

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.781/Kol/2023
Assessment Year: 2012-13**

Yew Infratech Pvt. Ltd. 9/12, Lal Bazar Street Mercantile Building, Block-B, 3 rd Floor, Kolkata-700001. (PAN: AAACY5327M)	Vs.	Assistant Commissioner of Income Tax, Ward-4(2), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : N o n e
Respondent by : Shri S. Datta, CIT, DR

Date of Hearing : 30.11.2023
Date of Pronouncement : 01.01.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1053839610(1) dated 21.06.2023 passed against the assessment order by ITO, Ward-4(2), Kolkata u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 13.03.2015.

2. The sole issue involved in this appeal is against the confirmation of addition of Rs.6,21,00,000/- by the Ld. CIT(A) on account of share capital raised.

3. From the perusal of the grounds, we note that in ground no. 3, the amount stated in respect of addition is Rs.2,74,01,730/- which in fact is Rs.6,21,00,000/- as stated in the order of Ld. AO for the

addition made by him. Thus, this correct amount needs to be considered in ground no. 3.

4. We note that this appeal has been listed for hearing on earlier occasion also. In all the hearings none appeared to represent the case of the assessee before us. It is also noted that notices were issued through RPAD as well as on the e-mail mentioned in Form 36. Assessee was also informed by making phone calls to its office staff. Despite all these efforts, none appeared before us at the time of hearing to represent the assessee. We also observe that the impugned assessment order is passed u/s. 144 of the Act and even Ld. CIT(A) has noted non-compliance made by the assessee in the first appellate stage. Considering all these, we are inclined to take up the matter ex parte qua the assessee with the assistance of Ld. CIT, DR by considering the observations and findings given in the orders of the authorities below and material available on record.

5. Brief facts as culled out from the orders of the authorities below are that assessee filed its return of income reporting total income as nil. Ld. AO has issued statutory notices on several occasions giving reasonable opportunities. However, no compliance was made by the assessee. From the uploaded copies of return of income and financial statement, ld. AO noted that assessee had raised share capital comprising of Rs.21,60,000/- and Rs.5,99,40,000/- towards share premium totalling to Rs.6,21,00,000/-. For the non-compliance on the part of the assessee, Ld. AO observed that unless the share applicant companies appeared with all their books of account, bank statement, copies of return, returns of the directors, no enquiry can be made so as to substantiate the veracity of claim made by the assessee in respect of share capital and including share premium raised during

the year. According to the Ld. AO, taking recourse to deferring the date of hearings, directors had deliberately thwarted the very attempt of the Ld. AO to make proper investigations to examine the transactions of allottee companies . He thus, completed the assessment by making an addition of the amount of Rs.6,21,00,000/- by treating it as unexplained income in the hands of the assessee u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A).

6. Before the Ld. CIT(A) the case was posted for hearing from time to time. The details of posting of the case and the response of the assessee as noted by the Ld. CIT(A) in his order is tabulated below:

Date of notice	Date of hearing	Remarks
25.01.2021	09.02.2021	No Reply
01.09.2021	16.09.2021	No Reply
29.10.2021	15.11.2021	No Reply
27.04.2023	02.05.2023	No Reply
11.05.2023	15.05.2023	No Reply
17.05.2023	22.05.2023	Requested for adjournment
01.06.2023	07.06.2023	Requested for adjournment
13.06.2023	19.06.2023	Requested for adjournment

7. Thus, in absence of any details and written submissions, Ld. CIT(A) found no reason to interfere with the order of Ld. AO and dismissed the appeal. Aggrieved, assessee is in appeal before the Tribunal.

8. Before us also, nothing was furnished except for filing the appeal. The behavioural pattern of the assessee before the authorities below continues even before the Tribunal where none has appeared to represent the case of the assessee on the dates of hearing. Neither paper book nor any written submission is placed on record by the assessee. It seems that assessee every time makes compliance of putting its grievance on record by filing an appeal and thereafter remains unattended. Such an approach on the part of the assessee is an empty formality which only results into clogging of the justice delivery machinery. From the perusal of the orders of the authorities below, we find that reasonable opportunities have been given to the assessee to make its submission so that it may enable the investigation process for examination of the transaction undertaken during the year of raising share capital of Rs.6.21 Cr. including share premium. In the facts and circumstances of the case and considering the observations made by the authorities below in their respective orders, we do not find any reason to interfere with them. Accordingly, grounds taken by the assessee are dismissed.

9. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 01.01.2024

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 01.01.2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. ITO, Ward-4(2), Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata