

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A.T.VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1704/Kol/2016

(निर्धारणवर्ष / Assessment Year:2012-13)

ITO, Ward-10(1), Kolkata	Vs.	M/s Oversure Vincom Pvt. Ltd. 7, Haladhar Basu Road, Panihati, Kolkata-700114
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCO 5192 P		
(Assessee)	..	(Revenue)

Assessee by : Shri A.K. Singh, CIT DR

Respondent by : Shri M. D. Shah, AR

सुनवाईकीतारीख/ Date of Hearing : 23/01/2019

घोषणाकीतारीख/Date of Pronouncement : 29 /03/2019

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to assessment year 2012-13, is directed against an order passed by the learned Commissioner of Income Tax (Appeals)-4, Kolkata (in short the ld. 'CIT(A)'), which in turn arises out of assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 22.03.2015.

2. At the outset itself the ld. DR for the revenue submitted that four notices u/s 133(6) of the Act remained unserved to the share applicants namely Life Time Mercantile Pvt. Ltd., Link Point Merchandise Pvt. Ltd., Bijay Kumar Jaiswal and

Manas Chakraborty. Therefore, the identity, creditworthiness and genuineness of these four share applicants have not been proved during the appellate proceedings. Therefore, the Id. DR requested the Bench to remit the case back to the file of the Ld. CIT(A) to examine the four applicants to whom the notices were not served. On the other hand, the Id. Counsel for the assessee has fairly agreed with the submissions of the Id. DR that during the appellate proceedings the notices u/s 133(6) of the Act had not served to the four share applicants i.e. notices were not served to the four addressee and therefore the counsel has agreed with the Id. DR to remit this case back to the file of the Ld. CIT(A) for limited purpose to verify the four addressees and their genuineness, identity and creditworthiness.

3. We have heard both the parties and perused the material available on record. We note that out of fourteen (14) share applicants, four share applicants` identity, creditworthiness and genuineness have not been tested by the Id CIT(A), as the notices U/s133(6) of the Act issued to them had not been served on them. The relevant observations of the Id CIT(A) to the extent applicable to us is given below:

“4.4. It is observed that that the AO had issued notices u/s 133(6) of the Act, to each of the share applicants. Such notices were duly served upon the respective share applicants at their respective addresses on the records of the appellant. Service of such notices u/s 133(6) of the Act to each of the share applicants at their respective known addresses proves their respective identities. It is further observed that the corporate share applicants are registered under the Companies Act, 1956 and are on the records of Registrar of Companies functioning under Ministry of Corporate Affairs, Government of India and the individuals are having permanent Account Numbers. In fact, each of the share applicants has responded to the statutory notices issued to them u/s 133(6) of the Act....

4.8. Therefore, considering the totality of the facts and circumstances of the case, I find substance in the argument of the AR that the appellant has made its case that the Identity of the share applicants are established beyond doubt and on enquiries made by the AO there is no adverse finding reached. on this aspect. Admittedly, all the share applicants are existing assesseees under the Act which establishes the identity and authenticity of the share applicants. About the genuineness of the transactions there is no any adverse finding in the assessment order which is distinct to the facts brought on record by the appellant during the course of assessment proceeding. The creditworthiness of the share applicants as regards their subscription to the share capital is proved by submission of their return, audited annual accounts, their bank statement and replies to notices u/s

133(6) of the Act as depicted hereinabove. The net worth of such subscribers is in excess of the amount invested by each of them as explained hereinabove. The addition made by AO is based on extraneous parameters not germane for deciding the issue. The AO had not dealt with the issue judiciously and consistently with the evidence adduced during the course of the assessment proceedings by the appellant and the replies of the share applicants in respect of the share capital do not warrant the inference that share application monies received is unaccounted cash credit. Hence, I am inclined to accept the arguments tendered by the AR of the appellant in this respect in view of the foregoing discussions, I have no hesitation to hold that the impugned addition made by invoking the provisions of s. 68 by the AO is not justified under the facts circumstances of the case and accordingly, the impugned addition of Rs. 12,80,00,000/- made on this count is directed to be deleted. Thus, these grounds are allowed.”

4. After going through the findings of the Ld. CIT(A) as noted above we note that out of fourteen share applicants, four share applicants have not been served notices u/s 133(6) of the Act, as admitted by both, Id counsel as well as, Id DR for the Revenue. We have verified the paper book submitted by the Id. Counsel for the assessee and we are of the view that these four share applicants should be examined by the Ld. CIT(A) in terms of identity, creditworthiness and genuineness of the share applicants` money. Therefore, we set aside the order of the Ld. CIT(A) and remit the issue back to the file of the Ld. CIT(A) to adjudicate the issue only for limited purposes, that is, identity, creditworthiness and genuineness of the four share applicants, as per the discussion made (supra).

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Court on 29.03.2019

Sd/-
(A.T.VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

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

कोलकाता /Kolkata;

दिनांक/ Date: 29 /03/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. ITO, Ward-10(1), Kolkata
2. M/s Oversure Vincom 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