

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "B", KOLKATA**

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.1619/Kol/2018  
Assessment Year: 2012-13**

M/s. Nilu Construction Pvt. Ltd.  11/1C/1, Glorious Space, East Topsia Road, Kolkata – 700046.  <b>PAN: AACCN 9790 K</b>	Vs.	ITO, Ward-11(3), Kolkata
(Appellant)		(Respondent)

**Present for:**

Appellant by : None  
Respondent by : Smt. Ranu Biswas, ACIT, DR

Date of Hearing : 16.06.2022

Date of Pronouncement : 13.09.2022

**ORDER**

**PER SONJOY SARMA, JM:**

The instant appeal filed by the assessee pertaining to the A.Y. 2012-13 is directed against the order passed u/s 250 of the I.T. Act, 1961 by the Ld. CIT(A) dated 15.05.2018. The assessee is in appeal before the Tribunal raising the following grounds:

*i. For that the Learned Commissioner(Appeals)(hereinafter referred to as the appellate authority) has failed to appreciate the contentions and submissions raised by the appellant, as it was out and out illegal to have disallowed the transactions procuring share capital for the appellant company, to the tune of 135,00,000 INR, on the sole reason that the directors of the 5 share holding companies did not personally appear in response to the summons issued under section 131 of the said Act, especially when the companies in question have entered appearances through authorized agents, produced and furnished all required documents, received the summons through speed post and they have also not been reported as SHELL companies by the ROC.*

*ii. For that the appellate authority failed to appreciate that under the Income tax laws, there is no provision by which the appellant company can compel the shareholding companies so as to make their directors personally available to the*

*income tax authorities, especially of when the income tax authorities, despite issuing summons under section 131 of the said Act failed to take any steps against the of shareholding companies, when the directors of those did not personally appear before them.*

*iii. For that the appellate authority failed to appreciate that though the directors of the 5 shareholding companies did not appear in person, they had time and again represented themselves through authorized agents and had caused to produce all the relevant documents especially in relation to share transactions, company identity, books of accounts etc.*

*iv. For that all the documentary evidences along with the books of accounts were produced before both the assessing authority and the appellate, which, unfortunately, both of them failed to appreciate and consider, thus making the impugned order and demand liable to be quashed and/or set aside.*

*v. For that the Assessing authority while computing the "total Assessed Income", at the time of Assessment, failed, refused and/or neglected to consider the expenditures for the whole year and such omission on his part was not considered by even the appellate authority, which renders the whole demand made against the assessee null and void.*

*vi. For that the appellate authority failed to consider that the assessee has his books of account audited by a reputed Chartered Accountant who has made no adverse comment in his report.*

*vii. For that the appellate authority failed to appreciate that the value of the shares, as arrived by the assessing officer was totally wrong who had pegged such value at a meager 66 INR, while the actual value of the shares, considering the worth of construction work in progress (WIP) reflecting the un-build revenue, should have been slated more than 150 INR per share, while the transaction disbelieved by the Assessing Officer considered the value of shares at 100 INR only.*

*viii. For that the appellate authority failed to appreciate that although the value of 150 INR per share was arrived at considering the future growth, un-build revenue and work-in-progress, the share transfer was made only on 100 INR which is only one-third of such escalated share price. This itself shows caution and restraint being exercised on the part of the appellant assessee and speaks galore about its honesty.*

*ix. For that the impugned appellate order dated May 15, 2018 passed by the Learned Commissioner (Appeals)- 4, Kolkata, is otherwise wrong and illegal and liable to be modified or set aside.*

*x. For that the appellant craves leave to add, amend or alter any or any other grounds later on at the time of or before hearing of this appeal.”*

2. At the outset, it is noted that there is a delay of 7 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there is a sufficient cause for the delay of 7 days on the part of the assessee in filing this appeal before the Tribunal and delay in filing the instant appeal is accordingly condoned.

3. Brief facts of the case are that the return of income for AY 2012-13 was filed on 29.09.2012 declaring total income of Rs. Nil. The assessee company was engaged in the business of construction and the case of the assessee was selected for scrutiny and assessment completed u/s 143(3) of the I.T. Act vide assessment order dated 24.03.2015. During the assessment proceeding, the AO has assessed the total income of the assessee for Rs. 2,35,00,000/- by making addition to the total income u/s 68 of the Act on account of unexplained credit in the books of the assessee in the form of share application money including premium.

4. Dissatisfied with the above order, the assessee preferred an appeal before the Id. CIT(A) wherein the appeal of the assessee was partly allowed. The Id. CIT(A) while deciding the issue divided into two parts for adjudication (i) addition for Rs. 1,00,00,000/- on account of amount received from M/s. Acetylene Trexim Pvt. Ltd. and (ii) addition for Rs. 1,35,00,000/- on account of amount received from five other parties. The Id. CIT(A) while deciding the issue no. 1 deleted the addition made by the AO. However, in relation to other five share holders of appellant from which share capital money for Rs. 1,35,00,000/- was received by the assessee was not considered.

5. At the time of hearing, no one appeared on behalf of the assessee nor any representative to argue the case before this Tribunal. Although, registry had issued notice upon the assessee but there was no compliance on the part of the assessee. In

such situation, we cannot keep the pending for indefinite period and heard the matter with the assistance of Id. DR.

6. The assessee in this appeal raised almost 10 grounds. However, the core issue raised in ground no. 1 in respect of disallowance of transaction for procuring share capital for the appellant-company to the tune of Rs. 1,35,00,000/- on the sole reasons that the director of the assessee company did not personally appear in response to the summons issued u/s 131 of the Act.

7. We after perusing the material available on record and examining the alleged impugned order and from the order passed by the AO, we find that while deciding the issue, Id. AO had issued summon u/s 131 of the Act to the director of the AO on 25.02.2015 with the direction to produce of the share holder along with document, in response to summon one of the director Md. Quamaruddin appeared on 12.03.2015. However, the incumbent failed to produce the share holder before the AO and also did not offer any explanation to the query raised during the course of taking his statement. Further, summon u/s 131 of the Act were also issued to the share holder of the companies on 03.03.2015, in response to which no one appeared on behalf of these five companies. Neither the investor companies appeared before the AO in compliance to notice u/s 131 of the Act nor appellant-company could produce them before the Id. AO. The alleged share transaction involved in this assessment proceeding, the face value of share of Rs. 10/- were issued at premium of Rs. 90/- per share whereas on the date of issue of share, book value of which were Rs. 66/- per share. In this regard, the assessee could not furnish any justification for reasoned price. Moreover, to examine the issue of CIT(A) directed to produce a remand report and in compliance to such direction and DCIT, Circle-11(2) has mentioned as per the report submitted by the inspector alleged facts could not be located in the given address, nobody appeared on behalf of those companies in compliance to the notice u/s 131 of the Act, the appellant-company had been directed vide letter dated 27.03.2018 to produce all five share holders along with the facts of identity of directors, return file, bank statement, evidence of source of fund, ITR & balance sheet, evidence of transaction with the assessee company. But the

appellant could not produce any of the director of the investor company nor furnished any explanation or clarification in this regard despite the fact that the AR was informed during the remand proceedings of the non-existence of companies at the given address and non-attendance by directors in response to the summons which leads to the conclusion that these companies were having existence in papers only and the Id. CIT(A) while passing this order, he confirmed the view taken by the AO in respect of addition made for Rs. 1,35,00,000/- as unexplained money u/s 68 of the Act on account of share application money received from five companies and the Id. CIT(A) did not interfere in the order passed by the Id. AO.

8. While examining the instant issue, we find that during the assessment proceeding as well as proceedings for remand report, the identity and creditworthiness of investor companies could not be established by the assessee and it can rightly be inferred that companies were having existence on papers only. Moreover, behind the payment of premium of share also could not be explained by the assessee neither before the AO nor Id. CIT(A). The assessee even before this Tribunal could not produce any documents or submission in support of its claim to negate the view taken by the AO as well as Id. CIT(A) and examining the facts and circumstances of the case and going through the documents available on record, we find that the order passed by the Id. CIT(A) need not required to be interfere. We accordingly sustain the order passed by the Id. CIT(A) and the appeal of the assessee is dismissed.

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

**Order pronounced in the open court on 13.09.2022.**

**Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER**

**Sd/-  
(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated:13.09.2022.  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: M/s. Nilu Construction Pvt. Ltd.
2. The Respondent: ITO, Ward-11(3), Kolkata.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench.

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata