

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5819/Del/2018
Assessment Year: 2007-08

Shivalik Cotex Limited,
C-586, LGF, Defence Colony,
New Delhi.

Vs. ITO,
Ward-23(2),
New Delhi.

PAN: AAICS3938E

(Appellant)

(Respondent)

Assessee by	:	Shri Swaranendu Chatterjee, & Ms Itisha Gulati, Advocates
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	01.07.2019
Date of Pronouncement	:	01.07.2019

ORDER

This appeal filed by the assessee is directed against the order dated 31st May, 2018 of the CIT(A), New Delhi, relating to Assessment Year 2007-08.

2. Although a number of grounds have been raised by the assessee, they all relate to the order of the CIT(A) in confirming the addition of Rs.10 lakhs made by the Assessing Officer u/s 68 of the IT Act.

3. Facts of the case, in brief, are that the assessee is a company. The case of the assessee was reopened by issue of notice u/s 148 on 27th March, 2014, after recording

reasons for issue of notice and after obtaining the approval from the Addl. CIT u/s 151 of the IT Act. The reason for such reopening was on account of accepting of accommodation entry by the assessee company from the following two companies:-

1. M/s Tejasvi Investment Pvt. Ltd. Rs.5,00,000/-

2. M/s Singhal Securities Pvt. Ltd. Rs.5,00,000/-

Rs.10,00,000/-

=====

4. The assessee, in response to the notice issued u/s 148 of the Act, submitted that the return already filed may be treated as return filed in response to notice u/s 148. During the course of assessment proceedings, the assessee was asked to produce the Principal Officer of M/s Tejasvi Investment Pvt. Ltd. and M/s Singhal Securities Pvt. Ltd. along with their confirmation, bank statements, ITRs, etc. The assessee failed to do so, but, requested to issue notice u/s 131 of the IT Act. In response to notice u/s 131 to these parties, replies were received from the above two parties, but, nobody attended for personal deposition. The Assessing Officer, therefore, confronted the same to the assessee and asked the assessee to substantiate such accommodation entry of Rs.10 lakhs. Since there was no compliance from the side of the assessee to his satisfaction, the Assessing Officer made addition of Rs.10 lakhs being the amount received as share capital not proved and invoking the provisions of section 68 of the IT Act, the Assessing Officer treated the same as income of the assessee.

5. In appeal, the Id.CIT(A) not only sustained the addition so made by the Assessing Officer, but, further enhanced the same by Rs.20,000/- being the amount incurred by the assessee for arranging such bogus share capital.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Id. counsel for the assessee submitted that the Id.CIT(A) has not given effective opportunity to the assessee to substantiate his case. No enhancement notice was given by him for enhancing the income of the assessee. He submitted that in the interest of justice, the assessee may be given an opportunity to substantiate his case before the CIT(A).

8. The Id. DR, on the other hand, heavily relied on the order of the CIT(A) and opposed the arguments advanced by the Id. counsel for the assessee for restoring the issue to the file of the CIT(A) for fresh adjudication.

9. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. It is the submission of the Id. counsel for the assessee that the addition made by the Assessing Officer and sustained by the CIT(A) is not justified. Subsequent to hearing of the appeal by the CIT(A), the decision of the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron & Steel (P) Ltd. (2019) 103 taxmann.com 48 (SC)* and the decision of the Hon'ble Delhi High Court *PCIT vs. NDR*

Promoters Pvt. Ltd. (2019) 410 ITR 379 (Del) were pronounced. Neither the assessee nor the CIT(A) had the benefit of these decisions. Considering the totality of the facts and in the interest of justice, I deem it proper to restore the issue to the file of the CIT(A) with a direction to give one more opportunity to the assessee to substantiate its case. Needless to say, the Id.CIT(A) shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 01.07.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 01st July, 2019

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi