

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1556/Del/2017
(Assessment Year: 2012-13)**

Pushpanjali Alkalis Pvt. Ltd, C/o. D Ostwal & Associates, 310, Competent House, F- 14, Middle Circle, Connaught Place, New Delhi (Appellant)	Vs. ITO, Ward No. 20(2), New Delhi (Respondent)
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PAN:AADCP9502G

Assessee by :	None
Revenue by:	Shri Vivek Vardhan, Sr. DR

Date of Hearing	02/04/2024
Date of pronouncement	04/04/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1556/Del/2017 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-36, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 216/2016-17 dated 25.01.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.03.2015 by the Assessing Officer, ITO, Ward-20(2), New Delhi (hereinafter referred to as 'Id. AO').

2. None appeared on behalf assessee despite issuance of notice. In fact after 19.05.2022 there was no appearance from the side of the assessee at all. Hence we proceed to dispose of this appeal on hearing the Id DR and based on materials available on record.

3. The assessee has raised the following ground of appeal:-

"1. That the appellant denies its liability to be assessed at income of Rs.2,04,06,290/- and accordingly denies its liability to pay tax, interest demanded thereon.

2. That having regard to the facts and circumstances of the case, CIT (A) 36 has erred in law and on facts in upholding the illegal action of the ITO to order without assuming jurisdiction as per law and without serving the mandatory notices under sections 143(2) of the Income Tax Act, 1961.

3. That having regard to the facts and circumstances of the case, CIT (A) 36 has erred in law and on facts in upholding the illegal action of the ITO, the respondent has erred in assuming jurisdiction u/s144 to make the illegal assessment without giving proper opportunity to the assessee liable to be set aside.

4. That having regard to the facts and circumstances of the case, CIT (A) 36 has erred in law and on facts in upholding the illegal action of the ITO in making an aggregate addition of Rs.2,00,00,000/- being the amount of share Application Money received. Whereas the total Share Application Money received during the year was only Rs. 1,82,00,000/- and an addition of hypothetic figure of Rs. 2.00 crore was made without application of mind liable to be deleted.

5. That having regard to the facts and circumstances of the case, CIT (A) - 36 has erred in law and on facts in upholding the illegal action of, the illegal additions made by the respondent of Rs. 4, 00,000/- on account of imaginary commission @ 2% paid to entry provider without any evidence.

6. That having regard to the facts and circumstances of the case, CIT (A) 36 has erred in law and on facts in upholding the illegal of the ITO without granting adequate opportunity of hearing to the assessee and without confronting the entire adverse material used against the assessee and even without issuing specific show cause notice to the assessee before making addition which against the principle of Natural Justice.

7. the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

4. We have heard the rival submissions and perused the material available on record. The Id DR placed on record the factual report with regard to issuance and service of notice u/s 143(2) of the Act. It was also submitted in the said factual report of the Id AO that time limit for issuance of notice u/s 143(2) of the Act was 30.9.2013 and notice stood issued to the assessee on 06.08.2013 and served through speed post on 10.08.2013.

5. The assessee had filed its return for AY 2012-13 on 25.09.2012 declaring total income of Rs. 6291/-. During the year under consideration, the assessee was in receipt of share capital and share premium of Rs. 2 crores (comprising of share capital of Rs. 20 lakhs and share premium of Rs. 1.80 crores). Since, the assessee could not prove the identity of the investors, creditworthiness of the investors and genuineness of the transactions, the Id AO proceeded to treat the receipt of share capital and share premium in the sum of Rs. 2 crores as unexplained cash credit u/s 68 of the Act while completing the assessment. Before the Id CIT(A), despite issuance of several notices, there were no compliance made by the assessee. The Id CIT(A) also proceeded to dispose of the appeal on merits by holding as under:-

"8. Apart from the non compliance matter, on merits also I find that there is no strength in the grounds of appeal made. On merits I find that the additions are rightly made by the AO on the basis of available information on record. The AO has brought out very clearly that the assessee has adopted evasive techniques to avoid giving replies to the queries till the very end. The counsel of the assessee has been attending the assessment proceedings sporadically but could not offer any further explanations or to produce alleged share subscribers or the Directors of the Company. It is also seen that on the share value of ₹ 1. the premium shown is 49/- which has clearly been done to hike up the value of the company. The whole circumstances as analysed by the AO, makes it very clear that the assessee has introduced its own unaccounted money through book entries with questionable intentions. As the assessee is not in a position to clarify/substantiate anything, the conclusion reached at by the AO is logical.

9. It is evident that the assessee has not cooperated in the assessment proceedings and in the appeal has raised allegation against the AO that he has not granted adequate opportunity and not confronted with adverse matter against the AO. This clearly reflects the evasatory tactics adopted to wriggle its way out of an adverse situation. It was for the assessee to prove its claim of introduction of share capital and its affairs in respect of its accounts. The documents submitted should have been explained. The methods adopted by the assessee is that the main director or the responsible person avoids appearing for the hearing to evade answering the relevant questions about share capital and later on claimed that no opportunity was provided. The arguments made by the assessee during the assessment are also fallacious as in any such case of fake share capital, obviously the proper documents would be provided. In this particular case, even the replies of share subscribers were made by a single No dividend was distributed to the share holders. The case laws relied upon by the AO apply to the assessee squarely. Looking into the entirety of the facts and circumstances of the case and the factual analysis made by the AO, I am inclined to confirm the additions made by the AO u/s. 68. However, the addition may be restricted to the actual amount as found in the documents on records, whether it is 2 2 crore or 1.8 crore, after verification. Similarly, the commission is also confirmed in absence of any other details given by the assessee.

10. In the result, the appeal of the assessee is Dismissed."

6. None of the aforesaid findings of the Id CIT(A) were controverted by the assessee before us and hence we do not deem it fit and appropriate to interfere in the order passed by the Id CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

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

Order pronounced in the open court on 04/04/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 04/04/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi