

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 2106/Kol/2018
Assessment Year : 2009-10

M/s. Aconite Commotrade Pvt. Ltd. (PAN: AAHCA 5280 G)	Vs.	ITO, Ward-9(1), Kolkata
Appellant		Respondent

Date of Hearing	23.11.2022
Date of Pronouncement	15.12.2022
For the Assessee	None
For the Revenue	Shri Ranu Biswas, Addl. CIT, DR

ORDER

PER SONJOY SARMA, JM:

This appeal filed by the assessee is directed against the order of Id. CIT(A)-3, Kolkata (hereinafter referred to as 'the Act') dated 10.08.2018 relating to A.Y. 2009-10.

2. When the case was called for non-appeared on behalf of the assessee on perusal of the records, it shows that number of notices of hearing were sent to the assessee including RPAD. But no one turned up on behalf of the assessee. The assessee has not filed any paper book nor filed any written submission. It seems that the assessee is not interested to pursue this appeal. We, therefore, deem it proper to adjudicate the appeal on the merits of the case ex-parte qua the assessee on the basis of material available on record and with the assistance of the Id. DR, the assessee has raised the following grounds of appeal for assessment year 2009-10:

"i. For that the order of the Id. CIT(A) is arbitrary, illegal, excessive perverse and bad in law.

ii. For that the Id. CIT(A) erred in confirming the assessment order passed by the Id. AO without providing the appellant sufficient and reasonable opportunity of being heard.

iii. For that the order passed by the ld. CIT(A) is bad in law since the ld. CIT(A) has not decided the issues ground wise in respect of the grounds raised by the appellant in the memo of appeal.

iv. For that the ld. CIT(A) erred in confirming the action of the AO in completing the assessment u/s 144 when no notice as required under the law before completion of assessment u/s 144 were served.

v. For that the ld. CIT(A) erred in confirming the action of the AO in completing the assessment in post haste u/s 144 without allowing the assessee any proper and reasonable opportunity of being heard.

vi. For that the ld. CIT(A) erred in confirming the action of the AO in making the addition of the share capital when the additions have been made by the AO without carrying out the directions of the ld. CIT in the order u/s 263.

vii. For that the ld. CIT(A) erred in confirming the action of the AO in completion of the assessment by making addition of Rs. 32,750,000/- as unexplained cash credit simply because the share applicants did not comply with the notice u/s 133(6) when otherwise all the evidences with regard to the receipt of the share application money as well as the source there was already on assessment records.

viii. For that the ld. CIT(A) erred in confirming the action of the AO in completing the assessment when the proceedings u/s 263 itself were bad in law, no fishing or rowing enquiry was required to made in the proceedings u/s 147 and as such the assessment is ab initio void.

ix. For that on the facts and in the circumstances of the case the addition of Rs. 32,750,000/- confirmed by the ld. CIT(A) was not justified.

x. For that the ld. CIT(A) erred in confirming the action of the AO in charging interest u/s 234A & 234B of the income tax act, 1961.

xi. For that the order of the ld. CIT(A) be modified and the assessee be given relief prayed for.

xii. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing.”

3. Brief facts of the case are that the assessee is a private limited company. The source of income is stated to be from the investment in shares. The income of the assessee for the assessment year declaring total loss of Rs. 16,730/- which was filed on 16.10.2009. The return of the assessee was duly processed u/s 143(1) of the Act

and subsequently notice u/s 148 was issued upon the assessee on 27.10.2011. Thereafter, assessment order u/s 147/143(3) was passed in the case of assessee on 19.12.2011. Soon after, the Commissioner of Income Tax (Appeals) -3, Kolkata held that the assessment order was erroneous and prejudicial to the interest of revenue on the ground that requisite enquiry was not done regarding identity and creditworthiness of the shareholders through which the introduction of share capital to the tune of Rs. 3,27,50,000/- was made in the financial year under consideration and accordingly after issuing show cause notice upon the assessee and the order u/s 263 was passed in the case of assessee on 13.03.2014 by which setting aside the above assessment order with the direction to AO for fresh assessment after conducting thorough and detailed enquiries into the assessee's case. In compliance of such order, the AO had issued notice upon the assessee from time to time. However, there was not compliance in response to such notice. The AO further issued notice u/s 133(6) of the Act to the shareholders of the company but most of them were returned unserved by the postal department and in some cases no compliance was made by such shareholders. As there was no compliance on the part of the assessee nor filed any fresh submission and notice u/s 133(6) of the Act could not be served in the case of assessee to prove identity as well as the creditworthiness of the shareholders, the ld. AO added a sum of Rs. 3,27,50,000/- as share capital contribution and added back to the total income u/s 68 of the Act.

4. Dissatisfied with the above order, the assessee preferred an appeal before the ld. CIT(A) raising various grounds of appeal. However, the appeal of the assessee was dismissed by the ld. CIT(A) and the assessee made no further effort before the ld. CIT(A) nor file any documentary evidence in support of its claim. As the assessee has completely failed to so do, the ld. CIT(A) confirmed such addition made by the AO.

5. Aggrieved by the aforesaid order, the assessee is in appeal before this Tribunal.

6. Again the assessee has failed to appear before us and any of the dates of hearing except filing the instant appeal before us, no one appeared to substantiate its claim. Therefore, it is clearly indicate that the assessee is only trying to delay the proceedings and has nothing to place on record. On the other hand, the Id. DR vehemently argue supporting the orders of authorities below and pray before us for confirming the orders of the Id. CIT(A) as the assessee completely failed to substantiate its claim before this bench.

7. We after hearing the Id. DR on this issue and perused the material placed on record before us. The core issue in this case that the assessee has challenged the findings of the Id. CIT(A) confirming the addition made u/s 68 of the Act is Rs. 3,27,50,000/- by the Id. AO for unexplained cash credit of share capital and security premium received during the year. We from the perusal of the fact noticed that the assessee company had offered meagre income of Rs. 14,870/- for assessment year in question and in such situation, the assessee company has failed to procure share capital and share premium of Rs. 3,27,50,000/- is nothing but an escaped income, statutory notice u/s 133(6) of the Act duly served upon the shareholders but same were not responded. In the instant case, assessee has failed to produce alleged shareholders before the Id. AO for identity, creditworthiness and genuineness of the transaction before the AO and even before the Id. CIT(A) no submission were made nor file any documents in this regard. Since the assessee has failed to file necessary details to explain the source of alleged cash credit and also unable to prove the identity and creditworthiness of the cash creditors as well as the genuineness of the transaction as per section 68 of the Act and the assessee company has miserably failed to explain the source of alleged cash credit. In the instant case, the assessee has sufficient details to substantiate the alleged sum. The assessee company consistently escaping from appearing before the Id. AO and the appellate authority indicates that the assessee has no plausible explanation to explain the source of alleged sum of share capital and security premium. Therefore, the assessee has failed to explain the alleged cash credit and under the provisions of section 68 of the Act and accordingly,

section 68 attracted upon the assessee. Therefore, 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 establishing bogus share capital and share premium through accommodation entry provider. Therefore, under this present facts and circumstances of the case, we find no infirmity in the findings given by the Id. CIT(A) by which he confirming the addition of Rs. 3,27,50,000/- made u/s 68 of the Act and same is confirmed in the hands of the assessee. Thus, the grounds of appeal raised by the assessee are dismissed.

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

Order is pronounced in the open court on 15.12.2022

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 15.12.2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Aconite Commotrade Pvt. Ltd., C/o. Rajesh Mohan & Associates, Unit No. 18, 5th Floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata – 700013.
2. Respondent – ITO, Ward-9(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata