

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
(समक्ष)Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य
[Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 2588/Kol/2018
Assessment Year: 2009-10

Highlight Commotrade Pvt. Ltd. (PAN: AACCH0877P)	Vs.	Income-tax Officer, Ward-1(4), Kolkata.
Appellant		Respondent

Date of Hearing	14.01.2020
Date of Pronouncement	29.01.2020
For the Appellant	Shri Miraj D. Shah, Advocate
For the Respondent	Shri Imokaba Jamir, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-5, Kolkata dated 04.09.2018 for AY 2009-10.

2. The sole issue involved in this appeal of assessee is against the action of Ld. CIT(A) in confirming the addition of Rs.13,21,00,000/- made on account of share capital and premium as unexplained cash credit u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and also against the confirming of interest u/s. 234A, 234B and 234C of the Act.

3. Briefly stated facts are that the AO in assessment order had observed that the assessee company was incorporated on 09.07.2008 with the object of carry on the business of trading and investment in shares and securities [refer Memorandum & Articles of Associations of the company]. The AO noted that the return of income filed by the assessee company for the AY 2009-10 which was its first year. The AO noted

that the assessee company had claimed to have received share capital of Rs.1,00,000/- in cash from two persons namely Shri Manoj Kurnar Agarwal and Shri Malay Das. According to AO, the assessee company had further claimed the receipt of share capital and share premium of Rs. 13,20,00,000/- from eight (8) companies and that each share of the assessee company of the face value of Rupee 1/- was issued at premium of Rs.99/- to the 8 companies. In the course of assessment proceedings, the AO acknowledges that the assessee company produced its director Shri Manoj Jain and directors of the 8 companies which were claimed to have made payment to the assessee company on account of share capital including share premium. The AO noted that all the persons produced before him were relatives of the director of the assessee company Shri Manoj Jain. However, the AO was not convinced with the personal appearance of the assessee's directors as well as that of the directors of eight (8) share subscribing companies since they were all the relatives of the assessee's director Shri Manoj Jain and the AO wondered as to how a company in its first year of incorporation could command premium of Rs.99/- per share. According to AO, the assessee failed to give any proper explanation on this issue which prompted him to add the entire share capital and premium as income of the assessee by observing as under:

“In this present case it is observed that the assessee, virtually, was not engaged in any business activity during the year. The share holders have made subscription towards share capital, of assessee company, at a high premium. It is not believable that any person, having any prudent business sense, will make investments by way of huge share subscription alongwith such huge share premium, in this assessee company which has virtually no business activity and also which virtually does not show any bright appreciation in the near future to give any sort of dividend to its investor. It is also not believable that any concern or person will be attracted to invest its funds, for any sort of lucrative return, from this assessee company. Hence it was necessary to examine the actual motive of the share subscribers who had invested their funds In the assessee company, to arrive at the logical conclusion about the true nature of the aforesaid share transactions between the assessee company and its purported investors. This could not be explained by the assessee company and its subscribers.

In the light of the ratio laid down in the aforesaid judicial pronouncements and discussion made in the aforesaid paras vis -a vis the facts and circumstances in the instant case as well as unsatisfactory explanation of the assessee company regarding its claim of introduction of fresh share capital, including premium, it is held that its purported fresh share capital, along with share premium, amounting to Rs.13,21,00,000/-

, is nothing but assessee's own money conducted under the grab of fresh share capital into its Books of account. It is apparent that such funds have been utilized by the assessee for making its own investments. Hence, the AO treated the sum of Rs.13,21,00,000/- as unexplained cash credit found in the books of account of the assessee relevant to AY 2009-10 and was accordingly added back to the total income of the assessee company."

4. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee by stating that the assessee could not establish the genuineness of transaction and creditworthiness of the shareholders. Hence, the confirmed the addition of Rs.13,21,00,000/- u/s. 68 of the Act. Aggrieved, assessee is before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that this was the second round of assessment before the AO. In the first round, the AO reopened the assessment u/s. 147 and completed it on 13.04.2012 u/s. 147/143(2) of the Act. However, it was interfered by the Ld. Pr. CIT-1, Kolkata u/s. 263 of the Act and the reassessment order dated 13.04.2012 was set-aside back to the AO along with detailed guidelines to conduct the investigation into the infusion of share capital and premium. We note that the Ld. Pr. CIT u/s. 263 of the Act had set aside the reassessment with the direction that the AO 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.13,21,00,000/- introduced in the instant case, and investments of Rs.13,21,00,000/- made in this case. It was further observed by the Ld. Pr. Commissioner of Income Tax-1, Kolkata that thorough and proper enquiry into the existence, and creditworthiness of the share subscribers and the genuineness of share subscription transactions claimed by the assessee company was not made and also the genuineness of the assessee company and its directors was not examined in the assessment order dated 13.04.2012 passed u/s. 147/143(3) of the Act.

6. However, we note that in the second round, the assessee pursuant to the summons issued by the AO produced the directors of the assessee company as well as

the director of eight (8) share subscribing companies. However the AO have not accepted the genuineness of the of share capital and premium on the ground that assessee being a new company [since it was incorporated only on 09.07.2008] could not have received premium of Rs.99/- per share in its first year i.e. AY 2009-10 and according to AO, no prudent businessmen would have ventured to invest in a new company such a huge amount without seeing any extraordinary future prospects. Since according to AO, the assessee failed to give satisfactory explanation about this issue as well as could not convince him that the assessee company was into genuine business activity with proper infrastructure, the AO took adverse view against the assessee. However, before us, the main grievance of the Ld. AR of the assessee was that though the Ld. Pr. CIT u/s. 263 by order dated 27.02.2015 has given detailed guidelines while setting aside the reassessment order dated 13.04.2012, the AO has not bothered to carry out the same as ordered and has based his decision on suspicion and conjectures and have mulct the addition against the assessee without providing proper opportunity to assessee when the assessee had complied with the summons by promptly producing directors etc. before the AO. According to him, if the AO still had some doubts in his mind should have taken steps to confront the assessee and then only should have drawn adverse inference against the assessee. So, according to him, this omission on the part of AO to confront the assessee with the doubts in his mind amounted to lack of proper opportunity before the AO during assessment stage and relying on the decision of Hon'ble supreme Court in *Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC)* wants one more opportunity before AO. We find force in the submission of AR, since the assessee produced the director of assessee company as well as the directors' of eight share subscribing companies and produced documents to discharge the onus, still if AO nursed some doubts against the assessee, then it was incumbent upon him to confront the assessee without which his action is bad in law. And since the omission as noted above tantamount to lack of proper opportunity before the AO during assessment stage, we are inclined to set aside the impugned order of Ld. CIT(A) and remand the matter back to AO for fresh assessment as per the guidelines given by ld. Pr CIT u/s. 263 of

the Act after giving proper opportunity to assessee. And the assessee is directed to participate diligently during the assessment proceedings before the AO.

7. In the result, the appeal of assessee is allowed for statistical purposes.

Order is pronounced in the open court on 29th January, 2020

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 29th January, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Highlight Commotrade Pvt. Ltd., C/o, Vasudha Jain, 15B, Dr. Rajendra Prasad Sarani, Kolkata-700 001.
2. Respondent – ITO, Ward-1(4), Kolkata.
3. The CIT(A)-5, Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.