

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

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

आयकरअपीलसं./ITA No.1920/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2008-09)

M/s Akashdeep Commodities Pvt. Ltd. C/o Santosh Choudhury & Associates, Commerce House, 2A, Ganesh Ch. Avenue, 6 th Floor, Room No. 3, Kolkata-700013	Vs.	ITO, Ward-1(2), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAGCA 5951 K		
(Assessee)	..	(Revenue)

Assessee by : Shri S. Jhajharia, AR
Respondent by : Shri A.K. Singh, CIT DR

सुनवाईकीतारीख/ Date of Hearing : 30/01/2019

घोषणाकीतारीख/Date of Pronouncement : 29/03/2019

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee , pertaining to assessment year 2008-09 is directed against the order passed by the Commissioner of Income Tax (Appeal)-9, Kolkata, which in turn arises out of an assessment order passed by the Assessing Officer u/s 263 /144 of the Income Tax Act, 1961 (in short the Act).

2. At the outset itself, the Id. Counsel for the assessee submitted before us that the notice issued by the Assessing Officer u/s 142(1) has not been received by the assessee during the assessment proceedings. The Assessing Officer has mentioned in page no. 7 of the assessment order that notice which was sent by speed post returned back with postal comment 'not known'. The assessee has submitted the correct communication address but because of postal anomalies the assessee could not receive the notice u/s 142(1) of the Act and as a result he could not plead his case properly at the assessment stage. Therefore, Id. Counsel requested the Bench that the matter should be remitted back to the file of the Assessing Officer for fresh adjudication. Apart from this, the Id. Counsel for the assessee also submitted that the Assessing Officer passed an order u/s 144 / 263 of the Act without taking into account the directions given by the Commissioner of Income Tax, Kolkata-1, u/s 263 of the Act, vide para no. 19 of his order which is reproduced below:

“19. In view of the above, the order passed by the A.O. is erroneous and prejudicial to the interest of revenue & hence, the order passed by the A.O. is set-aside with the direction that he/she should pass the assessment order after conducting independent detailed and complete enquiries into the subscription to the share capital and premium to the extent of Rs. 13,00,00,000/- introduced in this case. The A.O. should trace the source of share capital by enquiring into the various layers through which the money has been introduced in this company as share capital and also examine the directors of subscriber companies by issuing summons u/s 131 of the I.T. Act. The A.O. should send information to the A.Os. having jurisdiction over the subscriber company to the share capital regarding its investment into share capital & premium paid. The A.O. should conduct independent enquires to verify the documents filed before him in respect of proof of subscription to share capital. The A.O. should not confine himself to conducting enquiries into the subscribers to the share capital only on selective basis. The A.O. should also call upon the assessee to identify the persons who are shown as directors of the assessee company and examine them on oath to verify their credential as directors. The A.O. should pass speaking order after providing reasonable opportunity to the assessee and verifying the source of share capital including the share premium of all the subscribers and rotation of money through various bands so as to ascertain the true nature of transaction which will bring to the fore, the reality of the transactions.

Hence the order passed by the A.O. U/S 143(3) r/w 147 for the AY 2008-09 is set aside to be framed de-novo as per directions contained in the above parts of this order.”

The Id. Counsel further pointed out that Co-ordinate Benches of ITAT, Kolkata are remitting the case back to the file of Assessing Officer, based on the similar

identical facts where the Assessing Officer failed to conduct independent enquiry as per the directions given by the Id. CIT u/s 263 of the Act.

3. We have heard both the parties and perused the material available on record. We note that the assessee could not plead his case at the assessment stage because of non-receipt of notices u/s 142(1). We also note that the Assessing Officer has not framed the assessment as per direction given by the Id. CIT u/s 263 of the Act. Therefore, we remit the issue back to the file of the Assessing Officer for fresh adjudication. For that we rely on the judgment of the Co-ordinate Bench in the case of Sukannya Merchants vs. ITO in I.T.A. No. 291/Kol/2016 dated 15.12.2017 restoring the very same issue back to the Assessing Officer in identical circumstances as under:

“We note that the AO pursuant to the order of Ld. CIT had taken note of the directions of the Ld. CIT and issued notice u/s. 142(1) dated 16.08.2013 and has acknowledged that the assessee had furnished the copy of final account, I. T. Acknowledgement, bank statement for the relevant period evidencing the receipt of share application money from the share applicants. Thereafter, the AO makes certain inferences based on the list of shareholders and taking note of the bank statement furnished by the assessee. We note that after the initial notice dated 16.08.2013, thereafter the AO had issued the notice on 26.02.2014 which has been reproduced at page 3 of the reassessment order, wherein AO required the directors of the assessee company to be present before him on 06.03.2014. However, according to the Ld. AR, the assessee received the notice only on 07.03.2014 and thereafter, the assessee requested the AO to provide another opportunity of hearing vide its letter dated 20.03.2014. Thereafter, the AO fixed the date of hearing on 12.03.2014 vide notice dated 10.03.2014. So, according to the assessee company since the directors were not in station till 23.03.2014, the Ld. AR had requested for adjournment till that time. Though the AO has stated that he has issued summons on 24.03.2014 to the assessee company to produce the directors of the company before him on 26.03.2014, the assessee company contended that it has not received the said summon and, therefore, could not make the personal appearance. The AO has drawn adverse conclusion basically because of non-appearance of the directors of the assessee company and that of the shareholder companies. We note that initially the AO started the enquiry on 16.08.2013 which was complied by the assessee by submitting documents which has been acknowledged by the AO. Thereafter, the enquiry was started only at the fag end of February 2014 and the assessee company

had informed the AO that their directors were out of station till 23.03.2014. In the light of the aforesaid facts, we are of the opinion that the assessee did not get fair opportunity to present the evidences before the AO so, there was a lack of opportunity as aforesaid, therefore, it has to go back to AO.

8. We also note that Ld. CIT while setting aside the order of the AO which was passed u/s. 147/143(3) of the Act, the Ld. CIT gave certain guidelines to follow for conducting deep investigation. We also note that similarly placed assessee had challenged the exercise of revisional jurisdiction u/s. 263 of the Act before this Tribunal in those cases one of it of Subha Lakshmi Vanijya Pvt. Ltd. Vs. CIT in ITA No. 1104/Kol/2014 dated 30.07.2015, wherein the Tribunal was pleased to uphold the order passed by the Ld. CIT passed u/s. 263 of the Act, which we learn to have been confirmed by the Hon'ble jurisdictional High Court and the SLP preferred against the decision of the Hon'ble jurisdictional High Court has been dismissed by the Hon'ble Supreme Court. Therefore, similar order of the Ld. CIT passed u/s. 263 of the Act has been upheld. We note that the AO while giving effect to the CIT's 263 order has noted that the assessee company has in fact furnished the documents sought by him to his notice u/s. 142(1) of the Act. However, the AO took the adverse view against the assessee on the plea that the directors of the assessee company and share subscribing companies had not appeared before him on 26.03.2014 and t after taking note that none appeared on 26.03.2014 concluded on the same day 26.03.2014 that entire amount of share application money received along with premium amounting to Rs.8,06,00,000/- which has remained unexplained and added to the income of the assessee. We also note that the Ld. CIT after looking into the pernicious practice of converting black money into white money has given the guidelines to AO as to how the investigation should be conducted to find out the source of source. Since similar order of the Ld. CIT passed u/s. 263 of the Act has been upheld by the Tribunal as well as by the Hon'ble Calcutta High Court as well as the SLP has been dismissed by the Hon'ble Supreme Court, similar order of the Ld. CIT has to be given effect to as directed by the Ld. CIT. We take note that the Ld. CIT with his experience and wisdom has given certain guidelines in the backdrop of black money menace should have been properly enquired into as directed by him. The AO ought to have followed the investigating guidelines and method as directed by him to unearth the facts to determine whether the identity, genuineness and creditworthiness of the share subscribers. We note that the Hon'ble Supreme Court in three judges bench in the case of Tin Box, (supra), has held that since there was lack of opportunity to the assessee at the assessment stage itself, the assessment needs to be done afresh and thereby reversed the Hon'ble High Court, Tribunal and CIT(A)'s orders and remanded the matter back to AO for fresh assessment. So, since there was lack of opportunity as aforesaid it has to go back to AO. We also note that the Hon'ble Delhi High Court in the case of CIT Vs. Jansampark

Advertising & Marketing Pvt. Ltd. in ITA No. 525/2014 dated 11.03.2015 wherein after noticing inadequate enquiry by authorities below have 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 fact 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 inquiry' 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.”

In view of the aforesaid order and in the light of the Hon'ble Supreme Court's decision in Tin Box Company (supra) and taking into consideration the fact the order of the Ld. CIT passed u/s. 263 of the Act in similar cases being upheld up to the level of Apex Court, and taking note of Hon'ble Delhi High Court's order in Jansampark Advertising & Marketing Pvt. Ltd. (supra), we set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO for de novo assessment and to decide the matter in accordance to law after giving opportunity of being heard to the assessee.”

4. Therefore considering the entirety of the facts and circumstances of the case, and the fact that the assessee could not plead his case at the assessment stage due to non-receipt of notice and the Id. Assessing Officer failed to pass the assessment order as per the directions given by the Commissioner of Income Tax u/s 263 of

the Act. Hence we set aside the order of the Id. CIT(A), and remit the issue back to the file of the Assessing Officer for de novo adjudication. For statistical purposes, the appeal of the assessee is treated as allowed.

5. In the result, the appeal of the assessee 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. M/s Akashdeep Commodities Pvt. Ltd.
2. ITO, Ward-1(2), Kolkata
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