

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
(Virtual Court Hearing) BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.64/Kol/2018
Assessment Year: 2012-13

M/s Baba Bhootnath Commex Pvt. Ltd.Appellant
10/4, Hunger Ford Street,
Ground Floor, Kol-700017.
[PAN: AADCP5165D]

vs.

ITO, Ward-7(1), Kolkata.....Respondent

Appearances by:

Shri S. M. Surana, Advocate, appeared on behalf of the appellant.

Shri Sallong Yaden, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 07, 2022

Date of pronouncing the order : February 07, 2022

Hearing through Video Conferencing

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 24.02.2017 of the Commissioner of Income Tax (Appeals)-16, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act(hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. For that the Ld. CIT(A) erred in confirming the order of the AO making addition of Rs.1,23,20,000/- under sec. 68 without properly appreciating the facts and evidences filed and Summarily rejecting the contentions of the assessee by relying on the judgement in the case of CIT vs. Nipun Builders Pvt. Ltd (2013) 30 taxmann 292 (Delhi), CIT v. Precision Finance Pvt. Ltd. (1994) 208 ITR 465 (Calcutta) and Raj Mandir Estates Pvt. Ltd v. PCIT, Kolkata (Calcutta HC) when the facts of the said case were quite different from the case in hand.

2 For that the Ld. CIT(A) erred in confirming the addition made by the Ld AO whereas the assessment itself bad in law since the notice u/s 145(2) was not served within six months from the end of the year in which the return was filed.

3. For that in the circumstances of the case the Ld. CIT(A) erred in confirming the addition made U/s. 68 particularly when the initial onus were duly discharged by the assessee.

4 For that in the circumstances of the case the Ld. CIT(A) erred in confirming the addition made U/s. 68 whereas the notices issued to the share applicants u/s 133(6) by the Ld. A.O were duly served and complied with by filing details and documents as called for by the Ld. AO.

5. For that the Ld CIT(A) erred in confirming the addition made u/s 68 merely for the reason that the summons u/s 131 were remained un-complied with whereas in fact no summons u/s 131 were issued to the share applicants.

6. For that the Ld. CIT(A) erred in confirming the assessment order passed by the Ld. A.O which was passed in haste without providing the appellant sufficient opportunity of being heard.

7. For that the assessee craves leave to add, alter or withdraw any ground/s of appeal before the hearing of the appeal.”

2. At the outset, the ld. Counsel for the assessee invited our attention to the impugned assessment order to submit that, in this case, the addition has been made on the ground that the assessee could not substantiate the identity, creditworthiness of the share subscribers and genuineness of the transaction. He further brought to our attention to the relevant paras of the assessment order to submit that though, the assessee had furnished all the required documents but the Assessing Officer insisted for the personal appearance of the director of the assessee-company. He further submitted that the Assessing Officer did not consider the evidences furnished by the assessee rather made the impugned addition for non-appearance of the director of the assessee-company.

The Ld. CIT(A) also confirmed the addition so made by the Assessing Officer.

The ld. Counsel has further submitted that due to unavoidable circumstances, the director of the company could not appear at that time before the Assessing Officer. However, the assessee had already furnished the required evidences which the Assessing Officer was supposed to examine and arrive at a correct conclusion. However, the Assessing Officer instead of examining the evidences furnished by the assessee made the impugned additions only because of the non-appearance of the director of the assessee-company. The ld. Counsel has further submitted that proper enquiries/examination of evidences is required in this case to arrive at a correct conclusion. He has further undertaken that if so required by the Assessing Officer, Directors of the assessee company shall appear before

the Assessing Officer. He, therefore, has submitted that the matter be restored to the file of the Assessing Officer for proper enquiries and investigations.

3. The Ld. DR, on the other hand, has relied upon the findings of the lower authorities and submitted that since the director of the company did not comply with the notices issued u/s 131 of the Act, therefore, the Assessing Officer was justified in treating the aforesaid transactions as not genuine.

4. We have considered the rival submissions of the Ld. representatives of the parties. As contended by the Id. Counsel for the assessee that, in this case, the additions have been made by the Assessing Officer and further confirmed by the CIT(A), only because of the non-appearance of the director of the assessee-company. Further there is no rebuttal by the Ld. DR regarding the submissions of the assessee that the required evidences and details furnished by the assessee have not been thoroughly examined by the Assessing Officer before arriving at a conclusion that the transactions were not genuine. We, therefore, are of the view that interest of justice will be well-served if the matter is restored to the file of Assessing Officer to examine the issue afresh and make proper enquiries and investigations duly considering the evidences and details furnished by the assessee. The director/directors of the assessee-company shall make themselves available before the Assessing Officer, if so required by the Assessing Officer, relating to any queries in relation to the aforesaid transactions. With the above directions, the matter is restored to the file of the Assessing Officer for de novo assessment.

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

Kolkata, the 7th February, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 07.02.2022.

RS

Copy of the order forwarded to:

1. M/s Baba Bhootnath Commex Pvt. Ltd.
2. ITO, Ward-7(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches