

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 322/Kol/2023
Assessment Year: 2012-13

M/s. Mirabelle Tradecomm Pvt. Ltd. 85, Netaji Subhash Road Kolkata - 700001 [PAN: AABCM7418A]	Vs	Income Tax Officer, Ward-4(2), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Shri Ranu Biswas, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 28/06/2023
घोषणा की तारीख /Date of Pronouncement: 07/08/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal has been preferred by the assessee against the order of National Faceless Appeal Centre, (hereinafter referred to as "the Id. CIT(A)"), passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act') dated 23/03/2023, for Assessment Year 2012-13.

2. We notice that in the past when the case was fixed on 23/05/2023, none appeared on behalf of the assessee. Thereafter the case was fixed on 25/05/2023 and in the mean-time, the registry was directed to inform the assessee telephonically. In compliance, the Registry informed the assessee on telephone. Notice was also sent through RPAD which has been received back unserved for want of correct address. Still, one more opportunity was granted to the assessee to appear on 28th June, 2023 and the assessee was informed through telephone and e-mail on 25th May, 2023. When the Registry

called the assessee on telephone, the same was received by Mr. Gopal Maity, Director of the assessee company, who stated that the address of the assessee company is the same as filed in Form 36. However, on 28th June, 2023, i.e., the date fixed as final date of hearing again there is no appearance on behalf of the assessee. It is evident that, the assessee has no reasonable cause for consistent non-appearance and is not interested in prosecuting the appeal any further. Under these circumstances, we proceed to adjudicate the appeal on merits and the basis of the records available, after hearing the ld. D/R, *ex-parte qua* the assessee.

3. The assessee has raised three grounds, but the grievance of the assessee relates to addition of share capital and share premium raised during the year from seven share subscribers which remained unexplained by the assessee for which the Assessing Officer made addition under section 68 of the Act and thereafter, even before the ld. CIT(A), no relief was granted.

4. The ld. D/R vehemently argued supporting the orders of the lower authorities.

5. We have heard the ld. D/R and perused the material placed before us. We notice that the assessee is a private limited company and income of Rs. 210/- declared in the return e-filed for Assessment Year 2012-13. Case selected for scrutiny for the reason that "large share premium received", followed by issuance of notice u/s 143(2) and 142(1) of the Act. The ld. Assessing Officer noticed that during the year, assessee issued 80,000 equity shares at Rs.10/- each and charged premium of Rs.490/- per shares and thus received Rs.4,00,00,000/-

from the share applicants. Details of the share applicants were filed before the Id. Assessing Officer. However, the Id. Assessing Officer observed that all the share applicants are in the initial year of operation and are having meagre income and no business activities and these share applicants received huge share application and share premium and the same has been invested in the assessee company and other companies. The Id. Assessing Officer was thus, not satisfied with the genuineness of the transactions considering the same in the light of preponderance of probability and normal human behavior. Accordingly, the total amount of Rs. 4 Crores, being share capital and share premium added to the income of the assessee. Further, we notice that in the appeal before the Id. CIT(A), the assessee failed to succeed since the Id. CIT(A) was not satisfied with the genuineness of the transactions. The addition u/s 68 of the Act was confirmed by the Id. CIT(A) observing as follows:-

“6.1 I have gone through the Assessment Order and submissions of the appellant. The learned AO carried out addition of Rs.4,00,00,000/- on account of unexplained cash credit appearing in form of share capital and premium thereto.

6.2 During the year under consideration the appellant had issued equity shares of Rs.8,00,000/- at a premium of Rs.3,92,00,000/- and to test the genuineness and correctness of the transaction the learned AO called for supporting documents. In response to the same the appellant submitted details of share applicant such as name, address, PAN number, number of shares allotted, date wise break up of amount received, bank statement reflecting underlined transactions along with the confirmation from the share applicants. On perusal of confirmations the applicants has also provided source of money which they have invested in appellant.

6.3 The learned AO has also carefully considered above documents and have provided its findings as under.

- The appellant was recently incorporated with no visibility on business activity

- Raising of share capital with premium is a root to convert undisclosed money layering through different body corporates.

- The investing companies are also in the initial year operation and their income is very nominal with no business activity.

6.4 I have gone through the contentions of appellant and supporting documents filed the appellant has not submitted the annual accounts of investing companies to verify the creditworthiness of investing companies. Reliance cannot be placed on undertaking given by investing companies that the source of funds for them is sales proceed of shares of other companies unless the same is being verified from the financial statements.

6.5 In view of the above it is observed that the appellant has not discharged its onus to showcase the creditworthiness of the investors and justify substantial premium received. Therefore, the addition carried by learned AO for sum of Rs.4,00,00,000/- is upheld.

6.6 Accordingly, the appeal of the appellant is dismissed."

6. We observe that for the purpose of examining the application of Section 68 of the Act, the assessee needs to explain the nature and source of the alleged sum. The assessee needs to place on record complete documentary evidence including address proof, PAN details, ITRs, audited financial statements, details of bank accounts justifying the availability of funds with the assessee, confirmation of accounts, master data of the share applicants and other documentary evidence to explain the genuineness of the transactions. However, in spite of giving sufficient opportunity and communicating about the dates of hearing, the assessee has refrained from appearing before this Tribunal and has also not filed any paper book in support of its grounds of appeal. It strengthens our view that the assessee company is a paper and *jamakharchi* company and it has not carried out any regular business activity and the alleged transaction is merely rotation

of funds for the purpose of providing accommodation entries. Thus, in our considered view as the assessee has miserably failed to explain the nature and source of the alleged share capital and share premium and identity and creditworthiness of the share subscribers and genuineness of the alleged transactions, therefore, the revenue authorities have rightly invoked the provisions of Section 68 of the Act. Thus, no interference is called for in the findings of the Id. CIT(A) and the same is hereby upheld.

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

Order pronounced in the Court on 7th August, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 07/08/2023
*SC SrPs

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata