

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 993/Kol/2023
Assessment Year: 2012-13

Tirumala Irons (P) Ltd. Subash Agarwal & Associates, Advocates Siddha Gibson 1, Gibson Lane Suite 213, 2 nd Floor Kolkata - 700069 [PAN : AAAC9984H]	Vs	Income tax Officer, Ward - 4(1), Kolkata /Assessing Officer, NFAC, Delhi
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Agarwal, Advocate
Revenue by :	Shri Rakesh Kumar Das, CIT, D/R

सुनवाई की तारीख /Date of Hearing : 09/04/2024
घोषणा की तारीख /Date of Pronouncement: 08/05/2024

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals) (hereinafter the "1d. First Appellate Authority") dt. 27/07/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

"1. For that the Ld. CIT(A) was not justified in passing the order *ex parte* without affording reasonable opportunity of hearing.

2. For that the Ld. CIT (A) was not justified in confirming the addition of Rs. 4,81,00,000/- made by the A.O. on account of share capital including share premium by wrongly applying the decision of Hon'ble Supreme Court in the case of CIT vs. T.V. Sundaram Iyenger & Sons Ltd. 222 ITR 344.

3. For that the Ld. CIT(A) ought to have appreciated the fact that the share capital and share premium was raised in the preceding year and in the instant year, the assessee merely forfeited the shares, as such, the addition to the tune of Rs.4,81,00,000/- was not justifiable and was liable to be deleted.

4. For that the Ld. CIT (A) was not justified in confirming the addition of Rs.5,27,078/- made by the A.O. by wrongly invoking the provisions of section 14A of the Act.

5. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing."

3. Facts in brief are that the assessee is a private limited company engaged in investment business. Income of Rs. 1,76,400/- declared in the e-return for Assessment Year 2012-13 furnished on 25/09/2012. Case selected for scrutiny through CASS followed by issuing and serving of notice u/s 143(2) and 142(1) of the Act. One of the reasons for selection of scrutiny was "large share premium received". During the year, Rs.4,81,00,000/- has been transferred to share forfeited account. This amount was appearing under the head share application money in the preceding financial year. The ld. Assessing Officer observed that the alleged sum transferred to share forfeited account is liable to be treated as income of the assessee as unexplained cash credit because, it is quite improbable that a private limited company has received share application from the known persons and they have not paid some part of the share application money and have accepted to get their amount forfeited. The ld. Assessing Officer also observed that the summons issued u/s 131 of the Act to the directors of the assessee company also remained unserved and, therefore, no clarification can be sought about the alleged credit of Rs.4.81 Crores. The same was accordingly added to the income of the assessee u/s 68 of the Act. The ld. Assessing Officer

further noticed that the assessee had made investment in equity shares and thus he invoked the provision of Section 14A of the Act and made disallowance of Rs. 5,27,078/-. Income assessed accordingly.

3.1. Aggrieved, the assessee preferred appeal before the Id. CIT(A) challenging the additions made by the Id. Assessing Officer and also filed written submissions but thereafter, for insufficient compliance, the Id. CIT(A) proceeded to dispose off the case *ex-parte*.

4. Now, the assessee is in appeal before this Tribunal.

5. So far as the addition u/s 68 of the Act is concerned, it was submitted that the assessee company has not received the alleged sum during the year. Referring to the documents placed in the paper book and bank statement, it is claimed that the alleged sum was received in the preceding financial year. However, when the assessee was confronted that no such details were filed before the Id. CIT(A), he requested that, a remand report may be called for from the Id. Assessing Officer regarding the evidence filed in support of the claim that alleged sum was not received during the year. To this request, the Id. D/R did not oppose. Accordingly on 06/03/2024, the Id. D/R was directed to obtain the remand report from the jurisdictional Assessing Officer who shall examine the details of bank statements of preceding and current financial year of the assessee along with the ledger account of share applicants. In compliance thereto on 21/03/2024, the Id. Assessing Officer, has filed the report with the Id. CIT D/R and the copy of the same is placed on record. In the remand report of Id. Assessing Officer, it is stated that on going through the bank account statement forwarded by the Income tax Officer, Ward -4(1), Kolkata and ledger account

copies of share application money for FY 2010-11 and 2011-12 submitted by the assessee on 19/03/2024, the assessee had received Rs.4.81 Crores as share application money during financial year 2010-11 relevant to Assessment Year 2011-12. During the course of hearing, this remand report was confronted to the ld. CIT D/R who also accepted that the alleged sum has not been received during the year.

5.1. Based on these observations of ld. Assessing Officer in the remand report, the ld. A/R submitted that since the alleged sum has not been received during the year, therefore, Section 68 of the Act cannot be invoked. Further regarding the claim of forfeiture of shares treated as capital receipts by the assessee, reliance was placed on the decision of the Co-ordinate Bench ITAT Delhi in the case of *Sunita Gupta Share Brokers Limited vs. ACIT in ITA No. 4188/Del/2010; Assessment Year 2007-08; order dt. 07/12/2011*, where it has been held that profit arising out of forfeiture of shares cannot be considered as revenue receipt.

On the other hand, the ld. D/R vehemently argued supporting the orders of the lower authorities.

6. We have heard rival contentions and perused the material placed before us. The first issue for our consideration is addition made u/s 68 of the Act at Rs.4.81 Crores. We observe that during the year, the assessee has transferred the balance appearing in share application money account to share forfeiture account treating it as a capital receipt. The assessee has filed details of name and date of receiving share application money of 28 share applicants. It is claimed that the total sum of Rs.4.81 Crores has been received in the preceding FY 2010-11. Copies of the bank statement of financial year 2010-11 and 2011-12 has been

filed, copies of the ledger account of all the share applicants has also been filed. All these details were sent to the Id. Assessing Officer to file a remand report. The Id. Assessing Officer vide its report dt. 21/03/2024 has clarified the fact that the alleged sum of Rs.4.81 Crores was not received during the year under consideration and was received during FY 2010-11 relevant to Assessment Year 2011-12. Under these given facts when the alleged sum has not been received during the year nor is it a fresh credit entry from the share applicants during the year, the Id. Assessing Officer was not justified in invoking the provisions of Section 68 of the Act which are applicable only to sum found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation for the nature and source or the explanation offered by him is not found to be satisfactory by the Id. Assessing Officer. However, since the assessee has successfully explained that the sum was not received during the year, therefore, we fail to find any merit in the invocation of Section 68 of the Act.

7. So far as the treatment of share application money received in the preceding year having been transferred to share forfeiture account and claimed as capital receipt, it has been consistently held that forfeiture of shares is purely a capital receipt. We draw support from the decision of Co-ordinate Bench of ITAT Delhi in the case of *Sunita Gupta Share Brokers Limited (supra)* and the relevant finding of the Tribunal, reads as follows:-

"31. We have considered the rival submissions in the light of the material produced with regard to this issue. Undisputedly, the amount added was not received during the year under consideration. For this short reason itself, the addition is unsustainable. Further, the forfeiture of the share application money came about in financial yearn 2004-05, as is evident from the balance sheet of the assessee as on

31.3.2005 (APB 52). A sum of Rs. 75 lakhs was received in financial year 2003-04. The allotment of shares of Rs. 6,25,000/- was made against this receipt. A sum of Rs. 43,75,000/- was adjusted against share premium. The balance of Rs. 25,00,000/- was forfeited. The relevant entries in the aforesaid balance sheet are as under:-Liabilities Current Yr. Amount Previous Yr. Amount C RESERVE & SURPLUS 1. Share Application Money 2. Share Premium 3. Share Application Money forfeiture 4,375,000.00 2,500,000.00 7,500,000.00

32. The balance sheet as on 31.3.2006 (APB 54) shows no change in this regard. Similar is the position depicted by the balance sheet as on 31.3.2007 (APB 19). Thus, there has been no change in the current financial year, i.e. financial year 2006-07, relevant to assessment year 2007-08.

33. In the above position, even if the forfeiture is to be taken as a revenue receipt, since it came about in financial year 2004-05, it cannot be taxed in the current financial year.

34. It is, however, entirely another matter, that forfeiture of shares cannot be considered as a revenue receipt. This has been settled by "Multan Electric Supply Co. Ltd.", 13 ITR 457(Lahore) (supra), which has been considered and discussed by the Tribunal in "Asiatic Oxygen Ltd. V. DCIT", 49 ITD 359 (Kol),(supra). In "Multan Electric Supply Co. Ltd.."(supra), it has been held, inter alia, that any profit which arises on the forfeiture of shares is neither a revenue receipt, nor profit on the working of the company, but is simply the circulating capital of the company, and as such, a capital asset. Taking note of this, in "Asiatic Oxygen Ltd."(supra), it was observed that Schedule VI – Part I of the Companies Act contains the form in which the balance sheet is to be prepared by the company and it indicate that all capital reserves of the company should be disclosed under the head "Reserves and Supply" in the liability side of the balance sheet; that the assessee had credited the amount in respect of the forfeited shares under the head "capital reserve"; that thus, the Companies Act itself treats the profit on forfeiture of shares as capital reserve not available for distribution as evidence; that it could not therefore be held that the profit arising to the company on forfeiture of shares is a trading or business profit assessable in the hands of the company; that it is also correct to contend on behalf of the assessee that "Sundaram Iyengar and Sons Pvt. Ltd."(supra), has wrongly been applied to the instant case. Therein, the amount had admittedly arisen as a result of a trading transaction, having the character of income. In the present case, however, the receipt was on capital account, since the amount was received on account of share capital, having no relevance with trade. As such, the receipt cannot be treated as income."

8. Respectfully following the above decision, we find that the assessee has rightly claimed the alleged sum as a capital receipt shown under the head reserve and surplus which is arising on account of non-

payment of part amount of the share application money as payable by the share applicants on full and final payment for allotment of equity shares. Thus, the addition of Rs.4.81 Crores made by the Id. Assessing Officer is hereby deleted and Ground Nos. 2 & 3 raised by the assessee are allowed.

9. As far as the disallowance u/s 14A of the Act is concerned, we notice that the assessee has earned dividend income of Rs.9,33,018/-. The assessee has also made investment in quoted equity shares. No *suo moto* disallowance u/s 14A of the Act has been offered by the assessee. The Id. Assessing Officer has invoked Section 14A of the Act and calculated the disallowance applying Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules'). Now, going through the bifurcation of disallowance calculated under Rule 8D(i), (ii) & (iii) of the Rules, we find no reason to interfere with the disallowance made u/s 8D(i) at Rs. 4,456/- and 8D(ii) at Rs.29,037/-. So far as the disallowance computed u/s 8D(iii) is concerned at Rs.4,93,584/- is concerned, the same has been calculated by applying 0.5% to the average investment. Now, Section 14A of the Act is regarding disallowance of expenditure incurred in relation to income not includable in the total income. Now, the expenditure during the year appearing in the audited balance sheet, profit and loss account are Rs.2,45,57,632/- but the same includes long term capital loss on equity at Rs.1,86,20,790/-, STT paid at Rs.4,16,072/-, loss on F&O at Rs.24,98,734/- and short term capital loss at Rs.24,11,175/- and D-Mat charges at Rs.4,456/-. If we exclude these amounts, the remaining amount for the administrative expenditure is only Rs. 6,06,405/- which has been claimed against the income for the

year. Now, if we consider the revenue item, apart from dividend and long term capital gain and F&O profit, there is rental income and interest income of Rs.27,05,288/-. Certainly expenditure have been incurred for earning this income also. Considering the facts of the case, we deem it proper that sustaining disallowance at Rs.2,20,000/- as against Rs.5,27,078/- made by the Assessing Officer under Rule 8D(iii) will be sufficient to cover up the disallowance u/s 14A of the Act. Accordingly, assessee gets relief of Rs.2,73,585/- and Ground No. 4 raised by the assessee is partly allowed.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 8th May, 2024 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 08/05/2024

SJC/SJP

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata