

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.16/Kol/2023
(Assessment Year: 2012-13)

Umang Commo Trade Pvt. Ltd.....Appellant
2nd Floor, Room No.2B, 56,
Metacalfe Street,
Bowbazar, Kolkata-700013.
[PAN: AAACU3317M]

vs.

ITO, Ward-2(4) Presently ITO, Ward-1(3), Kolkata..... Respondent

Appearances by:

Shri Rites Goel, Advocate, appeared on behalf of the appellant.

Shri B. K. Singh, JCIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 06, 2023

Date of pronouncing the order : December 12, 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 18.01.2017 of the Commissioner of Income Tax(Appeals)-1, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The appeal is time barred by 2122 days. A separate application for condonation of delay has been filed, wherein, it has been pleaded that the impugned order of the CIT(A) was never served upon the assessee. Though, the order was uploaded on the website portal of the Income Tax Department, however, the assessee was not aware of the same. It has been submitted that the assessee came to know about the passing

of the order when he received notification regarding the same on 13.12.2022 and therefore, the appeal was filed within the limitation period. Without prejudice to the above submissions, it has been pleaded that the business of the assessee had almost come to standstill during the years 2017 to 2021 and he was in financial ruin. He had an extremely difficult time even meeting his family expenses. Thereafter, the Covid Pandemic period started and under the circumstances, the assessee has reasonable cause for not filing appeal within the limitation period. However, the main contention of the ld. AR has been that the impugned order of the CIT(A) was never served upon the assessee. The assessee has come to know about the passing of the impugned order of the CIT(A) only on 13.12.2022. The said contention of the assessee has not been rebutted by the Department by providing on file any evidence that the impugned order of the CIT(A) was served upon the assessee before 13.12.2022. In view of the aforesaid submissions and considering the interests of justice, the delay occurred in filing the present appeal is hereby condoned.

3. Now, coming to the merit of the appeal, the assessee in this appeal has agitated the confirmation of addition of a sum of Rs.3,00,00,000/- made by the Assessing Officer u/s 68 of the Act treating the share capital and share premium received by the assessee as unexplained income of the assessee.

4. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to submit that though the Assessing Officer in para 2 of the assessment order has observed that the assessee had submitted mere preliminary document in the office through DAK (to the receipt clerk), however, he has not discussed any

of the evidences/documents furnished by the assessee. He has further submitted that the Assessing Officer observed that the assessee had not made any compliance to the notices issued by the Assessing Officer which was factually wrong. In fact, the assessee duly furnished the documents to prove the identity and financial worth of the share subscribers and genuineness of the transaction. The ld. counsel, in this respect, has relied upon the following documents:

- “1. Income Tax Acknowledgement for AY 2012-13*
- 2. Director's Report for the year 31st March, 2012*
- 3. Auditor's Report, Balance Sheet with Schedules for the year 31st March, 2012*
- 4. Auditor's Report under NBFC for the year 31st March, 2012*
- 5. ROC Form 2 or Return of Allotment*
- 6. ROC Form 5 for Increase of Authorized Share Capital*
- 7. Ledger of Share capital for the year 01st April 2011 to 31st March 2012*
- 8. Ledger of Share Premium for the year 01st April 2011 to 31st March 2012*
- 9. Share Sale Bill with confirmation of JP Engineering Corporation Pvt Ltd*
- 10. Share Sale Bill with confirmation of Paridhi Finvest Pvt Ltd*
- 11. Master Data of JP Engineering Corporation Pvt. Ltd*
- 12. Auditor's Report of JP Engineering Corporation Pvt. Ltd with Balance Sheet with Schedules for the year 31st March, 2012*
- 13. Auditor's Report of Paridhi Finvest Pvt Ltd with Balance Sheet with Schedules for the year 31st March, 2012*
- 14. ITR & Auditor's report of Umang Commo Trade Pvt. Ltd.”*

5. He has further submitted that however none of the documents have been looked into by the Assessing Officer. The ld. counsel inviting our attention to the impugned order of the CIT(A) has submitted that

even the ld. CIT(A) has also dismissed the appeal of the assessee, without going through the evidence on the file, in a mechanical manner. The ld. counsel, therefore, has submitted that in the interests of justice, the assessee may be given an opportunity to present its case before the Assessing Officer to prove the identity and financial worth of the share subscribers and genuineness of the transaction.

6. The ld. DR could not rebut the above submissions of the assessee that both the lower authorities have not considered the documents furnished by the assessee.

7. Considering the above aspects, in our view, the interests of justice will be well-served, if, the assessee is given an opportunity to present its case before the Assessing Officer. In view of this, 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. Needless to say that the ld. CIT(A) will give proper and adequate opportunity to the assessee to present its case and furnish the evidences, thereafter, to decide the issue by way of a speaking order.

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

Kolkata, the 12th December, 2023.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

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

Dated: 12.12.2023.

RS

Copy of the order forwarded to:

1. Umang Commo Trade Pvt. Ltd
2. ITO, Ward-2(4) Presently ITO, Ward-1(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches