

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

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

RAJESH KUMAR, ACCOUNTANT MEMBER

&

SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील संख्या: 352/कोल/2019

निर्धारण वर्ष: 2008-09

I.T.A. No.: 352/Kol/2019

Assessment Year: 2008-09

Growfast Agency Pvt. Ltd.....Appellant
[PAN: AACCG 9928 J]

Vs.

ITO, Ward-6(4), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Shri Vijay Kumar, Addl. CIT (Sr. DR) appeared on behalf of the Revenue.

Date of concluding the hearing : October 11, 2022

Date of pronouncing the order : November 16, 2022

आदेश / O R D E R

PER SONJOY SARMA, JUDICIAL MEMBER:

This appeal of the assessee for the assessment year 2008-09 is directed against the order dated 06.06.2017 passed by the Id. Commissioner of Income-tax, Appeals [in short, hereinafter referred to as 'the 'Id. CIT(A)-17, Kolkata.

2. When the case was called for, none appeared on behalf of assessee. A perusal of file shows that number of notices of hearing was sent including few through RPAD, which have been returned unserved by the postal department. In this case, assessee has not filed any paper book or written submissions. It seems that assessee is

not interested to pursue this appeal. We, therefore, deem it fit and proper to adjudicate the appeal on merits *ex parte qua* the assessee on the basis of material available on record and the assistance of the ld. DR.

3. The assessee has raised the following grounds of appeal for the AY 2008-09:

1. *That on the facts and in the circumstances of the case, the learned Commissioner or Income Tax (Appeals) Kolkata-17, grossly erred in confirming the addition of Rs.2,73,25,000/- u/s 69 of the Act, as unexplained investment made by the appellant in the relevant year wrongly treating the same undisclosed income.*
2. *That the learned Commissioner of Income Tax (Appeals Kolkata-17, ought to have considered that the addition on account of share investment in the hands of the appellant in the light of the Judgement of the Hon'ble supreme court in the case Lovely Exports Pvt. Ltd. 299 ITR 268 (SC) and other legal precedents in the matter.*
3. *That the learned Commissioner of Income Tax (Appeals) Kolkata-17 erred in inclusion in the total income of the appellant a sum of Rs.2,73,25,000/- as unexplained investment under section 69 of the Income Tax Act, 1961.*
4. *That the learned Commissioner of Income Tax (Appeals Kolkata-17, erred in confirming the impugned assessment order passed was 263/144 of the Income Tax Act for the Assessment year 2008-09.*
5. *For that the Learned CIT is wrong in confirming the addition of Rs. 69,750/- as undisclosed Commission Income on the Share Capital & Share Premium raised during the year.*
6. *For that the Ld. CIT (A) -17 confirmed the addition on the basis of observation made by the Learned Commissioner of Income Tax -II Kolkata while passing the order under section 263 of the Act without any concrete evidence/ examining the provision of section 263 of the Income Tax Act, 1961.*
7. *For that the learned Commissioner of Income Tax (Appeals) -17 failed to appreciate that the assessment made u/s 143(3) of the Act earlier cannot be reversed merely on the basis of pointing of defect/lack of requisite enquiry on the part of erstwhile assessing officer..*
8. *For that further the Learned CIT (A) -17 Kolkata erred in confirming the addition u/s 68 of the Act, which was added by the Learned Assessing Officer /s 69 as unexplained investment.*
9. *For that the confirming of addition by ld. CIT(A) u/s 68 in respect of addition u/s 69 made by the Assessing Officer, reflecting the serious contradiction and confusion apart from non-application of mind, based on presumption, surmises conjunctures, illegal invalid and / otherwise perverse.*

10. That the appellant craves leave to alter, amend or modify all or any of the grounds or grounds of the appeal or before the time of hearing.”

4. Brief facts of the case are that the assessee is a private limited company and filed its return of income for the assessment year 2008-09 on 11.07.2008 declaring total income at Nil. Subsequently, the return of the assessee was processed u/s 143(1) of the Act and the case of the assessee was reopened by issuing notice u/s 148 of the Act and assessment order u/s 147/143(3) was passed on 14.07.2010 assessing the total income at Rs. 4380/-. Immediately after it on 28.03.2013, a revisionary order u/s 263 of the Act was passed by Id. CIT, Kolkata-II, setting aside the assessment order dated 14.07.2010 and directed to pass a fresh assessment order to AO. While framing the assessment, the AO noticed that the assessee raised share capital in its books from the subscriber whose identity and genuineness remained unexplained and had also provide entry to other which generated commission income in the hands of assessee and he added Rs. 2,73,25,000/- as unexplained investment u/s 69 of the Act in the hands of assessee. Further, he added Rs. 69,750/- as commission income in the hands of assessee and assessed the income of assessee at Rs. 2,73,99,130/-.

5. Aggrieved, by the above order, assessee preferred an appeal before the Id. CIT(A) challenging the impugned addition made u/s 69 of the Act. Apart from filing the appeal, the assessee made no further efforts before the Id. CIT(A) and did not file any other documentary evidence in support of its claim. Therefore, the Id. CIT(A) confirmed the addition made by the AO in the hands of assessee.

6. Dissatisfied with the above order, the assessee is in appeal before this Tribunal. However, the assessee again failed to appear before this Tribunal on any of the date of the hearing except filing this appeal before

us. From the conduct of the assessee, it is clearly indicates that the assessee is only trying to delay the proceedings and has nothing to placed on record. On the other hand, the Id. DR vehemently argued supporting the order of lower authorities and prayed for confirming the order of Id. CIT(A).

7. We have heard Id. DR and perused the material placed on record before us. The assessee has challenged the finding of the Id. CIT(A) confirming the addition made u/s. 68 of the Act at Rs. 2,73,25,000/- by the Id. AO for unexplained cash credits of share capital and security premium received during the year. We noticed that the assessee company had offered income of rupees nil for assessment year 2008-09 and subsequently it was assessed at Rs. 4380/- in pursuance to order u/s 147/143(3) which was passed on 14.07.2010. It has been noticed that the assessee has raised share capital in its books from the subscribers whose identity and genuineness remained unexplained and had also provide entry to other which in turn generated commission income and due to this, the AO added unexplained investment u/s 69 of the Act of Rs. 2,73,25,000/- as unexplained investment in the hands of assessee. Further, he added commission income of Rs. 69,750/- in the hands of assessee. The assessee has failed to produce the alleged shareholders before the Id. AO for identity, creditworthiness and genuineness of the transaction even after providing sufficient opportunity no submission was made before the Id. AO as well as Id. CIT(A) and even before us in this regard. The assessee was asked to explain the cash credit received by it during the year. The assessee has failed to file necessary details to explain alleged cash credit and also unable to provide identity and creditworthiness of the cash creditors as well as genuineness of the transaction as per the provisions of law. The

assessee has miserably failed to explain the source of alleged cash credit if the assessee has sufficient details to explain the alleged sum it could have certainly filed those details before the authorities below. The assessee consistently escaping from appearing before the Id. AO and the appellate authority plausible explanation to explain the source of alleged sum of share capital and security premium. If the assessee is unable to explain the alleged cash credit and consistent escaped, the provisions of section 68 of the Act are attracted. Thus, it is held that the assessee has routed its unaccounted income in the books of account in the form of share capital and security premium by arranging bogus share capital and share premium through accommodation entry provider.

8. Therefore, under these facts and circumstances, we find no infirmity in the finding of the Id. CIT(A) confirming the addition of Rs. 2,73,25,000/- made u/s. 68 of the Act and the same is confirmed. Thus, instant grounds of appeal raised by the assessee are dismissed.

9. The another issue raised by the assessee in this appeal in respect of addition of Rs. 69,750/- as undisclosed commission income from the share capital and share premium raised during the year. The same has been upheld by the Id. CIT(A) since the assessee did not make any effort before the Id. CIT(A) and did not file any documentary evidence in support of its claim. We after perusing the material available on record and findings of the authority below in respect of addition made by the AO on account of undisclosed commission income of Rs. 69,750/- and same has been confirmed by the Id. CIT(A) in its order. We are of the considered view that since the assessee could not demonstrate any irregularity in the order passed by the AO at the time of hearing before the Id. CIT(A) and even before us also and the assessee completely

failed to substantiate its claim before the authorities below, therefore, we find no infirmity in the findings of the Id. CIT(A) on this issue and thus this ground of appeal is dismissed. The other grounds raised by the assessee are general and consequential in nature therefore need not required to be adjudicated.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 16.11.2022

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Dated : 16.11.2022
Biswajit, Sr. P.S.

आदेशकीप्रतिलिपिअग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/: **M/s. Growfast Agency Pvt. Ltd., 107, Forshore Road, Shibpur, Howrah-711 102.**
2. प्रत्यर्थी/Respondent/: **Income Tax Officer, Ward 6(4), Kolkata.**
3. संबंधितआयकरआयुक्त/ Concerned CIT
- 4.आयकरआयुक्त- अपील / CIT (A)
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरणकोलकाता / DR, ITAT, Kolkata
- 6.गार्डफाइल/ Guard file.

True Copy/

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata