

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

श्री संजय गर्ग, न्यायिक सदस्य
एवं
डॉ. मनीष बोरोड, लेखा सदस्य
के समक्ष

**Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 133/Kol/2020
Assessment Year: 2012-13**

***Royalpet Traders Pvt. Ltd.....Appellant
[PAN: AAFCR 7873 N]***

Vs.

ITO, Ward-4(1), Kolkata.....Respondent

Appearances by:

Sh. Manoj Kataruka, Adv., appeared on behalf of the Assessee.

Sh. Biswanath Das, CIT (D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : September 29th, 2022

Date of pronouncing the order : January 2nd, 2023

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)-10, Kolkata [in

short ld. "CIT(A)"] dated 02.12.2019 arising out of the assessment order framed u/s 143(3) of the Act dated 10.03.2015.

2. The assessee is in appeal before the Tribunal raising the following grounds:

"1. That on the facts and circumstances of the case, the action of the Ld. CIT(A) to uphold the addition of Rs.9,91,00,000/- on account of share capital u/s 68 of the Act, made by the AO is contrary to the material evidences on record and the addition made is arbitrary, excessive and bad in law.

2. That on the facts and circumstances of the case, the action of the Ld. CIT(A) to uphold the disallowance of Rs.9,91,00,000/- on account of share capital by treating it as unexplained cash credit u/s 68 of the Act, made by the AO is without considering the evidences and submissions filed and the addition made is in violation of the principles of natural justice and therefore the addition made is arbitrary, excessive and bad in law.

3. That the order of the Ld. CIT(A) upholding the additions made by the Assessing Officer is illegal, arbitrary and bad in law.

4. That the above grounds of appeal shall be argued in detail at the time of hearing and the appellant craves leave to submit, add, alter, modify, amend any grounds of appeal or submit any additional grounds of appeal at or before the time of hearing."

3. At the outset, ld. Counsel for the assessee stated that the assessee did not get fair opportunity to plead its case before ld. CIT(A) nor could file various evidences explaining the source of share capital and share premium totalling to Rs. 9.91 Cr. Prayer was made to restore the issue raised on merit to ld. CIT(A) for afresh adjudication considering the details filed during the course of hearing before this Tribunal.

4. On the other hand, ld. D/R though supported the order of ld. CIT(A) stating it to be a well-reasoned order but could not

controvert the fact that the impugned order was framed *ex-parte* qua the assessee.

5. We have heard rival contentions and perused the records placed before us. Addition u/s 68 of the Act at Rs. 9.91 Cr for unexplained share capital and share premium is in challenge before us. During the course of assessment proceedings, the assessee was asked to explain the share capital of Rs. 1.99 lakh and share premium received on such share capital at Rs. 9,89,01,000/-. However, in spite of sufficient opportunity, the assessee failed to discharge the primary onus casted upon it to explain the source of the share capital and share premium raised. Id. AO made the addition u/s 68 at Rs. 9.91 Cr. The assessee carried the matter before Id. CIT(A) who issued a notice through ITBA module on 08.11.2019 fixing date of hearing on 26.11.2019. Though as per Id. CIT(A)'s notice was duly served upon the appellant company on 15.11.2019 but on the given date i.e. 26.11.2019 the appellant company did not appear nor filed any petition seeking adjournment of the case. No further opportunity was given and vide order dated 02.12.2019, addition made by Id. AO was confirmed.

6. Before us, Id. Counsel for the assessee stated that due to the change of system of serving of notices, the assessee missed to take note of the notice received through e-mail and was prevented for sufficient cause from appearing before Id. CIT(A). Before us the detailed paper book containing 67 pages have been filed in order to explain the alleged sum of share capital and share premium. Perusal of the impugned order and records show that the assessee

was not granted proper opportunity of being heard. We therefore, considering the factual matrix and in the interest of justice, restore all the issues raised on merit to ld. CIT(A) for afresh adjudication and to pass a speaking order considering all the evidences and details filed before us and which would be filed by the assessee again on the very first date of hearing and adjournment should not be sought unless otherwise required for reasonable cause. Thus, all the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Kolkata, the 2nd January, 2023

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 02.01.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Royalpet Traders Pvt. Ltd., 1st Floor, Room No. 107C, Todi Chamber, 2, Lalbazar Street, Kolkata-700 001.**
- 2. ITO, Ward-4(1), Kolkata.**
3. CIT(A)-10, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata