

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 253/KOL/2020
Assessment Year: 2012-2013**

Highrank Securities Pvt. Limited,.....Appellant
32, Ezra Street, Kolkata-700001
[PAN: AACCH7650L]
-Vs.-

Income Tax Officer,.....Respondent
Ward-5(4), Kolkata,
Aayakar Bhavan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri Manoj Kataruka, A.R., appeared on behalf of the assessee
Shri Amal Sudhir Kamat, CIT, appeared on behalf of the Revenue

Date of concluding the hearing : September 08, 2022

Date of pronouncing the order : October 31, 2022

O R D E R

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

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals)-14, Kolkata dated 26.12.2018 passed for assessment year 2012-13.

2. The assessee has taken following grounds of appeal:-

(1) That on the facts and in the circumstances of the case, the action of the ld. CIT(A) to confirm the addition made by the AO is without providing reasonable opportunity of being heard in violation of the principles of natural justice and therefore, the order passed is bad in law.

(2) That without prejudice to the above ground, the action of the ld. CIT(A) to confirm the addition made by

the AO of Rs.44,08,00,000/- on account of share capital u/s 68 of the Act, is illegal and bad in law.

(3) That the order of the Id. CIT(A) confirming the addition made by the AO is arbitrary, excessive and illegal.

(4) That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of acts and grounds of appeal at or before the time of hearing.

3. Ld. Counsel for the assessee submitted that order of the Id. CIT(Appeals) is not a complete order and it is not available even in the Website of the Revenue. He tried his best to get a complete order but could not get. The order of the Id. CIT(Appeals) reads as under:-

"APPELLATE ORDER AND GROUND OF DECISION

This appeal has been instituted on 07.05.2015 against the order u/s 143(3) of the Income Tax Act, 1961 dated 28.03.2015 passed by the ITO, Ward-5(4), Kolkata for the assessment year 2012-13.

After a careful consideration of the decisions as foregoing including that of the jurisdictional High Court, and ITAT the assessment records and the submission of the assessee, disallowance of Rs.44,066/- under section 14A of the Act read with Rule 8D(2) is to be deleted. The Assessing Officer is directed accordingly. This ground of appeal succeeds and is, therefore, allowed.

Conclusion:

In the result, the appeal is treated as "partly allowed".

Sd/-

D.A.J. Sawkmie

*Commissioner of Income Tax (Appeal)-14,
Kolkata"*

4. When this appeal was listed before us, we passed the following order:-

"08-Sep.-2022 : *The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-14, Kolkata dated 26.12.2018 passed for A.Y. 2012-13.*

2. *The order of the ld. CIT(Appeals) annexed with the appeal is not a complete order. It reads as under:-*

“APPELLATE ORDER AND GROUND OF DECISION

This appeal has been instituted on 07.05.2015 against the order u/s. 143(3) of the Income Tax Act, 1961 dated 28.03.2015 passed by the ITO, Ward-5(4), Kolkata for the Assessment Year 2012-13.

After a careful consideration of the decisions as foregoing including that of the jurisdictional High Court, and ITAT the assessment records and the submission of the assessee, disallowance of Rs.44,066/- under section 14A of the Act read with Rule 8D(2) is to be deleted. The Assessing Officer is directed accordingly. This ground of appeal succeeds and is, therefore, allowed.

Conclusion: In the result, the appeal is treated as “partly allowed”.

*(D.A.J. Sawkmie)
Commissioner of Income Tax (Appeal)-14,
Kolkata”*

3. *This appeal was listed for hearing on 6th September, 2022 also. We brought this fact to the notice of the ld. Representatives. The ld. Counsel for the assessee submitted that on the Website of the Revenue, this much order is only available. He is unable to lay his hand on the complete order. We request the ld. CIT(D.R.) to verify this fact from the ld. Assessing Officer and kindly place on record the complete order. Due to paucity of time, the ld. CIT(D.R.) could not complete the enquiry. Today, we have concluded the hearing with an observation that in case, this is the only order available on record, then it is not a speaking one and matter would be restored to the file of the ld. CIT(Appeals). In case, a detailed order is placed on record, then appeal will be re-listed for hearing. We have given time to the ld. CIT(D.R.) upto 30th September, 2022.*

In view of the above, the hearing is concluded. Order reserved. Copy of this order-sheet be supplied to both the parties.

*Sd/-
Rajesh Kumar
Accountant Member*

*Sd/-
Rajpal Yadav
Vice-President (KZ)”*

5. The ld. CIT(DR) failed to place on record copy of any order other than the one order extracted above. Sub-section (6) of section 250 contemplates that ld. CIT(Appeals) would determine the points in dispute and thereafter records reasons in support of his conclusion on those points. A perusal of the order of ld. CIT(Appeals) would reveal that it is a

non-speaking order, which does not deal with any of the issues agitated in the grounds of appeal before CIT(A) or issues taken up in the assessment order. Therefore, we allow this appeal for statistical purposes, set aside the impugned order of Id. CIT(Appeals) and restore these issue to the file of Id. CIT(Appeals) for fresh adjudication.

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

Order pronounced in the open Court on October 31st , 2022.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 31st day of October, 2022

*Copies to : (1) Highrank Securities Pvt. Limited,
32, Ezra Street, Kolkata-700001*

*(2) Income Tax Officer,
Ward-5(4), Kolkata,
Aayakar Bhavan,
P-7, Chowringhee Square, Kolkata-700069*

(3) Commissioner of Income Tax (Appeals)-14, Kolkata

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

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

Laha/Sr. P.S.