

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2455/Del/2017
Assessment Year: 2013-14
With
ITA No.247/Del/2022
Assessment Year: 2013-14

M/s. Shree Ramanand Industries Pvt. Ltd., Timber Market, Sadar Bazar, Karnal, Haryana	Vs.	ACIT, Circle- Karnal
PAN :AAPCS7556P		
(Appellant)		(Respondent)

Assessee by	Sh. Gautam Jain, Advocate Sh. Lalit Mohan, CA
Department by	Sh. Anuj Garg, Sr. DR

Date of hearing	05.12.2023
Date of pronouncement	08.12.2023

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

These appeals by the assessee arise out of two separate orders of learned Commission of Income Tax (Appeals), Karnal. One of the appeals arises out of quantum proceeding, whereas, the other one is against the penalty imposed under section

271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). Both the appeals relate to assessment year 2013-14.

ITA No.2455/Del/2017

2. This appeal arises out of quantum proceeding. Ground No. 1 is general in nature, hence, does not require adjudication.

3. As regards the other grounds, learned counsel appearing for the assessee, on instructions, submitted that ground nos. 5 & 6 are not pressed. Accordingly, they are dismissed as not pressed.

4. The common issue arising in Ground Nos. 2, 3 & 4 relate to addition of an amount of Rs. 6 crores as unexplained cash credit under section 68 of the Act.

5. Briefly the facts are, the assessee is a resident corporate entity and stated to be engaged in the business of import, sawing and wholesale trading of timber and rice. For the assessment year under dispute, the assessee filed its return of income on 21.09.2013 declaring income of Rs.49,96,143/-. In course of assessment proceedings, the Assessing Officer, while examining the audited financial statement of the assessee, noticed that in the year under consideration, the assessee had issued 19 lakhs share on premium and received share application money of

Rs.96,25,000 and Share premium of Rs.5,13,75,000/- from 9 persons/entities. As observed by the Assessing Officer, to verify the identity and creditworthiness of the creditors and genuineness of investors, the Assessing Officers issued summons to the concerned parties through the Inspector of Income Tax. However, as reported by the said Inspector, only in respect of Annex Hotel Private Ltd., the summons could be served. Whereas, in respect of rest of the parties, the summons could not be served, as, they were not found at the given addresses. Based on the report of the Inspector of Income Tax, the Assessing Officer issued a show-cause notice to the assessee to explain, as to why the amount of Rs. 6 crores comprising of share application money and share premium should not be treated as unexplained cash credit. In response to the show cause notice, the assessee filed a detailed reply on 09.03.2016. Along with the said reply, the assessee furnished various supporting evidences, such as, bank statements, balance-sheet and profit and loss account, list of shareholders, share application form received from all parties, copy of Form no. 2 i.e. return of allotment filed before the Registrar of Companies, annual return filed before the Registrar of

Companies. Even, in respect of Investor companies, the assessee furnished various documentary evidences, such as, returns of income, balance-sheet and profit and loss account, PAN details, copy of Board Resolution, confirmation from the parties, copy of share application form, copy of bank statement of the parties, copy of Memorandum and Articles of Association etc. The Assessing officer, however, was neither convinced with the submissions of the assessee nor evidences furnished. He observed that due to non-production of investors, identity and creditworthiness remained unverified and even the genuineness of transactions could not be proved. Accordingly, while completing the assessment, he treated the amount of Rs.6 crores as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. Though, the assessee contested the aforesaid addition before learned first appellate authority, however, the addition was sustained.

6. Before us, learned counsel appearing for the assessee submitted that in course of assessment proceedings, the assessee has furnished all supporting evidences to prove the identity and creditworthiness of the creditors as well as the genuineness of the

transactions. He submitted, the Assessing Officer without making any inquiry to find out the authenticity of the evidences furnished by the assessee, deputed Inspector of Income Tax to serve summons on the investors and simply based on the report of the Inspector completed the assessment by adding back the amount of Rs. 6 crores. He submitted, even, the report of the Inspector was never confronted by the Assessing Officer and only in the assessment order, the Assessing Officer has reproduced the gist of the report furnished by the Inspector. He submitted, in course of assessment proceedings itself, the assessee had communicated with the investors and has requested them to furnish the requisite information regarding the share application money and share premium to the Assessing Officer. He submitted, in response to the request by the assessee, the investors have individually replied to the Assessing Officer and furnished necessary details relating to transactions made with the assessee. He submitted, the details furnished by the investors have not, at all been, considered by the Assessing Officer. He submitted, though, these facts were brought to the notice of the first appellate authority, however, he also ignored the submissions of

the assessee. Thus, he submitted, since, relevant facts brought on record have not been properly examined by the departmental authorities and, moreover, the assessee has not been provided proper opportunity to rebut the adverse materials brought on record, the issue may be restored back to the Assessing Officer for *de novo* adjudication.

7. The learned Departmental Representative relying upon the observations of the Assessing Officer and learned Departmental Representative and submitted that, since, the assessee failed to furnish cogent evidences to prove the genuineness of the share application money and share premium, despite adequate opportunity being granted, there is no need of restoring the issue to the Assessing Officer.

8. We have considered rival submissions and perused the materials available on record. Undisputedly, in the year under consideration, the assessee has received share application money and share premium from certain investors. In course of assessment proceedings, the Assessing Officer wanted to verify the identity and creditworthiness of the investors as well as genuineness of the transactions. In compliance, the assessee has

furnished various documentary evidences before the Assessing Officer. However, the Assessing Officer, without making proper inquiry on such evidences, has deputed an Inspector to serve the summons on the investors. It is observed, based on the report submitted by the Inspector that the summons could not be served on the investors, since they were not found at their addresses, the Assessing Officer proceeded to treat the share application money and share premium as unexplained cash credit. However, he has not conducted any inquiry to verify the veracity of the evidences furnished by the assessee. Even, neither any notice under section 133(6) of the Act, nor summons under section 131 of the Act has been issued by the Assessing Officer to the investors through postal mode. Merely relying upon the report of the Inspector, the Assessing Officer has completed the assessment. Though, before learned first appellate authority the assessee has specifically submitted that in response to the letters issue by the assessee, the investors have individually replied to the Assessing Officer and furnished documentary evidences, which have been ignored by the Assessing Officer, however, learned first appellate authority has not, at all, taken cognizance of the submissions made by the

assessee. Thus, in our view, the addition has been made without inquiry and without application of mind.

9. In view of the aforesaid, we are inclined to set aside the impugned order of learned Commissioner (Appeals) and restore the issue to the file of the Assessing Officer for *de novo* adjudication after providing due and reasonable opportunity of being heard to the assessee.

10. It is made clear, the Assessing Officer is required to make proper inquiry regarding assessee's claims and contentions and if, he so desires, may call for information from the concerned investors under section 133(6) or by issuing summons under section 131 of the Act. Liberty is also granted to the assessee to bring further material on record to prove the genuineness of the share application money and share premium. Grounds are allowed for statistical purposes.

11. In the result, appeal is allowed for statistical purposes.

ITA No.247/Del/2022

12. This appeal is against the imposition of penalty under section 271(1)(c) of the Act. While deciding assessee's appeal arising out of quantum proceeding in ITA No. 2455/Del/2017 in

the earlier part of the order, we have restored the issue of addition of Rs.6 crores, based on which penalty has been imposed, to the Assessing Officer for *de novo* adjudication. Therefore, as of now, the penalty imposed under section 271(1)(c) of the Act cannot survive, as, factually there is no surviving addition. That being the case, the impugned order of learned Commissioner (Appeals) confirming the imposing of penalty under section 271(1)(c) of the Act is hereby set aside.

13. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 8th December, 2023

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 8th December, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi