

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.569/Kol/2018
Assessment Year: 2010-11**

Mudrika Projects Pvt. Ltd. FE-83, North Face Sector-III, Salt Lake City, Kolkata-700106. (PAN: AADCM9964F)	Vs.	Income Tax Officer, Ward- 1(4), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, Advocate
Respondent by : Shri S. Datta, Sr. DR

Date of Hearing : 22.01.2024
Date of Pronouncement : 31.01.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-1, Kolkata dated 20.02.2018 passed against the assessment order by ITO, Ward-1(4), Kolkata u/s.143(3)/147/263/244 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 04.03.2015 for AY 2010-11.

2. Grounds taken by the assessee are as under:

"1. That, the order passed u/s. 143(3)/147/263/144 by the Ld. CIT(A) is bad in law as well as in facts of the case.

2. That the Ld. Cit(A) erred in law as well as in facts of the case by not providing the app4ellant proper opportunity of being heard.

3. That the Ld. Cit(A) erred in law as well as in facts of the case by confirming the additions made by Ld. AO who treated the share application money including premium of Rs.31,32,50,000/- as bogus and added back the same to the total income of the appellant u/s. 68 of the I. T. Act, 1961.

4. that the appellant reserves its right to avail other legal sources for defending the present matter under appeal.”

3. Brief facts of the case are that the assessee is a private limited company. The assessee filed its return of income on 11.09.2010. The return was duly processed u/s 143(1). Subsequently, the case was reopened u/s 147 and notices u/s 148 were issued and served on the assessee. During the year under consideration, assessee had raised fresh equity share capital including share premium totalling to Rs.31,32,50,000/- for which Ld. AO called for relevant documentary evidences and explanations. The Ld. AR of the assessee submitted relevant details & documents and order u/s 143(3)/147 was passed with an assessed total at nil.

3.1. Later on, the case was taken up for proceedings u/s 263 and the order was passed on 26.03.2014. Vide order u/s 263 the order passed u/s 143(3)/147 was set-aside and the same was treated as erroneous and prejudicial to the interest of the revenue as the share capital raised during the year under consideration was not properly verified. The Ld. A.O was directed to start fresh proceedings and to also verify the share capital raised during the relevant year. Accordingly, fresh notices u/s 143(2) and 142(1) were issued and served on the appellant for verification of identity, genuineness and creditworthiness of the investor but the notices were not complied upon. For further verification, notices u/s 131 were issued to the director of the assessee company for producing the principal officers and directors of the investor companies for verifying the identity, genuineness and creditworthiness of the investors but the director of the assessee

company failed to comply with the notices. Since there was non compliance from the assessee, the Ld. Assessing Officer completed the assessment proceedings u/s 144 of the Act in which he added the entire share capital including premium of Rs.31,32,50,000/- by treating the same as unexplained cash credit u/s 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4. Ld. CIT(A) noted that assessee had failed to offer any explanation and submission in support of the grounds raised in the appeal before him nor any supporting evidences were produced despite adequate opportunity provided to the assessee. He thus, upheld the finding arrived at by the Ld. AO, sustaining the addition so made and the appeal was dismissed. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee asserted that an opportunity may be given to the assessee to make its submissions in support of the claim made by it and provide explanations in respect of the transaction of share capital including share premium raised during the year. He further stated that in the original proceedings the assessee had furnished the relevant details and documents which were on record. He also placed on record an affidavit from the Director of the assessee to explain its case as to non-attendance of hearing at the first appellate stage. On confrontation of the plea made by ld. Counsel for the assessee to the Ld. Sr. DR, nothing objectionable was furnished.

5.1. Considering the overall factual matrix and the submissions of both the parties before us, in the interest of justice and fair play, we find it appropriate to allow the plea raised by the ld. Counsel for the assessee. We accordingly, remit the matter back to the file of Ld.

CIT(A) for de novo adjudication by passing a speaking order, taking into consideration the provisions of section 250(6) of the Act. Needless to say that assessee be given reasonable opportunity of being heard. We also direct the assessee to be diligent and attentive in making its submissions in support of the claim and furnish all the required explanation as and when called for, for the expeditious disposal of the appeal by the Ld. CIT(A). Assessee should not seek adjournment unless warranted by compelling reason, lest Ld. CIT(A) will be at liberty to pass the order as deem appropriate. Accordingly, ground no. 2 taken by the assessee is allowed.

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

Order is pronounced in the open court on 31st January, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31st January, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A)-1, Kolkata
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata