

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

आयकर अपीलीय अधिकरण, न्यायपीठ “C” कोलकाता,

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

**ITA No.1017/Kol/2018
Assessment Year: 2012-13**

Alpha Vyapaar Pvt. Ltd. 106, Girish Ghosh Road, 5 th floor, Belurmath, Howrah-711202 (PAN: AAGCA5424P)	Vs.	Income Tax Officer, Ward- 14(4), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : N o n e

Respondent by : Shri Vijay Kumar, Addl. CIT, DR

Date of Hearing : 09.02.2023

Date of Pronouncement : 24.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-5, Kolkata vide Appeal No. 54/CIT(A)-5/Wd-14(14/15-16/Kol) dated 02.02.2018 passed against the assessment order by the ITO, Ward-14(4), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 25.03.2015.

2. None appeared on behalf of the assessee. Shri Vijay Kumar, Addl. CIT, DR appeared on behalf of the revenue.

3. Grounds taken by the assessee in the present appeal are as under:

“1. In the facts and circumstances of the case, the Ld. CIT(A) erred in summarily dismissing the appeal filed by the assessee without discussing the grounds on merits which is unjustified, illegal and against the provisions of the Act.

2. That the Ld. CIT(A) officer has erred in law as well as in facts in not providing reasonable opportunity to the appellant of being heard.

3. Without prejudice to above, in the facts and circumstances of the case the CIT (A) erred in dismissing the appeal filed by the appellant thereby confirming the addition of Rs. 2,40,00,000/- made by the AO introduced as Share Capital and Premium which is unjustified, illegal and against the provisions of the Act.

4. In the facts and circumstances of the case, while the assessee did not get justice from the Assessing Officer, he was denied the principles of natural justice by the Ld. CIT (A) also, which is unjustified, illegal and against the provisions of the Act.

5. The appellant craves leave to add/alter any grounds of appeal before or at the time of hearing.

6. The grounds of appeal taken are without prejudice to each other.

7. That the Ld. Assessing officer has erred in law as well as in facts in not providing reasonable opportunity to the appellant of being heard.

8. That the Ld. Assessing officer has erred in law as well as in facts in adding a sum of Rs. 2,40,00,000/- (as increase in share capital and securities premium) on the basis of erroneous presumptions & surmises.

9. That the Ld. Assessing officer has erred in law as well as in facts in adding a sum of Rs.50/- as expenditure not forming part of total income.

10. That the Ld. Assessing officer has erred in law as well as in facts in charging the interest u/s. 234B amounting to Rs. 28,03,248/- of the Income Tax Act, 1961.

11. That the Ld. Assessing Officer erred in law as well as in facts in initiating Penalty Proceeding u/s. 271(1) (c) of the Income Tax Act, 1961.

12. That the order is bad in law as well as in facts and is wholly arbitrary, unreasonable, and perverse and in violation of the principles of natural justice.

13. That the appellant craves to add, alter, amend or withdraw any grounds of appeal before or at the time of hearing.”

4. In this case, assessee filed its return of income on 17.09.2012, reporting a total income at Nil. Case of the assessee was selected for scrutiny. Statutory notices were issued and duly served on the assessee. In the course of assessment proceedings, Ld. AO observed

that during the year, assessee raised share capital by issue of shares, amounting to Rs. 2,40,00,000/-.

5. According to Ld. AO, during the course of assessment proceedings some discrepancies related to issue of share capital emerged. A letter was issued to the assessee on 02.03.2015 where in the assessee was given opportunity to produce director of the assessee company and one director each of all the shareholder companies. In response to the same Ld. AR of the assessee appeared on 09.03.2016 and filed some papers relating to shareholders. He stated vide order sheet noting that none of the share allottees could be contacted. Therefore, no one could be produced. Regarding director of assessee, even they did not appear. However, after considering the details furnished by the assessee during the course of assessment proceedings, the facts of the case, the inquiries made and other details available on record, ld. AO concluded that the assessee miserably failed to prove the identity and genuineness of transaction and creditworthiness of shareholders. Therefore, the amount of share capital and share premium raised during the year i.e. Rs 2,40,00,000/- was treated as unexplained and added to the total income of the assessee u/s. 68 of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A).

6. Before the ld. CIT(A) made detailed submission and explanation in support of its claim which has been reproduced in the order itself. After considering the multifold contentions of the assessee, Ld. CIT(A) sustained the addition towards share capital and premium by giving his finding as under:

“After careful consideration of the submission of the appellant, the relevant assessment records, various judicial decisions including that of the Apex Court & Jurisdictional High Court, and it has to be held that the appellant could not establish the genuineness of transaction and creditworthiness of the shareholders. The addition of Rs.2,40,00,000/- is confirmed. The appeal on these grounds fails and is therefore dismissed. The AO is directed accordingly.”

6.1. Aggrieved, assessee is in appeal before the Tribunal.

7. We note that there is no appearance before us, on behalf of the assessee despite several notices having been issued and served on the assessee through e-mail, RPAD, more particularly, last one fixing the date of hearing on 9th February, 2023, sent through Sr. DR, ITAT, Kolkata via e-mail. Hence, finding no other alternative, we adjudicate this appeal *ex parte qua* the assessee, with the able assistance of Ld. Sr. DR.

7.1. Before us, at the time of hearing, neither anybody appeared on behalf of the assessee nor filed any application seeking adjournment. Case was fixed for hearing on 09.02.2023 and we note that several notices have been issued to the assessee. Details of these notices issued by the registry are as under:

- (i) Notice issued dated 25.07.2022 by RPAD fixing on 16.08.2022.
- (ii) Notice issued dated 19.08.2022 by RPAD fixing on 21.11.2022.
- (iii) Notice issued dated 09.01.2023 by RPAD fixing on 09.02.2023 and also through Ld. Sr. DR vide e-mail on 02.07.2023, which is reproduced as under:

Subject: Fixing of your case before ITAT Kolkata as ITA No. 1017/KOL/2018 for AY 2012-13 Date: 02/07/23 06:42 PM
From: "vijay kumar" <vijay.k@incometax.gov.in>
To: alphavyapaar2007@gmail.com

To
The Principal Officer/Director
M/s Alpha Vypaar Private Limited

Sir,

As directed by the Hon'ble ITAT Kolkata you are hereby informed that your appeal before ITAT Kolkata as ITA No. 1017/KOL/2018 for AY 2012-13 has been fixed for hearing on 9th February 2023. This is for your Information.

Thank You.
Vijay Kumar
SR DR, ITAT, Kolkata

8. These facts gives an impression that assessee is not seriously interested in pursuing the appeal before the Tribunal. On the merits of the case, considering the material available on record and facts narrated above, we do not find any reason to interfere with the findings of the authorities below which have been elaborately discussed in their respective orders. Accordingly, grounds taken by the assessee are dismissed.

9. We, further, make it clear that if the assessee is advised to move appropriate application to recall this order, then it is at liberty to do so within the prescribed limitation, for just cause and the Tribunal may decide it in accordance with the Act.

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

Order is pronounced in the open court on 24th February, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 24th February, 2023

JD, Sr. P.S.

Copy to:

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

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata