

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.66/Kol/2023
Assessment year: 2012-13

M/s Mohan Motor Business Pvt. Ltd.....Appellant
55, Chowringhee Road,
Kolkata-700071.
[PAN: AACCA6163F]

vs.

DCIT, Circle-11(1), Kolkata.....Respondent

Appearances by:

Shri Sunil Surana, AR, appeared on behalf of the appellant.

Shri Umakanta Dhruvati, DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 19, 2023

Date of pronouncing the order : October 18, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 07.11.2022 of the National Faceless Appeal Centre [(hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the Ld CIT(A) erred in confirming the addition of Rs. 1,20,00,000/- without properly considering the submissions of the assessee.

2. For that the Ld CIT(A) erred in confirming the action of AO in adding the share capital on grounds of non-appearance of share applicants when the directors of the assessee company and the share holder companies were common directors and therefore it cannot be said that the identity and

creditworthiness was not proved and the transaction took place by account payee cheque hence, the genuinity of the transaction cannot be doubted or disputed.

3. For that the Ld CIT(A) erred in confirming the additions by simply holding that assessee failed to discharge its onus when the assessee duly submitted all the documents evidencing three limbs of section 68 discharged its onus and no cogent material was brought on record to disprove the same.

4. For that even otherwise no addition of share capital was called for when the source of source was also proved.

5. For that the addition was not in accordance with law and is liable to be deleted.”

3. A perusal of the above grounds of appeal would reveal that the assessee is aggrieved by the action of the CIT(A) in confirming the additions made by the Assessing Officer by treating the share application money received by the assessee as unexplained income of the assessee u/s 68 of the Act on account of failure of the assessee to prove the identity and creditworthiness of the share applicants and genuineness of the transaction.

4. The brief facts of the case are that the assessee company has been engaged in the business of dealing in cars and accessories. During the assessment proceedings, the Assessing Officer noted that the assessee had received the share capital/share premium from the following three companies:

Sl. No	Name & Address of the Parties	No. of Shares	Rate per unit	Premium per unit share	Total Share capital	Total share premium
1	Bihariji Consultancy Pvt Ltd., 28, Roy Bahadur Road, Kolkata-53	50000	10/-	90	50000	45,00,000

2	Green Field Vanijya Pvt. Ltd. B.B.T. Road, Jalkal, Maheshtala, Kolkata - 141	50000	10/-	90	50000	45,00,000
3	Trinity Vanijya Pvt. Ltd., B.B.T.Road, Jalkal, Maheshtala, Kolkata-141	20000	10/-	90	20000	1800000
	TOTAL	120000			120000	10800000

On being asked to explain about the identity, creditworthiness of the share applicants and genuineness of the transaction, the assessee furnished various details. However, the notices sent u/s 133(6) of the Act to shareholding companies were returned unserved. Even the summons issued u/s 131 for personal appearance of the said parties were also returned back unserved. The Assessing Officer, therefore, held that the assessee had failed to prove the identity and creditworthiness of the share applicants and genuineness of the transaction and added the share application money and share premium as unexplained income of the assessee.

5. The Id. CIT(A) confirmed the additions so made by the Assessing Officer.

6. Before us, the Id. counsel for the assessee has submitted that all the three share applicants were sister companies of the assessee. That their identities were duly proved as the subscribing companies had executed rent agreement with the assessee company. That Mr. Pradip Kr.

Bajaj was the common director in all the companies whose identity was well-established. That the address of the subscribing companies had changed, therefore, no summons were received by them and hence they could not respond to the notices issued by the Assessing Officer. The ld. counsel has further submitted that however the assessee to prove the identity of the share subscribers and genuineness of the transaction had furnished the following documents relating to the three share subscribing companies:

“1. Documents of Bihariji Consultancy Pvt. Ltd.

- i. Director List, Audited Financial Statements along with the computation sheet for A.Y 2012-13*
- ii. Form of Application dated 09.03.2012 for allotment of equity shares*
- iii. Bank Statement for the period 01.03.2012 to 31.03.2012*
- iv. ITR Acknowledgement for A.Y 2012-13 & MCA Master Data*
- v. Certificate of enrolment under the West Bengal State Tax on Professions, Traders, Callings and Employments Rules, 1979*
- vi. Letter dated 25.03.2012 regarding Confirmation of receiving Security Deposit of Rs. 1,37,00,000/- Mohan Motor Business Pvt Ltd*
- vii. Form 18 for the change of registered office*
- viii. Agreement of Rent between Bihariji Consultancy Pvt. Ltd and Mohan Motor Business Pvt Ltd*
- ix. Ledger Account of Share Applied - MGBPL from 01-04-2011 to 31-03-2012*
- x. Bank Statement from 01.04.2011 to 24.10.2011 & from 24.10.2011 to 17.04.2012*

2. Documents of Greenfield Vanijya Pvt Ltd

- i. Director List, Audited Financial Statements along with the computation sheet for A.Y 2012-13*
- ii. Form of Application dated 09.03.2012 for allotment of equity shares*
- iii. Bank Statement for the period 01.03.2012 to 31.03.2012*

- iv. ITR Acknowledgement for A.Y 2012-13 & MCA Master Data*
 - v. Certificate of enrolment under the West Bengal State Tax on Professions, Traders, Callings and Employments Rules, 1979*
 - vi. Letter dated 25.03.20 12 regarding Confirmation of receiving Security Deposit of Rs. 58,00,000/- to Mohan Motor Business Pvt Ltd*
 - vii. Agreement of Rent between Greenfield Vanijya Pvt Ltd and Mohan Motor Business Pvt*
 - viii. Ledger Account of Share Applied from 01-04-2011 to 31-03-2012*
- 3. Documents of Trinity Vanijya Pvt Ltd*
- i. Director List, Audited Financial Statements along with the computation sheet of for A.Y 2012-13*
 - ii. Form of Application dated 10.03.2012 for allotment of equity shares*
 - iii. Bank Statement for the period 01.03.2012 to 31.03.2012*
 - iv. ITR Acknowledgement for A.Y 2012-13 & MCA Master Data*
 - v. Certificate of enrolment under the West Bengal State Tax on Professions, Traders, Callings and Employments Rules, 1979*
 - vi. Letter dated 25.03.2012 regarding Confirmation of receiving Security Deposit of Rs. 20,00,000/- to Mohan Motor Business Pvt Ltd*
 - vii. Agreement of Rent between Trinity Vanijya Pvt Ltd and Mohan Motor Business Pvt*
 - viii. Ledger Account of Share Applied from 01-04-2011 to 31-03-2012*
 - ix. Bank Statement from 24.10.2011 to 17.04.2012”*

He has further submitted that both the lower authorities have ignored the details and documents furnished by the assessee. He has submitted that even otherwise, the lower authorities were supposed to consider the documents furnished by the assessee. That non-response by the subscriber companies to the notices issued by the Assessing Officer was beyond the control of the assessee. The ld. counsel, therefore, has submitted that the assessee may be given an opportunity to present its case and furnish the required details to the Assessing Officer to prove

the identity and genuineness of the share subscribers and genuineness of the transaction.

7. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

8. Considering the above submissions of the assessee and in the light of the various details furnished by the assessee, we are of the view that the interests of justice will be well-served if the assessee is given an opportunity to present its case before the Assessing Officer. The impugned order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer for de novo assessment on this issue.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 18th October, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 18.10.2023.

RS

Copy of the order forwarded to:

1. M/s Mohan Motor Business Pvt. Ltd
2. DCIT, Circle-11(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches