

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.461/Del./2017
(ASSESSMENT YEAR : 2012-13)**

M/s. Canyon Financial Services Ltd., vs. ITO, Ward 5 (3),
Chamber 1, A – 257, Sarita Vihar, New Delhi.
New Delhi – 110 076.

(PAN : AAACC3744J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 18.07.2019

Date of Order : 26.07.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Canyon Financial Services Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 30.11.2016 passed by the Commissioner of Income - tax (Appeals)-2, New Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

“1. That on the facts and circumstances of the case, Ld. ITO erred in law and facts of this case on initiating and concluding the proceedings u/s 153C / 143(3) of the Income Tax Act, 1961, on the basis of documents already on record and belong to the Dalmia Equities

Private Limited found during the search and seizure operation carried out at the premises of Sh. Parag Dalmia, 113-114, Mohta Building, 4-Bhikaji Cama Place, New Delhi, as a part search operation on M/s Dalmia Group on 28th January, 2012 by the investigation wing, Unit-VI(l), New Delhi.

2. That on the facts and circumstances of the case, the Ld CIT(A) erred in law and facts of this case in making the addition of Rs.1,98,00,000/- into the income of the appellant for the AY 2012-13 as unexplained credit u/s 68 of the Income Tax Act, 1961 instead of treating the same as share capital and share premium.

3. That the Ld CIT(A) erred in law and facts of this by not considering the details and documents produced / submitted under protest, in support of the identity, creditworthiness and genuineness of the share capital/share premium received by the appellant during the AY 2012-13.

4. That on the facts and circumstances of the case, the Ld CIT(A) erred in law and facts of this case in making the addition of Rs.9,20,00,000/- into the income of the appellant for the AY 2012-13 as unexplained credit u/s 68 of the Income Tax Act, 1961 instead of treating the same as un-secured loan received by the appellant.

5. That Ld CIT(A) failed to appreciate the evidences filed during the course of assessment proceedings wherein the genuineness and creditworthiness of loan transaction has been duly explained and hence same cannot be taxed as income of the Appellant.

6. That the Order u/s 153C / 143(3) of the Income Tax Act, 1961 dated 31st March, 2015 passed by the Ld ITO is bad in law and void ab-initio.”

2. Briefly stated the facts necessary for adjudication of the issues at hand are : On the basis of search and seizure operation carried out at the premises of Dalmia Group of cases on 28.01.2012 by the Investigation Wing, Unit-VI (1), New Delhi, certain documents viz. A-3/DB-8 were found and seized belonging to the assessee. On the basis of seized material, satisfaction note was recorded and notice under section 143 (2) of the Income-tax Act, 1961 (for short 'the Act') was issued. Assessing Officer (AO) noticed that the assessee has received fresh share capital of Rs.7,92,000/- and fresh share premium of Rs.1,90,08,000 totaling to Rs.1,98,00,000/- from M/s. Ratiff Accessories Pvt. Ltd. (formerly M/s. Anubhav Footwear Pvt. Ltd.). Assessee company also claimed to have received unsecured loan of Rs.9,20,00,000/- from M/s. Net Agrofoods Pvt. Ltd.. On failure of the assessee to furnish evidence so as to prove creditworthiness and genuineness of the transaction, AO made addition of Rs1,98,00,000/- on account of share application/premium and Rs.9,20,00,000/- on account of unsecured loan u/s 68 of the Act.

3. Assessee carried the matter by way of appeal before the Id. CIT (A) who has dismissed the appeal ex-parte though on merit. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. Senior DR as well as on the basis of documents available on the file.

5. We have heard the Id. Departmental Representative for the revenue to the appeal who has relied upon the order passed by the AO, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Perusal of the impugned order passed by the Id. CIT (A) apparently goes to show that on the first day of hearing i.e. 09.09.2016, assessee moved request for adjournment and consequently, the case was adjourned to 05.10.2016 on which date none appeared and then Id. CIT (A) recorded in para 3.0 to have issued the notice on 06.10.2016 and 27.10.2016 but has not brought on record the fact, if such notice was ever served upon the assessee company. Entire exercise has been completed within a period of one and half month which shows that the appeal has been decided in haste without getting the service effected. There is not an iota of evidence on file if 05.10.2016, the date of hearing requested by the assessee was ever brought to the notice of assessee company or notice reported to have issued thereafter was

served upon the assessee company. Moreover, if at all appeal was to be decided ex parte, CIT (A) was required to decide on merit as he has no power to dismiss the appeal for non-prosecution. So, in these circumstances, we are of the considered view that taking a holistic view and to decide the controversy at hand once for all, the issue is required to be set aside to the Id. CIT (A) who shall decide the appeal after providing adequate opportunity of being heard to the assessee. Consequently, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 26th day of July, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 26th day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-2, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**