

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 329/Kol/2023
Assessment Year: 2012-13

Namaskar Fashions (P) Ltd. (PAN: AABCN 0520 G)	Vs.	ITO, Ward-8(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.05.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.06.2023
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 23.03.2023 for the AY 2012-13.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition of Rs. 1,38,50,000/-of Ld. CIT(A) as made by the

AO u/s 68 of the Act in respect of share capital/share premium as unexplained cash credit.

3. Facts in brief are that the assessee filed return of income on 6.9.2012 declaring total income of Rs. 29,527/-. The return was selected for scrutiny and statutory notices were duly issued and served on the assessee. The AO, in assessment proceedings on examination of the records and material filed by the assessee, observed that the assessee has raised share capital including share premium of Rs. 1,38,50,000/- by issuing shares of face value of Rs. 10/- each at a premium of Rs. 90/-. The AO called upon the assessee to furnish the necessary evidences proving identity, creditworthiness of the investors and genuineness of the transactions which were duly filed by the assessee. The AO has issued summons u/s 131 of the Act to the director of the assessee company directing the personal appearance which was duly complied with by the Director Shri Sanjeev Kumar Agarwal. Pertinent to note that the assessee has issued equity shares to the group companies. The AO also directed that the director of the assessee company to produce the directors of the share subscribing companies and in the same summon and no separate summons were issued to the share subscribers u/s 131 of the Act. The AO also noted that the assessee company was incorporated on 30.05.2011 and it was first year of business and therefore there was no justification for issuing shares at premium of Rs. 90/-. Thereafter the AO discussed modus operandi of the shell companies and after relying on the various decisions, such as decisions of the Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More in 82 ITR 540 and in the case of Sumati Dayal vs. CIT in 214 ITR 801 and various other decisions as mentioned in para 10, came to the conclusion that money received by the assessee by issuing shares at premium of Rs. 1,38,50,000/- remained unexplained and added the same to the income of the assessee in the assessment order framed u/s 143(3) of the Act dated 11.03.2015.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by just reiterating the findings of the AO such as the company was recently incorporated with no visible business activity, raising of share capital at premium,

assessee being a root to convert undisclosed money by layering through different body corporates etc. The Ld. CIT(A) observed that the assessee has failed to discharge the onus of substantiating the genuineness of the transactions and thus justified dismissal of the appeal of the assessee.

5. After hearing the rival contentions and perusing the material on record, we observe that the assessee has raised share capital by issuing equity shares to four group companies on which the directors are common as is apparent from the details filed by the assessee details whereof is filed at page 4 of PB. Therefore we find merit in the contentions of the Ld. A.R. that these are the group concerns and not shell companies as observed by the authorities below. The details of directors are filed at page no. 93 of the PB which shows that there are a common directors on these group concerns vis a vis assessee company. We have also examined the financial statements of these investor companies and found that these companies have sufficient net worth to invest in the equity shares of the assessee company. We also note that the assessee has filed all the details pertaining to these four investors such as ITRs, PAN cards, audited balance sheets and profit and loss accounts, share allotment letters, share applications copies with bank statements of the share subscribers and also placed before us which are filed at page 94 to 175 of the PB. We observe that the AO has not examined the evidences furnished by the assessee and has only discussed the modus operandi by the shell companies in different layers by stating the same to be a organized way to convert the black money to bring back into the books of accounts. We note that the summon u/s 131 of the Act was issued to the director of the assessee which was duly complied with on 16.01.2015 and 16.02.2015 by filing necessary details before the AO the copies whereof are placed in the PB at page no. 73 to 93. The AO has stated that the directors of the assessee company has failed to produce the directors of the share subscriber companies but we find that no separate summons were issued to the share subscribers and only the director of the assessee company was directed to produce the directors of the investor companies. In the appellate proceedings, the Ld. CIT(A) simply dismissed the appeal of the assessee without

giving any cogent reasons and findings on the evidences filed by the assessee. Considering the facts and circumstances and the net worth of these investors group companies and assessee having filed all the evidences before the AO as well as before Ld CIT(A), we are of the view that the investments by share subscribers into assessee is fully explained and provisions of Section 68 are not attracted. In other words all three ingredients of section 68 of the Act such as identity, creditworthiness of the investors and genuineness of the transactions are fully explained. According we 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 16th June, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
 Judicial Member/न्यायिक सदस्य

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

Dated: 16th June, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Namaskar Fashions Pvt. Ltd., 16A, Shakespeare Sarani, 5th Floor, Kolkata-700071
2. Respondent – ITO, Ward-8(2), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata