

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. 281/Kol/2023
Assessment Year: 2012-13

Silchar Food Processing (P) Ltd. (PAN: AAMCS 7499 A)	Vs.	CIT(A), Burdwan
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	26.07.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate
For the Respondent/ राजस्व की ओर से	Shri Abhijit Kundu, CITDR

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 25.01.2023 for the AY 2012-13.

2. The only issue raised by the assessee is against the confirmation of addition of Rs. 8,10,00,000/- by the Ld. CIT(A) as made by the AO on account of share capital/share premium.

3. Facts in brief are that the assessee filed return of income on 19.06.2013 showing total income of Rs. Nil. The case of the assessee was selected for scrutiny under CASS for the reasons of large share capital/share premium received by the assessee during the year. The AO observed on the basis of Part-A-BS portion of the return of income that the assessee has received 8,00,00,000/- as premium account and Rs. 10,00,000/- as share capital. Accordingly the AO called upon the assessee to furnish the details of security premium received along with names and addresses of the share holders/share applicants. The AO also issued summons u/s 131 of the Act to the directors of the assessee company which was duly complied with and statement u/s 131 of the Act was also recorded. In para 17 of the assessment order, the AO noted that for AY 2012-13 the income tax return has been filed for the first time in which the share capital of Rs. 10,00,000/- and share premium of Rs. 8,00,00,000/- were shown. The AO also noted that the assessee could not produce the details of share premium received, balance sheet and books of accounts and thus finally came to the conclusion that share capital / share premium are unexplained cash credit thereby adding the entire amount to the income of the assessee in the assessment framed u/s 144 of the Act dated 31.03.2015.

4. The Ld. CIT(A) simply affirmed the order of AO by holding that the assessee could not prove genuineness of the share capital/share premium.

5. The Ld. A.R vehemently submitted that both the authorities below have failed gross to appreciate the facts in correct perspective. The ld. A.R stated that the assessee has filed audited accounts/balance sheets right from financial year 2008-09 to financial year 2011-12 before the authorities below. The ld AR stated that it is apparent from the audited balance sheets that the said share capital/share premium of Rs. 8,10,00,000/- were received in the earlier financial years and not during the year. The Ld. A.R drew our attention to balance sheet and profit and loss account as on 31.03.2008 and argued that the share premium was received in the financial year 2009-10 and thus is being brought forward thereafter. The Ld. A.R also drew our attention to audited balance sheet as on 31.03.2011 wherein the said share capital/

share capital was duly shown and thereafter also referred to audited balance sheet as on 31.03.2012 wherein the same position remained unchanged. The Ld. Counsel stated that both the authorities have failed to appreciate this fact correctly despite the fact that all the balance sheets, documents were furnished before the AO as well as ld. CIT(A). Ld. A.R prayed before us that the provisions of section 68 of the Act cannot be invoked in respect of share capital/share premium which were received in the earlier years and not during the year. In defense of arguments the Ld. A.R relied on the decision of Hon'ble Calcutta High Court in the case of *Jatia Investment Co. vs. CIT* in [1994] 206 ITR 718 (Cal). The Ld. A.R therefore prayed that the order of Ld. CIT(A) may be reversed and AO may be directed to make the addition.

6. The Ld. D.R on the other hand relied heavily on the authorities below by submitting that in absence of documents before the authorities below how the correct position could not be deciphered and appreciated. The Ld. D.R therefore prayed that issue may be restored to the file of AO so that the correct position could be ascertained and matter to be decided accordingly.

7. After hearing the rival contentions and perusing the material on record, we find that undisputedly on the basis of audited balance sheets furnished before us from A.Y. 2009-10 to A.Y.2011-12. We note that the share capital of Rs.10,00,000/- and share premium of Rs.8,00,00,000/- were not received during the year and is coming from the earlier years as opening balances. We note that both the authorities below have failed to appreciate these facts correctly and thus there was total non-application of mind to the facts on record. Moreover, it is trite law that Section 68 of the Act can only be invoked where money was found to be credited in the books of the accounts during the year and not with respect to that money which was received in earlier years. The case of the assessee is squarely covered by the decision of jurisdictional High Court in the case of *Jatia Investment Co. vs. CIT* (supra) wherein the Hon'ble High Court has held the same issue in favour of the assessee. We, therefore respectfully following the ratio laid down in the above decision, set aside the order of Ld. CIT(A) and direct the AO to delete the addition of Rs. 8,10,00,000/-.

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

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

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 22nd August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Silchar Food Processing Pvt. Ltd., Golahat Nimtala Masjid, P.O- Sripally, Dist- Purba Bardhaman-713103
2. Respondent – CIT(A)-Burdwan
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata