

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.477/Kol/2019

(निर्धारणवर्ष / Assessment Year:2012-13)

ITO, Ward-1(3), Kolkata	Vs.	M/s Trilokpati Exim Pvt. Ltd.
		14C, M. D. Road, 4th Floor, Kolkata-700007.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAECT 1933 G		
(Appellant)	..	(Respondent)

Appellant by : Shri Ram Bilash Meena, CIT

Respondent by :ShriVinod Kr. Jain, FCA

सुनवाईकीतारीख/ Date of Hearing : 27/07/2020

घोषणाकीतारीख/Date of Pronouncement : 16/09/2020

आदेश / O R D E R

Per Dr. A.L. Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2012-13, is directed against the order passed by the Commissioner of Income Tax (Appeal)-1, Kolkata, in appeal no. 18449/CIT(A)-1/Kol/Ward-1(3)/2015-16, dated 15.01.2019, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 25 /03/2015.

2. The grounds of appeal raised by the Revenue are as follows:

1) *That on the facts and circumstances of the case and on Law Ld. CIT(A) has erred in granting relief to the assessee in respect of addition made u/s 68 of*

Rs.9,93,00,000/- by the AO for lack of explanation and for want of satisfaction, simultaneously, in respect of:

- i) Identity of the persons with whom transactions took place.
- ii) Genuineness of transactions for which credit entries entered in the books of Accounts.
- iii) Capacity of the persons or their creditworthiness from whom such receipts were recorded.

2) That on the facts and circumstances of the case and on Law Ld. CIT(A) has erred in granting relief to the assessee without taking into account the Journal entries being passed and accounting entries made in the respective Ledger of books of accounts maintained by the assessee.

3) The Ld. CIT(A) erred in interpreting the applicability of the Sec. 68 in regard to invoking the provision stating that 'as no infusion of cash for purchase of shares and that cannot be held as being credited to the account of the assessee' whereas the recording of the receipt in the Balance Sheet of the assessee establishes the credit of the sum in the Book of Accounts maintained by the assessee in the form of receipt of fresh share capital including share premium during F. Y. - 2011-12.

4) The Ld. CIT(A) erred in overlooking the fact that the assessee company allotted its own shares instead of making payment, thus transferring the shares, while Ld. CIT(A) drawing conclusion basing on court decisions.

5) The appellant craves the leave to make any addition, alteration, modification etc, of the grounds either before the appellate proceedings, or, in the course of appellate proceedings.

3. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the order dated 26.09.2018, passed by the Division Bench of this Tribunal in the case of ITO, Ward-13(1), Kolkata Vs. M/s Anand Enterprises Ltd. in ITA No. 1614/Kol/2016 for A.Y. 2012-13, whereby the issue of barter transaction that is shares are issued in lieu of other shares, (exchange of shares) has been discussed in favour of assessee and held that when assessee had allotted shares for consideration other than cash then provisions of section 68 (cash credit) does not apply. Learned counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

4. Learned Departmental Representative relied upon the orders of the authorities below.

5. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in the case of ITO, Ward-13(1), Kolkata Vs. M/s Anand Enterprises Ltd. in ITA No. 1614/Kol/2016 for A.Y. 2012-13. In this order, the Tribunal has inter alia observed as follows:

“4. We have heard the rival submissions. At the outset, we find that the assessee had not raised any share capital by receipt of cash consideration in the instant case. The shares were issued for consideration other than cash in lieu of assessee company making investment in shares in some other company. Effectively, the assessee purchased certain shares from the aforesaid six shareholders and instead of paying cash to them, the assessee company issued shares in its own company to those shareholders. Hence the assessee had made investments in shares of another company for which consideration was settled through issuance of its shares to those shareholders. Now the crucial point is whether the provisions of section 68 could be invoked in the instant case for making investment towards share capital. There was no receipt of any sum as provided u/s 68 of the Act in the instant case. It would be pertinent here to refer to the decision of Hon’ble Supreme Court in the case of Shri H.H. Rama Varma vs. CIT reported in 187 ITR 308 (SC) wherein it was held that ‘any sum’ means ‘sum of money’. We find that ld. CIT(A) had deleted the addition by observing as under:

“6. On consideration of the AR’s submission, especially the portion reproduced above, it is seen that section 68 of I.T. Act, 1961 does not apply to cases of purchase of share assets and allotment of shares by the appellant when purchase and allotment are under a barter system. The AO has not refuted the appellant’s claim that shares were allotted in exchange for acquisition of shares by the appellant from the companies which surrendered such shares to the appellant. Though as per the AO to apply section 68 to make the said addition in the appellant’s hand. Transactions purportedly executed by entry operators involve multiple layers and other complexities, introducing delays in introduction of unaccounted cash/money and multiple players being incorporated entities. Measures taken by the AO in the course of the assessment proceeding falls much short of what is required to be done in such case laws, which have evolved on this issue, call for concerted actions on the part of the AO pinpointing utilization of unexplained/unaccounted/untaxed money and the players and the beneficiaries effectively using the weblike scheme to plunder black money. For example introduction and use of black money in the present case may be at a different point of time and in different hands. The AO’s action in the present case cannot be upheld in law. I, therefore, delete the additions and grounds of appeal Nos. 3 & 4 are allowed.”

4.1. We find that the Hon’ble Allahabad High Court in the case of CIT vs. Sohanlal Singhania reported in 235 ITR 616 (All) had held in the context of allowability of donation as deduction u/s 80G of the Act that the expression ‘any sum paid’ used in the said section denotes ‘sum of money paid’. Hence if certain shares were donated by a person, then the same would not fall eligible for

deduction u/s 80G of the Act. We also find that the Hon'ble Jurisdictional High Court in the case of *Jatia Investment Company (Co.) vs. CIT* reported in 206 ITR 718 (Cal) also supports the case of the assessee herein, wherein it was held as under:

"It is finally emphasised by learned counsel for the assessee that the ultimate result is that the firm becomes a debtor to GB and Co. and the three non-financial companies of the group got discharged. Learned counsel also emphasised that, at the worst, it can be said that the assessee-firm has received valuable assets being the said shares of the equivalent value of the debt taken over by it from the companies, i.e., Rs. 11.20 lakhs.

Therefore, the question of cash credit does not come in, there being no actual passing or receipt of cash. In other words, the transactions are mere book entries. It was contended that the fact that the entries passed through the cash book could not detract from or efface the essential nature of the entries. It was also urged that the entries were passed through the cash book so that the repayment of loans by the said three companies could be established before the Reserve Bank of India. But, according to Shri Bajoria, that does not mean that it amounts to an artifice employed to deceive any authorities, because the transactions showing the amount as received in cash and paid away spontaneously and simultaneously were not actual but only notional. He, however, stated that, as far as the question of section 68 is concerned, the nature of the transactions and the entries clearly show that no cash, in fact, flowed. It was further stressed that the transactions are above board. No outsider is involved. The entries were made in the books of the concerns of the same group. The shares in question were also of the companies of the group. There was no attempt at hiding the transactions. Nor is it the case of any of the parties to the transaction that there was any passing of cash. Every party unequivocally stated that the transactions were carried into effect merely by way of adjustments of the said loans and the share transfers.

Shri A. C. Moitra, the learned advocate for the Revenue, reiterated the grounds on which the Tribunal has affirmed the addition of the amount of Rs. 11.20 lakhs as unexplained cash credit. He particularly emphasised that the assessee's contention that the entries are only adjustment entries is not acceptable, because the adjustment entries are not made through the cash book. It is an accepted principle of accounting that book adjustments and the entries in effecting them are made by journal entries and not cash entries. He urged that the purported motive of the entries being the reduction of loans of the three limited companies does not explain the whole matter, because the entries are cash entries. The fact remains that, at every stage, the parties showed the payments and receipts of cash even when there was no cash available for such entries. This quite justifies the addition as sustained by the Tribunal.

We have perused the assessment order carefully. We find that cash did not pass at any stage though entries were made in the cash book showing payments and receipts ; but since the entries made a complete round, no passing of cash was necessary for the purpose of making the entries. That there was no passing of cash is also admitted by the Income- tax Officer himself. We have already extracted the observation of the Income-tax Officer in paragraph 14 of his assessment order. The Income- tax Officer has clearly opined that all the respective parties did not receive cash nor did pay cash as none had any cash for the purpose. The only point in the assessment order is that the entries not involving the passing of cash should not have found a place in the cash book, but in the ledger account through journal entries. There is another self-contradiction

in the Income-tax Officer's finding that, if there was no real cash entry on the credit side of the cash book, but merely a notional or fictitious cash entry, as admitted by him, there is no real credit of cash to its cash book ; the question of inclusion of the amount of the entry as unexplained cash credit cannot arise.

One of the grounds of the Tribunal for disbelieving the assessee's case is that the adjustment entries were made by notional cash entries with a view to bringing down the debt-and-capital ratio, i.e., that while being discharged of the debt the said companies also jettisoned their assets, i.e., the shares held by them of equivalent sum without achieving the avowed purpose. Here the Tribunal certainly misdirected itself. The ratio to be reduced is of the loan in relation to the share capital and the reserves. Jettisoning the shares had the desired effect of reducing the borrowed capital.

Again, as regards the Tribunal's refusal to take notice of the directions of the Reserve Bank, it is not correct for the Tribunal to hold that the said document was a new evidence in the true sense of the term. The assessee has been consistently pleading before the lower authorities that the entries had to be made in order to bring the companies in conformity with the said direction. Moreover, the direction of the Reserve Bank is a public document within the meaning of section 74 of the Evidence Act, 1872. Documents of a public nature and public authority are generally admissible in evidence subject to the mode of proving them as laid down in sections 76 and 78 of the Evidence Act.

In our view, the effect and import of the transactions is that the assessee took over the liability of the aforesaid non-financial companies to GB and Co. in exchange for the shares as aforesaid.

In the premises, we answer all the questions, in the affirmative and in favour of the assessee and against the Revenue.”

4.2. It would be pertinent to note that in the instant case, the ld. AO had not doubted the investment made in shares by the assessee company. There is no dispute raised by the ld. AO with regard to number of shares; value thereon invested by the assessee company. We also find that the Co-ordinate Bench decision of Pune Tribunal in the case of Kantilal and Bros. vs. ACIT reported in 52 ITD 412 (Pune Trib.) also supports the case of the assessee.

4.3. In view of the aforesaid observations, in the facts and circumstances of the case and respectfully following the aforesaid judicial precedents relied upon hereinabove, we hold that the ld. AO had erroneously invoked the provisions of section 68 of the Act to the facts of the instant case, which, in our considered opinion, are not at all applicable herein. This is a simple case of acquiring shares of certain companies from certain shareholders without paying any cash consideration and instead the consideration was settled through issuance of shares to the respective parties. Moreover, in the balance sheet of the assessee company in the schedule to share capital, it is very clearly mentioned by way of note that the fresh share capital was raised during the year for consideration other than cash. Hence we hold that provision of section 68 of the Act are not applicable in the instant case and accordingly the entire addition deserves to be deleted which has rightly been done by the ld. CIT(A) which does not require any interference. Accordingly, grounds raised by the revenue are dismissed.”

6. As the issue is squarely covered in favour of the assessee by the decision of the coordinate bench, in the case of ITO, Ward-13(1), Kolkata Vs. M/s Anand Enterprises Ltd. in ITA No. 1614/Kol/2016 for A.Y. 2012-13 (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Division Bench (supra). We find no reason to interfere in the said order of the Division Bench, therefore, respectfully following the judgment of the Coordinate Bench (supra) we confirm the order passed by the Id CIT(A).

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

Order pronounced in the Court on 16.09.2020

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 16/09/2020

(SB, Sr.PS)

Copy of the order forwarded to:

1. ITO, Ward-1(3), Kolkata
2. M/s Trilokpati Exim Pvt. Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches