

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.130/Kol/2019
Assessment Year: 2012-13

M/s Arham Packaging Goods Pvt. Ltd.....Appellant
35, Humayun Kabir Sarani,
4th Floor, Kolkata-700053.
[PAN: AAKCA2369R]

vs.

ITO, Ward-10(2), Kolkata..... Respondent

Appearances by:

Shri Akkal Dudhewala, AR, appeared on behalf of the appellant.

Shri Rakesh Kumar Das, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 13, 2023

Date of pronouncing the order : January 08, 2024

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 30.10.2018 of the Commissioner of Income Tax (Appeals)-15, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

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

"1. For that in the facts and in the circumstances of the case, the Ld. CIT(Appeal)-15 erred in violating the principles of natural justice and opportunity of being heard by not considering the appearance/adjournment request of the appellant. As such, the order passed u/s 250 is void ab-initio. The action of Ld. CIT(Appeal)-15 was wholly unreasonable, uncalled for and bad in law.

2. For that the Ld. CIT(Appeal)-15 erred in making addition of entire share capital and share premium of Rs.9,67,59,171/- on account of unexplained cash credit u/s 68.

3. For that the appellant craves leave to add, alter or delete any grounds of appeal.”

3. A perusal of the above grounds of appeal would reveal that the assessee has agitated the addition of Rs.9,67,59,171/- made by the Assessing Officer treating share capital and share premium received by the assessee as unexplained income of the assessee u/s 68 of the Act.

4. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to submit that the only observation made by the Assessing Officer in the impugned order is that the assessee during the year had received share capital/share premium of Rs.9,67,59,171/- and he treated the said amount as unexplained income of the assessee by way of a non-speaking order and in a mechanical manner. The assessee had duly furnished all the details relating to the identity and creditworthiness of the creditors and genuineness of the transaction. Further, the Assessing Officer, however, without examination any of the documents, did not point out any defect, discrepancy or infirmity in the evidences furnished by the assessee and made the impugned addition in a mechanical manner. Even the Assessing Officer has not properly considered the accounts/balance sheet of the assessee and picked up the opening balance for the purpose of addition which shows non-application of mind on the part of the Assessing Officer. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the assessee had made detailed submissions before the CIT(A), which have also been reproduced in the impugned order. However, the ld. CIT(A), without considering any of the submissions and evidences furnished by the assessee, confirmed the addition in a mechanical manner.

5. We find that the only contention raised by the lower authorities is that the director of the subscriber company did not appear in response to the summons issued u/s 131 of the Act. The ld. counsel, in this respect, has submitted that the director of the share subscriber company though has shown inability to appear personally on the date fixed, however, he had duly responded to the summons issued and sent the required details and evidences to the Assessing Officer. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta

High Court in the case of “Crystal networks (P) Ltd. vs CIT” (supra) has held as under:

“We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding.”

6. So far as the reliance of the Ld. DR on the decision of the hon’ble Supreme Court in the case of “PCIT v/s NRA Iron & Steel (P) Ltd.” (supra) is concerned, we note that the Hon’ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the “the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”

Thereafter the hon’ble Supreme Court summed up the principles which emerged after deliberating upon various case laws as under:

“11. *The principles which emerge where sums of money are credited as Share Capital/Premium are:*

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

The Hon’ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view

of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., impugned additions are not warranted in this case.

7. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the AO and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the order of the Assessing Officer in mechanical manner. The order of the ld. CIT(A) is a non-speaking order. The same is not sustainable as per law.

8. In view of the above discussion we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

9. In the result, the appeal of the assessee stands allowed.

Kolkata, the 8th January, 2024.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

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

Dated: 08.01.2024.
RS

Copy of the order forwarded to:

1. M/s Arham Packaging Goods Pvt. Ltd
2. ITO, Ward-10(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches