

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

Before Shri Rajpal Yadav, Vice-President (KZ)

&

Shri Girish Agrawal, Accountant Member

**I.T.A. No. 1175/KOL/2017
Assessment Year: 2008-2009**

Allied Infracon Pvt. Limited,.....Appellant
Bhoumik Park, 1st Floor,
Kamrabad, Sonarpur,
Kolkata-700150
[PAN:AAGCA7275A]
-Vs.-

Income Tax Officer,.....Respondent
Ward-1(4), Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

N o n e, appeared on behalf of the assessee

Md. Ghayas Uddin, CIT(DR), appeared on behalf of the Revenue

Date of concluding the hearing : 4th August, 2022

Date of pronouncing the order : October 12, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-9, Kolkata dated 22.03.2017 passed for assessment year 2008-09.

2. In response to the notice of hearing, no one has come present on behalf of the assessee. The Postal Authorities have informed that nobody is residing on the given address. Copy of one of the notices issued earlier is available on the paper book. With the assistance of Id. D.R. we have gone through the record carefully and proceed *ex-parte qua* the assessee.

3. The assessee has taken seven grounds of appeal. In these grounds, the assessee has raised two-folds of grievance:

(a) The ld. Assessing Officer did not grant proper opportunity of hearing because assessment was required to be framed in pursuance of 263 order passed by the ld. Commissioner on 05.03.2013. The ld. Assessing Officer has issued notice under section 142(1) on 21.02.2014 and thereafter passed the impugned order *ex-parte* on 21.03.2014. Thus according to the assessee, opportunity of hearing was not granted.

(b) In the 2nd fold, the assessee has challenged the addition made with the aid of section 68 at Rs.6,57,00,000/- on account of unexplained cash credit.

4. We have perused the order of ld. CIT(Appeals) and we find that this order is running into seven pages. On the pages no. 1 & 2, the ld. CIT(Appeals) has reproduced the grounds of appeal taken by the assessee. Thereafter on pages no. 3 & 4, he has reproduced the submissions raised by the assessee. The conclusions of the ld. CIT(Appeals) are from paragraph no. 4 on page 3. We find that the ld. CIT(Appeals) has not made any reference to anything. He just reproduced the judgment of Hon'ble Calcutta High Court in the case of Rajmandir Estate Pvt. Limited. We take note the conclusions of the ld. CIT(Appeal), which read as under:-

"4. Conclusion:-

In the judgement of Hon High Court, Kolkata, in the case of Rajmandir Estate Pvt. Ltd v PCIT in GA No 509 of 2016, it is held that:-

"(7) We have indicated above the pieces of evidence which go to show that the Commissioner had reasons to entertain the belief that this was or could be a case of money laundering which went unnoticed because the assessing officer did not hold requisite investigation except for calling for the records. The evidence which we have tabulated above and the prima facie inference drawn by us is deducible from the documents

also submitted before the assessing officer. The fact that the assessing officer did not apply his mind to those pieces of evidence would be evident from the assessment order itself.

(8) The persons behind the assessee company and the persons behind the subscribing companies were not interrogated which was essential to unearth the truth. Reference may also be made to the judgement of this Court in the case of CIT -Vs- Active Traders Pvt. Ltd. (supra). The question for consideration is whether in the presence of materials discussed above the Commissioner was justified in treating the assessment order erroneous and prejudicial to the interest of the revenue. That question in the facts and circumstances has to be answered in the affirmative.

(9) Whether receipt of share capital was a taxable event prior to 1st April, 2013 before introduction of Clause (VII b) to the Sub-section 2 of Section 56 of the Income Tax Act; whether the concept of arms length pricing in a domestic transaction before introduction of Section 92A and 92BA of the Income Tax Act was there at the relevant point of time are not questions which arise for determination in this case. The assessee with an authorised share capital of Rs.1.36 crores raised nearly a sum of Rs.32 crores on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees is an important pointer necessitating investigation. Money allegedly received on account of share application can be roped in under Section 68 of the Income Tax Act if the source of the receipt is not satisfactorily established by the assessee. Reference in this regard may be made to the judgment in the case of Sumati Dayal -Vs- CIT (supra) wherein Their Lordships held that any sum 'found credited in the books of the assessee for any previous year, the same may be charged to income tax...'. We are unable to accept the submission that any further investigation is futile because the money was received on capital account. The Special Bench in the case of Sophia Finance Ltd. (supra) opined that "the use of the words "any sum found credited in the books" in Section 68 indicates that the said section is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money. Mere fact that the payment was received by cheque or that the applicants were companies, borne on the file of Registrar of Companies were held to be neutral facts and did not prove that the transaction was genuine as was held in the case of CIT -Vs- Nova Promoters and Finlease (P) Ltd. (supra). Similar views were expressed by this Court in the case of CIT -Vs- Precision Finance Pvt. Ltd. (supra). We need not decide in this case as to whether the proviso to Section 68 of the Income Tax Act is retrospective in nature. To that extent the question is kept open. We may however point out that the Special Bench of Delhi High Court in the case of Sophia Finance Ltd. (supra) held that "the ITO may even be justified in trying to ascertain the source of depositor". Therefore, the submission that the source of source is not a relevant enquiry does not appear to be correct. We find no substance in the submission that the exercise of power under Section 263 by the Commissioner was an act of reactivating stale issues. In the case of Gabriel India Ltd. (supra) the CIT

was unable to point out any error in the explanation furnished by the assessee. Whereas in the present case we have tabulated the evidence which was before the assessing officer which should have provoked him to make further investigation. The assessing officer did not attach any importance to that aspect of the matter as discussed above by us. The judgment in the case of Leisure Wear Exports Pvt. Ltd. (supra) relied upon by Mr. Poddar has no applicability because the evidence furnished by the assessee in this case does suggest a cover up. We also have held prima facie that neither the transaction appears to be genuine nor are the applicants of share are creditworthy. The judgment in the case of Omar Salay Mohamed Sait (supra) cited by Mr. Poddar has no application for reasons already discussed. It is not true that the Commissioner in this case has merely on the basis of suspicion held that this was or could be a case of money laundering. We as a matter of fact have discussed this issue in great detail and need not reiterate the same. The order passed by the Commissioner is by no means an act of substituting his own views to that of the assessing officer. It is true that the assessing officer had requisitioned the necessary details by his notice u/s.142(1) but he thereafter did not apply his mind thereto. The judgment in the case of J. L. Morrison (India) Ltd. has no manner of application because in that case the question essentially was whether the receipt was of a capital or revenue nature. The facts and circumstances were not in dispute. Moreover the view taken by the assessing officer was not shown nor was held by the Court to be an erroneous view. Whereas in this case we have demonstrated in some detail as to why is the order of the assessing officer erroneous and prejudicial to the revenue."

In view of the order of jurisdictional High Court, the appeal of the appellant is dismissed".

5. A perusal of the above conclusion would show that the Id. CIT(Appeals) has not touched any issue, rather he simply reproduced the reasoning of the Hon'ble High Court rendered in a different case and thereafter observed that in view of the order of the Hon'ble Jurisdictional High Court, the appeal of the assessee is dismissed. There is no finding as to how these reasoning are applicable on the case of the assessee. He has not discussed a single fact. At this stage, we deem it appropriate to make reference of sub-clause (6) of section 250, which reads as under:-

"(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision".

6. The above provision mandates the Id. CIT(Appeals) to state the points in dispute and thereafter record the finding on those points. In the

impugned order, this procedure has not been adhere by the ld. 1st Appellate Authority. He simply reproduced the grounds, thereafter submissions of the assessee and nowhere propounded as to how these submissions deserve to be rejected in view of the judgment of the Hon'ble Calcutta High Court. He simply reproduced the Head-Note of this judgment and thereafter dismissed the appeal. It is not a permissible course in the law. Therefore, we set aside the impugned order and remit this issue to the file of ld. CIT(Appeals) for fresh adjudication.

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

Order pronounced in the open Court on October 12, 2022.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 12th day of October, 2022

*Copies to :(1) Allied Infracon Pvt. Limited,
Bhoumik Park, 1st Floor,
Kamrabad, Sonarpur, Kolkata-700150*

*(2) Income Tax Officer,
Ward-1(4), Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square, Kolkata-700069*

(3) Commissioner of Income Tax (Appeals)-9, Kolkata

(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.