

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No.1322/Kol/2023
Assessment Year: 2018-19

Harisneh Vanijya Pvt. Ltd. (PAN: AADCH 6236 M)	Vs.	ITO, Ward-5(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	28.02.2024
Date of Pronouncement / आदेश उद्घोषणा की तिथि	09.05.2024
For the Appellant / निर्धारिती की ओर से	Shri N. Kedia, Advocate
For the Respondent / राजस्व की ओर से	Shri S. Datta, CITDR

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)- NFAC, Delhi [hereinafter referred to as 'Ld. CIT(A)'] dated 06.10.2023 for the assessment year 2018-19.

2. The only issue raised in the various ground of appeal is against the confirmation of addition of Rs. 10,70,45,000/- as made by the AO in respect of share capital received by the assessee during the year.

3. Facts in brief are that the assessee filed return of income which was processed u/s 143(1)(a) of the Act on 16.05.2019. Thereafter the case of the assessee was selected for scrutiny on account of share capital being substantial raised during the instant assessment year. The statutory notices were duly issued and served on the assessee. The assessee filed various details and information before the AO consisting details share capital raised from thirteen existing shareholders giving names, addresses along with PAN's data, mode of payments besides filing other details such as list of allottees, ROC, challans, copy of share certificate etc besides filing the bank statement copy whereof are shown at page 99 to 321 of PB. The AO after perusing the evidences furnished by the assessee, issued notice to the assessee on 16.11.2020 as to why the entire share capital of 10,70,45,000/- received should not be assessed as unexplained cash credit u/s 68 of the Act which was extracted by the AO at page 3 of the assessment order. Considering the reply of the assessee, the AO added the same as unexplained investments u/s 69 of the Act by recording a the finding that activity of the assessee was very poor as there was only claim of expenses in the profit and loss account and in such scenario no prudent businessmen would invest money in loss making company. Finally the AO recorded the final conclusion which is reproduced as below:

“Further on perusal of the details it is seen that out of 13 share applicants 5 entities are functioning from the same premises, same Room no. 167, No. 25, Strand Road, Kolkata-700001. Two other share applicants have not given the room number, but the address is given as No. 25, Strand Road, lane, Kolkata-700001. For the remaining 5 share applicants, the address is mentioned as No. 33/1, NS Road, 167, Marshal House, Kolkata-700001.

Further in all the cases, source for share application money is stated to be loan repayment. It is also seen from the ITR acknowledgement that all the share applicants have offered nil income for AY 2018-19.

Moreover the assessee himself in response to show cause notice submitted that the activity of trading is very poor, hence the company is managing with one part time account to minimize the office expenses and that is the only expenditure claimed in the P & L account statement. This being the situation, no prudent businessman will invest such a huge amount in the loss making company which is run by a single part time accountant.

Thus it is clear from the above that these share purchase transactions were not genuine and were result of meticulously planned circular trading and the entities involved in these transaction were part of these exercise in an effort to create documentary evidences for a pre-planned scheme for converting unaccounted money. Therefore, in view of the above facts, the entire money of Rs. 10,70,45,000/- received during the year as share capital is treated as unexplained investment u/s 69 of the Act and assessed under the head ' Income from other sources' chargeable to tax at maximum marginal rate as per Section 115BBE of the Act."

Perusal of the last para of the AO's conclusion reveals that the AO has made addition on account of unexplained investments u/s 69 of the Act which is not the case at hand. Money was in fact received towards share capital from 13 share subscribing companies.

4. In the appellate proceedings, the Ld. CIT(A) simply dismissed the appeal after taking into account the detailed submissions and arguments of the assessee which are also extracted at para 4 page 2 to 8 of the appellate order. The ld CIT((A) while dismissing the appeal even noted that assessee had furnished all the evidences before the AO and he rightly treated the share capital as unexplained investments. Finally the ld CIT(A) upheld that order of the AO by recording a finding that the addition was rightly made as the transactions were not genuine and the shareholders seem to be mere paper /dummy companies.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised share capital by issuing equity shares to 13 subscribers at face value which were all existing shareholders in the assessee company. Besides no share premium was charged on the issue of equity shares. During the course of assessment proceedings as per direction of AO all the details/ information were duly furnished comprising names, addresses, PANs, copies of balance sheets and profit and loss accounts and bank statements etc. We note that the assessee was given show cause notice u/s 68 of the Act as to why the entire share capital of Rs. 10,70,45,000/- received during the year should not be assessed as unexplained cash credit u/s 68 of the Act. The assessee has also replied the show cause notice issued on 16.11.2020 vide written submissions dated 28.02.2024 wherein the assessee has submitted that the shares have been issued in the previous financial year as well as current financial year and all the share holders are existing either friends or relatives and therefore the

money raised by the assessee should be not be added as unexplained cash credit u/s 68 of the Act. It was also stated that the main business of the assessee is trading in food grain but due to losses in the business the assessee provided short term loans to some clients to survive and earned interest income only. We note that the AO has extracted the said reply of the assessee on page no. 3 of the assessment order and then recorded a finding as extracted above that these shares transactions were not genuine and meticulously planned circular trading and part of preplanned scheme for converting unaccounted money and then treated the share capital as unexplained investments u/s 69 of the Act and assessed under the head other sources at maximum marginal rate u/s 115BBE of the Act.

6. We would like to discuss the provisions of Section 69 of the Act which deals the unexplained investment made by the assessee. A perusal of the said section makes it abundantly clear that where the assessee has made investments which are recorded in the books of accounts if maintained by him for any source of income and the assessee offers no explanation about the nature or source of investments or the explanation offered by the assessee is not satisfactory, then the value of such investments may be deemed to be income of the assessee of such financial year. Thus, it is clear from the provisions of Section 69 of the Act that where the assessee has made investments which are not recorded in the books of account maintained by the assessee whereas in the instant case at hand the assessee has not made any investments but received money by way of share capital by issuing equity shares to 13 subscribers which were all existing shareholders the details thereof filed before the Ld. CIT(A) as well as AO. We note that the assessee has filed complete details of share subscribing companies, share allotment letters, bank statements, ITRs. However the AO has not discussed even minutely and came to the perverse conclusion that the assessee has made investment which are unexplained u/s 69 of the Act. In our view, the AO has failed to record any objective/substantive observation for making the addition which has apparently made on account of wrong understanding of facts as well as the law. In our opinion, issue should have been dealt with under Section 68 of the Act as unexplained cash credit had the assessee failed to establish that the

identity, creditworthiness and genuineness of the transactions not otherwise. The Ld. CIT(A) simply affirmed the view of AO after noting that amount received from the shareholders was added as unexplained investments without discussing as to how the addition was made u/s 69 of the Act the AO was justified. In the present case in our opinion, both the authorities below have failed to carry out the onus which shifted to revenue with the assessee filing all the evidences before both the authorities. Under the circumstances, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 9th May, 2024

Sd/-

(Sanjay Garg /संजय गर्ग)
Judicial Member /न्यायिक सदस्य

Sd/-

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

Dated: 9th May, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Harisneh Vanijya Private Limited, 25, Strand Road, 1st Floor, Room No. 167, Kolkata-700001.
2. Respondent – ITO, Ward-5(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata