

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

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1793/Kol/2018
Assessment Year : 2012-13

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|---|----|---|
| Dy. Commissioner of Income Tax, Circle-10(2), Kolkata | Vs | M/s. Narayani Coke Private Limited PAN: AABCN8540L |
| Appellant | | Respondent |

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|-----------------------|---|
| Date of Hearing | 15.09.2023 |
| Date of Pronouncement | 13.12.2023 |
| For the Assessee | Shri R. Choudhury & Shri Vinit Jallan, AR |
| For the Revenue | Shri Abhijit Kundu & Smt. Ranu Biswas, Sr. DR |

ORDER

Per Sonjoy Sarma, JM:

The instant appeal is preferred by the revenue against the order of Id. CIT(A)-4, Kolkata dated 15.05.2018. The revenue has raised the following grounds of appeal:

"1. That on the facts and in circumstances of the case, the Id. CIT(A) has erred in law as well as on fact by deleting the addition of Rs. 2,55,00,000/- made on account of unexplained share capital u/s 68 of the Income Tax Act, 1961 without considering the credit worthiness of the share subscribers.

2. That the appellant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing."

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2012-13 by disclosing the income of Rs. 98,84,885/-. Subsequently, the case of the assessee was selected for scrutiny followed by notices issued u/s 143(2) and 142(1) of the Act. In response to notices, the Id. AR of the assessee appeared before the AO time to time and furnished the necessary details as asked for by the Id. AO. During the assessment proceeding, the Id. AO noticed that the assessee-company has received a sum of Rs.

20,00,000/- in form of share application money reflecting from balance sheet of the company but assessee company had failed to furnish any documents and explanation with regard to the source of those share application money. In this context, summon u/s 131 of the Act was issued to the director of the company and he stated before the Id. AO that assessee had received share application money from Dinesh Management Services Ltd. & Harsh Fuel Pvt. Ltd. In this context, assessee submitted the copies of ITR, computation, audited balance sheet, tax audit report of both the share holders. The Id AO while framing the assessment in order to verify the statement of Shri Anant Prakash Kabra, director of investment company noticed that balance sheet submitted by director of assessee-company in relation with investing company namely Dinesh Management Services Ltd. were totally different from balance sheet submitted on 28.07.2014. He noticed the difference in the balance sheet in following manner:

| <i>Particulars</i> | <i>Balance sheet submitted on 19.03.2015 (a)</i> | <i>Balance sheet submitted in reply u/s 133(6) on 28.07.2014 (b)</i> | <i>Difference (a-b)</i> |
|--------------------------------------|--|--|-------------------------|
| <i>Share Capital</i> | 69,90,000 | 69,90,000 | <i>Nil</i> |
| <i>Reserve & Surplus</i> | 3,98,39,167 | 3,98,39,167 | <i>Nil</i> |
| <i>Long Term Borrowings</i> | 15,88,26,469 | 16,05,53,331 | <i>(17,26,862)</i> |
| <i>Deferred Tax Liability (Net)</i> | 4,335 | 4,335 | <i>Nil</i> |
| <i>Trade Payables</i> | 14,565 | 14,565 | <i>Nil</i> |
| <i>Other Current Liabilities</i> | 85,758 | 85,758 | <i>Nil</i> |
| <i>Short Term Provisions</i> | 3,69,011 | 3,69,011 | <i>Nil</i> |
| <i>Total</i> | 20,61,29,305 | 20,78,56,167 | <i>17,26,862</i> |
| <i>Tangible Assets</i> | 96,574 | 96,574 | <i>Nil</i> |
| <i>Long Term Loans & Advance</i> | 9,89,13,760 | 12,01,40,622 | <i>2,12,26,862</i> |
| <i>Other Non-current assets</i> | 1,15,724 | 1,15,724 | <i>Nil</i> |
| <i>Investment</i> | 4,72,90,000 | 2,77,90,000 | <i>1,95,00,000</i> |
| <i>Inventories</i> | 3,60,23,750 | 3,60,23,750 | <i>Nil</i> |
| <i>Cash & bank balances</i> | 1,89,497 | 1,89,497 | <i>Nil</i> |
| <i>Other current assets</i> | 2,35,00,000 | <i>Nil</i> | <i>2,35,00,000</i> |
| <i>Trade receivables</i> | <i>Nil</i> | 2,35,00,000 | <i>2,35,00,000</i> |

| | | | |
|-------|--------------|--------------|-----------|
| Total | 20,61,29,305 | 20,78,56,167 | 17,26,862 |
|-------|--------------|--------------|-----------|

3. The ld. AO after going through the facts of the case alleged the amount paid by Dinesh Management Services Ltd. to the tune of Rs. 2,35,00,000/- and share application money of Rs. 20,00,000/- totaling to Rs. 2,55,00,000/- added to the income of the assessee as unexplained income.

4. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was allowed on the issue involved observing as under:

"7.1 I find that the AO in its remand report dated 19.02.2018 stated that the assessee had shown in its Balance Sheet against 4,70,000 Shares allotted M/s. Dinesh Management Services Limited. During scrutiny proceedings, the A.O, observed that in reply dated 28.07.2014 against requisition Ws 133/6) of the Act, M/s Dinesh Management Services Limited had reflected in its Balance Sheet as on 31.03.2012 relevant for the Assessment Year 2012-13 a sum of Rs. 2.35 Crore as Trade Receivables and Current assets as Nil, whereas during recording of statement of Shri Anant Prakash Kabra, director of M/s Dinesh Management Services Limited u/s 131 of the Act on 19.03.2015 the Balance Sheet for the above financial year produced by him reflected Trade receivable at Rs. Nil and Other current assets at Rs. 2.35 crore. The A.O. observed that the balance sheets were altered to hide the fact in order to prove that investment was made by M/s Dinesh Management Services Limited in the assessee company. As such the A.O. made an addition of Rs. 2.35 Crore as unexplained cash credit.

Again the remand report brought on record alteration in the Balance Sheet but tailed to brought anything to the contrary as to how the Investor hide the fact. Instead it was confirmed that the Company do exist at the given address, directors were traceable and notices issued u/s 131 of the Act were duly served and responded and statement were recorded at the Office of the A.O. thereby identity of the Investor Company was completely proved.

It was also stated in the remand report that the source of funding were not generated from outside instead the same was from the Group concern of the investor Company and that the investor Company directors and the appellants Company also in the same line of business thereby credit worthiness and genuineness of the transaction were also proved.

It was stated in the Order of Assessment as well as in the remand report by the A.O. that the investor Company (M/s. Dinesh Management Services Ltd.) has altered balance sheets to hide the fact in order to prove that investment was made by M/s Dinesh Management Services Limited in the assessee company. As such the A.O. made an addition of Rs. 2.35 Crore as unexplained cash credit. The observation of the A.O. is not based on the facts of the records but only based on the suspicion of his own. There are summaries as below.

i. The Payment was made through the recognised banking channel during the year under consideration as such the payment made in the past cannot be altered and more produced by the appellant Company importantly bank statement and the investor which were submitted during the Company were not doubted which were submitted during the assessment proceedings. This is an undisputed fact that the payment was made by the investor company. Hence the suspicion of the AO cannot be accepted.

ii. The identity of the Investor Company was established by providing the PAN number, service of notice and statement recorded on oath at the Office of the A.O. at the time of Assessment proceedings and as well as at the time of remand report. As such the identity of the Company has not been disputed by the A.O. in the Original Assessment proceedings. Hence, assessee been able to prove the identity of the Investor Company.

iii. It was stated in the remand report of the A.O. that the source of investment was from group concern and not from elsewhere which is sufficient to prove that the investor Company has credit worthiness because owned funds were used to invest in the appellant Company.

iv. It was also stated in the Remand report that the directors of the investor Company were examined on oath at the office of the A.O. and the transaction entered into by the appellant Company and the investor Company were fully explained. Hence, genuineness of the transaction is also been established.

v. The Appellant Company has fulfilled all the requirement of section 68 of the Income tax Act, 1961 as such addition under section 68 cannot be made.

vi. The Assessing Officer failed to understand that there was only re-grouping of advances. There were some error in grouping of amount paid to other persons as such the amount was later on rightly categorized and rectified balance sheet was produced thereafter.. The Assessing Officer not only failed to realize that there were re-grouping only but the fact remains the same that the investor Company paid the amount to the appellate Company and all documents related to such payment was produced at the time of assessment proceedings.

vii. The Assessing Officer made the addition of Rs.20,00,000/- in case of share application money reflected in the balance sheet of the appellate Company as the appellate Company had not given any details to share application money received.

viii. The AR of the appellate Company has submitted that the AO has never asked for the details of share application money existed at the balance Sheet of the appellate Company and has produced certified copy of note Sheet of the assessment proceeding and also various notices issued to the appellate company and it was found that the AO has not never asked for the details of share application money and made the addition base on the figure in the balance sheet of the appellate Company.

ix. The AO in the remand report dated 19.02.2018 stated that he issued requisition u/s 133(6) of the Act to M/s Saraogi Coke Traders and reply obtained. On perusal of the reply, it is noticed from the relevant ledger account and bank statement, that M/s Saraogi Coke Traders had made purchases from M/s Narayani Coke Pvt. Ltd. during the year under reference and Rs.20 Lakhs was receivable from the assessee company. M/s Narayani Coke Pvt. Ltd. is also reflected as debtor in the balance sheet of M/s Saraogi Coke Traders as on 31.03.2012.

7.2 I have considered the submission of the AR of the appellate as well as the assessment order and remand report. I find that the AO has not followed principal of natural justice and above all A.O. failed to appreciate the fact the regrouping of advances in various categories is not illegal and does not change the nomenclature of the transaction. The Whole ground of addition rowing around the difference in the balance sheet and the AR of the assessee fully explained the to with supporting related share capital of Rs.2,35,00,000/-. Had the AO followed the principal of natural justice the matter could got clarified at the assessment stage itself. The AO has made further addition of share application money of Rs.20,00,000/- Lakh existed at the balance sheet of the appellate Company. The AO has not only failed to bring anything contrary to the submission of the appellate Company with respect to Share Application money but also not asked anything related to the share application money and made the addition is completely against the law. AO in it remand report confirmed the details of share application money and has confirmed that identity of the applicant, genuineness of the transaction and credit worthiness of the applicant and the matter is fully explained at the appellate stage even the matter was not raised by the AO at the time of assessment proceedings. The AR of the appellate Company has rightly quoted the citation of Hon'ble Supremen Court in case of CIT Vs. Simon Carves Ltd. 105 ITR 212 (SC) "that the taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also

at the same time not act in a manner as might indicate that scales are weighted against the assessee. We are wholly unable to subscribe to the view that unless those authorities exercise the power in a matter most beneficial to the revenue and consequently most adverse to the assessee, they should be deemed not to have exercised it in a proper and judicious manner. Thus the disallowance of Rs. 2,35,00,000/- and Rs. 20,00,000/- made by the AO on account of share capital and share application money is directed to be deleted. The ground is allowed.”

5. Dissatisfied with the above order, revenue is in appeal raising two grounds of appeal. Ground no. 1 is in relation with deleting the addition of Rs. 2,55,00,000/- made on account of unexplained share application u/s 68 of the Income Tax Act, 1961 without considering the credit worthiness of the share subscribers. On this context, the ld. DR stated before the bench that the findings given by the ld. CIT(A) is not proper and pray before the bench to set aside the impugned order passed by the ld. CIT(A) by sustaining the order of AO.

6. On the other hand, ld. AR opposed to the prayer made by the ld. DR on this issue. He invited attention of the bench to the fact that while passing the order challenged before the bench. The ld. CIT(A) called the remand report from the AO on 19.02.2018 which was not passed any adverse comment on the issue involved in this appeal. Further, he invited our attention by stating that while passing the assessment order, assessing officer had failed to understand the fact that there was only re-grouping of advance made by the applicant company due to error in grouping of amount and which was later on rightly rectified by the applicant company in its balance sheet which was produced before the AO. The ld. AR further stated that the assessing officer has failed to realize that

there were re-grouping only taken place and fact remains the same that the investor company paid the amount to assessee-company and all the relevant documents related to such transactions were produced at the time of assessment proceeding. Therefore, such addition made by AO was uncalled for and the Id. CIT(A) rightly allowed the ground taken by the assessee and even on the issue of addition of Rs. 20,00,000/- made by AO on account of share application, Id. CIT(A) observed that from the remand report called from the AO stated that sum of Rs. 20,00,000/- receivable from assessee company by M/s. Saraogi Coke Traders as on 31.03.2012 and assessee company had been shown as debtor in the balance sheet of Saraogi Coke Traders. Therefore, the addition was uncalled for in the hands of assessee and the Id. CIT(A) has rightly allowed the appeal of the assessee. Therefore, the grounds taken by the revenue is liable to be dismissed.

7. We have heard the rival submission of the parties and perused the material available on record. We find that the case of the assessee, the disallowance of Rs. 2,35,00,000/- was made u/s 68 of the Act on account of two different balance sheet has been submitted by the assessee as well as the director of the investing company before the Id. AO and another sum of Rs. 20,00,000/- by treating it as unexplained share application money in the hands of assessee while framing the assessment. We have noted that assessee has furnished two different balance sheet before the AO at the time of framing of the assessment order one by the assessee and another by the director of the applicant company. The difference as noticed by the AO during the assessment proceeding

was only due to re-grouping of the advance made by the applicant company. However, the amount after re-grouping the facts remains the same i.e. the investor company paid the amount to the assessee company. The assessee company also filed relevant documents in support of its contention at the time of assessment proceeding and the ld. CIT(A) also called a remand report from the AO in this regard. Similarly, on the issue of addition of Rs. 20,00,000/- on account of share application, the ld. CIT(A) on this issue called a remand report from the ld. AO finds that sum of Rs. 20,00,000/- received by the assessee from M/s. Saraogi Traders and name of the assessee company had shown as sundry creditors in the books of Saraogi Coke Traders. We therefore, from the findings given by the ld. CIT(A) and going through the facts of the case do not find any infirmity in the order passed by the ld. CIT(A). Accordingly, we dismiss the appeal of the revenue sustaining the order of the ld. CIT(A).

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 13.12.2023.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 13.12.2023
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant - Dy. Commissioner of Income Tax, Circle-10(2), Kolkata.
2. Respondent - M/s. Narayani Coke Private Limited, 40, Lansdowne Terrace, 2nd Floor, Kolkata-700026.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata