

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA  
[Virtual Court Hearing]**

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

**I.T.A. No. 154/KOL/2019  
Assessment Year: 2014-2015**

**Deputy Commissioner of Income Tax,.....Appellant**  
**Circle-45, Kolkata,**  
**P-7, Chowringhee Square,**  
**Aayakar Bhawan, Kolkata-700069**

**-Vs.-**

**Confident Financial Consultancy Pvt. Limited,.....Respondent**  
**3, Saklet Place, 2<sup>nd</sup> Floor,**  
**Central Avenue, Kolkata-700072**  
**[PAN: AADCC4061H]**

**Appearances by:**

*Shri Vijay Shankar, CIT, D.R., for the Appellant*  
*Shri Vinod Kumar Jain, FCA, for the Respondent*

Date of concluding the hearing : July 13, 2020  
Date of pronouncing the order : July 17, 2020

**O R D E R**

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

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-12, Kolkata dated 04.10.2018 and the solitary substantive ground raised therein reads as under:-

*“Whether on the facts and circumstances of the case, the Id. CIT(Appeals) was justified in coming to a conclusion regarding the period of investment or non-investment, without regarding the matter to the Assessing officer or consulting the records”.*

2. At the outset, it is noted that there is a delay of 17 days on the part of the Revenue in filing this appeal before the Tribunal. In this regard,

the Revenue has moved an application seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay on the part of the Revenue in filing this appeal before the Tribunal. Even the Id. Counsel for the assessee has not raised any objection in this regard. The said delay is accordingly condoned and the appeal of the Revenue is being disposed of on merit.

3. The assessee in the present case is a Company, which filed its return of income for the year under consideration on 30.09.2014 declaring a loss of Rs.7,021/-. The said return was selected for scrutiny and a notice under section 143(2) of the Income Tax Act, 1961 was issued by the Assessing Officer to the assessee. There was, however, no compliance on the part of the assessee to the said notice issued by the Assessing Officer under section 143(2) of the Act as well as the subsequent notices issued by him under section 142(1) of the Act. The Assessing Officer, therefore, was left with no option but to complete the assessment to the best of his judgment under section 144 of the Act. In the assessment so completed vide an order dated 06.12.2016, the Assessing Officer, *inter alia*, made an addition of Rs.14,14,42,120/- on account of investment made by the assessee-company in unlisted equity shares appearing in the balance-sheet as on 31.03.2014 by treating the same as undisclosed income of the assessee as there was a failure on the part of the assessee to explain the source of the said investment.

4. Against the order passed by the Assessing Officer under section 144, an appeal was preferred by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted on behalf of the assessee-company that the investment in equity shares of unlisted companies having been duly recorded in the books of account, the same could not be added to the total income of the assessee under section 69 by treating the same as unexplained. It was

also submitted on behalf of the assessee-company before the Id. CIT(Appeals) that the said investment was not made in the year under consideration and the same having been made in the earlier years, no addition could be made in the year under consideration by treating the said investment as unexplained. To support and substantiate its case on this issue, the assessee-company filed evidence in the form of audited annual accounts for the years ended on 31.03.2012, 31.03.2013, 31.03.2014 and also the details of investment made from the financial years 2007-08 to 2013-14. After taking into consideration the said evidence filed by the assessee as well as the submissions made in the light of the said evidence, the Id. CIT(Appeals) deleted the addition made by the Assessing Officer on this issue for the following reasons given in paragraph no. 4.2 of his impugned order:-

*"4.2. I have considered the facts of the case and the submissions of the appellant. The AO added back an amount of Rs.14,14,42,120/- as income from undisclosed sources. The appellant has shown this amount as investment in its balance sheet. The appellant assessee has stated that this amount is being shown in its balance sheet in FY 2011-12. There is no investment in this relevant FY. It is clearly established from the submissions filed by the appellant that the impugned amount relates to previous year 2011-12 and hence the AO was not justified in law in bringing the same amount to tax as income from undisclosed sources in AY 2014-15. I find that the judgments relied upon by the appellant are applicable to the present case. This ground of appeal is allowed".*

Aggrieved by the order of the Id. CIT(Appeals), the Revenue 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 limited grievance of the Revenue as projected in the ground raised in this appeal as well as further argued by the Id. CIT (D.R.) is that the assessment having been completed by the Assessing Officer under section 144 due to non-

compliance on the part of the assessee, the Id. CIT(Appeals) ought to have given an opportunity to the Assessing Officer to verify the claim of the assessee made for the first time before him that the investment in the unlisted equity shares in question was actually made by the assessee-company in the earlier years and not in the year under consideration. Keeping in view the submissions made on behalf of the assessee before the Id. CIT(Appeals) as well as before us and having regard to the material available on record, we are unable to accept this contention of the Revenue. First of all, it is observed that the evidence in the form of audited annual accounts for the year under consideration as well as for the immediately preceding two years was filed by the assessee-company before the Id. CIT(Appeals) to establish that the investment in question in the equity shares of unlisted companies was made by it in the earlier years and not in the year under consideration. Even the details of investment made by the assessee-company from the financial years 2007-08 to 2013-14 were furnished by the assessee-company before the Id. CIT(Appeals), which clearly established that the investment in question was not made by the assessee-company in the year under consideration and the same was an old investment made by the assessee-company even prior to 31.03.2008. Having verified the claim of the assessee from this cogent documentary evidence, the Id. CIT(Appeals) having powers, which are co-terminus with that of the Assessing Officer, found himself satisfied that the investment in question was made by the assessee in the earlier year and not in the year under consideration and consequently he deleted the addition made by the Assessing Officer under section 69 by treating the same as unexplained by relying on the various judicial pronouncements cited on behalf of the assessee in support of its case.

6. As rightly contended on behalf of the assessee-company before the Id. CIT(Appeals) as well as before us, the addition on account of unexplained investment can be made under section 69 of the Act, which

provides that “where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year”. In the present case, it was not only established by the assessee-company on the basis of cogent evidence that the investment in question was not made by it in the year under consideration, but even the fact that the said investment was duly recorded in the books of account of the assessee was never disputed even by the Assessing Officer. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) deleting the addition made by the Assessing Officer on account of the alleged unexplained investment made by the assessee in the unlisted equity shares and upholding the same on this issue, we dismiss this appeal filed by the Revenue.

**7. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on July 17, 2020.

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

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

***Kolkata, the 17<sup>th</sup> day of July, 2020***

*Copies to : (1) Deputy Commissioner of Income Tax,  
Circle-45, Kolkata,  
P-7, Chowringhee Square,  
Aayakar Bhawan, Kolkata-700069*

*(2) Confident Financial Consultancy Pvt. Limited,  
3, Saklet Place, 2<sup>nd</sup> Floor,  
Central Avenue, Kolkata-700072*

*(3) Commissioner of Income Tax (Appeals)-12, 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*

*Laha/Sr. P.S.*