

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 388/KOL/2023
Assessment Year: 2012-2013**

***Abhyudaya Power Pvt. Ltd.,.....Appellant
3/1, Dr. U.N. Brahmachari Street,
Loudon Street, Kolkata-700017
[PAN: AAJCA1599E]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

Shri N.S. Saini, A.R., appeared on behalf of the assessee

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : January 16, 2024

Date of pronouncing the order : January 17, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 23.03.2023 passed for A.Y. 2012-13.

2. The grievance of the assessee is that ld. CIT(Appeals) has erred in dismissing its appeal *ex-parte*.

3. Brief facts of the case are that the assessee has filed its return of income on 27.09.2012 declaring total income at 'NIL'. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. This fact has not been challenged in the present appeal. Thereafter the ld. Assessing Officer has issued notices under section 142(1) along with show-cause notices. It unearthed before the ld. Assessing Officer that the assessee had received share premium of Rs.990/- against the face value of Rs.10/- per share. According to the ld. Assessing Officer, the assessee failed to supply any document before him and accordingly an addition of Rs.1,24,00,000/- was made.

4. Dissatisfied with this assessment order, the assessee had originally filed an appeal before the ld. CIT(Appeals) under manual mode, i.e. physical appeal. The ld. CIT(Appeals) has called for a remand report. Thereafter the appeal was taken in faceless. Simultaneously ld. Assessing Officer has passed an order under section 271(1)(b) of the Income Tax Act by holding that assessee failed to appear in response to the notices issued under section 142(1) of the Income Tax Act. He imposed a penalty of Rs.20,000/-. Dissatisfied with that order, assessee carried the matter in appeal before the ld. CIT(Appeals). The ld. CIT(Appeals)

vide its order dated 13.12.2022 has held that these notices were not served upon the assessee because the assessee sought evidence of dispatching of notices, which has also not been provided to it. Accordingly ld. CIT(Appeals) has deleted the penalty. Copy of this order is placed at pages no. 240 to 244 of the paper book.

5. Ld. Counsel for the assessee submitted that a remand report was called for by the ld. CIT(Appeals) and copy of such report is available on the record, which reads as under:-

*Office of the Income Tax Officer, Wd-7(1), Kolkata
Aaykar Bhawan, 5th Floor, Room No.-21, P-7, Chowringhee Square, Kolkata-700069*

*No. ITO Wd-7(l)/2019-20/ Remand Report/ 164 Dated : 13/05/2019
To
The Commissioner of Income Tax (A)-3
Aayakar Bhawan
Kolkata-700069*

Sir,

[Through Addl. CIT, Range-7, Kolkata]

*Sub.; Factual report in case of M/s Abhyudaya Power Pvt. Ltd
PAN: AAJCA1599E- A.No. 13 55/2015- 16-Asst.yr-2012-13-Matter reg.*

Ref: your No.CIT (A)-3/ Kol/ A.No.1355/ W-7(l)/2018-19/172-174 dt.25.04.2018.

Kindly refer to the above.

State briefly, the assessment in the instant case was made u/s.144 dt 06.02.2015 determining total income at Rs.1,24,00,000/- as against returned income at Nil. In the order of assessment the then A.O treated the share capital along with the premium amounting to Rs.1.24 crores as unexplained cash credit u/s.68 of the Act. pertaining to the assessment year in question, the notice u/s. 143(2) issued by post returned back unserved. Thereafter notice u/s. 142(1) & 131 ere served by affixation. For non compliance the assessment was subjected to be completed u/s. 144 disallowing the claim of share capital/premium raised. In the order of assessment the A.O held that during the relevant asstt. yr the assessee company issued shares of face value of Rs.10/- at a premium of Rs.990/- through there was no income nor business activity. As the basic three ingredience-1.Identity, 2.Creditworthiness with source of fund 3.Genuineness of transaction could not be established the suggested addition/disallowances were made.

As directed by your good self the additional evidences along-with written submission forwarded to the undersigned have been perused. To verify the claim of the assessee company notices u/s.133 (6) of the I.T.Act'61 were issued to all the share applicants/holders who have filed the details as requisitioned. The contention in regard to raising such huge share capital/premium, it has been submitted by the assessee company that though taxable income during the year Nil it entered into a Memorandum of Agreement (MOU) with Govt. Of Arunachal Pradesh for execution of Hydro Electric Power Project. It appears from replies to notice u/s. 133(6) of the I.T. Act from the share applicants that most of them are from group companies having own resources. Respective bank a/c. Produced showing the fund transaction. All of them have also filed share holding certificates. The documents furnished by the share applicants verifiable from the details filed with the requisitions u/s 13 3(6) of the I.T Act.

In such view of the matter you are requested to kindly call for record, if deem fit, for your perusal and necessary action.

Submitted.

*Yours faithfully,
Sd/-
(Amir Paul)
ITO Wd-7(1), Kolkata.*

6. Therefore, according to him, it is incorrect at the end of ld. CIT(Appeals) to record a finding that nothing has been produced by the assessee before him. Basically it appears that ld. CIT(Appeals) has not called for the record from the ld. Assessing Officer. These exercises had taken place before CIT(A) prior to appeal is being transferred to on-line system.

7. With the assistance of ld. Representatives, we have gone through the record carefully. *Prima facie* we are satisfied that proper opportunity of hearing was not granted to the assessee as discernable from the order of ld. CIT(Appeals), whereby penalty imposed under section 271(b) of the Income Tax Act for non-appearance of the assessee is deleted.

8. The ld. CIT(Appeals) further committed an error by not taking into consideration the assessment record, in which a remand report is still available. Thus it suggests that neither by the ld. Assessing Officer nor by the ld. CIT(Appeals) a proper opportunity has been granted to the assessee. It is also a fact that neither of the authority has recorded a finding of the fact whether receipt of share application money by the assessee is genuine or not. Therefore, faced with the above situation, we deem it appropriate to relegate this issue to the file of ld. Assessing Officer for re-adjudication.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17/01/2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 17th day of January, 2024

*Copies to :(1) Abhyudaya Power Pvt. Ltd.,
3/1, Dr. U.N. Brahmachari Street,
Loudon Street, Kolkata-700017*

*(2) Income Tax Officer,
Ward-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) CIT- , Kolkata;

(5) *The Departmental Representative*
(6) *Guard File*
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.