

आयकर अपीलीय अधिकरण, पीठ "B" , कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "B" KOLKATA

समक्ष : श्री मनीष बोरड, लेखा एवं
श्री संजय शर्मा न्यायिक सदस्य

**Before: Shri Manish Borad, Accountant Member and
Shri Sonjoy Sarma, Judicial Member**

आयकर अपील सं.य/
ITA No. 1127/Kol/2019
Assessment Year: 2008-09

M/s. Well Plan Tradelink P.Ltd 15 Ganesh Chandra Avenue, Kolkata-700 013.	<u>बनाम</u> V/s.	Income Tax Officer Ward 2(4), Kolkata Aaykar Bhawan P-7 Chowringhee Sq., Kolkata-700 069.
PAN: AAACW7230R		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant		None
प्रत्यर्थी की ओर से/By Respondent		Shri Sudipta Guha. CIT, Id. Sr.DR
सुनवाई की तारीख/Date of Hearing		23-11-2022
घोषणा की तारीख/ Date of Pronouncement		29-11 -2022

आदेश /O R D E R

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment year 2008-09 is directed against the order dt. 13-12-2017 passed by the Id. Commissioner of Income-tax, Appeals [in short, hereafter referred to as 'the 'Id. CIT(A)-19, Kolkata.

2. When the case was called for, none appeared on behalf of assessee. A perusal of file shows that the assessee's case was fixed on

various occasions. It shows that the assessee is not interested to prosecute its appeal. We, therefore, deem it fit and proper to adjudicate the appeal on merits *ex parte* assessee on the basis of material available on record and with the assistance of the Id. DR.

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

- 1. That under the facts & circumstances of the case, the Ld.CIT(A) erred in passing order ex-parte.*
- 2. That under the facts & circumstances of the case, the Ld.CIT(A) erred In confirming addition amounting to Rs.11,12,00,000/-, being the share capital alongwith premium raised by the assessee during the year the same to be unexplained cash credit in terms of Sec.68 of the Income Tax Act, 1961. The addition is unjustified and needs to be deleted.*
- 3. That under the facts & circumstances of the case, the Ld. CIT(A) erred in confirming addition of a sum of Rs.9,160/- under section 14A read with Rule-8D. The addition is unjustified and needs to be deleted.*
- 4. That the levy of interest under section 234B of the Income Tax Act, 1961.*
- 5. The assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing*

4. Perusal of records shows that the assessee has challenged the findings of the Id.CIT(A) confirming the additions made u/s. 68 of the Act at Rs. 11,12,00,000/- and disallowance u/s.14A of the Act/ Read With 8D of the I.T Rules,1962 at Rs. 9,160/-.

5. Brief facts of the case are that the assessee is a private limited company, engaged in the business of trading in shares and securities. Income at Rs. Nil declaring in e-return of income was filed on 13.08.2008 for the AY 2008-09, which was assessed u/s. 143(1) of the Act. Later the case was reopened by issuance of notice u/s. 148 and thereafter, order u/s. 143(3) of the Act was passed on 29-04-2010

raising a demand at Rs.2,271/-. On perusal of records, the Id. AO found that the assessee company had raised share capital of Rs. 11,12,00,000/- including share premium by issuing 222400 shares at a face value of Rs. 10/- each.

6. Subsequently, the case was taken up u/s. 263 of the Act and order u/s. 263 of the Act was passed on 11-03-2013 holding the above order of the AO as erroneous and prejudicial to the interest of revenue. It was set aside with the direction that the Id. AO should pass fresh assessment order after conducting independent and detailed enquiry in respect of share capital/share premium. In pursuance to the said direction, the Id. AO issued notice u/s. 142(1) of the Act, which was not properly served upon the assessee by the postal authority as no such company was located in the given address. However, on 21-03-2014 Miss Megha Goenka A/R of the assessee appeared and filed some details. For looking into the three limbs of section 68 of the Act i.e. to prove the identity, genuineness and creditworthiness of the share transaction, the assessee was asked to produce the alleged directors/subscribers of the company for examination. But there was complete non compliance of the assessee on the date (25-03-2014) fixed by the Id.AO. The AO found that the assessee intentionally avoided the assessment proceeding and not cooperated in completing the assessment. Finally he completed best judgment assessment u/s. 144 of the Act making addition of Rs. 11,12,00,000/- for unexplained share capital and share premium u/s. 68 and Rs. 9400/- on account of preliminary expenses u/s. 14A of the Act.

7. Aggrieved, the assessee preferred appeal before the Id. CIT(A) only challenging the impugned addition made u/s. 68 of the Act at Rs.

1,12,00,000/- made towards unexplained cash credit and Rs.9,160/- made u/s. 14A/RWR 8D.

8. During the appellate proceedings the Id. CIT(A) fixed the case for hearing. But on such appointed date neither any one attended nor any submission in support of its claim/grounds was filed before him. The assessee remained absent on the said dates of hearing. Therefore, the Id. CIT(A) passed *ex parte* order respectfully following the judgment of the Hon'ble Supreme Court in the case of *H.M Esufali H.M Abdulali* (1973) 90 ITR 271 (SC) dismissing the appeal of assessee.

9. Aggrieved, the assessee is now in appeal before this Tribunal challenging the impugned additions made u/s. 68 of the Act at Rs. 1,12,00,000/- and Rs.9,160/- made u/s. 14A. Apart from filing appeal, the assessee had not made any further efforts to file any other documentary evidence or paper book and written submissions in support of its claim.

10. Nobody has appeared on behalf of the assessee. On the other hand, the Id. DR vehemently argued supporting the orders of lower authorities and prayed for confirming the order of Id. CIT(A).

11. We have heard the Id. Departmental Representative 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. 11,12,00,000/- by the Id.AO for unexplained cash credits of share capital and share premium received during the year. We notice that the assessee company had offered Nil income for the AY 2008-09. The assessee company has been able to procure share capital/share

premium at Rs. 11,12,00,000/-. It creates doubt about the genuineness of the alleged transaction as to how such company with no asset and poor track record has been able to procure share capital/share premium totalling to Rs.1,12,00,000/-. The company having secured such huge magnitude of share capital and share premium must be having proper business set up. Statutory notice u/s. 143(2) of the Act duly served upon the assessee and when the case of the assessee was selected for scrutiny, there was no proper compliance. The assessee failed to produce the alleged parties who had subscribed to the equity shares of the assessee company and did not file any documentary evidence to explain the alleged credit. The assessee was asked to explain the cash credits received by it during the year. The assessee failed to file necessary details to explain the source of alleged cash credit u/s. 68 and also unable to prove identity, creditworthiness of the cash creditors as well as genuineness of the transaction. The assessee company has miserably failed to explain the source of alleged cash credits. If the assessee had sufficient details to explain the alleged sum, it could have certainly filed those details at any stage. Consistently escaping from appearing/producing the documents and alleged parties before the Id. AO and the appellate authority(Id.CIT-A) indicates that the assessee has no plausible explanation to explain the source of alleged sum of share capital and security premium and, therefore, the provisions of section 68 of the Act have rightly been invoked by Id. AO treating the alleged sum as the unaccounted income of assessee, which seems to be routed in the books through bogus/accommodation entry in the form of share capital and security premium. Therefore, under these facts and circumstances, we find no infirmity in the finding of the Id. CIT(A)

confirming the addition of Rs.1,12,00,000/- made u/s. 68 of the Act. This ground of assessee's appeal is dismissed.

12. Ground no. 3 is with regard to the disallowance made u/s. 14A of the Act. However, on perusal of order passed u/s.144 of the Act, we find that this addition/disallowance was correctly made as there was no submission/satisfactory explanation. We thus fail to find any infirmity in the findings of the Id. CIT(A). Therefore, we dismiss ground no. 3 raised by the assessee.

13. Ground no.4 is consequential and academic in nature which requires no adjudication.

14. Ground no.5 is general in nature, which requires no adjudication.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

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

आदेश खुले न्यायपीठ में दिनांक 29-11-2022 को उद्घोषित।

Sd/-
(SONJOYSARMA)
JUDICIAL MEMBER

Sd/-
(MANISHBORAD)
ACCOUNTANT MEMBER

Dated : 29 -11-2022

**PP/SPS

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

- 1.अपीलार्थी/Appellant/: **M/s. Well Plan Tradelink P.Ltd**
15 Ganesh Chandra Avenue, Kolkata-700 013.
2. प्रत्यर्थी/Respondent/: **Income Tax Officer, Ward 2(4), Kolkata**
Aaykar Bhawan, P-7 Chowringhee Sq., 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.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

**Assistant Registrar
ITAT, Kolkata**