

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.4531/Del/2017
Assessment Year: 2012-13

Blooming Diagnostics & Impex Pvt. Ltd., C/o R.K. Tuli & Associates, CA, 11/37, Old Rajinder Nagar, New Delhi.	Vs	ITO, Ward-5(1), New Delhi.
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PAN : AACCB9882G

(Appellant)

(Respondent)

Assessee by	:	Shri Baldev Raj, CA
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	26.10.2021
Date of Pronouncement	:	26.10.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the ex parte order dated 10th March, 2017 of the CIT(A)-2, New Delhi, relating to the assessment year 2012-13.

2. Although a number of grounds have been raised by the assessee, these all relate to the ex parte order of the CIT(A) in confirming the various additions made by the AO and determining the total income of the assessee at Rs.2,24,13,520/- against the returned income of the assessee of Rs.5,95,800/-.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of trading of drugs, medicines and pathological items. It filed its return of income on 6th July, 2013 declaring the total income of Rs.5,95,810/-. The case was selected for scrutiny under CASS and notice u/s 143(2) of the Act dated 02.09.2014 was issued and served upon the assessee through speed post. A questionnaire dated 22nd October, 2014 u/s 142(1) of the Act was issued and served upon the assessee for compliance.

4. During the course of assessment proceedings, the AO asked the assessee to prove the identity, genuineness and credit worthiness of the person from whom share capital/share application money/share premium amounting to Rs.2,98,68,677/- has been received. From the various details furnished by the assessee, he noted that during AY 2011-12, the assessee had received an amount of Rs.5,45,500/- towards share capital and share premium which has gone upto Rs.2,98,68,677/- during the year. Thus, there is an increase in the share capital and share premium of Rs.2,44,63,177/-. The AO, in order to examine the identity, genuineness and credit worthiness of the persons issued summons u/s 131 of the Act to various parties from whom the assessee has received share capital/share premium. He also asked the persons to confirm the investment with evidence about their sources of income from where the alleged investments were made. They were asked to file the copy of their ITR for A.Y. 2011-12 and 2012-13, statement of affairs, balance sheet, P&L Account and the bank statement, etc.

Since the assessee failed to substantiate with evidence to the satisfaction of the AO regarding the identity and credit worthiness of the persons and the genuineness of the transactions, the AO, after accepting the amount of Rs.60 lakhs, claimed to have been received from Shri J.D. Tyagi, who is a retired government servant and whose bank account was showing sufficient funds since 20th February, 2012, accepted the same as genuine and made an addition of Rs.1,84,63,177/- to the total income of the assessee u/s 68 of the IT Act. The AO also made various other additions such as VAT payable ó Rs.35,619/-; disallowance of expenses u/s 40(a)(ia) ó Rs.16,57,830/-; ad hoc disallowance of various expenses ó Rs.5 lakhs; and disallowance on late deposit of TDS ó Rs.16,569/-. Accordingly, the AO determined the total income of the assessee at Rs.2,24,13,516/-. Since there was no compliance by the assessee before the CIT(A) despite four statutory notices issued, the Id.CIT(A), in the ex parte order passed by him, sustained the various additions made by the AO and also enhanced the income of the assessee by Rs.60 lakhs which the AO had allowed.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. Counsel for the assessee submitted that in the interest of justice the assessee should be given an opportunity to substantiate his case before the CIT(A) since there was no proper compliance before the CIT(A).

7. The Id. DR, on the other hand, while opposing the arguments advanced by the Id. Counsel for the assessee, submitted that the Id.CIT(A) has given sufficient opportunity to the assessee to substantiate its case, but, the assessee did not appear before the CIT(A). Further, the Id.CIT(A) has decided the appeal on merit. He accordingly submitted that the order of the CIT(A) be upheld and the grounds raised by the assessee should be dismissed.

8. We have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that despite three opportunities granted by the CIT(A), the assessee did not appear before the CIT(A) for which the Id.CIT(A) not only sustained the additions made by the AO, but also enhanced the assessment by Rs.60 lakhs being share application money/share capital received from Shri J.D. Tyagi. It is the submission of the Id. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate its case with evidence to the satisfaction of the CIT(A). Considering the totality of the facts of the case and in the interests of justice, we deem it proper to restore the issue back to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) and substantiate its case without seeking any adjournment under any pretext, failing which, the Id.CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The order was pronounced in the open court on conclusion of the hearing itself, i.e., on 26th October, 2021.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 26th October, 2021.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi