

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "A" KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and
Shri Manish Borad, Accountant Member**

आयकर अपील सं.य/ ITA No.382/Kol/2019 Assessment Years:2012-13
--

Bhakti Dealmark P.Ltd PAN: AAECB6463F	<u>बनाम /</u> <u>V/s.</u>	I.T.O Ward 10(1), Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Abhisek Bansal, FCA, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Biswanath Das, CIT,DR
सुनवाई की तारीख/Date of Hearing	02-11-2022
घोषणा की तारीख/Date of Pronouncement	03-11-2022

आदेश /O R D E R

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the assessee against the order dated 14-12-2018 of the Learned Commissioner of Income-tax(Appeals)-15, Kolkata (hereinafter, referred to as the ' Ld.CIT(A) ').

2. The assessee in this appeal has contested the confirmation of addition made by the Ld.AO of Rs. 213,369,500/- u/s. 68 of the Income-tax Act, 1961 (hereinafter, referred to as the ' Act ') on account of unexplained share capital and premium.

3. The brief facts of the case are that during the assessment proceedings the ld. Assessing Officer (in short, ' AO) noticed that the assessee company had claimed to have received a sum of Rs.1,05,06,539/- on account of share capital with face value of the share at Rs.1 each, and premium of Rs.20,28,62,961/- totaling Rs. 21,33,69,500/- during the financial year under consideration.

4. Since the identity of the assessee as well as the identity and creditworthiness of the share subscribers and genuineness of transaction were not verifiable from the documents on record, therefore, the ld.AO issued summons u/s. 131 of the Act to the

directors of the assessee/appellant company for their personal deposition and to produce the following details:-

1. *Proof of your photo identity/PAN card*
2. *List of companies where you were Director/shareholders from the AY 2008-09 till date with dates of appointments thereto with DIN*
3. *Proof of acknowledgment of filing your personal IT Return, copies of accounts*
4. *Proof of your address*
5. *Copy of bank statement of your company reflecting the all transaction during the period of 01.04.2011 to 31.03.2012 with complete narration & source of fund*
6. *Produce the Director of investors' company along with their proof of Photo identity and copy of bank statement of their company reflecting the all transaction during the period 01.04.2011 to 31.03.2012 with complete narration & source of fund.*
7. *A write up on justification of large share premium*

5. Since in response to the said summons neither any one appeared on behalf of the assessee/appellant company nor filed the details as mentioned above. Therefore, the Id. AO made the impugned additions u/s. 68 of the Act holding the said share capital and share premium as unexplained income of the assessee. The Id. CIT(A) also confirmed the addition so made by the Id. AO observing that the assessee company had failed to establish not only the identity and creditworthiness of the share subscribers, but also genuineness of the transaction. The Id. CIT(A) also noticed that the assessee company which was a private limited company, has no track record or asset base, is asking for astronomically high premium per share defying all commercial and financial prudence and logic. He also observed that there was no noticeable business activity or book value/Earning per share which could justify the very high share premium. The Id. CIT(A) relying upon various case laws dismissed the appeal of the assessee.

6. Being aggrieved by the aforesaid order of the Id.CITA), the assessee has come in appeal before us.

7. Earlier notice for hearing on 16.8.2022 was sent to the assessee through Regd. Post (RPAD) as well as electronically on email address in Form No. 36. However, no one appeared on behalf of the assessee. Registered Post was received back/returned

back with report of the postal authority 'Addressee/ Absent/ Intimation on 4.8.22' Final/Intimation served on 5.8.22. Since no one appeared on behalf of the appellant/assessee on 16.8.2022, therefore, following order was passed:-

16 Aug 2022 Notice of hearing of appeal was sent to the assessee through RPAD as well as through email. However, no one has put in appearance on behalf no one of the appellant. In the interest of justice, let the notice be again sent through RPAD and email for 27th September 2022.

8. However, on the next date of hearing i.e on 27-09-2022, Shri Abhishek Bansal, Ld.AR appeared on behalf of the assessee and filed Power of Attorney in favour of Shri S.M. Surana, Advocate, Shri Sunil Surana, FCA, and Shri Abhishek Bansal, FCA. This Tribunal took note of the fact that in any case, the notices sent through Registered Post/AD (RPAD) was received back unserved. However, the Counsel for the assessee has appeared. The Tribunal also took note of several such instances in other cases also with such modus operandi, wherein the appellant/assessee are not traceable being paper companies. The Tribunal made the following observation vide order dated 27.9.2022.

27.09.2022 Vide order dated 16.J8.2J22, it was noted as under:

"Notice of hearing of appeal was sent to the assessee through RPAD as well as through email. However, no one has put in appearance on behalf of the appellant. In the interest of justice, let the I notice be again sent through RPAD and email for 27th September 2022."

Thereafter, the notice was again sent through email as well as registered post. However, the same has been received back unserved with the report of postal authority 'address absent'. Shri Abhishek Bansal, FCA, has appeared on behalf of the assessee appellant and filed paper book, copy given to the Ld. D.R. Though as per the report of postal authority, the assessee was not available at the given address whereas the appearance of the Id. counsel for the assessee suggests that the assessee, on the one hand, wants to contest the appeal on merits but at the same time identity and address of the assessee is not verifiable and hence, the assessee may avoid consequences/recovery of taxes in case the appeal is decided against the assessee. Under the circumstances, it is directed that the assessee will furnish its proper address, name of the directors of the assessee company along with their name, address and identity proof etc. The copy of the address as well as name and identity proof of the director of the assessee company may

also be given to the DR which may be forwarded to the concerned Assessing Officer. With the above direction, the case is adjourned to 02.11.2022.

9. A perusal of the above order reveals that this Bench of this Tribunal had made a categorical observation, from the above stated facts and circumstances that it appeared that on the one hand appellant/assessee wants to contest the appeal but at the same time, the assessee wants to conceal its identity to avoid consequences/recovery of the taxes in case the appeal is decided against the assessee. Under such circumstances, it was directed to the assessee to furnish its proper address, name of the directors of the assessee company along with their address and identity proof etc. It was directed that the copy of the address as well as identity proof of the directors of the assessee company be also given to the Ld. DR, which may be forwarded to the concerned Assessing Officer.

10. Today (02-11-2022), earlier no one stood up on behalf of the assessee when the case was called upon. However, Shri Abhishek Bansal, FCA, Ld. Counsel for the assessee was present in the Court. He was asked about the status of the compliances of the directions of the Bench to furnish name, address, identity proof of the assessee to which, Shri Abhishek Bansal, Ld. Counsel for the assessee submitted that he had informed the assessee about the aforesaid directions of the Tribunal vide order dt. 27-09-2022, but the assessee has not supplied the above details and has further instructed not to furnish any such details before this Tribunal or to pursue the matter before this Tribunal.

11. In this case as noted above, the ld.AO had also asked the assessee to file the proof of identity, PAN card of the directors of the assessee company and also list of the companies where the aforesaid persons were also directors/shareholders from AY 2008-09 till date with dates of appointment thereto, proof of acknowledgement of filing of personal I.T returns of the directors, copy of account, proof of address, copy of bank statement of the company reflecting the transactions during the period 01.04.2011 to 31.03.2012 with complete narration & source of funds as well as the details of the directors of the investors companies along with a write up on justification of large premium.

12. As noted above, the ld. AO has not only asked the assessee to furnish the required documents to prove the identity and creditworthiness of share subscribers, but also about the identity of the assessee company as well as its directors. The assessee company did not furnish the aforesaid details before the ld. AO, which means that the assessee right from the very beginning did not want to reveal the identity and address of its directors, even its own proper address. The facts are apparent that the assessee company might be a paper company incorporated for the purpose of routing unexplained funds in the shape of share application and share premium. Though the assessee company was represented through a Ld. Counsel not only before the ld.AO, but also before the ld. CIT(A), but at the same time, the assessee company concealed its own identity, address as well as the identity and address of its directors. The motive being that in case the assessee company is burdened with the additions/taxes, it may avoid the payment of the same by concealing its identity and identity of its directors. The assessee/appellant has not come to the court with clean hands. The appellant in this case wants to abuse the process of law.

13. Facts are apparent that the assessee/appellant company being a paper company has indulged in routing the unaccounted money. The assessee company miserably failed to prove not only its existence, identity and the identity of its directors, but also the identity, credit worthiness of share subscribers and genuineness of the transactions.

14. In view of this, there is no merit in the appeal of assessee and the same is hereby dismissed.

Order pronounced in open court at the time of hearing on 03 - 11 -2022

Sd/-
(Manish Board)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Dated 03 - 11-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant/Bhakti Dealmark Pvt.Ltd, PAN: AAECB6463F, C/O Rajesh Mohan & Associates, Unit No. 18,, 5th Fl.,Bagati House, 34 Ganesh Chandra Avenue, Kolkata-700 013.
2. प्रत्यर्थी/Respondent/Income Tax Officer, Ward-10(1), Kolkata Aaykar Bhawan, 3rd Fl., P-7, Chowringhee Square, Kolkata-700 069.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Assistant Registrar
Income Tax Appellate Tribunal
Kolkata