

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1096/Del/2019  
(Assessment Year : 2009-10)

M/s. Garima Commerce Pvt. Ltd. Flat-IA, Block-2, Silver Spring Building, 5, JBS, Haldane Avenue, Kolkata, West Bengal-700 105.  <b>PAN No. AADCG 3328 B</b> <b>(APPELLANT)</b>	Vs.	ACIT Central Circle – 8, New Delhi  <b>(RESPONDENT)</b>
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Assessee by	-None-
Revenue by	Shri T. Kipgen, CIT-D.R.

Date of hearing:	07.11.2022
Date of Pronouncement:	23.11.2022

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 31.12.2018 passed by the Commissioner of Income Tax (Appeals)-24, New Delhi relating to Assessment Year 2009-10.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company who had originally electronically filed its return of income for A.Y. 2009-10 on 28.03.2010 declaring total income at Rs. Nil. AO has noted that the case of the assessee was selected for scrutiny u/s 147 of the Act and for which notice u/s 148 of the Act was issued on 28.03.2016. Thereafter, a search and seizure operation was carried out in the case of Priya Gold Group & its promoters on 16.12.2014 and during the proceedings of search and seizure, substantial documents relating to the assessee was found and seized. In view of the aforesaid, the assessment proceedings u/s 148 of the Act were abated as per proviso of the Section 153C r.w.s 153A of the Act and proceedings u/s 153C of the Act were initiated. Thereafter, assessment was framed u/s 153C r.w.s 143(3) of the Act vide order dated 30.12.2016 and the total income was determined at Rs.84,00,000/-, being the addition made on account of share application money, u/s 68 of the Act. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 31.12.2018 in Appeal No.240/2016-17 upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds of appeal:

- “1. *That on the facts and circumstances of the case & in law, the Ld. CIT(A)-XXIV, New Delhi [‘the Ld CIT(A)’], has erred in upholding the order of the ACIT, Central Circle – 08, New Delhi (‘the Ld. AO’) in upholding the addition of Rs.84,00,000/- made u/s 68 of the Act on account of receipt of share capital.”*

4. The case file reveals that there is no appearance on behalf of the assessee on any of the occasions before the Tribunal despite notices being issued through RPAD nor any application was filed by assessee seeking adjournment. Further, the notice issued for the present hearing by the Registry through RPAD was returned unserved with the postal remarks “No such person in this address”. Preferring an appeal does not mean mere formally filing it but also taking all the steps to effectively pursue the appeal. The conduct of the assessee in not appearing before the Tribunal shows the negligent approach of the assessee. The fact that the assessee has not appeared before the Tribunal despite various opportunities granted to the assessee shows that the assessee is not serious in pursuing the appeal filed by it. In the absence of any co-operation from the side of the assessee, we don't find any reason to keep the matter pending before us. In such circumstances, we, therefore, have no option but to dispose of the appeal after considering the material available on record and after hearing the Ld. D.R.

5. Before us, Learned DR took us through the findings of AO and CIT(A) and supported the order of lower authorities.

6. We have heard the rival submissions and perused the material available on record. The issue in the present ground is about the addition made of Rs.84,00,000/- on account of share

application money by invoking the provision u/s 68 of the Act. We find that while CIT(A) upholding the order observed as under:

*“5.1 I have considered the material on record including written submissions of the AR of the appellant filed in course of appellate proceedings. I have perused the assessment order u/s 153C/143(3) of the Act passed by the AO.*

*5.2 Vide **Ground No. 1** the appellant has contested addition of Rs. 84,00,000/- on account of share application money u/s 68 of the Act without appreciating the fact the applicant company has no assets except paper entries showing investment in other shell companies. The appellant has contended that if these were actual assets in these shell companies then these would have been taken over by the Priya Gold Group Companies, which would be the recipient of these assets. On due consideration, I find that the AO conducted enquiries to identify whether the companies from whom the appellant had received share application money during the year under consideration were genuine or not. The AO rightly issued notices u/s 133(6) of the Act to all the share applicants at the addresses registered on the Ministry of Corporate Affairs. Even the AO issued summons to all these parties. As stated in the assessment order all the notices returned un-served. Thereafter, the AO perused the bank statement of the appellant company and noticed that there are numerous debit & credit entries of the same amount on the same day.*

*5.3 Subsequently the AO vide order sheet entry dated 19.12.2016 asked the appellant to provide details of debit entries of bank account and prove the genuineness of these transactions. The appellant in his reply vide letter dated 23.12.2016 did not provide details of debit entries of bank account and also made no effort to prove the genuineness of the transactions. Neither before the AO nor before the undersigned the appellant submitted documentary evidences to prove the identity and creditworthiness of the so called share applicants and genuineness of the transactions. The appellant just contended that the appellant company is a shell company. It has no assets except paper entries showing investment in other shell companies. In fact if there were actual assets in these shell companies then these would have been*

taken over by the Priya Gold Group and in that case the Group would be the recipient of these assets. The appellant further submitted that the total amount of Rs. 84,00,000/- received by the appellant is only by way of book entries. It further claimed that the investments shown in the Balance Sheet are in other shell companies which are mere paper entries and do not have intrinsic value. It was also claimed that the appellant acted as intermediary and was merely a conduit for introducing share capital for Priya Gold Group of companies.

5.4 The contention of the appellant was not accepted by the AO. In my considered view the AO has rightly not accepted the reply of the appellant. The appellant simply stated that the total amount of Rs.84,00,000/- received on account of share application money is only by way of book entries but did not provide the name of the beneficiary. The appellant company did not provide the details of the debit entries of its bank account. The appellant company knows its affairs and its transactions. The appellant company knows the sources of the amounts credited in its bank account. The appellant company also knows the beneficiaries in respect of debit entries in its bank account. In such situation, to make things more clear and transparent, the appellant was required to provide the requisitioned details to the AO to lend credence to its contention.

5.5 The AO has rightly noted that Priya Gold Group is beneficiary of funds from AY 2013-14 onwards and definitely was not beneficiary during the period relevant to AY 2009- 10. The appellant company should have provided details of beneficiary during the period relevant to AY 2009-10 in support of its contention. The appellant company cannot shirk from its legal obligation to prove the identity and credit worthiness of the so called share applicants and genuineness of transactions by adjudging itself as shell company.

5.6 The contention of the AR of the appellant in his written submission dated 22.11.2018 that the investments shown in the Balance Sheet are in other shell companies which are mere paper entries and have no intrinsic value is contrary to his own assertion

made in the same submission that the appellant company had made investments in various companies in AY 2009-10 which were sold in AY 2011-12 and further reinvested the same amount in M/s Surya Agrotech Infrastructure Ltd and in three other shell companies namely M/s Surya Vincom Pvt. Ltd., M/s Subhshree Investment Management Pvt. Ltd. and M/s Surya Vanijya Pvt. Ltd. for making further investment in M/s Surya Agrotech Infrastructure Ltd and M/s Surya Processed Food Pvt. Ltd., which are part of the Priya Gold Group. If the investments made in other shell companies are mere paper entries then it is bewildering to note how such paper entries were sold in AY 2011-12 for further reinvestment.

5.7 At this stage it is relevant to examine the provisions of section 68 of the Act which is reproduced hereunder for easy reference:

**“Cash credits.**

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

**Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless -

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory;

**Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to

*therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.*  
”

*5.8 Thus, as per section 68 of the Act, the primary onus is on the appellant to prove to the satisfaction of the AO that sum credited in its books of accounts is genuine. The appellant has to prove to the satisfaction of the AO, the identity and creditworthiness of the creditor and genuineness of the transaction. The appellant company by self proclaiming itself as a shell company cannot shirk and avoid its legal obligation to prove the identity and creditworthiness of the so called share applicants and genuineness of transactions as mandate by various Courts of law in respect of applicant of the provisions of section 68 of the Act.”*

7. Thereafter, CIT(A) has relied on various decisions noted in the order and thereafter has further observed as under:

*5.11 “The AR of the appellant in his written submissions dated 14.12.2018 had cited a number of case laws to support his contention. However, in the facts and circumstances of the instant case when the appellant has itself proclaimed that it is a shell company, the applicability of the case laws cited by the appellant with different factual matrix is debatable.*

*5.12 Considering the facts stated above, in my considered and reasoned opinion the appellant undoubtedly has failed in course of assessment and appellate proceedings to establish the identity and creditworthiness of the so-called share applicants and genuineness of transactions. The AO has rightly invoked the provisions of the section 68 of the Act to make addition of Rs. 84,00,000/- on account of share application money and added it back to the total income of the appellant. Thus, I hold that the action of the AO in making addition of Rs. 84,00,000/- on account of share application money is justified and therefore the addition of Rs. 84,00,000/- u/s 68 of the Act made by the AO is confirmed. This Ground No. 1 of appeal is therefore dismissed.”*

8. Before us, no fallacy in the findings of CIT(A) has been pointed out by assessee nor any document placed by assessee to support its contentions. In such a situation, we find no reason to interfere with the order of CIT(A). **Thus the ground of assessee are dismissed.**

**9. In the result, appeal of the assessee is dismissed.**

**Order pronounced in the open court on 23.11.2022**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 23.11.2022

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI