as well as its directors to the summons issued by the A.O. u/s 131 of the Act. The Assessing Officer accordingly held that the direction contained in the order of the Ld. CIT u/s 263 could not be implemented due to non-compliance of the directors of the assessee company and proceeded to make an addition of Rs. 7,07,00,000/- u/s 68 by treating the share capital and share premium amount received by the assessee during the year under consideration as unexplained cash credit in the assessment completed u/s 147/143(3)/263 of the Act vide an order dated 24.03.2014.

4. Against the order passed by the A.O. u/s 147/143(3)/263, an appeal was preferred by the assessee before the Ld. CIT(A) and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) deleted the entire

addition made by the A.O. u/s 68 on account of share capital and share premium amount. Aggrieved by the order of the Ld. CIT(A), the Revenue has preferred this appeal before the Tribunal.

5. We have heard the arguments of both this sides and also perused the relevant material available on record. The learned DR has submitted that the specific directions given by the concerned Ld. CIT in the order u/s 263 could not be implemented by the A.O. due to the non-compliance on the part of the assessee and this vital aspect was completely overlooked by the Ld. CIT(A) while giving relief to the assessee by deleting the addition made by the A.O. u/s 68 on account of share capital and share premium vide his impugned order. He has contended that since the A.O. was required to complete the assessment afresh as per the specific directions given by the Ld. CIT u/s 263 and the A.O. could not do so due to non-compliance on the part of the assessee, the matter should go back to the Assessing Officer for making the assessment as per the directions given by the Ld. CIT u/s 263. He has submitted that the assessee may also be directed to comply with the requirement of the A.O. so as to enable him to make the assessment afresh as per the directions given by the Ld. CIT specifically u/s 263. Since the learned counsel for the assessee has also not raised any objection for sending the matter back to the A.O., we set aside the impugned order of the Ld. CIT(A) and restore the matter to the file of the A.O. for deciding the same afresh as per the specific directions given by the Ld. CIT in the order passed u/s 263. The assessee also directed to make due compliance before the A.O. and extend all the possible cooperation in order to enable the

A.O. to complete the assessment afresh as per the specific directions given by the Ld. CIT u/s 263.

6. In the result, the appeal of the Revenue is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 16th January, 2019.

Sd/-

(A.T. Varkey)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
Vice President

Dated: 16/01/2019
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Rameshwar Commercial Pvt. Ltd., 38, N.S. Road, 2nd Floor, Kolkata – 700 001.
2. ITO, Ward 4(1), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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