

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 47/Kol/2020
Assessment Year : 2012-13

M/s. Roplas Commotradars Pvt. Ltd.	Vs.	ITO, Ward-4(1), Kolkata
PAN: AABCR 3471 Q		
Appellant		Respondent

Date of Hearing	06.09.2023
Date of Pronouncement	29.09.2023
For the Assessee	Shri Sunil Surana, AR
For the Revenue	Shri S. Datta, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 27.12.2019 passed by the Id. Commissioner of Income-tax, Appeals -10, Kolkata [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

1 For that the Ld. CIT(A) erred in confirming the order of the AO in adding back the share capital including premium of Rs. 25,00,00,000/- raised during the year from 9 share subscriber companies as unexplained cash credit u/s 68 when all the details and evidences were filed to prove the identity and creditworthiness of the party and genuineness of the transactions, the AO verified the same by issue of notice u/s 133(6), the onus that lay on the discharged and the AO simply made the addition on surmises & suspicions without bringing any cogent material on record.

2 For that the Ld. CIT(A) erred in doubting the value of share premium amount determined by the assessee company for issue of shares when neither the provisions of section 56(2)(viib) came into force from the assessment under amended provisions of section 68.

3. For that on the facts and circumstances of the case, the ld. CIT(A) erred in confirming the order of the AO in adding back Rs. 25,00,00,000/- which was unjustified and not in accordance with law.”

2. Brief facts of the case are that the assessee filed its return of income A.Y. 2012-13 by declaring total income of Rs. 4,792/-. The case of the assessee was selected for scrutiny assessment through CASS followed by notices issued u/s 143(2) and 142(1) of the Act and in compliance to the notices, ld. AR of the assessee appeared before the AO to represent its case from time to time. During the assessment proceeding, the ld. AO observed that the assessee company received share capital along with premium amount of Rs. 25,00,00,000/-. The ld. AO on account of issuance of share capital and share premium to various parties had made an addition in the case of assessee by observing as follows:

“The assessee company is a closely held company in which public are not substantially interested. Keeping this in consideration, notice under section 131 were issued and sent to the assessee requiring it to appear personally along with all the Principal Officers , Directors of all the investor companies and/or individual investors as the case may be for the purpose to primarily verify the identity and credit worthiness of the shareholders and genuineness of the transaction made by them in the assessee company, as well as analysis of various entries in bank statements, cash book, ledger etc. for ascertainment of primary sources , reasons for raising capital, rationality of reasons for investment by the investors ,procedure and certifications involved in respect of calculation and determination of such a high premium amount in their respective parts for business and financial justification etc in presence and discussion with all the directors at a time for the purpose of providing the opportunities of cross interaction and cross examination regarding above especially for ascertaining primary sources etc. However, in spite of having opportunities the assessee failed to justify his return with the evidences as discussed which will justify the primary sources etc of its capital raised.”

Ultimately, the ld. AO made an addition of Rs. 25,00,00,000/- in the hands of assessee as unexplained income.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the ld. CIT(A) sustained the order passed by the ld. AO.

4. Feeling aggrieved by the above order, assessee is in appeal before this Tribunal. At the time of hearing, ld. counsel for the assessee strongly objected to the order passed by the ld. CIT(A). However, he submitted that the complete details of identity and creditworthiness of the share holders and genuineness of the transactions were filed before the AO and all the share applicants issued notice u/s 133(6) of the Act in response to same compliance made by all of them whereby their financial status, bank statement, source of fund, ITR, share application and all connected papers were submitted at the time of framing of assessment order. However, while framing the assessment order, the ld. AO does not narrate the facts and the assessment order passed u/s 143(3) only on the ground that assessee could not produce the shareholders before the AO and even the ld. CIT(A) also without appreciating the fact properly simply sustained the addition made by the ld. AO in the case of assessee. Therefore, the impugned order needs to be set aside by the Tribunal.

5. On the other hand, ld. DR relied on the order of ld. CIT(A) submitted that assessee in the instant case has miserably failed as indicate section 68 of the Act providing of identity and

creditworthiness of the fact and genuineness of the transaction. He further submitted that when the assessee company could not produce directors of the company to prove the fact before the AO. In such a situation, ld. CIT(A) was fully justified in sustaining the addition made by the AO.

6. We have heard rival submission of both the parties and perused the order of ld. AO as well as ld. CIT(A) and going through paper book filed on behalf of the assessee on this issue. From the submissions made by the assessee, we find that the assessing officer did not issue notice u/s 133(6) of the Act while framing the assessment to the investing companies. It is the submission of the ld. counsel for the assessee that mere non-production of the director of the company could not be a ground when all the evidences were filed and there is no allegation/adverse material brought on the record contrary to the evidence filed. Since in the present case admittedly, the assessing officer has not conducted preliminary enquiry such as verification of PAN number from the data bank of the department and even not verified the various documents furnished by the assessee during the assessment proceeding. Similarly while passing the impugned order, the ld. CIT(A) has wrongly interpreted the fact of the case by sustaining the order of ld. AO. Therefore, considering the totality of the facts of the case and in the interest of justice we restore the issue to the file of ld. CIT(A) with the direction to re-examine various documents filed by the assessee before the AO and decide the whole issue in the light of the above observation. It is also stated that the ld. CIT(A) should be given reasonable

opportunity of being heard to the assessee before passing such order.

7. In the result, the appeal of the assessee is allowed for statistical purposes in terms indicated above.

Order pronounced in the open court on 29.09.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 29.09.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- M/s. Roplas Commotradars Pvt. Ltd.
2. Respondent – ITO, Ward-4(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata