

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.816/Kol/2018
Assessment Year: 2012-13**

Kailash Trading Pvt. Ltd. 45, Dobson Road, Gangotri Apartment, 3 rd Floor, Howrah- 711101. (PAN: AAECK6356L)	Vs.	Income Tax Officer, Ward- 13(2), Kolkata
(Appellant) (Respondent)		

Present for:

Appellant by : Shri S. Murarka, FCA
Respondent by : Shri Biswanth Das, CIT, DR

Date of Hearing : 22.11.2022
Date of Pronouncement : 09.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-14, Kolkata vide Appeal No. 52/CIT(A)-14/Wd-13(2)/2015-16 dated 22.02.2018 passed against the assessment order by ITO, Ward-13(2), Kolkata u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 27.03.2015.

2. Grounds raised by the assessee are descriptive and elaborative which appears to be ten in numbers. On perusal of these grounds, the moot point involved is in respect of addition of Rs.6,29,88,940/- made by the Ld. AO towards share capital and share premium raised by the assessee during the year.

2.1. In this case, assessee filed its return of income on 23.09.2012 reporting total income nil with a current year loss of Rs.1093/-. The

case of the assessee was selected for scrutiny through CASS. In the course of assessment proceedings, Ld. AO noted that assessee has raised share capital for an amount of Rs.5,29,70,022/- by issuing 2,05,740 no. of shares with face value of Re.1 at a premium of Rs.256.46 per share.

2.2. In the course of assessment proceeding, Ld. AO for want of details and explanation in respect of the share capital including share premium raised by the assessee, issued a show cause notice u/s. 142(1) of the Act which is reproduced in the assessment order as table-A. The same is extracted below for ease of reference:

TABLE- A							
<p>To The Managing Directors Kailash Trading (P) Ltd. 45, GangatriAppts., Dobson Rd. 4th Floor Howrah – 711101</p>							
Sir,							
Sub:	Show Cause Notice & Final Opportunity to respond with evidence / submission as u/s 142(3) of the I T Act 1961; Scrutiny Asst. Proceedings for the Asst. Yr.2012-13						
Ref:	Notice u/s 142(1) vide no.- ITO Wd 13(2)Koi/AY 2012-13/AAECK6356L/ 11 dated30/12/2014						
Please refer to the above.							
<p>A. During the year under scrutiny your Co. have raised a Capital of Rs.5,29,70,000/-. Despite providing opportunities, none among the Directors appeared to furnish evidence and cogent reasons and logic behind such issuance of shares at premium and the high premium was not substantiated vis-à-vis the balance sheet. Please note that the scrutiny proceedings needs to be attended and has to be duly complied with.</p>							
<p>B. In the absence of production of the complete set of the books of accounts of your Co. and of the share-allottee Cos. (shares allotted during the previous year), the bank book with narration and bank account statements of such accounts held by your Co., and also by the share-allottee Cos., Copy of the Board's Resolution / meetings held in the previous year by your Company and by these share-allottee Cos. and examination under oath of the Directors of your Co. as well as of the share-allottee Cos., it is clear that your Company have avoided to explain with cogent reasons the peculiarity and intricacies of the accounts, and furnish valid reasons for raising capital with such a high premium.</p>							
<p>C. The books of accounts of such share allottee Cos. remained unexamined and in the absence of the production of the Directors of the share-allottee Cos., the identity, their commercial intent to invest, the source of the funds utilised to purchase shares, fund flow analysis and also the genuineness of such share purchase couldn't be ascertained. Thus, for the increase in the Capital, your Co. have failed to discharge the onus of establishing the identity of the share-allottee Cos.; genuineness of the transaction; and their creditworthiness. This entails addition as u/s 68 of the Income Tax Act 1961. You are provided with the last opportunity to show cause in writing as to why Rs. .5,29,70,000/- should not be added back to the total income and be taxed accordingly.</p>							
<p>D. The reply has to be filed by 25/3/2015. For non-compliance with the terms of the notice, penal action as u/s 271(1)(b) of the Act would be initiated and the assessment order would be passed as u/s 144 of the Act and /or as per merit.</p>							
Income Tax Officer, W-13(2), Kolkata							
Copy to – With separate Notices U/s 131 of the I.T. Act 1961.							
<table border="1"> <tr> <td>Director 1</td> <td>Director 2</td> </tr> <tr> <td>Swapan Pakhira</td> <td>Kailash Chandra Joshi</td> </tr> <tr> <td>45, Gangatri Appts., Dobson Rd. 4th Floor, Howrah - 711101</td> <td>4th Floor N.S.Road LILUAH, HOWRAH 711204</td> </tr> </table>	Director 1	Director 2	Swapan Pakhira	Kailash Chandra Joshi	45, Gangatri Appts., Dobson Rd. 4th Floor, Howrah - 711101	4th Floor N.S.Road LILUAH, HOWRAH 711204	
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Swapan Pakhira	Kailash Chandra Joshi						
45, Gangatri Appts., Dobson Rd. 4th Floor, Howrah - 711101	4th Floor N.S.Road LILUAH, HOWRAH 711204						

TABLE-'B'	
Particulars	
i.	The Photo Identity Card issued by Govt. Authority and PAN (also a photocopy).
ii.	Last passed examination certificate (e.g. graduation, M.Com. etc.)
iii.	Date of incorporation of your Co. with details of business activities since incorporation of these Cos. Commercial intent in forming these Cos. and commercial gains accumulated by these Cos. since incorporation.
iv.	Copies of the Income Tax Returns of the Company and that of the Directors in the individual capacity with the copies of the Balance Sheet and Profit & Loss A/c for the periods ending on 31 st March 2010, 31 st March 2011 & 31 st March 2012 & 31 st March 2014

v.	Trade license of the Company for the Fin Yrs. 2007-08 to 2011-12																										
vi.	Rent receipts issued to the Company for the Fin Yrs. 2008-09 to 2011-12 from where the office was run. If the office was run from owned property, file evidence thereof.																										
vii.	Full list of the Companies where you are a Director or were a Director since 1 st April 2007.																										
viii.	PAN, Complete name and addresses of the Directors, share allottees of these companies in a tabular format since incorporation.																										
ix.	Produce complete set of Books of accounts viz. Cash Book/ Bank Book for the Fin. Yr. 2011-12 of the Company including full Bank Acct. Statements for the period 01.04.2011 to 31.03.2012 of the Company.																										
x.	Copy of the Board's resolution / meetings held in the Fin. Yr. 2011-12 of the Company.																										
xi.	Copy of the prospectus / offer letter for share investments made in your Company and by you in other Companies. Counter foil / submission document of share applications.																										
xii.	Ledger accounts of capital raised and the application of the funds destination that was utilized in making investments in shares/advances /loans																										
xiii.	Details of the source of the funds utilized to make investments during the FY 2010-11, FY 2011-12 & Fin Yr. 2009-10																										
xiv.	Evidence and explanation of the source of the funds earned, which were further utilized to make investments during the FY 2010-11, FY 2011-12 & Fin Yr. 2009-10																										
xv.	Specify details as per table below for your –																										
	<table border="1"> <thead> <tr> <th rowspan="2">Name of the Co.</th> <th colspan="4">Gross Receipts (Net Profit) in Fin Yrs</th> <th colspan="4">Total Income (Taxes paid) in Fin Yrs</th> </tr> <tr> <th>2009-10</th> <th>2010-11</th> <th>2011-12</th> <th>2012-13</th> <th>2009-10</th> <th>2010-11</th> <th>2011-12</th> <th>2012-13</th> </tr> </thead> <tbody> <tr> <td colspan="9">Produce the Directors of the share-allottee Co.s for the Fin Yr 2011-12 with the same documents as asked for from Sl. No. (i) to (xv) above.</td> </tr> </tbody> </table>	Name of the Co.	Gross Receipts (Net Profit) in Fin Yrs				Total Income (Taxes paid) in Fin Yrs				2009-10	2010-11	2011-12	2012-13	2009-10	2010-11	2011-12	2012-13	Produce the Directors of the share-allottee Co.s for the Fin Yr 2011-12 with the same documents as asked for from Sl. No. (i) to (xv) above.								
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Produce the Directors of the share-allottee Co.s for the Fin Yr 2011-12 with the same documents as asked for from Sl. No. (i) to (xv) above.																											

2.3. Since the details as mentioned in the notice above remained uncomplied by the assessee, Ld. AO proceeded to complete the assessment *ex parte* u/s. 144 of the Act by making an addition of Rs.5,29,70,000/- towards unexplained cash credit for share capital raised during the year and of Rs.18,029/- towards disallowance on expenses incurred. Aggrieved, assessee preferred an appeal before the Ld. CIT(A).

3. None appeared on behalf of the assessee before the Ld. CIT(A) though as many as twelve dates of hearing were fixed by the Ld. CIT(A), details of which are tabulated in the order of Ld. CIT(A). While disposing of the appeal *ex parte*, Ld. CIT(A) observed as under:

"The present appeal is against the 'order u/s.144 passed by the A.O. I have carefully perused the grounds of appeal and the order of the A.O. as already available on records. The appellant failed to offer any explanation or submission in support of the grounds raised in this appeal nor any supporting evidences were produced to substantiate the appeal against the order of the A.O. despite adequate opportunity having been provided. The material on record including the assessment order and the statement of facts

accompanying the grounds of appeal were examined. This is an appeal of the appellant and the onus lies upon him to keep the appeal office abreast of his whereabouts if not indeed try to pursue his own appeal. On the contrary, the appeal office, after receiving an appeal, seems now to be suddenly beholden to the appellant to try and trace him out and make sure that he defends his own appeal. If an appellant does file an appeal, then he should at least show a modicum of interest in pursuing it. The appellant in this case, is showing no such interest. The appeal therefore cannot but be decided on the material on record which in this case includes the grounds of appeal, the accompanying statement of facts and the assessment order. These have been perused.

As in the instant case the appellant has not been able to show that the decision of the A.O. was arbitrary, biased, irrational, vindictive or capricious without any basis, I find no reason to interfere with the decision of the A.O.”

3.1. Hence, Ld. CIT(A) dismissed the appeal of the assessee.

4. Before us also, at the time of hearing, Ld. Counsel for the assessee could not demonstrate its claim against the addition made by the Ld. AO and confirmed by the Ld. CIT(A) by placing relevant documents and corroborative material. He only referred to certain documents which were furnished before the Ld. AO as noted in para 3(b) in his order. The said para 3(b) of the order of Ld. AO is extracted below:

“b) In the course of the proceedings, the assessee Co. through a messenger, sent across the bare minimum details of the P&L A/c, B/sheet, hard copy of the ITR, list of share allotted parties, copy of bank account statements and some forms of ROC, Kolkata. Neither the books of accounts of the assessee company nor of the share allottee Cos. were produced. The bank entries thus remained unexplained. Thus, the intricacies and complexities of such noticeably high value transactions couldn't be deciphered.”

4.1. Ld. Counsel referred to the submission dated 16.05.2018 placed before the Ld. CIT(A), containing statement of facts and ground of appeal. Considering the inability of the Ld. Counsel to furnish necessary documentary evidence to substantiate its claim in respect of

addition made by the Ld. AO and on going through the findings given by the ld. AO in the assessment order, we are of the view that no interference is called for in the findings given by the Ld. CIT(A), as extracted above. Accordingly, grounds taken by the assessee are dismissed.

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

Order pronounced in the open court on 09thFebruary, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 09th February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-14, Kolkata.
 4. The Pr. CIT, , Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata