

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजपाल यादव, उपाधक्षएवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President& Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 2621/Kol/2018
Assessment Year: 2012-13

M/s Sahal Food Products Pvt. Ltd. (PAN: AA ECS 4631 A)	Vs.	DCIT, Circle-2(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	19.03.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	08.04.2024
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) -1, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 06.09.2018 for the AY 2012-13.

2. At the outset we note that the appeal by the assessee is barred by limitation by 33 days. The same was confronted to the Id AR and he drew our attention to the condonation petition and affidavit of the Director of the assessee company explaining the delay due to medical issues in the family of the director of the assessee and he was not able to attend the office regularly. Considering the reasons to be reasonable, we hereby condone the delay and admit the appeal of the assessee for adjudication.

3. The only issue raised by the assessee in various grounds of appeal is against the confirmation of addition of Rs. 1,05,50,000/- by the Ld. CIT(A) as made by the AO on account of Share Application Money received from Jasmine Port Folio & Finlease Pvt. Ltd which by treating the same unexplained cash credit u/s 68 of the Act.

4. Facts in brief are that the assessee filed return of income on 21.09.2012 declaring total income of Rs. 44,71,841/-. The case was selected for scrutiny and statutory notices were duly issued and served on the assessee. The AO noticed during the course of assessment proceedings that assessee has received share application money from M/s Jasmine Portfolio and Finlease Pvt Ltd. Accordingly the assessee was called upon to furnished the details of share application money along with name , complete address, audited accounts, return filing evidence, bank statement ,source of investments of the share a applicant and PAN which were duly furnished by the assessee. The summons u/s 131 of the Act were issued to the directors of the assessee company requiring their personal presence and also to produce the director of share applicant. Before the AO the assessee did not comply the summon nonetheless furnished letter of allotment, audited accounts , confirmation letter, board resolution, copy of PAN Card, copy of audited financial statements before the AO. Finally the AO added entire amount of share application money of Rs. 1,05,00,000/- to the income of the assessee in the assessment framed u/s 143(3) vide order dated 30.03.2015 on the ground that the assessee has not complied with the summons issued u/s 131 of the Act.

5. In the appellate proceedings, the Ld. CIT(A) affirmed the order by observing that the assessee has not produced the directors of the subscriber company despite summons issued to the assessee u/s 131 of the Act and therefore the identity, mode of payment and creditworthiness remained unexplained.

6. We have heard the rival contentions and perused the material on record. The undisputed facts are that the assessee has raised money by way of share application of Rs. 1,05,50,000/- from group company namely Jasmine Portfolio and Finlease Pvt Ltd. with common directors. The assessee has filed all the documents concerning the investor

however the personal presence of the directors of the assessee company and the investors were not made before the AO. We note that the AO, instead examining and enquiring into the materials/evidences furnished further, has straightaway jumped to the conclusion that these are unexplained cash credit for the reasons that the summons issued u/s 131 of the Act remained non complied. Similarly the Ld. CIT(A) has affirmed the findings of AO on this issue on the same reasoning without commenting on the evidences filed by the assessee. In our opinion when the assessee has filed all the documents/evidences before the authorities, they are duty bound to investigate the matter further and conduct necessary enquiries and only base conclusion on the basis of result of search enquiry. However we note that in the present case, no further investigation or enquiry was conducted either by the AO or by the Ld. CIT(A). Even the documents furnished by the assessee were not commented. We also observe that this is not a case of shell companies or bogus accommodation entries but raising share application money from the group company. Under the circumstances we are not in a position to concur with conclusion drawn by the Ld. CIT(A). The mere non-production of share holders before the AO and non appearance of the directors of the appellant cannot be a ground for making the addition. We note that despite having filed all the evidences, no enquiry was done and the Ld. CIT(A) has simply affirmed the finding of the AO by holding that no identity and creditworthiness of the creditors could not be proved by the assessee by ignoring all the evidences placed before him. We find support from the decision of Hon'ble Supreme Court in the case of CIT Vs Orissa Corporation Ltd. ([1986] 159 ITR 78 (SC)) wherein it has been held as under:

“That in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.”

6.1 The case of the assessee is also squarely covered by the decisions of Hon'ble Calcutta High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT (353 ITR 171 (Cal) wherein it has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions, the fact that summon issued were returned un-served or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. The relevant portion of the decision is extracted below:

“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 Ld. CIT(A) 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 product of the assessee or note. When it was found by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:

“The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and records its findings on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law.”

The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.

Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.

Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed.”

6.2. The case of is also covered by the decision of the coordinate bench in ITO Vs M/s Cygnus Developers India Pvt. Ltd. (ITA No. 282/Kol/2012)the operative part whereof is extracted below:

“8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. CIT(A) and further drew our attention to the decision of Hon’ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No. 179/2008 dated 17.11.2009 wherein the Hon’ble Allahabad High Court took a view that non-production of the director of a Public Limited Company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs. Devinder Singh Shant in ITA No. 208/Kol/2009 vide order dated 17.04.2009.

9. We have considered the rival submissions. We are of the view that order of Ld. CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the revenue that the revenue disputed only the proof of identity of share holder. In this regard it is seen that for AY 2004-05 Shree Shyam Trexim Pvt. Ltd. was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd. was assessed to tax u/s 143(3) for AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 2005-06 by the very same ITO, Ward-9(3), Kolkata assessing the assessee. In the light of the above factual position which is not disputed by the revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon’ble Allahabad High Court as well as ITAT, Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non-production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue.”

6.3. Similar ratio has been laid down by the Hon’ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd [397 ITR 136 (Bom)] by holding that provisions of section 68 of the Act cannot be invoked for the reasons that the person has not appeared before the AO where the assessee had produced on records documents to establish genuineness of the party such as PAN, financial and bank statements showing share application money .

7. In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but AO has not commented on these evidences filed by the assessee. Besides the investors have also furnished complete details/evidences before the AO which proved the identity, creditworthiness of investors and genuineness of the

transactions. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above , we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition .The appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 8th April, 2023

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)
Vice-President/उपाधक्ष

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 8th April, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sahal Food Products Pvt. Ltd. Ltd. , 7 , Ganesh Chandra Avenue, 4th Floor, Room No. 6, Kolkata-13.
2. Respondent – DCIT, Circle-2(2), Kolkata
3. Ld. CIT(A)-1, Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata