

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 2434/KOL/2019
Assessment Year: 2008-2009**

**M/s. Mayfair Commotrade Pvt. Limited,.....Appellant
9, Jagmohan Mullick Lane, Kolkata-700 007
[PAN: AAFCM2895P]
-Vs.-**

**Income Tax Officer,.....Respondent
Ward-2(1), Kolkata,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata-700069**

Appearances by:

*Shri Soumitra Choudhury, Advocate, for the Appellant
Shri Supriyo Pal, JCIT (D.R.), for the Respondent*

Date of concluding the hearing : November 22, 2019

Date of pronouncing the order : November 22, 2019

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-14, Kolkata dated 28.10.2019 passed ex-parte, whereby he confirmed the addition of Rs.5.68 crores made by the Assessing Officer under section 68 by treating the share application money received by the assessee during the year under consideration along with share premium as unexplained cash credit.

2. The assessee in the present case is a Company, which is engaged in the business of share trading and investment. In the assessment completed under section 143(3) read with section 147 vide an order dated 29.04.2010, the total income of the assessee was determined by the Assessing Officer at Rs.12,140/- as against the total income of Rs.340/- returned by the assessee. The records of the said assessment came to be

examined by the concerned Id. CIT and on such examination he found that the share capital and share premium amount of Rs.5.68 crores received by the assessee-company during the year under consideration was accepted by the Assessing Officer without making the required enquiries as were called for in the facts and circumstances of the case. He found that the identity as well as creditworthiness of the concerned share applicants and genuineness of the relevant transactions was accepted by the Assessing Officer merely by relying on the primary documents filed by the assessee and there was no further independent enquiry that was conducted by the Assessing Officer regarding the source of funds for the investment in the shares of the assessee-company at the premium as high as Rs.190/- per share. He also found that no exercise had even been made by the Assessing Officer to examine the veracity of the documents furnished by the concerned share applicants. He also noted that no independent enquiry was conducted by the Assessing Officer to examine the genuineness of the Company or its Directors. The order passed by the Assessing Officer under section 143(3) read with section 147 on 29.04.2010 accordingly was held to be erroneous as well as prejudicial to the interest of the revenue by the Id. CIT and by setting aside the same vide his order passed under section 263, the Assessing Officer was directed by the Id. CIT to make the assessment afresh as per the following directions:-

“The A.O. should make comprehensive and detailed enquiries into the source of subscription to the share capital. The A.O. should pass the assessment order after conducting independent details and complete enquiries into the subscription to the share capital and premium to the extent of Rs.5.68 crores 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 by issuing summons u/s 131 of the I.T. Act. 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 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 call upon the assessee to identify the persons who are shown as directors of these

companies and examine them on oath to verify their credential as directors. The A.O. should pass a 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 hands so as to ascertain the true nature of transaction which will bring to the fore, the reality of the Transactions”.

3. In pursuance of the order passed by the Id. CIT under section 263, notices under section 131 were issued by the Assessing Officer to the concerned shareholders asking them to personally appear for examination/verification. There was, however, no response from the concerned shareholders to the said notices issued by the Assessing Officer. Even the assessee-company also failed to produce the concerned shareholders along with the relevant supporting documents for verification before the Assessing Officer. The Assessing Officer, therefore, treated the entire amount of share capital including share premium of Rs.5.68 crores as unexplained cash credit and addition to that extent was made by him to the total income of the assessee under section 68 in the assessment completed under section 143(3) read with section 263 of the Act vide an order dated 28.03.2014.

4. Against the order passed by the Assessing Officer under section 143(3) read with section 263, an appeal was preferred by the assessee before the Id. CIT(Appeals) and since there was no compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee and confirmed the addition made by the Assessing Officer under section 68 vide his appellate order dated 28.10.2019 passed ex-parte. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has

submitted that the notices stated to be issued by the Id. CIT(Appeals) fixing the appeal of the assessee for hearing on the various dates were never received by the assessee and such non-receipt of notices resulted into non-appearance of the assessee when its appeal was called for hearing before the Id. CIT(Appeals). He has also submitted that a bulk paper book was filed by the assessee before the Id. CIT(Appeals) containing all the relevant documents to establish the identity and creditworthiness of the concerned shareholders as well as the genuineness of the relevant transactions but the same were not taken into consideration by him while disposing of the appeal of the assessee vide his impugned order ex-parte confirming the addition made by the Assessing Officer under section 68. He has also submitted that proper and sufficient opportunity was not given by the Assessing Officer during the course of assessment proceedings to produce the concerned share applicants along with the necessary supporting documents for verification. It is also observed that specific directions were given by the Id. CIT in his order under section 263 to be followed by the Assessing Officer while completing the assessment afresh and a perusal of the assessment order passed by the Assessing Officer shows that the Assessing Officer has failed to comply or follow the said directions. The Id. Counsel for the assessee has submitted that the assessee is in a position to produce the concerned shareholders along with the relevant documentary evidence for verification of the Assessing Officer and urged that one more opportunity may be given to the assessee for this purpose by sending the matter back to the Assessing Officer. Keeping in view all the facts and circumstances of the case, we are inclined to accede to this request made by the Id. Counsel for the assessee. Even the Id. D.R. has not raised any objection for sending the matter back to the Assessing Officer for the necessary verification. The impugned order passed by the Id. CIT(Appeals) is accordingly set aside and the matter is restored to the file of the Assessing Officer for deciding the same afresh as per the specific direction given by the Id. CIT in the order under section 263 after

giving the assessee proper and sufficient opportunity to produce the concerned share applicants along with the necessary supporting documentary evidence for verification. As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Assessing Officer and will extend all the possible cooperation in order to enable the Assessing Officer to complete the assessment afresh expeditiously.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on November 22, 2019.

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

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 22nd day of November, 2019

- Copies to :*
- (1) **M/s. Mayfair Commotrade Pvt. Limited,
9, Jagmohan Mullick Lane, Kolkata-700 007**
 - (2) **Income Tax Officer,
Ward-2(1), Kolkata,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata-700069**
 - (3) *Commissioner of Income Tax (Appeals)-14, Kolkata;*
 - (4) *Commissioner of Income Tax, Kolkata- , Kolkata;*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.