

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

**I.T.A. No. 189/Kol/2020**  
**Assessment Year : 2011-12**

ITO, Ward-13(4), Kolkata	vs	M/s. Vikash Tradelink India Pvt. Ltd. (Now amalgamated with M/s. Yes Tecno Ltd. PAN: AACCV 0705 E
Appellant		Respondent

Date of Hearing	22.11.2022
Date of Pronouncement	24.01.2023
For the Assessee	None
For the Revenue	Shri G.H. Sema, CIT(DR)

**ORDER**

**Per Sonjoy Sarma, JM:**

The present appeal has been preferred by the revenue against the order of Ld. CIT(A)-Jamshedpur (hereinafter referred to as the "ld. CIT(A)") dated 18.10.2019 for A.Y. 2011-12. The revenue has raised the following grounds of appeal:

*"i. Whether on the facts & in the circumstances of the case, ld. CIT(A) erred in fact and law in treating the notice issued u/s 148 of the I.T. Act, 1961 as void ab-initio and liable to be quashed without making proper appreciating of the findings and observation of the AO, the onus is on the assessee to prove the identity, creditworthiness and genuineness of the transaction which he had failed at the time of scrutiny proceedings.*

*ii. Whether on the facts & in the circumstances of the case, ld. CIT(A) erred in fact and law in treating the notice issued u/s 148 of the I.T. Act, 1961 as void ab-initio and liable to be quashed ignoring the fact that assessing officer had made independent enquiries u/s 133(6) and u/s 131 from the directors of the companies from where share premium amounting to Rs. 1,53,00,000/- was received and discovered that the assessee company had routed it own unaccounted money through the shell shareholder companies.*

*iii. That the department craves leave to add modify or alter any of the grounds of appeal and/or adduce additional evidence at the time of hearing of the case."*

2. At the outset, it is noted that there is a delay of 20 days on the part of the revenue in filing this appeal before the Tribunal. In this regard, the Revenue has filed an application seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there is a sufficient cause for the delay of 20 days on the part of the Revenue in filing this appeal before the Tribunal and delay in filing the instant appeal is accordingly condoned.

3. When the case was called for none appeared on behalf of the assessee. On perusal of the file, it shows that number of notices of hearing were sent including RPAD by which returned unserved by the postal department. The assessee has not filed any paper book or written submission in such circumstances, it seems that the assessee is not interested to contest this appeal. We, therefore, deem it proper to adjudicate the appeal on the merits ex-parte qua on the basis of material available on record with the assistance of ld. DR.

4. Brief facts of the case are that the assessee is a private limited company. The source of income is stated to be from business of trading of industrial goods. The assessee company filed its return of income for the the assessment year 2011-12 relevant to financial year 2010-11 on 26.09.2011 showing total income of Rs. 34,12,090/-. The return of the assessee was duly processed u/s 143(1) of the Act, immediately after it, the ld. AO on receiving credible information which was in possession of the department that the assessee company has shown to have received Rs. 2,32,00,000/- which included share capital of Rs. 23,20,000/- and share premium of Rs. 2,08,80,000/- and the AO asked the assessee company to furnish details of name, address, PAN of their relationship with the assessee company from whom said share capital and share premium was raised. The ld. AO further noticed that the premium of Rs. 90/- was charged against face value of Rs. 10/- per share which was very high as the financials of the assessee company showed nothing to justify such a

high premium per share. The ld. AO further obtained necessary approval from the ld. PCIT, Jamshedpur and notice u/s 148 was duly received upon the assessee company on 26.03.2018. In response to such notice, the assessee filed ITR-6 on 17.04.2018 showing total income at Rs. 34,12,090/-. During the assessment proceeding, the reason to believe was sent to the assessee on 07.05.2018 and the ld. AO issued notice u/s 143(2) on 07.05.2018 and which was served upon the assessee. The ld. AO further issued notice u/s 142(1) dated 23.08.2018 which was also duly served upon the assessee and letter to third party u/s 133(6) dated 23.08.2018 of the Act for calling information were issued. In response to aforesaid notices, assessee's submissions were considered by the ld. AO and placed on record. During the assessment proceeding, the ld. AO has noticed that the assessee had received Rs. 1,53,00,000/- as share capital/share premium from Kolkata based company viz:

Sl. No.	Name	Amount
1	Brijdham Sales Pvt. Ltd. (PAN: AADCB1785F)	1,33,00,000/-
2	Mangalam Viniyog Pvt. Ltd. (PAN: AADCM5074C)	20,00,000/-

The ld. AO to examine the identity and creditworthiness of the third parties and genuineness of the transaction, the notice u/s 133(6) of the Act was issued for submitting various documents. Further summon u/s 131 was also issued to third parties for establishing identity of the applicant company. In pursuance to such notices, no compliance was made by M/s. Mangalam Viniyog Pvt. Ltd. which raised the question of identity of Investor Company. However in case of M/s. Brijdham Sales Pvt. Ltd. complied with the summon notice and Mr. Vikash Garg being director appeared and stated that the company had shifted from Kolkata to Purulia. However verify the fact where the company actually working from Kolkata in earlier years, inspectors were sent to Kolkata and the report submitted by the inspectors considered wherefrom it reveals that the company namely M/s. Brijdham Sales Pvt. Ltd. was not found in the given address. Infact, there was an old building where there was some

other companies' offices were situated. Further the inspector stated in his report that they had talked to the people who were working in that particular building for years and asked about the company M/s. Brijdham Sales Pvt. Ltd. and they were replied that they had never known to or heard of a company named Brijdham Sales Pvt. Ltd. in that address.

5. Considering all the facts, the ld. AO added further sum of Rs. 1,53,00,000/- in the hands of assessee u/s 68 of the Act as undisclosed income.

6. Dissatisfied with the above order, the assessee preferred an appeal before the ld. CIT(A) where the ld. CIT(A) allowed the appeal of the assessee on legal issue after relying on the decision of various higher authorities. However, the ld. CIT(A) never discuss the issue properly nor discuss about the factual matrix of the case.

7. Aggrieved by the aforesaid order, revenue preferred an appeal before the Tribunal. At the time of hearing, ld. DR placed strong reliance on the order passed by the ld. AO. He further drew our attention to the fact that the ld. CIT(A) decide the appeal of the assessee only on legal issue without going into the merits of the case and without appreciating the findings and observations made by the ld. AO to the fact that assessee had completely failed to prove the identity, creditworthiness and genuineness of the transaction which the assessee had failed to prove at the time of assessment proceeding and to examine the identity and creditworthiness of the third parties and genuineness of the transaction although notice u/s 133(6) of the Act were issued for compliance. The ld. AO during the assessment proceeding called a report from the inspector to verify whether the company were actually exist or not and from the report of the inspector it reveals that no such company was found on the given address as furnished by the assessee. Therefore, the ld. AO rightly added the amount of Rs. 1,53,00,000/- in the hands of assessee shown to have received under the head of share capital & premium as undisclosed income. Therefore, the view taken by the ld. CIT(A)

needed to be interfered and set aside the order passed by the ld. CIT(A) and sustained the order passed by the ld. AO.

8. We after hearing the submission made by the ld. DR and perusing the material available on record. We find that the ld. CIT(A) has decided the appeal of the assessee only on the legal issue without examining the merits of the case. In the instant appeal, the revenue has challenged ground no. 1 by stating that impugned action taken by the ld. CIT(A) by which allowing the appeal of the assessee by treating the notice issued u/s 148 of the Act as void-ab-initio without appreciating the facts and findings given by the ld. AO while framing the assessment u/s 143(3) r.w.s. 147 of the Act. While we are examining the instant issue by going through the facts of the case, we find that it cannot be said that the ld. CIT(A) while allowing the appeal of the assessee that there was no material before the assessing officer to brought on record any satisfaction or “reason to believe” that income chargeable to tax has been escaped assessment, therefore, notice issued u/s 148 was void-ab-initio. In the present appeal, the ld. AO has issued notice u/s 148 on the basis of information received from DIT that the assessee has received share application money from several entities which were only engaged in business of providing accommodation entry to the beneficiary concern. In such circumstances, it cannot be said that there was no basis that the ld. AO to frame “reason to believe” and in such situation it cannot be said that the ld. AO has issued notice u/s 148 of the Act upon the assessee as void-ab-initio. Since the ld. AO had made instant enquiry u/s 133(6) and u/s 131 of the Act from the directors of the companies, from where share premium was received by the assessee company and he discovered that assessee company had rooted its own fund/unaccounted money through the shareholders company. We after discussing in detail in foregoing paragraphs we are not convinced with the view taken by the ld. CIT(A) by which he treating the notice issued u/s 148 by the ld. AO was void-ab-initio and allow the appeal of the assessee without going through the merits of the case. Therefore, we remand back to the whole issue to the file of the ld. CIT(A) to decide the merits of the case. Therefore, ground nos. 1 is allowed and ground no. 2 taken by the revenue is allowed

*M/s. Vikash Tradelink India Pvt. Ltd. (Now amalgamated with M/s. Yes Tecno Ltd.)*

for statistical purposes. The remaining ground is consequential in nature and need not required to be adjudicated.

9. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order is pronounced in the open court on 24.01.2023

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 24.01.2023

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- ITO, Ward-13(4), Kolkata.
2. Respondent – M/s. Vikash Tradelink India Pvt. Ltd. (Now amalgamated with M/s. Yes Tecno Ltd., 51/1/A/13, Rabindra Sarani Liluah, Howrah-711204.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata