

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं

डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष

Before

**SHRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 1770/Kol/2019
Assessment Year: 2012-13**

***M/s Avon Dealcom Pvt. Ltd.....Appellant
C/o. Agarwal Vishwanath & Associates,
133/1/1A, S.N. Banerjee Road,
Pushkal Bhawan, 3rd Floor,
Kolkata-700013.
[PAN: AAICA6176C]***

Vs.

ITO, Ward-11(4), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Partha Pratim Barman, Addl. CIT, D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : October 12th, 2022

Date of pronouncing the order : October 31st, 2022

आदेश/ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals)-15, Kolkata [in short ld. "CIT(A)"] dated 14.11.2018 which is arising out of the assessment order framed u/s 143(3) of the Act dated 13.03.2015.

2. The assessee is in appeal before this Tribunal raising the following grounds:

"1. For that on the facts and circumstances of the case, the impugned order passed by the Ld. A.O. as well as the appellate order passed by Ld. CIT (Appeals) is unjustified, perverse, arbitrary and bad in law.

2. For that on the facts and circumstances of the case, the Ld. A.O. With a pre biased mind on a stereotype basis, simply added the share capital increased of Rs 5,28,00,000/-, without making any proper enquiry & investigation from the parties & the concerned Directors of the Companies involved when such details were submitted before the Ld. A.O to prove the genuinity of the share capital introduced.

3. Without prejudice to above, for that on the facts and circumstances of the case, the Ld. CIT (Appeals) grossly erred in confirming the addition made by the Ld. A.O. of Rs 5,28,00,000/- without giving proper and meaningful opportunity of being heard to the appellant which is in gross violation of the principles of natural justice and hence illegal, arbitrary and highly unjustified.

4. For that on the facts and circumstances of the case, the Ld. CIT(Appeals) was vehemently wrong and unjustified in not considering the facts of the case and the submission made by the

appellant before the Ld. A.O. and was quite unjustified in Confirming the addition of the share capital and share premium amounting to Rs 5,28,00,000/-. Relief Claimed: The addition to the tune of Rs 5,28,00,000/- is liable to be quashed & deleted.

5. That the appellant craves leave to add/alter, modify, amend, delete and/or withdraw any or all of the grounds of appeal.”

3. When the case was called for, none appeared on behalf of the assessee, however Registry was informed that Virendra Singh, Director of the assessee company has filed an affidavit dated 23.08.22 stating that notice of hearing by the ld. CIT(A) was not served upon the appellant due to which assessee was unable to represent its case before the ld. CIT(A). Undertaking has been given by the said director before this Tribunal stating that the matter may be set aside before ld. CIT(A) for passing of fresh appellate order after providing reasonable opportunity of being heard. Necessary and proper compliance to all the notices shall be made by the assessee company in future.

4. The ld. Departmental Representative did not oppose this written request made by the assessee in the form of an affidavit for restoring issues raised on merits to ld. CIT(A) for afresh adjudication.

5. We have heard the ld. DR and perused the records placed before us. We observe that the impugned order is *ex parte*. We also notice that the assessee which is a private limited company declared nil income in the return filed for assessment year 2012-13 on 22.03.2013. After the case was selected for scrutiny by

service of notices u/s 143(2) and 142(1) of the Act, the Assessing Officer examined various transactions carried out by the assessee company during the year including the receipt of share capital of Rs.10,56,000/- and share premium of Rs.5,17,44,000/- totalling to Rs.5,28,00,000/-. The ld. Assessing Officer was not satisfied with the submissions made by the assessee and doubted the genuineness of these transactions looking to the very little visible activity carried out by the assessee company and huge amount of share premium charged on the share issue during the year and thus the source of the said capital and share premium remained unexplained. Ld. Assessing Officer assessed the income at Rs.5,28,00,000/- after making an addition u/s 68 of the Act at Rs.5,28,00,000/-.

6. Aggrieved, assessee preferred appeal before the ld. CIT(A) but failed to appear on various dates of hearing which led the ld. CIT(A) to frame the order *ex parte* in confirming the addition made by the Assessing Officer.

7. Before us, an affidavit has been filed by Mr. Virendra Singh, Director of the M/s Avon Dealcom Pvt. Ltd., praying for one more opportunity to be granted to appear before ld. CIT(A). the ld. Departmental Representative being fair enough not to oppose this request. We, therefore, in the interest of justice and being fair to both the parties, set aside the finding of the ld. CIT(A) and restore all the issues on merits for afresh adjudication to Ld. CIT(A) which shall be carried out after providing assessee with the

reasonable and meaningful opportunity. We also direct the assessee company to remain vigilant to the notice of hearing issued by Id. CIT(A) and should not take adjournment unless and otherwise required for reasonable cause and may file all the necessary documents and submissions in support of its grounds of appeal.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Kolkata, the 31st October, 2022.

Sd/-

[Sanjay Garg]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated:31.10.2022
RS

Copy of the order forwarded to:

1. M/s Avon Dealcom Pvt. Ltd
2. ITO, Ward-11(4), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata