

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 2073/Kol/2019
Assessment Year: 2012-13

M/s Akshara Developers Pvt. Ltd. (PAN: AACCA 5550 G)	Vs.	ITO, Ward-2(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	29.03.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.05.2023
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, CA
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) -17, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 19.07.2019 for the AY 2012-13.

2. The only issue raised by the assessee in various grounds of appeal is against the confirmation of addition of Rs. 1,05,00,000/- by the Ld. CIT(A) as made by the AO on account of unexplained cash credit u/s 68 of the Act.

3. Facts in brief are that the assessee filed return of income on 14.08.2012 which was processed u/s 143(1) of the Act on 18.05.2013. The assessee is engaged in real

estate business. The case was selected for scrutiny and statutory notices were duly issued and served on the assessee. The AO noticed during the course of assessment proceedings that assessee has received share application money along with premium accordingly summon u/s 131 were issued to the director of the assessee company. Before the AO the assessee did not file any information and finally the AO added entire amount of share application money of Rs. 1,05,00,000/- to the income of the assessee in the assessment framed u/s 143(3) vide order dated 10.03.2015 on the ground that the assessee has not complied with the summon. The assessee filed before the AO the letter of allotment, certificate for statutory auditor, confirmation letter, board resolution, copy of PAN Card, copy of audited financial statements for AY 2012-13, copy of assessment order. In case assessment order u/s 143(3) of the Act during the year the assessee raised share capital from two subscribers namely M/s Positive Vinimay Pvt. Ltd. and M/s Newtown Mercantile Pvt. Ltd.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the order by referring to various decisions of Hon'ble Calcutta High Court in the case of Rajmandir Estate Pvt. Ltd. vs. PCIT in GA No. 509 of 2016 and decision of Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. (arising out of SLP(Civil) No. 29855 of 2018) and finally affirmed the order by giving two line findings.

5. After hearing rival contentions and perusing the material on record, we observe that the assessee has received Rs. 1,05,00,000/- as share application money from two private limited companies namely M/s Positive Vinimay Pvt. Ltd. Rs. 35,00,000/- and M/s Newtown Mercantile Pvt. Ltd. Rs. 70,00,000/- during the year. The assessee furnished before the AO as well as the Ld. CIT(A) the reply to notice u/s 133(6), letter of allotment, certificate from statutory auditor, confirmation letter, board resolution, subscriber's name and address, audited account and also the copy of assessment framed u/s 143(3) of these subscribers before both the authorities below. We also note that the AO has issued notice u/s 133(6) to both the parties which were duly responded and the reply of the assessee were filed on records. The AO has simply added amount on the ground that summon issued u/s 139 of the Act to the director of the assessee

company were not complied with. In our opinion, the non-compliance to summon is not for sufficient ground for making addition especially when the assessee has furnished all evidences before the AO and even notice issued u/s 133(6) were responded by the subscriber. So much so that revenue has framed assessment u/s 143(3) in case of the both the subscribers and the copy of assessment orders are placed at page no. 41 to 45 of PB in case of Positive Vinimay Pvt. Ltd. and at page 62 to 66 in case of M/s Newtown Mercantile Pvt. Ltd. The case of the assessee find support from the following decisions:

- i) *ITO vs. M/s Kemex Engineering Pvt. Ltd. in ITA No. 75/Kol/2021 for AY 2012-13 dated 01.02.2023*
- ii) *M/s Starland Vinimay Pvt. Ltd. vs. ITO in ITA No. 574/Kol/2020 for AY 2012-13 dated 24.01.2023*
- iii) *M/s Lucky Agencies Pvt. Ltd. vs. ITO in ITA No. 2501/Kol/2019 for AY 2012-13 dated 23.02.2023*
- iv) *M/s Lalbaba Seamless Tubes Pvt. Ltd. vs. DCIT in ITA No. 2641/Kol/2019 for AY 2012-13 dated 21.10.2022*
- v) *ITO vs. M/s Coxis Finance & Investment Pvt. Ltd. in ITA No. 649/Kol/2020 for AY 2012-13 dated 10.11.2022*

Respectfully following the above decision, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 22nd May, 2023

Sd/-

(Sanjay Garg /संजय गर्ग)
Judicial Member/न्यायिक सदस्य

Sd/-

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 22nd May, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Akshara Developers Pvt. Ltd., 74, Lenin Sarani, Kolkata-700013
2. Respondent – ITO, Ward-2(2), Kolkata
3. Ld. CIT(A)-17, Kolkata (Sent through e-mail)
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata