

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E" NEW DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.7848/Del/2019
निर्धारणवर्ष/Assessment Year: 2009-10

M/s. Neelkanth Tradelink Pvt. Ltd., 401, White House, 382, Sant Nagar, East of Kailash, New Delhi - 110 065.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 18 (1) New Delhi.
PAN : AACCN4587E		
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by :	N o n e;
राजस्वकीओरसे /Revenue by :	Ms. Garima Sharma, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	09/06/2022
उद्घोषणाकीतारीख/Pronouncement on :	30/08/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-15, New Delhi [CIT (Appeals)] dated 09.08.2019 for the assessment year 2009-10

2. The assessee in its appeal has raised the following substantive grounds:-

“1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AO despite that reopening the assessment under Section 147 of the Act and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.

3. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AO despite that the reasons recorded for reopening the assessment does not meet the requirements under section 147 of the Act, bad in law and are contrary to the facts.

4. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.

5. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the reopening despite the fact that the same has been made by the AO without independent application of mind.

6. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO despite that the assessment order having been framed on the basis of material collected at the back of -the assessee without providing adequate opportunity to the assessee to rebut the same in violation of statutory provision of section 142(3) of the Act.

7. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the order passed by the AO despite the fact that reopening the assessment proceedings as well as re-assessment order passed under section 148 of the Act are illegal, as the same have been made without assumption of valid jurisdiction.

8. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the

action of the AO despite that the reassessment proceedings initiated by the learned AO without valid approval of the prescribed authority under the Act is bad in law and liable to be quashed.

9.(i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.86,70,000/- made by AO on account of share capital/ share premium holding the same to be not genuine invoking the provisions of section 68 of the Act.

(ii) That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of the shareholders as well as the genuineness of the transaction.

10.(i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.1,56,060/- made on account of commission paid treating the same as unexplained investment.

(ii) That the addition has been confirmed by applying an arbitrary rate of 1.8% on the above eligible amount without there being any basis for the same.

11. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the above addition rejecting the contention of the assessee that the same has been made merely relying on the report of the investigation wing and without application of his own mind.

12. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO despite the fact that same has been made without conducting an independent enquiry during the course of assessment proceedings.

13. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO despite the same having been made on the basis of statement recorded without giving assessee an opportunity to cross examine the same.

14. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in

confirming the above addition rejecting the contention of the assessee that same has been made by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was filed. The notice sent through Registered Post with acknowledgement due fixing the date of hearing as 09.06.2022 returned un-served by the Postal authorities. Therefore, we proceed to dispose of this appeal on hearing the Id. DR.

4. Ground No. 1 is general. Need no adjudication.

5. In ground Nos. 2 to 8 of the grounds of appeal the issue involves is directed against re-opening of assessment by the Assessing Officer is bad in law.

6. Before us the assessee could not prove that how the reopening of assessment made by issue of notice under section 147 of the Income Tax Act, 1961 (the Act) was bad in law was demonstrated. In the circumstances these grounds are dismissed and the order of the Assessing Officer reopening the assessment under section 147 is upheld.

7. In ground Nos. 9 to 14 the assessee challenged the order of the Id. CIT (Appeals) in sustaining the addition of Rs.86,70,000/- made under section 68 of the Act in respect of share capital and share premium and disallowance of Rs.1,56,060/- towards commission expenses on the above transaction.

8. The Id. DR submits that on scrutiny of information received from Investigation Wing in the case of P. K. Jindal Group, it was noticed that the assessee company had received share capital and

share premium of Rs.86,70,000/- from company's entities engaged in the business of providing accommodation entries in lieu of cash payment. It was also noticed that in this process commission of 1.8% was paid by the assessee. Therefore, assessee company was required to prove the identity, creditworthiness and genuineness of the transactions of various parties from whom the assessee obtained accommodation entries. As the assessee could not prove identity, genuineness and creditworthiness of the transactions, the Assessing Officer made addition under section 68 of the Act in respect of the share capital and share premium amounting to Rs.86,70,000/- and also disallowed commission payment of Rs.1,56,060/-. The Id. CIT (Appeals) sustained the addition as the assessee failed to discharge its onus to prove the identity, creditworthiness and genuineness of the transactions.

9. We have perused the orders of the authorities below. On perusal of the assessment order, we find that the assessee has not led any evidence to prove that the share capital and share premium received from various parties as mentioned in the assessment order are genuine. The assessee could not prove the identity, creditworthiness and genuineness of the transactions. Even before the Id. CIT (Appeals) the assessee could not prove the genuineness of the transactions entered into by the assessee with various parties through P. K. Jindal Group. The Id. CIT (Appeals) placing reliance on the decision of the PCIT Vs. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC) sustained the addition made by the Assessing Officer under section 68 of the Act by the Assessing Officer. None of the findings of the lower authorities have been rebutted before us. Thus, we sustain the order of the lower authorities and reject the grounds raised by the assessee.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on : 30/08/2022.

Sd/-
(G. S. PANNU)
PRESIDENT

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 30/08/2022.

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	25.08.2022
Date on which the typed draft is placed before the dictating member	26.08.2022
Date on which the typed draft is placed before the other member	30.08.2022
Date on which the approved draft comes to the Sr. PS/ PS	30.08.2022
Date on which the fair order is placed before the dictating member for pronouncement	30.08.2022
Date on which the fair order comes back to the Sr. PS/ PS	30.08.2022
Date on which the final order is uploaded on the website of ITAT	30.08.2022
Date on which the file goes to the Bench Clerk	30.08.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	