

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

**I.T.A No.608/Kol/2023
Assessment year: 2017-18**

**Hirawat Electrical Pvt. Ltd.....Appellant
32, Ezra Street, 5th Floor,
Kolkata-1.
[PAN: AACCH1690Q]**

vs.

ITO, Ward-5(4), Kolkata.....Respondent

Appearances by:

Shri P. K. Singh, FCA & Gaurav Rathi, FCA, appeared on behalf of the appellant.
Shri Swapan Kr. Bera, JCIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 22, 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 20.01.2023 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 appeal is time barred by 89 days. A separate application for condonation of delay has been filed. It has been pleaded in the said application that the appeal was electronically filed within the limitation period, however, due to inadvertence/miscommunication the appeal papers were submitted by the concerned clerk after the limitation period.

Considering the above submissions, the delay in filing the appeal is hereby condoned.

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

“(1). That the ex-parte Appellate Order passed by the Ld. CIT (A), NFAC, Delhi is illegal, arbitrary and contrary to the facts and weight of evidence on record.

(2). That the impugned order is against the principles of natural justice as the appellant company was totally unaware as to the dates fixed in the appeal due to lack of communication.

(3). That the order passed by the Ld. CIT (A), NFAC, Delhi is highly prejudiced and is based on presumption, assumption and surmises.

(4).(a). That the Ld. CIT (A), NFAC, Delhi erred in law as well as in fact in confirming addition of Rs. 1,20,00,000/- made by the Assessing Officer by treating capital receipt in the form of Share Capital of Rs.24,00,000/- and Share Premium of Rs.96,00,000/- both aggregating to Rs.1.20.00,000- as unexplained cash credit purportedly under Section 68 of the Income Tax Act, 1961.

(4).(b). That the observation of the Ld. CIT (A), NFAC, Delhi vis-à-vis share capital and share premium raised by the assessee company during the year in confirmation of finding of the Assessing Officer is perverse and prejudiced.

(4). (c). That the observation of the A.O., as confirmed by Ld. CIT (A), NFAC, Delhi, to the effect that no details of the raised capital and premium was furnished by the assessee during the scrutiny proceedings" is quite contrary to the materials on records inasmuch as (i). Financial Statements of the appellant company with schedules giving names of subscribers of the said share capital (i). Copy of Bank Statement of the company reflecting credit of the amounts through banking channel, (iii). Balance Sheets, Profit and Loss Accounts, ITR Acknowledgements and copy of relevant pages of bank statements of the subscribers of share capital and premium (electronically filed in course of assessment proceedings on 23.12.2019) showing identity and their creditworthiness were lost sight of by the A.O. at the time of passing the impugned order.

(4). (d). That genuinity of transactions could not be called in question as the subscribers of shares were none other than directors of the company

itself, namely, Sri Sandeep Kumar Hirawat and Sri Sourav Hirawat as apparent from the schedule of the financial statements.

(4). (e). That the Valuation Report under Rule 11UA of I.T. Rules (electronically filed in course of assessment proceedings on 23.12.2019) also lost sight of the Ld. A.O. which, if considered, would have led to the favourable finding as to its adequacy.

(5). That the appellant craves leave to add, alter, modify and/or withdraw any ground or grounds of appeal before the or at the time of hearing.”

4. At the outset, the ld. counsel for the assessee has brought our attention to the impugned assessment order to submit that the same is an ex parte-best judgment order passed by the Assessing Officer u/s 144 of the Act. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the same is also an ex parte order. The ld. counsel has further submitted that the notice of hearing was sent by the CIT(A) on email but the assessee was not aware of the procedure and could not access the email, therefore, the case remained unrepresented before the CIT(A).

5. The ld. counsel has further submitted that the issue involved in this appeal is relating to the genuineness of the share capital and share premium received by the assessee. That the Assessing Officer has treated the share capital, share premium received by the assessee during the year as unexplained income of the assessee. The ld. counsel has submitted that the assessee had furnished the requisite details and evidences before the Assessing Officer, however, the Assessing Officer totally ignored the details and evidences furnished by the assessee. The ld. counsel has further submitted that the share capital/share premium in question, was received by the assessee company from its directors. That the directors of the assessee company had earlier given loan to the assessee company which was converted into share capital in this year. It

has been further submitted that in fact, the assessee company wanted to raise loan from the bank and for that purpose to improve the financials of the company, the directors had contributed towards share capital. The ld. counsel has submitted that the impugned additions were not warranted.

6. The ld. DR however has submitted that the assessee did not furnish the requisite details and evidences before the lower authorities and that the assessee had failed to prove its case before the lower authorities.

7. Considering the rival submissions, we are of the view that in this case, the assessee should be 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 Assessing Officer will give proper opportunity to the assessee to present its case. The assessee is also directed to access its email regularly to be aware about the date of hearing before the Assessing Officer.

8. With the above observations, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 12th December, 2023.

Sd/-
[Rajesh Kumar]
लेखा सदस्य /Accountant Member

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

Dated: 12.12.2023.

RS

Copy of the order forwarded to:

1. Hirawat Electrical Pvt. Ltd
2. ITO, Ward-5(4), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches