

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

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]

**I.T.A. No. 1694/Kol/2016
Assessment Year: 2012-13**

Income Tax Officer, Ward-10(1), Kolkata.....Appellant

***M/s. Intime Commodeal Pvt. Ltd.....Respondent
AD-76, Salt Lake City
Sector-I
Kolkata - 700 064
[PAN : AACCI 6889 E]***

Appearances by:

Shri Miraj D. Shah, A/R, appeared on behalf of the assessee.

Shri P.K. Srihari, CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : January 7th, 2019

Date of pronouncing the order : February 27th, 2019

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 4, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 05/07/2016, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2012-13.

2. The assessee is an investment company and filed its return of income declaring Nil income on 11/09/2012. The assessee company raised equity share capital of Rs.65,51,400/- (65,51,400 shares of Re.1/- each) at a premium of Rs.11,23,98,600/-. It also received share application money pending allotment of Rs.40,00,000/-. The Assessing Officer vide his order passed u/s 143(3) of the Act, on 22/03/2015 made an addition of Rs.12,29,50,000/- u/s 68 of the Act of these receipts on the ground that the creditworthiness of the share holders could not be established. At page 2 of his order, he states that the notice u/s 131 of the Act, were issued to the Directors of the assessee company. He also states that the assessee failed to produce the investors who invested in shares at a premium, in spite of the repeated opportunities. Hence he made the addition u/s 68 of the Act.

2.1. On appeal, the Id. First Appellate Authority has granted relief by relying on a number of decisions.

3. Aggrieved the revenue is in appeal before us.

4. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4.1. We find that in similar cases this Bench of the Tribunal has been restoring the matter to the file of the Assessing Officer for fresh adjudication, in accordance with law as the Assessing Officer has not granted sufficient opportunity to the assessee to substantiate its case and as the Id. CIT(A) has not applied the propositions of law laid down by the Tribunal on such matters where substantial share premium is charged by a company which has negligible turnover and negligible assets. For the sake of brevity we extract hereinbelow one such order. The order of the Id. CIT(A) cannot be sustained.

5. The 'D' Bench of the ITAT Kolkata Bench, in the case of *Wise Enclaves Pvt. Ltd. -vs- I.T.O. in I.T.A No. 323/Kol/2017; Assessment Year : 2008-09*, under similar circumstances held as follows:-

"7.1. We find that it is not in dispute that the entire transactions of share capital and share premium was the subject matter of verification in the re-assessment proceedings by the Id AO, wherein the shareholders had duly responded to notice u/s 133(6) of the Act by confirming the fact of making investments in the assessee company. The shareholders had also duly furnished their income tax assessment particulars. Pursuant to directions of the Id CIT u/s 263 of the Act, the Id AO was mandated to make direct verifications about the genuineness of the transactions and creditworthiness of the shareholders by making necessary specific enquiries as listed out supra. The Id CIT had specifically directed the Id AO to make enquiries directly from the shareholders and not through the assessee. Hence non-appearance of the assessee before the Id AO intentionally or unintentionally does not make any relevance here. The Id AO admittedly did not resort to make enquiries in the manner stated by the Id CIT u/s 263 of the Act in spite of the fact that all the necessary details were very much available before him. The Id CIT had directed the Id AO to investigate into multiple layers of the investment in shares made by respective shareholders and identify the ultimate person holding controlling interest including the change in shareholding, directorship etc and then take the entire matter to its logical conclusion to bring out the facts on record. From the perusal of the assessment order, we find that this has not been done by the Id AO. In this regard, we would like to place reliance on the decision of Hon'ble Delhi High Court in the case of [CIT vs Jansampark Advertising & Marketing Pvt Ltd](#) in ITA No. 525/2014 dated 11.3.2015 wherein after noticing inadequate enquiry by authorities below, the court had held as under:-

"41. We are inclined to agree with the CIT(Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.

42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT(Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under [Section 148](#) issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a 'further enquiry' in exercise of the power under [Section 250\(4\)](#). His approach not having been adopted, the impugned order of ITAT, and consequently that of CIT(Appeals), cannot be approved or upheld."

7.2. In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the decision of Hon'ble Delhi High Court supra, we deem it fit and appropriate, in the interest of justice and fairplay, to remand the matter back to the file of the Id AO for de novo assessment and to decide the matter as mandated by the Id CIT in [section 263](#) order, after giving sufficient opportunity of being heard to the assessee. Accordingly, the Grounds raised by the assessee are allowed for statistical purposes."

5.1. Consistent with the view taken therein, and for the reason cited above we set aside this issue to the file of the Assessing Officer for fresh adjudication in accordance with law.

6. In the result, appeal of the revenue is allowed for statistical purposes.

Kolkata, the 27th day of February, 2019.

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 27.02.2019
{SC SPS}

Copy of the order forwarded to:

1. M/s. Intime Commodeal Pvt. Ltd
AD-76, Salt Lake City
Sector-I
Kolkata - 700 064

2. Income Tax Officer, Ward-10(1), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches