

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.5529/Del/2017
Assessment Year: 2009-10

DCIT Circle Najibabad, Bijnor Uttar Pradesh	Vs.	Parmarth Industries Pvt. Ltd., 10th, KM Stone, Nagina Road, Bijnor, Bijnor Uttar Pradesh PAN No.AADCP0551D
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. V.K. Dubey, Sr. DR
Respondent by	Sh. Mayank Patawari, CA Sh. Anmol Jagga, Advocate

Date of hearing:	15/01/2024
Date of Pronouncement:	15/01/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A), Moradabad dated 27.06.2017 pertaining to A.Y. 2009-10.

2. The grievance of the revenue read as under :-

“1. That the Ld. Commissioner of Income Tax (Appeal), Moradabad has erred in law and on the facts of the case in deleting the addition

of Rs. 1,50,00,000/- on account of unexplained deposits with regard to amount of share premium and increase in paid up capital ignoring the fact that the identity, creditworthiness and genuiness of the creditors were not established by the assessee.

2. That the Ld. Commissioner of Income Tax (Appeal), Moradabad has erred in law and on the facts of the case in deleting the addition of Rs. 1,00,00,000/- on account of unexplained deposits with regard to amount of share application money ignoring the fact that assessee has not provided any details in respect of such sum during the assessment proceedings.

3. That the order of the Ld. Commissioner of Income Tax (Appeal), Moradabad is erroneous in law and on facts may be cancelled and the order of the Assessing Officer may be restored.

4. Any other grounds may be taken during the course of the hearing of the appeal may also be kindly allowed.”

3. Briefly stated the facts of the case are that assessment u/s. 147 r.w.s. 143 (2) of the Act was framed vide order dated 29.03.2016 wherein two additions were made. The first addition was of Rs. 1.50 crores in respect of share capital received during the year alongwith share premium. The share capital was to the tune of Rs. 6 lacs and share premium of Rs. 1.44 crores totaling to Rs. 1.50 crores. The second addition was of Rs.1 crore being share application money received during the year.

4. Both the additions were made on a categorical finding that the assessee grossly failed in discharging the initial onus cast upon it by the provisions of section 68 of the Act in as much as the assessee failed to establish a) identity b) genuineness of the transaction c) capacity of the depositor / investor.

5. Assessee challenged the addition before the CIT(A) and it is not known what documents were submitted which prompted the CIT(A) to hold as under :-

“5.2 The Appellant's contention is correct in the sense that the shares were issued out of share application money received during FY 2007-08 which appeared in the balance sheet as on 31.03.2008. Therefore it does not pertain to the year under consideration. It is also seen that all the investors' details are on records. In his letter dated 17.03.2016 addressed to DCIT Nazibabad (Sic) the details have been submitted to the AO. The assessment records were checked by the undersigned during a camp at Najibabad on 19.04.2017 and the said information was found to have been filed by the assessee and was on record, Therefore the AO was grossly mistaken in stating that the details of identity of the share applicants were not proved. He not only made the mistake of adding the amount in the current year but also on facts by ignoring the submission of the assessee which the latter had provided as evidence regarding identity and creditworthiness of the persons who had given share application money. Moreover other than what he had stated in his order, the AO made no independent verification to examine the facts before making these huge additions. In the absence of the same, the addition made cannot be sustained.. The

additions are thus deleted being wrong on facts as well as on technical ground.”

6. Before us the DR vehemently stated that the CIT(A) has not examined any document whatsoever and has deleted the addition holding that the assessee has discharged the onus cast upon it by the provisions of section 68 of the Act.

7. Per contra the Counsel for the assessee vehemently stated that the share application money was received in F.Y. 2007-08 and, therefore, provisions of section 68 do not apply for the impugned assessment year. It is the say of the Counsel that the cheques were accounted for in the balance sheet for the year ending 31.03.2008 and since the cheques were under clearing the amount got credited in F.Y. 2008-09 and, therefore, the credit is appearing in F.Y. 2008-09 though the entries are reflected in the balance sheet as at 31.03.2008.

8. We have given a thoughtful consideration to the orders of the authorities below. The findings of the CIT(A) mentioned elsewhere do not have any supporting evidences. It appears that the first appellate authority has simply believed what has been stated before him without making any verification himself and putting the entire blame on the AO.

9. The first error in the findings of the CIT(A) is that the share application money was received in F.Y. 2007-08. The bank

statements show that the credits were made in the bank account in the month of August 2008. The contention of the Counsel that the cheques were received in the month of March-2008 and, therefore, the entries are reflected in F.Y.2007-08 is nothing but mockery of the accounting system as no bank in the entire country would validate clearing of check after 8 months. The validity of check is only for 3 months and, therefore, cheques of March-2008 could not have cleared in the month of August-2008. Assuming that fresh cheques were issued then the cheques must have been issued in F.Y. 2008-09 pertaining to year under consideration. When the bench asked the Counsel to give the balance sheet of year ending 31.03.2008 the Counsel showed his inability and sought adjournment.

10. We are of the considered view that this issue needs fresh examination of facts and, therefore, we deem it fit to restore the impugned issues to the files of the AO. The assessee is directed to demonstrate that the impugned share application money was received in F.Y. 2007-08 and is duly reflected in the balance sheet as on 31.03.2008. The assessee is further directed to furnish all necessary demonstrative evidences to explain the credit of Rs. 1 crore being fresh application money received during the year alongwith documents relating to share application money of Rs. 1.50 crore. The AO is directed to examine the same and decide the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee.

11. In the result, the appeal of the revenue is allowed for statistical purpose.

12. Decision announced in the open court on 15.01.2024.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .01.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR