

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA**

**BEFORE SHRI S.S. GODARA, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.1157/Kol/2015**

**(निर्धारणवर्ष / Assessment Year: 2012-13)**

|  |            |   |
|--|------------|---|
| <b>ITO, Ward-5(3), Kolkata</b>                           | <b>Vs.</b> | <b>M/s Brightway Tradelink Pvt. Ltd.</b><br><br>22, Strand Road, 2 <sup>nd</sup> Floor, Kolkata-700001. |
| <b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCB 6713 H</b> |            |   |
| <b>(Assessee)</b>  | <b>..</b>  | <b>(Revenue)</b>  |

Assessee by : Dr.P.K. Srihari, CIT DR

Respondent by : Shri Miraj D. Shah, AR

सुनवाईकीतारीख/ Date of Hearing : 05/02/2019

घोषणाकीतारीख/Date of Pronouncement : 08/02/2019

**आदेश / ORDER**

**Per Dr. A. L. Saini, AM:**

The captioned appeal filed by the Revenue , pertaining to assessment year 2012-13 is directed against the order passed by the Commissioner of Income Tax (Appeal)-2, Kolkata, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the Act) dated 18.03.2015.

2. The grounds of appeal raised by the revenue are as follows:

1. "That on the facts and in the circumstances of the case, the Ld. CIT(A)-2, Kolkata, erred in holding that addition of Rs.5,33,40,000/- on account of share

*application money as cash credit u/s.68 was not warranted, ignoring the fact that at the time of assessment before the Assessing Officer the assessee failed to establish the identity, genuineness of transaction and creditworthiness of the shareholders, which are precondition to prove the genuineness of any amount credited in the books."*

*2. "That on the facts and in circumstances of the case, the CIT(A)-2, Kolkata, erred in holding that addition of Rs.1,13,00,000/- on account of undisclosed income was not warranted, ignoring the fact that at the time of assessment before the Assessing Officer, the assessee failed to put forward any reasonable and/or satisfactory explanation in respect of the bogus entry of Rs.1,13,00,000/- as share transactions provided by M/s. Favourite Steel Traders Pvt. Ltd. to the assessee."*

*3. "The appellant craves leave to adduce addition and/or supplementary ground/grounds and to amend and/or alter the ground /grounds any time before or at the time of hearing of the appeal."*

3. The Id. DR at the outset itself submitted before the Bench that during the assessment proceedings the directors of the company were not examined by the Assessing Officer. The Assessing Officer has not issued notice to the directors of this assessee company, which issued shares at huge premium therefore the identity, creditworthiness and genuineness of the directors of the said company has not been established. The Id. Counsel for the assessee has fairly agreed with the proposition canvassed by the Id. DR for the revenue that during the assessment proceedings the directors of the company could not be examined in further and to section 131 / 133(6) process by the Assessing Officer therefore the issue should be remitted back to the file of the Assessing Officer, for fresh assessment.

4. We have heard both the parties and perused the material available on record. We note that during the assessment proceedings the important aspect to examine the directors of the company has not been carried out by the Assessing Officer. Since the company has issued shares at huge premium and in this scenario it was necessary for the Assessing Officer to examine the identity of the directors of the company, therefore we think it fit and appropriate to remit this issue back to the file of the Assessing Officer, and hence we set aside the order of Id. CIT(A) and remit the matter back to the file of Assessing Officer for de novo adjudication.

5. In the result, the appeal of the revenue is treated to be allowed for statistical purposes.

**Order pronounced in the Court on 08.02.2019**

**Sd/-**  
**(S.S.GODARA)**  
**न्यायिकसदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(A.L.SAINI)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata;

दिनांक/ Date: 08/02/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. ITO, Ward-5(3), Kolkata
2. M/s Brightway Tradelink Pvt. Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches