

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य
 [Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]

ITA No.1246/Kol/2018
Assessment Year: 2012-13

A.G. Infraproperties Pvt. Ltd. (PAN: AAJCA6073H)	Vs.	Income-tax Officer, Ward-4(3), Kolkata
Appellant		Respondent
Date of Hearing		21.01.2020
Date of Pronouncement		18.03.2020
For the Appellant		Shri Miraj D. Shah, Advocate
For the Respondent		Shri Dhrubajyiti Roy, JCIT, Sr. DR

ORDER

Per A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-13, Kolkata dated 16-03-2018 for the assessment year 2012-13.

2. At the outset itself, the Ld. AR of the assessee Shri Miraj D. Shah submitted that the assessee company in this year had collected share capital and premium and during the assessment proceedings the AO issued notice u/s. 133(6) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) to the share holders as per Form 2 and that the AO acknowledges that the shareholders have confirmed the payment of share capital as well as premium. And since this was the first year of incorporation of the assessee company the AO doubted the huge share capital and premium collected by the assessee. The AO issued summons u/s. 131 of the Act to the directors of the assessee company as well as the share subscribing companies. According to AO, none of the directors of the share subscribing companies appeared before him and instead they only filed the confirmation in respect of subscribing to the shares as well as share premium. The Ld. AR contended that the director of the assessee company Shri Girdharilal Saraf had in fact appeared pursuant to the section 131 notice and has answered the queries asked for by the AO. However, according to Ld.

AR, the AO was not satisfied and based on suspicion and surmises and alleging that directors of the share subscribing companies did not appear before him he made the addition of the entire share capital plus premium, which action of the AO has been confirmed by the Ld. CIT(A).

3. According to the Ld. AR, the directors of the share subscribing companies were out of station and, therefore, they could not appear before the AO since there was no sufficient reaction time. According to the Ld. AR, given an opportunity the assessee is ready to produce all the directors of all the share subscribing companies to allay all the doubts persisting in the mind of the AO, if any. Per contra, the Ld. DR though opposed the plea of the Ld. AR, however, wants the Ld. AR to undertake that before the AO the assessee will produce the directors of the share subscribing companies.

4. Having heard both the parties and perused the material available on record, we note that the AO has noted that this is the first year of incorporation of the assessee company and it had collected share capital and premium amount of Rs.1.99 cr. According to AO, pursuant to the issue of notice u/s. 133(6) of the Act, the share subscribers had confirmed infusement of the amount in question to the assessee company. However, the AO taking note that this was the first year of incorporation of the assessee company issued sec. 131 notices to all the share subscribers as well as to the assessee. And the AO acknowledges that pursuant to the notice, the director of the assessee company appeared before him. However, the AO noted that the directors of the share subscribing companies did not turn up before him. Since the directors did not turn up before him, the AO drew adverse inference against the assessee and made the entire addition of Rs.1.99 cr. Before us, the Ld. AR submits that the sec. 131 notice summoning the directors of the share subscribing companies could not be complied with due to their earlier commitments they were out of station and now they would be in a position to appear before the AO and satisfy all the queries raised by the AO. We note that the share subscribers pursuant to sec. 133(6) notice had confirmed to the AO of subscribing the share capital along with premium. However, their directors could not appear before the AO due to earlier commitments and since they were out of station. Taking into consideration the aforesaid facts, we are of the considered opinion that the assessee did not get proper opportunity before the AO during the assessment proceedings.

Therefore, relying on the order of the Hon'ble Supreme Court in the case of Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC), we set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO for fresh assessment in accordance to law after hearing the assessee. The assessee is directed to diligently participate in the assessment proceedings and to produce the directors of the share subscribing companies as directed by the AO. Therefore, the appeal of assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 18th March, 2020.

Sd/-

(P. M. Jagtap)
Vice President

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 18th March, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. M/s. A. G. Infraproperties Pvt. Ltd., 85, N. S. Road, 4th floor, R. No. 408, Kolkata-72.
2. Respondent – ITO, Ward-4(3), Kolkata.
3. CIT(A)-13, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar