

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH: 'DB': JODHPUR
(VIRTUAL HEARING AT DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No:- 447/JODH/2018
(Assessment Year: 2014-15)**

Asstt. Commissioner of Income-Tax, Circle, Bhilwara.	Vs.	Plaza Tex (India) Pvt. Ltd., C-1, First Floor, Bhilwara Textile Market, Bhilwara, Rajasthan.
PAN No: AACCP3115		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Shri Rajeev Mohan, JCIT-DR

Date of Hearing : 13.09.2023
Date of Pronouncement : 20.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(Appeals), Ajmer, vide appeal no. 649/2016-2017 dated 26.07.2018 against the assessment order passed U/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 27.12.2016 by ACIT, Circle-Bhilwara, for Assessment Year 2014-15.

2. Grounds raised by the revenue are reproduced as under

"On facts and in law, the Ld. CIT(A). Ajmer erred in:-

1. deleting addition of 2,24,00,000/- as undisclosed cash credit u/s. 68 of the I.T. Act, 1961 on account of consideration received on allotment of new shares without appreciating the facts of the case that the genuineness of the transaction was not proved and found not satisfactory in the opinion of the AO as provided in the proviso to section 68 of the I.T. Act, 1961.

2. deleting addition of 2,24,00,000/- merely by pointing out the faults in the order of AO but did not give any positive findings and neither referred to the documents placed on assessment record as the powers of CIT(A) are coterminous with that of the AO, as held by the Hon'ble ITAT. Jodhpur in the case of M/s. Seasons Intertational Pvt. Ltd. in ITA No.285/Jodh/2017;

3. The appellant craves to add, amend, alter, delete or modify the above ground of appeal before or at the time of hearing."

3. In the present case, none represented the assessee before us. From the perusal of the order sheets, we note that this case has been listed for hearing on several occasions but none appeared on behalf of the assessee to represent the case except for one date i.e. on 04.07.2023, where an oral request was made for seeking the adjournment which was granted. Notices sent by the Registry for the dates of hearing have returned un-served with the marking "left. On the last date of hearing on 12.07.2023, office of Ld. DR was directed to serve the notice on the assessee and produce the copy of acknowledgment, showing the receipt thereof by the assessee. In this respect, the Ld. Sr. DR has placed on record, proof of serving of notice of hearing fixed on 13.09.2023 vide his covering letter from the Ld. AO dated 19.07.2023. In this letter, Ld. AO has confirmed that notice for hearing has been served on the accountant of the assessee company in which acknowledgment of the notice in original is placed on

record. On the said notice, accountant has acknowledged the receipt of notice by putting his signature and mobile number. Since adequate opportunities have been given to the assessee to represent the case, we find it proper to take up the matter ex-parte qua the assessee with an able assistance of the Ld. Sr. DR.

4. Brief facts of the case are that assessee filed its return on 30.09.2014, reporting total income of Rs. 44,78,480/-. In the course of assessment, Ld. AO noted that assessee has issued 3,50,000 shares at a premium of Rs. 50 and Rs. 55 against which received a sum of Rs. 2,24,00,000/-. Details of shares issued and allotted to the three shares subscribing companies is tabulated as under:

S. No.	Name of person	Address	PAN	No. of shares allotted	face value	share premium	total consideration
1	Legato Technologies Pvt. Ltd.	Gujrewala Appts J-Block Vikas Puri, New Delhi.	AAACL6774D	180000	1800000	9900000	11700000
2	Yamini Financial Const. Pvt. Ltd.	85, Matcafe Street, Kolkata	AAACY3706E	70000	700000	3500000	4200000
3	Yamini Financial Const. Pvt. Ltd.	85, Matcafe Street, Kolkata	AAACY3706E	100000	1000000	5500000	6500000
				350000	3500000	18900000	22400000

4.1 In this respect, Ld. AO called for the relevant documentary evidences and explanations. Assessee submitted copies of income tax return, bank statements, audited balance sheet and Profit and Loss account of these companies to justify the creditworthiness. However, Ld. AO noted that these companies do not have significant business activities, and therefore, receiving large share premium is not justifiable. Thus, in absence of justification and explanation, satisfactory to the Ld. AO, he completed the assessment by making an addition of Rs. 2,24,00,000/- against

allotment of share by treating it as unexplained cash credit U/s 68 of the Act. Aggrieved, assessee went into appeal before the Ld. CIT(A). Ld. CIT(A) has granted relief to the assessee by noting that it has furnished the documentary evidences. In this respect, Ld. CIT(A) noted that Ld. AO has not examined any of the share applicant either U/s 133(6) or 131 of the Act. Ld. CIT(A) also observed that addition made by the Ld. AO is merely on the basis of suspicion or doubt, as he has not brought on record any evidence to show that assessee has introduced its own income from undisclosed sources in the form of share capital including share premium. The finding arrived at by the Ld. CIT(A) and the observation made in this regard are reproduced as under:

"4.4 The appellant has furnished, in respect of each person following documentary evidences to prove the identity and creditworthiness of the persons from whom the appellant has received share application money and genuineness of the transactions:

- i. Copy of share application.*
- ii. Copy of bank statements of the share applicants from whom the share application money was received.*
- iii. Copy of the acknowledgement of the return of income filed by the share applicants and assessment order of the share applicants.*
- iv. Copy of PAN of the share applicants.*
- v. Copy of audited financial statement (balance sheet and Profit & Loss account) of the share applicants.*
- vi. Copy of the confirmatory letters from the share applicants.*
- vii. Copy of memorandum and article of association of each share applicant company.*

4.5 It is seen that the appellant has filed each and every documents required for proving the identity and creditworthiness of the share applicants and genuineness of the transactions. The AO has not examined any of the share applicant either u/s 133(6) or 131. The AO has also not brought on record any evidence, received from any other source/ authority, to show that the appellant has introduced its own income from undisclosed sources in the form of share application money from the 2 companies from whom the share application money of Rs. 2,24,00,000/- was received by the appellant. The reason given by the AO for treating the sum of Rs. 24,00,000/- as unexplained credit of the appellant at the most can be described as

suspicion or doubt. I am of the considered view that no addition can be made u/s 68 merely on the basis of suspicion or doubt, especially when the appellant has furnished every documentary evidence to prove the identity and creditworthiness of the share applicants and genuineness of the transactions. The appellant has discharged its onus by filing necessary documentary evidences to prove the identity and creditworthiness of the share applicants and genuineness of the transactions and the AO has not brought on record any evidence to show that the appellant has introduced its own funds from undisclosed sources in the form of share application money. Therefore, in view of the various decisions relied upon by the appellant, the addition of Rs. 2,24,00,000/- made by the AO u/s 68 is hereby deleted."

5. Aggrieved by the relief granted by Ld. CIT(A), Revenue is in appeal before the Tribunal.

6. Before us, Ld. Sr. DR asserted that Ld. CIT(A) has granted the relief merely on the basis of documents furnished by the assessee. No exercise of any enquiry or verification has been undertaken either by the Ld. AO or by the Ld. CIT(A). To ascertain the veracity of the documents so furnished, he further stated that non-conduct of any enquiry and examination by Ld. AO by issuing notice/ summon U/s 133(6) and 131 of the Act is noted by the Ld. CIT(A) in his findings itself. To this effect, Ld. Sr. DR stated that what the Ld. AO failed to do ought to have been done by the Ld. CIT(A) by exercising his powers contained in Section 250 sub Section 4 which is reproduced as under:

"250(sub Section (4). Commissioner appeals may, before disposing of any appeal, make such further enquiry as he think fits, or may direct the assessing officer to make further enquiry and report the result of the same to the commissioner appeals."

7. Ld. Sr. Dr, thus, submitted that no enquiry whatsoever have been undertaken by the authorities below and the relief granted it's merely on the basis of bunch of

documents placed on record. He further stated that Ld. CIT(A) himself has not commented and expressed his findings on the documents so as to justify the identity and creditworthiness of the share subscribing companies as well as genuineness of the transaction, more particularly when Ld. AO has noted that there is no significant business activity by the three subscribing companies. According to the Ld. Sr. DR, observations made by the Ld. CIT(A) while arriving at the conclusion to give relief are general and casual in nature without establishing the identity and creditworthiness as well as genuineness of the transaction.

8. Before us nothing is placed on record to demonstrate the claim made by the assessee and upheld by the Ld. CIT(A). Further, it is noted that Ld. CIT(A) has arrived at a conclusion merely on the basis of written submission made in the course of first appeal before him without any verification and examination of the facts claimed by the assessee. There is nothing in the order of Ld. CIT(A) from where it is discernible as to how assessee had made investments in various parties. Merely by placing reliance on certain judicial precedents, conclusion has been drawn without reference to any factual observation with corroborative evidences. There is no material even before us which would enable us to verify the claim of the assessee so as to uphold the finding given by the Ld. CIT(A). After considering the observations and findings given by the authorities below, we set aside the order of the Ld. CIT(A) and do not find any reason to interfere in the order passed by the Ld. AO and accordingly, uphold the addition so made by the Ld. AO in this regard.

10. In the result, appeal of the revenue is allowed.

Order pronounced in the Open Court on 20.09.2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 20/09/2023.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	15.09.23
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	