

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1199/Kol/2015
Assessment Year: 2011-12

Income-tax Officer, Ward-6(2), Kolkata	Vs.	M/s. Jyotirupa Tie-up Pvt. Ltd. (PAN: AACCCJ5353J)
Appellant		Respondent

Date of Hearing	30.01.2019
Date of Pronouncement	15.03.2019
For the Appellant	Shri A. K. Singh, CIT, DR
For the Respondent	Shri S. M. Surana, Advocate

ORDER

Per Shri A.T.Varkey, JM

This is an appeal preferred by the revenue against the order of Ld. CIT(A)-2, Kolkata dated 39.06.2015 for AY 2011-12.

2. The main grievance of the Revenue is against the action of the Ld. CIT(A) in deleting the addition made u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) which according to the Revenue, the assessee failed to explain the creditworthiness of the shareholders and the genuineness of the transaction.

3. At the outset itself, the Ld. AR drew our attention to the fact that there were all together four shareholders out of which three share applicant’s assessments were completed under scrutiny in 143(3) for the AY 2011-12 namely, M/s. Blueberry Vintrade Pvt. Ltd., M/s. Creeper Merchants Pvt. Ltd., M/s. Jeenmata Commercial Pvt. Ltd. and the remaining share applicant M/s. Celebrity Tradecomm Pvt. Ltd., return was acknowledged by the

department u/s. 143(1) of the Act and he drew our attention to the scrutiny assessment orders filed u/s. 143(3) in respect of the three shareholders as stated supra, as well as to the income tax return of M/s. Celebrity Tradecomm Pvt. Ltd., wherein we note that the department has processed the return in respect to the said share applicants u/s 143(1) of the Act. The AO had issued 133(6) notice to the share applicants which have been acknowledged by the AO to have been duly replied by them. The Ld. AR drew our attention to the latest Supreme Court Judgment in PCIT, Panji Vs. Paradise Inland Shipping (P) Ltd. (2018) 93 taxmann.com 84 (SC) wherein the Hon'ble Supreme court has upheld the order of the Hon'ble High Court wherein the Hon'ble High Court has set aside the reassessment proceedings which was initiated by the AO after reopening u/s. 147 of the Act and the action of AO to add the cash credit (share capital raised by that assessee) on the ground that its share were purchased by fictitious companies. When the assessee filed the Writ Petition challenging the validity of the reopening of the assessee, the Hon'ble High court took note of the fact that assessee had produced voluminous document from public offices which maintained records of those companies. The Hon'ble High Court noted that the assessee also brought on record assessment orders passed in the case of the said companies. Thus, the Hon'ble High Court was of the view that the assessee has proved the genuineness of the share transaction and was pleased to set aside the reopening proceeding. This action of Hon'ble High Court was challenged by the Revenue before the Hon'ble supreme Court and the Hon'ble Supreme Court by its order dated 23.04.2018 in Civil Appeal No. S 12644 of 2018 was pleased to dismiss the SLP. So the Ld. AR contended that the assessee has brought on record the identity, creditworthiness and genuineness of the transaction by adducing evidence in the form of assessment orders completed u/s. 143(3) of the Act of the three share applicants and u/s. 143(1) of the Act of one share applicant as well as filed documents in public domain to prove identity, creditworthiness and genuineness of the transaction which are found placed from pages 20 to 75 of the paper book. The assessment order framed u/s. 143(3) of the Act of M/s. Blueberry Vintrade is found at pages 76-80 from where we note that the AO in the scrutiny assessment passed on

17.03.2014 for the AY 2011-12 has taken note that the said assessee has made investment of Rs.10,51,00,000/- in equity shares and thereafter, has passed the 143(3) order; likewise in the case of M/s. Kripper Merchants Pvt. Ltd. for AY 2011-12, the AO passed 143(3) order on 22.03.2014 and the AO noted that this company has raised share capital by issuing 48750/- equity shares of face value of Rs.10/- each at a premium of Rs.1990/- by private placement and the AO has noted that information were also sought for by issuing of notice u/s. 133(6) of the Act from various shareholders and has received replies from them which were placed on record. Moreover, the AO notes that departmental Inspector was also deputed to enquire about the source of share capital of the assessee company along with the sources thereof from and pursuant to which the ITI's report was submitted and that has also been perused by him and placed on record. And thereafter, he framed the assessment order without making any adverse comments against the share subscriber/assessee in this regard. In the case of M/s. Jeenmata Commercial Pvt. Ltd. the assessment u/s. 143(3) was passed on 11.11.2013 for AY 2011-12 and the AO has noted in the order that the paid up share capital of the assessee company was of Rs.51,22,000/- with premium of Rs.49,71,78,000/- and the AO has stated that he had issued 133(6) notice to all share applicants and has received replies from all shareholders and after having cross verified with the details provided by the assessee, no adverse inference view was drawn by the AO in this case also. We note that, in the present case before us, the addition has been made only because the directors of the assessee company did not turn up before the AO and thus, according to AO, creditworthiness of the share applicants could not be ascertained. The Ld. AR drew our attention to the fact that after the AO had acknowledged that sec. 133(6) notice issued against the share applicants were duly replied by them, and thereafter the AO had issued notice u/s. 131 to the director of the assessee company for recording the statement under oath and also asked for the following details:

“Address proof of your company. Please produce any utility bill like electricity bill, water bill etc. as evidence.

Your photo identity and residential proof.

Your income tax return along with P/L & B/Sheet and bank statements for the AY 2011-12 onwards.

The bank statement of your company along with books of accounts for FY 2010-11 i.e. for AY 2011-12.

Copy of annual return of the company filed before ROC for FY 2006-07 onwards.

If there is any change in Directorship from the relevant previous year, then you are requested to come along with the previous Director, along with all the documents, as referred above of the then Director.

Please also produce evidences to prove identity, genuineness and creditworthiness of share applicants for the relevant FY.”

4. The Ld. AR drew our attention to the aforesaid questions/details asked from assessee from where no details/queries regarding creditworthiness of the share applicants was asked by the AO and though the assessee has furnished all the details/explanations to the AO to the aforesaid queries, the AO has taken an arbitrary and adverse view against the creditworthiness of the share applicants. According to Ld. AR, all the aforesaid aspects were taken into consideration by the Ld. CIT(A) and even if the AO had any doubt in respect to the creditworthiness of the share applicants, then the AO ought to have written to the AO of the share applicants as held by the Hon'ble jurisdictional High Court in CIT Vs. Dataware (P) Ltd. ITA No. 263 of 2011 dated 21.09.2011 wherein the Hon'ble jurisdictional High Court has held that in case if the AO nurses any doubt regarding the creditworthiness of the loan creditor, then the AO in turn had to seek report from the AO of the creditor and thereafter only draw adverse inference against the creditor. In this case, the AO has not made any exercise of this nature to discredit the share applicants whose details were filed before the AO and out of the four share applicants, 3 of the share applicants case were scrutinized by their respective AO, who has taken note of the share capital infused and investment made by these share applicants and has made enquiries about it and then only has framed the assessment for AY 2011-12 and the 4th share applicant's return for AY 2011-12 was accepted by department u/s. 143(1) of the Act and

the assessee had answered to all queries and details sought by the AO had been furnished by the assessee. Taking note of all these facts and documents filed in paper book pages 20 to 75, we find that the assessee has discharged the onus by placing all the documents before the AO; and the Ld. CIT(A) has taken note of all these facts to delete the addition which is supported by relevant material, so the impugned order warrants no interference and, therefore, we dismiss the appeal of the revenue.

5. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 15th March, 2019.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 15th March, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – ITO, Ward-6(2), Kolkata.
- 2 Respondent – M/s. Jyotirupa Tie-up Pvt. Ltd., 9/12, Lal Bazar Street, Kolkata-700 001.
- 3 CIT(A)-2, Kolkata (sent through e-mail)
- 4 CIT , Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,
Assistant Registrar