

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Dr. Arjun Lal Saini, Accountant Member**

**I.T.A. No. 2586/KOL/2018
Assessment Year: 2009-2010**

***Samudra Commotrade Pvt. Limited,.....Appellant
C/o. Manoj Jain,
15B, Dr. Rajendra Prasad Sarani, Kolkata-700001
[PAN:AAMCS2512G]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-1(4), Kolkata,
Aayakar Bhawan,7th Floor,
P-7, Chowringhee Square, Kolkata-700069***

Appearances by:

*Shri Miraj D. Shah, A.R., for the Appellant
Shri Dhrubajyoti Ray, JCIT, for the Respondent*

Date of concluding the hearing : January 27, 2020
Date of pronouncing the order : 5th February, 2020

O R D E R

Per Shri Satbeer Singh Godara, Judicial Member:-

1. This assessee's appeal for assessment year 2009-10 arises against the CIT(A), 5, Kolkata's order dated 04-09-2018 passed in case no. 460/CIT(A)-5/Wd-1(4)/18-19/Kol involving proceedings u/s 147/143(3)/144/263 of the Income-tax Act, 1961 (in short 'Act').

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance canvassed in the instant pleads that both the lower authorities have erred in law and on facts in holding its share capital/premium amounting to

Rs.99,750,000/- as unexplained cash credits on account of its alleged failure in proving identity, genuineness and creditworthiness of the investor parties as per hon'ble apex court's judgments in Sumati Dayal & Durgaprasad More reported in [(1995) 214 ITR 801(SC) & 82 ITR 540(SC)]. A perusal of the case file indicates the instant its involve multiple round of proceedings u/s. 147/143(3)/144 r.w.s 263 of the Act. This assessee is a company engaged in share trading business. It filed its return on 25-08-2019 declaring total loss of Rs. 4478/-. The same stood assessed. The assessing authority then formed reasons to believe that assessee's taxable income liable to be assessed had escaped assessment. He therefore initiated section 148/147 proceedings and framed re-assessment dt. 13-04-2012. The CIT then exercised his section 263 revision jurisdiction vide order dt. 27-02-2015 and held that since the Assessing Officer had not carried out necessary investigation regarding impugned share capital/premium, the said re-assessment was erroneous causing prejudice to the interest of the revenue. He therefore directed the Assessing Officer to conduct an independent, detailed and complete investigation regarding assessee's investor parties.

3. We proceed further to notice that the assessing authority completed his consequential assessment on 31-03-2016 quashing this taxpayer's failure to prove identity, genuineness and creditworthiness of the investor parties in the light of hon'ble apex Court's judgments (supra) to conclude that said share capital/premium was liable to be added as unexplained cash credits u/s. 68 of the Act. The CIT(A) has upheld the impugned additions in his lower appellate discussion under challenge.

4. We have given our thoughtful consideration to the rival contentions against and in support of the impugned share capital/premium addition. We find that both the lower authorities' action regarding share capital/premium does not deserve to be concurred with in principle. This is for the reason that the PCIT's revision directions (supra) had made it explicitly clear to the Assessing Officer that he would conduct "independent" "detailed" and "complete" enquiry(ies) regarding genuineness and creditworthiness of assessee's share capital/premium's investor parties. Learned departmental representative fails to rebut the clinching fact the impugned consequential assessment invoking sec. 68 unexplained cash credits addition nowhere complied with the same since the Assessing Officer put the entire onus on the assessee to prove foregoing aspect than proceeding independently. We, therefore deem it appropriate to restore the matter back to the assessing authority to re-examine the entire issue(s) afresh going by the CIT's original revision directions. Suffice to say, assessee would be afforded adequate opportunity of hearing in consequential proceedings.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on Feb. 05 , 2020.

Sd/-

(Dr. Arjun Lal Saini)
Accountant Member

Kolkata, the 5

Sd/-

(Satbeer Singh Godara)
Judicial Member

day of Feb., 2020

**PP/SPS*

- Copies to :*
- (1) Samudra Commotrade Pvt. Limited,
C/o. Manoj Jain,
15B, Dr. Rajendra Prasad Sarani, Kolkata-700001*
 - (2) Income Tax Officer,
Ward-1(4), Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square, Kolkata-700069*
 - (3) Commissioner of Income Tax (Appeals)-5, Kolkata;*
 - (4) Commissioner of Income Tax- , Kolkata*
 - (5) The Departmental Representative*
 - (6) Guard File*

By order

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