

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1394/Kol/2023
Assessment Year : 2012-13

M/s. NCS Impex Holdings Pvt. Ltd.	vs	ITO, Ward-8(2), Kolkata
PAN: AABCN 0337 R		
Appellant		Respondent

Date of Hearing	01.05.2024
Date of Pronouncement	10.05.2024
For the Assessee	Shri S.M. Surana, Advocate & Shri Sunil Surana, FCA
For the Revenue	Shri Abhijit Adhikary, Addl. CIT

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of Id. CIT(A), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi dated 29.11.2023 for A.Y. 2012-13.

2. The only issue raised by the assessee is against the order of Id. CIT(A) confirming the addition of Rs. 1,51,00,000/- as made by the AO u/s 68 of the Act on account of unexplained share capital/share premium raised from six subscriber companies during the year.

3. Facts in brief are that the assessee filed the return of income on 27.09.2012 at a total income of Rs. 8,623/- which was duly processed u/s 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny and assessment was framed u/s 143(3) vide order 07.03.2015. During the course of assessment proceedings, the Id. AO issued notice to the assessee calling upon

the assessee to furnish the details qua the six subscribers which were duly furnished by the Assessee. The ld. AO also issued notice u/s 133(6) of the Act to all the subscribers which were duly complied by filing the requisite details as sought by the AO. The AO also issued summon u/s 131 of the Act to the subscribers which were not complied with. Thereafter, the AO without doing any enquiry/verification has straightway jumped to the conclusion that the money raised by the assessee by way of share capital/share premium was unexplained cash credit as the summon issued u/s 131 were not complied with and thus the addition of Rs. 1,51,00,000/- was made in the assessment framed u/s 144 of the Act vide order dated 07.03.2015.

4. In the appellate proceedings, ld. CIT(A) simply dismissed the appeal of the assessee by affirming the order of AO that summons issued were not complied with thereby not proving the genuineness and creditworthiness of the transactions.

5. We have heard the rival contentions and perused the material on record. We note that that in this case the assessee has raised share capital and share premium to the tune of Rs. 1,51,00,000/- and the assessee has filed before the AO necessary evidences comprising name, PAN, ITR, audited balance sheet, bank statement etc. Besides, we note that notices issued u/s 133(6) of the Act issued to the subscribers were responded and the details requisitioned by the AO are also furnished. Thereafter, the AO issued summons u/s 131 which were not complied with. In our opinion, when the assessee has filed all the documents before the authorities below, they are duty bound to investigate the matter

and conduct necessary enquiries and only base the conclusion on the basis of result of 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. Under the circumstances we are not in a position to concur a conclusion drawn by the Ld. CIT(A). The mere non compliance by appearance of share holders before the AO can not be the reason for making the addition. We note that despite having filed all the evidences, no enquiry was done by the AO. We also note that 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. Under the circumstances, we are not in a position to sustain the order of Ld. CIT(A). The case of the assessee is squarely covered by the decision of co-ordinate bench of the Tribunal in the case of Prompt Barter Private Limited vs ITO, Ward-8(3), Haldia in ITA No. 806/Kol/2023 dated 11.10.2023 also the decision of CIT vs Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC), CIT vs Orchid Industries Ltd. 397 ITR 136 (Bom), Crystal Networks Pvt. Ltd. vs CIT 353 ITR 171 (Kol), ITO vs M/s. Cygnus Developers India Pvt. Ltd. (ITA No. 282/Kol/2012) and Joy Consolidated Pvt. Ltd. vs ITO (ITA No. 547/Kol/2020. All these decision are discussed as under: The Hon'ble Supreme Court in the case of Orissa Corporation Ltd. (supra) has 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.”

5.1 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 (supra) 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 unserved 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 upset 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.”

5.2. The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) 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 nonproduction 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."

5.3. Similar ratio has been laid down by the Hon'ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd (supra) 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.

5.4. 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 or recorded is objective satisfaction on these evidences filed by the assessee by further conducting enquiry.

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) by directing the AO to delete the addition.

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

Order pronounced in the open court on 10.05.2024.

Sd/-

Sd/-

(Sonjoy Sarma)
Judicial Member

(Rajesh Kumar)
Accountant Member

Dated:10.05.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. NCS Impex Holdings Pvt. Ltd., Room No. 509, Block-C, 5th Floor, 71, Canning Street Bagri Market, Kolkata-700001.
2. Respondent – ITO, Ward-8(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata