

आयकर अपीलीय अधिकरण
IN THE INCOME TAX APPELLATE TRIBUNAL,
'C(SMC)' BENCH, KOLKATA

Before Shri Sanjay Garg, Judicial Member
&
Shri Girish Agrawal, Accountant Member

I.T.A. No. 324/KOL/2021
Assessment Year: 2012-2013

Argan Traders Pvt. Limited,.....Appellant
KB-25, Salt Lake City, Sector-III,
Kolkata-700098
[PAN: AACCA1743P]

-Vs.-

Income Tax Officer,.....Respondent
Ward-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Sri Subash Agarwal, Advocate, appeared on behalf of the assessee
Shri Robin Chaudhary, Addl. CIT, appeared on behalf of the Revenue

Date of concluding the hearing: June 28, 2022
Date of pronouncing the order: September 22, 2022

आदेश

O R D E R

Per Girish Agrawal, Accountant Member:-

This appeal by the assessee is against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2021-22/1034566398(1) dated 02.08.2021 against the assessment order passed by ITO, Ward-1(1), Kolkata under section 147 read with section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') dated 20.12.2019 for assessment year 2012-13.

2. Grounds of appeal relate to the addition of Rs.10,00,000/- received from shareholders towards allotment of equity shares, which has been added under section 68 of the Act.

3. Assessee has also challenged the jurisdictional aspect of the assessment by taking additional grounds filed on 14.03.2022. In the course of appellate proceedings before the Tribunal, ld. Counsel for the assessee submitted that the additional grounds of appeal are not pressed. Accordingly, additional grounds submitted by the assessee challenging the jurisdictional issues under section 147 are dismissed as not pressed.

4. Brief facts of the case are that assessee filed its return of income on 27.11.2012 reporting a total income of Rs.1,020/-. Upon receipt of information from the Office of the Investigation Wing of the Department, Kolkata, in the course of assessment, ld. Assessing Officer sought explanation on the amount of Rs.10,00,000/- received by the assessee from one M/s. Mangalmayee Hirise Pvt. Limited towards share capital and share premium for issue of 2,000 equity shares having face value of Rs.10/- and share premium of Rs.490/- per share. Statutory notices were issued by the ld. Assessing Officer and the assessee filed copy of Income-tax Return, its Audited Balance-sheet and Profit & Loss Account, Computation of Income and copy of Bank Statement which are all placed on record. To enquire into the details of transaction of Rs.10,00,000/-, ld. Assessing Officer issued notice under section 133(6) dated 30.08.2019 on the subscriber company M/s. Mangalmayee Hirise Pvt. Limited. In compliance to this, it filed its copy of Income-tax Return, Audited Balance-sheet, Profit & Loss Account, Computation of income and Bank Statement. As part of its further enquiry and investigation to look into the three basic parameters, i.e. identity, genuineness of transactions and creditworthiness of the share applicant, ld. Assessing Officer issued summons under section 131 dated 11.10.2019 on the subscriber company

to record the statement of the Director. Further, a show-cause letter dated 16.12.2019 was also issued to the assessee to explain with corroborative evidences, the basic three parameters noted above, in respect of the transaction of Rs.10,00,000/-. In this respect, ld. Assessing Officer noted that no compliance was done, both by the investor company as well as by the assessee and thus concluded to hold the amount of Rs.10,00,000/- as unexplained cash credit under section 68 of the Act and accordingly made the addition. Aggrieved, the assessee went in appeal before the ld. CIT(Appeals).

5. Ld. CIT(Appeals) noted that in respect of meeting the compliance towards three basic parameters, i.e. identity, genuineness of transactions and creditworthiness of share applicants, assessee without furnishing any new details merely stated that for identity and genuineness of transactions, the details of the subscriber company is available on MCA Portal in Form No. 2. For the creditworthiness of the share applicant, it was stated by the assessee that the same could have been verified from the PAN of the subscriber company, which were also available on the MCA Portal. Relevant extract in this respect from the order of ld. CIT(Appeals) is reproduced as under:-

“4.4. In respect of allegation of Ld AO mentioned in para 3.5 about the three limbs of basic parameters i.e. identity, genuineness of transactions and creditworthiness of share applicants:

The appellant states that the fact remains the identity and genuineness of transaction of equity capital of any company cannot remain un-explained as the details are available in MCA portal in Form No. 2 (Return of allotment) filed by company and the same is available for public view. As regards the credit worthiness the same could have been verified from PAN of the allottee as per their name and address available in the same MCA portal.

In the instant case since the shares are already allotted to allottee/shareholder and the information is available in MCA portal the onus lies on the AO to make an enquiry about the alleged share holder existence. And on such enquiry if he/she finds that the share holder /allottee are not existent then it is proper on the part of AO to treat the credits as income of the Assessee. The above position

of law is upheld CIT v Kwick Travels, SLP(Civil) No. 15056 of 1992: (1993) 199 ITRfSt.) 85-86(SC).

On the basis of above position of law which is applicable in the instant case for the reason the credits being issued share capital of the company, the AO had acted beyond power in treating the credit as income of the assessee without proving the share holders to be non existent/bogus.

4.5. In respect of point mentioned in 3.6, the appellant states that the AO computed other source income Rs.4.28.106/- straight without mentioning in the order the reason and circumstances that binds her/him to compute Income under Other sources on Gross figure without considering related expenses and inter/intra head adjustment From this it is clear that the AO did not apply his/her mind properly by taking facts and laws of this case. Hence taking other head income Rs.428106/- by Ld. AO is not as per Law and is inappropriate. ”

6. While disposing the appeal of the assessee, the Id. CIT(Appeals) held that the argument of assessee that the share application money was share capital and the same could not be treated as income without proving the shareholders to be bogus is fallacious. He further noted that as per the amended section 68 of the Act, the onus is on the assessee to prove the source of source for which Id. Assessing Officer had summoned the Directors of the investor company and was not responded. Aggrieved, the assessee is in appeal before the Tribunal.

7. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and referred to the paper book containing 43 pages, placed on record. For the purpose of effective discharge of the onus of the assessee to establish the three basic parameters of identity, genuineness of transaction and creditworthiness of the investor company as well as to prove the source of source in respect of the investment of Rs.10,00,000/-, Id. Counsel pleaded that the matter may please be set aside wherein the assessee shall make the required submissions in respect of its claim.

8. Per contra, Id. Sr. DR stated that the impugned assessment was reopened pursuant to information received from the Department,

Investigation Wing since the returned income of the assessee is a meagre amount of Rs.1,020, who has charged a premium of Rs.490/- on the face value of Rs.10/- for issuing its shares. He also referred to the Bank Statement placed at page 31 of the paper book to point out that there is a negative balance of Rs.9,41,306.98 on 01.10.2011 in the Bank Statement of the investor company from where the amount of 10,00,000/- rupees has been paid to the assessee against issue of shares and thus submitted that the addition made is ought to be sustained.

9. We have heard the rival contentions and perused the relevant material placed on record. We note that in the peculiar set of facts in the present case before us, relevant and detailed enquiry to establish the basic three parameters of identity, genuineness of transactions and creditworthiness of the investor company has not been undertaken both at the assessment level and at the first appellate stage. Further Id. Counsel has pleaded to set aside the matter, wherein assessee will make all the necessary submissions for its claim.

10. Considering the material on record and the prayer made by the Id. Counsel for the assessee as also the observation made by the Id. CIT(Appeals) in respect of proving the source of source, we find it proper to set aside the matter to the file of Id. CIT(Appeals) in the interest of justice and fair play. We direct to pass a speaking order considering the submissions made by the assessee, calling requisite remand report from the Id. Assessing Officer and after making required enquiries/investigation as deem fit. Needless to say that the assessee be given reasonable opportunity of being heard to substantiate its claim by making any further submissions apart from the documents already placed on record. Since the matter is restored to the file of Id. CIT(A) for fresh adjudication in terms of our observations herein above, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Id. CIT(A). The observations herein made by us in

remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defence / explanation of the assessee. Accordingly, in terms of above, the appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open Court on September 22nd, 2022.

**Sd/-
(Sanjay Garg)
Judicial Member**

**Sd/-
(Girish Agrawal)
Accountant Member**

Kolkata, the 22nd day of September, 2022

- Copies to :*
- (1) Argan Traders Pvt. Limited,
KB-25, Salt Lake City, Sector-III, Kolkata-700098***
 - (2) Income Tax Officer,
Ward-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069***
 - (3) Commissioner of Income Tax(Appeals),
National Faceless Appeal Centre (NFAC), Delhi;***
 - (4) Commissioner of Income Tax -, Kolkata***
 - (5) The Departmental Representative***
 - (6) Guard File***

TRUE COPY

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.