

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. 286/Kol/2019
Assessment Year : 2012-13

ITO, Ward-3(1), Kolkata	vs	M/s. Moon Raker Construction Pvt. Ltd. PAN: AABCM 9001 H
Appellant		Respondent

Date of Hearing	21.11.2022
Date of Pronouncement	03.02.2023
For the Assessee	Shri P.N. Keshari, FCA
For the Revenue	Shri P.P. Barman, CIT

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the revenue against the order of Ld. CIT(A)-1, Kolkata (hereinafter referred to as the "ld. CIT(A)" dated 12.12.2018 for A.Y. 2012-13. The revenue has raised the following grounds of appeal:

"i. The ld. CIT(A) has failed to appreciate the fact and also erred in deleting the addition of Rs. 2,33,89,643/- made u/s 68 of the I.T. Act merely on the ground that summons had not been issued to the directors of the companies to whom shares had been allotted by assessee company during the year under consideration.

ii. The ld. CIT(A) has failed to appreciate the fact and also erred in deleting the addition of Rs. 2,33,89,643/- made u/s 68 of the I.T. Act as assessee itself failed to substantiate (i) identity of the share holding company, (ii) creditworthiness of the share holding companies, even in response to summon u/s 131 of the I.T. Act, issued to the directors of the assessee company.

iii. The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings or in the course of appellate proceedings."

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2012-13 disclosing a total

income of Rs. 21,130/-. The case of the assessee was selected for scrutiny and notices u/s 143(2) and 142(1) were issued to the assessee. In response to such notices, the ld. AR of the assessee appeared on different dates and produced the details sought by the ld. AO. The ld. AO further issued summon u/s 131 of the Act to the director of the assessee company by which he asking them to produce the directors of the share-holding companies or the persons (in case of individual shareholders) with all the books of accounts and other supporting documents of the other shareholding company maintained by them during the financial year under consideration. However, in compliance to such summon, the assessee nor the shareholders appeared before the ld. AO to prove the identity and creditworthiness of the shareholders and genuineness of the transactions by them. Therefore, the ld. AO has no other option but to pass an ex-parte order u/s 144 of the Act by which he added the entire amount of Rs. 2,33,89,643/- including Rs. 2,70,000/- of fresh paid up share capital and Rs. 2,31,19,643/- of fresh premium as unexplained credit in the books of assessee company. By doing so, the ld. AO further disallowing of Rs. 49,946/- u/s 14A of the Act in the hands of assessee and assessed the total income of the assessee at Rs. 2,34,60,719/-.

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) and appeal of the assessee was allowed.

4. Aggrieved by the above order passed by the ld. CIT(A) dated 12.12.2018, revenue is in appeal before the Tribunal raising two grounds of appeal. At the time of hearing, the ld. DR submitted that the ld. CIT(A) has failed to appreciate the fact and erred in law in deleting the addition of Rs. 2,33,89,649/- made u/s 68 of the Act only on the ground that the ld. AO did not issue summons to the director of the company to whom the assessee had allotted by the assessee company during the year under consideration. He also submitted that while deleting the addition of Rs. 2,33,89,643/- made by the AO u/s 68 of the Act, the assessee itself failed to substantiate the identity of the shareholding company and creditworthiness even in response to summons issued u/s 131 of the Act to the director of the assessee company and the ld. CIT(A) while passing the impugned order did not consider the merits of the case as in the instant case, assessee itself failed to prove the identity, creditworthiness and genuineness of the transactions at the time of hearing before the AO as well as ld. CIT(A). The ld. DR further contended that these companies were exclusively engaged in providing the accommodation entry. Therefore, he requested before this bench for reversing the order passed by the ld. CIT(A) and confirming the order of the ld. AO by making the addition u/s 68 of the Act. On the other hand, ld. AR of the assessee submitted that assessee has duly discharged its onus with regard to the identity, creditworthiness and genuineness of the shareholders by furnishing name and address of the share applicant companies. The ld. AR to substantiate his arguments and heavily

relied on the findings recorded by the ld. CIT(A) and decision of various co-ordinate bench on this issue.

5. We have considered the rival contention and carefully gone through the orders of the authorities below. In the present case, ld. CIT(A) allowed the appeal of the assessee by stating as under:

“I am not convinced with the submissions made by the learned A.R. In fact, assessee was specifically asked during hearing that when one company i.e. M/s. Ansumali Merchandise Barter Pvt. Ltd. was a group company how could it be possible that compliance would not be made in that case. To this, the assessee stated that notice Under Section 131 or similar notices could have been issued to the four parties.

There is no doubt that when additions are made u/s 68, the assessee has to prove the identity, creditworthiness of the parties and genuineness of the transactions.

It is a fact that the assessee did not produce the four parties in consideration. However, nothing prevented the A.O. to issue summons to the four debtors including the group company. As such, the addition to income cannot stand. The learned A.O. had all the opportunities to issue the summons which had not been done by him. Under these circumstances, the addition is deleted.

Therefore, addition to the extent of Rs. Rs.2,33,89,643/- is deleted. It was for the learned A.O. to time his hearing and not wait to the fag end of the year to pass the assessment order. Grounds of appeal no. 7, 8 & 9 are general in nature and therefore, need no adjudication.”

6. However, while framing the assessment order, the ld. AO's view was that inspite of giving opportunities by issuing statutory notice and the assessee could not comply in full, in such situation he had no other alternative but to assessed the case of assessee ex-parte u/s 144 of the Act. While framing the assessment, ld. AO also observed in

paragraph 4 of his order, the relevant portion of extraction is hereunder:

“In the instant case Summon under section 131 was issued and sent to the Directors or the assessee company asking them to produce in person the directors of the share-holding Companies or the persons (in case of individual shareholders) with all the books of accounts and other supporting documents of the shareholding company (or all the personal Books of accounts in case of individual shareholders) maintained by them relating to share application money received by the assessee company during the financial year under consideration. In response to above none appeared. Letter was also issued to Assessee Company requesting to appear for hearing and explain as to why the transactions with the said parties (shareholders) should not be treated as bogus and share application money received by the company should not be treated as unaccounted money converted in the form of share capital and hence undisclosed income. The assessee was requested to produce in person the Directors of all of their share holding companies and individual shareholders before the undersigned to prove the identity and creditworthiness of the shareholders and genuineness of transaction. Assessee failed to produce subscribers in response to aforesaid letter.”

7. While going through the above facts of the case, it is come to our notice that the order passed by the ld. AO is an ex-parte order. Since the directors of the company did not comply with the summons issued by the AO and in such a situation he has no other alternation but to frame the assessment u/s 144 of the Act. Moreover, from the order of the authorities below, the assessee did not make any endeavour to prove the identity, creditworthiness and genuineness of the transactions neither before the AO nor before the ld. CIT(A). While allowing the appeal of the assessee, ld. CIT(A) by going one step ahead stating that the ld. AO had all the opportunities to issue the summons but he had not done so. Therefore, the addition made by the AO to the extent of Rs. 2,33,89,643/- was deleted without going into merits of

the case. From the facts of the case, it is clear that assessee did not able to prove its case before the ld. AO nor the ld. CIT(A) regarding identity, genuineness and creditworthiness of the transactions. On such circumstances of the case, we restore the matter to the file of AO to verify the source of such money having been given by those bogus shareholders and their identity & genuineness as well as creditworthiness of the transactions after giving reasonable opportunity to the assessee and frame the fresh assessment on the limited issues involved in this appeal.

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

Order is pronounced in the open court on 03.02.2023

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 03.02.2023

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-3(1), Kolkata.
2. Respondent – M/s. Moon Raker Construction Pvt. Ltd., 11, Crooked Lane, 1st Floor, Kolkata – 700 069.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata