

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

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 2046/Kol/2018
Assessment Year: 2012-13**

***Janhavi Promoters Pvt. Ltd.....Appellant
[PAN: AABCJ 8764 G]***

Vs.

ITO, Ward-13(2), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Sh. G.H. Scma, CIT, D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : December 5th, 2022

Date of pronouncing the order : December 15th, 2022

आदेश

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-5, Kolkata [in

short ld. "CIT(A)"] dated 10.07.2018 arising out of the assessment order framed u/s 144 of the Act dated 31.03.2015.

2. When the case was called for, none appeared on behalf of the assessee. In the past also, on the date of hearing on 11.08.2022 none appeared on behalf of the assessee. Thereafter, on the next date of hearing i.e. 19.09.2022 an e-mail was received seeking a month's time for submitting the paper book. The case was adjourned to 5th December, 2022, but again neither the assessee has appeared through its authorized representative nor any adjournment application or a paper book has been filed. It, *prima facie* indicates that the assessee is not serious in contesting the instant appeal. We, therefore, decide to adjudicate the appeal on merit with the assistance of ld. D/R and the available records.

3. The assessee has raised the following grounds of appeal:

"1. That the order of the Ld. Income Tax Officer is bad in law and on facts of the case.

2. That the Ld. CIT(A) erred in upholding the addition of Rs 1,10,00,000/- on account of share application money received during this assessment year, in spite of having noted that the said amount has been allowed as share capital allotted in A.Y. 2014-15, assessed u/s 143(3) of the Income Tax Act, 1961.

3. That the appellant craves leave to adduce additional grounds or amend or alter any of the foregoing grounds before on at the time of the Appeal."

4. Brief facts of the case as culled out from the records are that the assessee is a private limited company. Income of Rs. NIL declared in the return of income filed on 29.09.2012 after claiming current year loss of Rs. 21,05,340/-. Case selected for

scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. As observed by ld. AO that during the year the share application money of Rs. 12,15,06,500/- was received. Ld. AO asked the assessee to explain the said sum but the assessee did not comply which left no option with ld. AO except to make the addition for unexplained cash credit u/s 68 of the Act of Rs. 12,15,06,500/-. Ld. AO also disallowed the expenses at Rs. 19,46,610/- considering them to be bogus. Income assessed at Rs. 14,09,72,710/-.

5. Aggrieved, the assessee preferred appeal before ld. CIT(A) and partly succeeded. Ld. CIT(A), after considering the submissions made by the assessee as well as considering the remand report issued by ld. AO dated 16.05.2015 partly allowed the appeal thereby sustaining the addition u/s 68 of the Act at Rs. 1.10 Cr being share application money received during AY 2012-13 which remained unexplained by the assessee and also deleted the part of the expenses assessed by ld. AO.

6. Aggrieved, the assessee is now in appeal before this Tribunal with regard to the addition of Rs. 1.10 Cr. confirmed by ld. CIT(A) towards unexplained share application money.

7. Ld. D/R vehemently argued supporting the orders of both the lower authorities and again asserted that the assessee failed to explain the alleged sum.

8. We have heard ld. D/R and perused the records placed before us. Addition u/s 68 of the Act for unexplained share application money of Rs. 1.10 Cr is in challenge before us. The contention of the assessee as discernible from the statement of

facts and the grounds raised by the assessee is that a sum of Rs. 1.10 Cr was received during the year as share application money u/s 68 of the Act. Id. CIT(A) confirmed this addition observing that the assessee is unable to explain the source of the said sum. Relevant extract from the finding of Id. CIT(A) is reproduced below:

“The Standard Procedure issued by CBDT makes it clear that section 68 would apply only to credits in the books of account of the appellant in the relevant year. Section 68 would not operate in credits found in the books of the appellant to previous assessment years which have not explained. They would have to be taxed in the appropriate assessment years. The assessment order is therefore patently bad in law as addition on account of undisclosed cash credits amounting to Rs. 11,05,06,500/- have been made in the wrong assessment year. However, in the assessment year under appeal i.e. A.Y. 2012-13, the share application amounting to Rs.1,10,00,000/- was received. The A/R of the appellant has not made any submission as regards the nature and source of this amount. The A/R of the appellant in submissions submitted on different dates had only emphasized on additions amounting to Rs. 11,05,06,500/- being made in violation of the provisions of section 68 of the Act. In the absence of any submission made by the appellant as regards, source of share application amounting to Rs. 1,10,00,000/-, the addition is confirmed u/s 68 of the Act for the A.Y. 2012-13.

After careful consideration of the submission of the appellant, perusal of relevant assessment records and relevant judicial decision, the addition of Rs.12,15,06,500/- is restricted to Rs.1,10,00,000/- as unexplained cash credit u/s 68 of the Act. This ground of appeal partly succeeds and is therefore partly allowed.”

9. Before advertng to the facts of the case, we notice that Section 68 of the Act has a direct bearing on the issue raised before us and Section 68 of the Act reads as follows:

“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:

79[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:

80[Provided further] that nothing contained in the first proviso 81[or second 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.”

10. Perusal of the above provision shows that if a sum found credited/received in the books of account maintained for the previous year and if the assessee has no explanation about the nature and source thereof or the explanation offered by him, in the opinion of Id. AO, satisfactory, the sum so credited is chargeable to income tax as the income of the assessee of the previous year.

11. Now, the undisputed fact is that the alleged sum of Rs. 1.10 Cr is received during the year and to explain the source thereof neither during the course of assessment proceedings nor during the appellate proceedings before Id. CIT(A) and even during the proceedings before us, no details whatsoever has been filed by the assessee to explain the alleged sum of share application money. The assessee miserably failed to discharge the primary onus casted upon it as per the provisions of Section

68 of the Act. Identity and creditworthiness of the share applicant and genuineness of the transaction has not been proved.

12. The assessee is trying to take shelter on the ground that share capital against the said share application money was allowed in AY 2014-15 and the same was assessed u/s 143(3) of the Act, therefore, addition could not be made for AY 2012-13 in which the said sum is received. We, however, fail to find any merit in this plea taken by the assessee in the grounds of appeal and are of the considered view that since the alleged sum was received during the year, ld. AO was justified in asking the assessee to explain the source of said sum and since the assessee failed to file any documentary evidences and discharge the primary onus casted upon it and could not explain the source of said sum, provisions of Section 68 of the Act are attracted. Thus, we fail to file any infirmity in the finding of ld. CIT(A) confirming the addition of Rs. 1.10 Cr. Thus, ground no. 2 raised by the assessee is dismissed.

13. Other grounds are general in nature which need no adjudication.

14. In the result the appeal filed by the assessee is dismissed.

Kolkata, the 15th December, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 15.12.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Janhavi Promoters Pvt. Ltd., 11, Clive Row, Kolkata-700 001.**
- 2. ITO, Ward-13(2), Kolkata.**
3. CIT(A)-5, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata