

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

Before: Shri Sanjay Garg, Judicial Member and
Shri Manish Borad, Accountant Member

आयकर अपील सं.य/ ITA No. 1226/Kol/2019 Assessment Year: 2012-13		
M/s. Subhlabh Realcon P.Ltd. 133 Canning Street, Chopra House, 3 rd Fl., Kolkata-700 001.	बनाम V/s.	Income Tax Officer Ward 5(1), Kolkata Aaykar Bhawan P-7 Chowringhee Sq., Kolkata-700 069.
PAN: AAQCS 9275G		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant		None
प्रत्यर्थी की ओर से/By Respondent		Shri Biswanath Das, CIT, Id. Sr.DR
सुनवाई की तारीख/Date of Hearing		30-11-2022
घोषणा की तारीख/Date of Pronouncement		02/01/2023

आदेश / O R D E R

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment year 2012-13 is directed against the order dt. 21-08-2017 passed u/s.250 of the Income-tax Act, 1961 (hereinafter, referred to as the 'Act') by the Id. Commissioner of Income-tax, Appeals [in short, hereafter referred to as 'the 'Id. CIT(A)-2, 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 for

hearing on various occasions. It also shows that notice(s) for hearing sent to addressee, but returned unserved. It is, therefore, presumed 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 2012-13:-

1. (a) That on the facts and in the circumstances of the case, Ld.CIT(A) is wrong and unjustified in passing order u/s. 250 of Income Tax Act, 1961 dated 21.08.2017 on exparte view for non-compliance only on last occasion.

(b) That the Id. CIT(A) has erred in passing exparte order without appreciating that non compliance on 09.08.2017 was due to unavoidable circumstances.

2. That without prejudice to ground no. 1 and on the facts and in the circumstances of the case, Id. CIT(A) is wrong and unjustified in confirming addition of Rs. 11,72,00,000/- u/s. 68 of Income Tax Act, 1961 towards share capital with premium received for allotment of shares without a speaking order on its merit.

3. That without prejudice to ground no. 1 and on the facts and in the circumstances of the case , Id. CIT(A) is wrong and unjustified in confirming disallowance of expenses of Income Tax Act, 1961 amounting to Rs. 14,147/- without a speaking order on its merit.

4. That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal

4. Perusal of records shows that the assessee has challenged the findings of the Id.CIT(A) confirming the addition made u/s. 68 of the Act at Rs. 11,72,00,000/- and disallowance u/s.14A of the Act/ Read With 8D of the I.T Rules,1962 at Rs. 14,147/-.

5. Brief facts of the case are that the assessee is a private limited company, engaged in the business of investment. Income at Rs. 850/- declaring in e-return of income was filed on 03.03.2013 for the AY 2012-13, which was assessed u/s. 143(1) of the Act. Subsequently, assessee's case was selected for scrutiny under CASS by serving of valid/statutory notices u/s. 143(2)/142(1) of the Act to submit the requisite details. Details of, which available at page-2 & 3 of the assessment order. But in response to notice issued u/s. 142(1) of the neither any one appeared nor filed any details requisitioned by the Id.AO. Thereafter, the Id.AO issued summons u/s. 131 of the Act to the directors/share subscribers of the assessee company, but there was no compliance. Ld. AO found that the assessee company had issued shares at Rs. 568400/- with a premium at Rs. 11,66,31,600/- but assessee failed to explain the said sum. Ld. AO found that the assessee intentionally avoided the assessment proceeding and not cooperated in completing the assessment. Finally Ld. AO completed best judgment assessment u/s. 144 r.w.s 143(3) of the Act after 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. Income assessed at Rs. 11,72,15,000/-.

6. Aggrieved, the assessee preferred appeal before the Id. CIT(A) only challenging the impugned addition u/s. 68 of the Act at Rs. 11,72,00,000/- made towards unexplained share capital & share premium at Rs. 14,147/- made u/s. 14A of the Act.

7. During the appellate proceedings the Id. CIT(A) fixed the case for hearing on five occasions. 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 dismissing the appeal of assessee for non compliance.

8. Aggrieved, the assessee is now in appeal before this Tribunal challenging the impugned additions made u/s. 68 of the Act at Rs. 11,72,00,000/- and Rs. 14,147/- 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.

9. 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).

10. 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. 11,72,00,000/- 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 income at Rs. 850/- for the AY 20012-13. The assessee company has been able to procure share capital/share premium at Rs. 11, 72,00,000/-. 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.11,72,00,000/-. 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 share capital and share premium of Rs. 11.72 cr. received by it during the year. The assessee failed to file necessary details to explain the source of alleged sum and also unable to prove identity and creditworthiness of the cash creditors as well as genuineness of the transaction. The assessee company has miserably failed to explain the source of alleged share capital and share premium. 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) and non appearance before us 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.11,72,00,000/- made u/s. 68 of the Act. This ground of assessee's appeal is dismissed.

11. 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 notice that said disallowance was made as there was no satisfactory submission/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.

12. Ground nos.1(a)/(b) are consequential and academic in nature which requires no adjudication.

13. Ground no. 4 is general in nature, which requires no adjudication.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

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

आदेश खुले न्यायपीठ में दिनांक 02/01/23 को उद्घोषित।

Sd/-

(SANJAYGARG)
JUDICIAL MEMBER

Dated : 02.01-2023

Sd/-

(MANISHBORAD)
ACCOUNTANT MEMBER

**PP/SPS

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

1.अपीलार्थी/Appellant/: M/s. Subhlabh Realcon P.Ltd. 133 Canning Street, Chopra House, 3rd Fl., Kolkata-700 001.

2. प्रत्यर्थी/Respondent/: Income Tax Officer, Ward 5(1), 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