

ITA No. 220/KOL/2023 (A.Y. 2012-2013)

&

ITA No. 221/KOL/2023 (A.Y. 2014-2015)

Advent Vinimay Private Limited

**THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

Before Shri Rajpal Yadav, Vice-President (KZ)

&

Dr. Manish Borad, Accountant Member

I.T.A. Nos. 220 & 221/KOL/2023

Assessment Years: 2012-2013 & 2014-2015

Advent Vinimay Private Limited,.....Appellant
207, Maharishi Devendra Road,
Burrabazar, Kolkata-700007
[PAN:AAICA3094K]

-Vs.-

Income Tax Officer,.....Respondent
Ward-9(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

N o n e, appeared on behalf of the assessee

Shri Abhijit Kundu, CIT, D.R. and Shri P.P. Barman,
Addl. CIT, Sr. D.R., appeared on behalf of the Revenue

Date of concluding the hearing: April 03, 2024

Date of pronouncing the order: May 14, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present two appeals are directed at the instance of assessee against the separate orders of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC),

Delhi dated 19.01.2023 passed for A.Y. 2012-13 and 2014-15 respectively.

2. Both these appeals were listed for hearing on 21.05.2023. No one was present on behalf of the assessee and the appeals were heard *ex-parte*. However, thereafter these appeals were released for fresh hearing. The notice through Registered Post with Acknowledgment (RPAD) was issued to the assessee. On 20.02.2024, the notice was issued with the help of Id. Assessing Officer. The Id. Assessing Officer has sent his report that notice of hearing was served upon the last known address of the assessee.

3. The Id. CIT(DR) has placed on record copy of the letter written by the ITO through N. Nandy dated 30th March, 2024. The letter reads as under:-

“Madam,

With reference to your trailing e-mail, I am directed to request you to check and confirm whether the said e-mail has been delivered or not to the assessee’s last known e-mail address. Furthermore, it is also requested to confirm that whether the assessee is not available at the given address after physical verification.

Your reply must reach by this Office positively by 01.04.2024”.

ITO replied to this letter that the assessee has stopped filing of the return. The Income Tax Inspector attached to ITO, Ward-9(1),

Kolkata has submitted his report and such report reads as under:-

“INSPECTOR REPORT

“As directed by the Income Tax Officer, Ward-9(1), Kolkata to verify whether the assessee, M/s. Advent Vinimay Private Limited having PAN: AAICA3094K available at the address 207, Maharshi Devendra Road, Burra Bazar Kolkata- 700007 or not.

As directed, I visited the said premise 02.30 PM on 02.04.2024 and it is seen that the said premise is a 7th storied building having about total 133 rooms as per one person at the said place introduced himself Arjun Sharma, Care Taker of the said premise.

Further, the said Care Taker and the Lift Man of the said premise stated that no such name of company is available at this premise. Further physical verification has been made to all the ground floor to 7th Floor however, no such company's name plate is shown at there”.

Dated: 02.04.2024

Sd/-

(RANJEET KUMAR)

Income Tax Inspector

Attached to ITO, Ward-9(1), Kolkata”.

4. With the assistance of Id. CIT(DR), we have gone through the record carefully. It is pertinent to note that these are the appeals of the assessee and it is the assessee, who should be vigilant to prosecute them but neither the assessee is appearing in response to the notice of hearing served on the address mentioned in Form No. 36 nor submitting any supporting material in support of its grounds of appeal. With this background, let us examine the facts on the record.

5. First we take **ITA No. 220/KOL/2023**.

Brief facts of the case are that the assessee has filed its return electronically on 21.09.2012 declaring total income of Rs.5,320/-. The case of the assessee was selected for scrutiny

assessment and a notice under section 143(2) was issued and served. The Id. Assessing Officer has noticed the facts as under:-

“Accordingly notices u/s 143(2) of the LT. Act was issued on 23/09/2013. Thereafter Notice u/s. 142(1) of the I.T. Act, 61 were also issued on 15/01/2014. response Sri Sunil Kumar Jain., A/R of the assessee company appeared and from time to time and furnished details of submissions and explanations. Notices u/s. 133(6) of the I.T. Act was issued to the shareholders and replies received. It was submitted that the assessee was engaged in the business of Trading & Investment during the relevant F.Y.

However, on verification of the ITD database, and comparison of the Balance Sheet for the A.Y. 2011-12 and A.Y. 2012-13 it was seen that the assessee company had raised Share Capital amounting to Rs.17,37,50,000/- during the financial year under consideration . Hence to check the genuineness, summon U/s. 131 of the I.T. Act was issued on 06/02/2015 to the Director of the assessee company as well as some of the Directors of the Shareholder companies for personal deposition and also producing the following details on 23/02/2015 .

- 1 Proof of identity-Voter Card/Passport/Driving license/PAN Card.*
- 2. List of companies where you were Directors/shareholders from the A.Y. 2008-09 till date with dates of appointments thereto with DIN.*
- 3. Proof of acknowledgement of filing IT Return alongwith copies of accounts and that of the companies where you have been director as mentioned above in SI. 2 for A. Yrs. 2010-11, .2011-12 & 2012-13.*
- 4. Details of transaction with the above assessee company alongwith complete bank statements in respect of bank accounts through, which such transactions have been made, also highlighting the relevant portions of the statement with regard to the said transactions.*
- 5. Declaration of all sources of investment/transactions with the above part)' for the A.Y. 2012-13.*
- 6. Identification of family members who are directors in the assessee company and there relationship.*

7. *A write-up on justification of large share premium.*

The Director of the assessee company Sri Rup Chand Jain, appeared and gave deposition before the undersigned on 20/03/2015. The Directors of the Shareholder companies did not appear before the undersigned. However, not being satisfied with the deposition which fell far short of discharging the onus of the assessee in the matter of explaining the sources of the said share capital in question.

The Id. Assessing Officer thereafter made reference to a large number of decisions and then observed that the assessee failed to explain the share capital received by it along with the huge premium. He accordingly made addition of Rs.17,37,50,000/-.

6. Dissatisfied with the assessment order, the assessee carried the matter in appeal. The Id. CIT(Appeals) has dismissed the appeal by observing as under:-

“Facts of the case is that assessee filed its ROI on 21/09/2012 declaring total income at Rs.5,320/-. Subsequently, the case of the assessee was selected for scrutiny through CASS to examine large share premium received. In view of this, statutory notices were issued on the assessee from time to time. In pursuant to the notices issued, the AR of the assessee company appeared and furnished details from time to time. After considering the facts and circumstances of the case, the then A.O. ITO, Ward-9(1), Kolkata passed the assessment order u/s 143(3) of the Income-tax Act, 1961 on 28/03/2015 by making an addition of Rs.17,37,50,000/- and assessing the total income at Rs.17,37,55,320/- and levying tax thereof at Rs.7,66,59,710/-. Aggrieved assessee filed appeal u/s 246A of the Act. The said appeal subsequently migrated to “NFAC”.

During appellate proceedings, an e-notice for providing written submissions were issued to assessee on 23/12/2020 which remained un-complied with till date. Meaning thereby, assessee did not have anything to furnish substantiate its contentions. I find that assessment order passed u/s 143(3) of the Act is a valid order and ample opportunities of being heard have also been accorded to the assessee. Keeping in mind these facts and circumstances of the case, I do not find any reason for further intervention in the

assessment order so passed; therefore order passed u/s 143(3) of the Act is hereby sustained.

Assessee's appeal fails in Gr. No. 2".

7. We have duly perused the record carefully. Before we embark upon an inquiry on the facts of the present appeal, in order to find out whether the share capital and share premium money received by the assessee during the year is required to be treated as its unexplained credit and deserves to be added under section 68 of the Income Tax Act, 1961. We deem it appropriate to bear in mind certain basic principles/tests propounded in various authoritative pronouncements of the Hon'ble High Courts and Hon'ble Supreme Court. It is also pertinent to observe that both the sides have made reference to a large number of decisions. We do not deem it necessary to recite and recapitulate them because that would make this order repetitive and bulky. We take cognizance of some of them. It is pertinent to observe that in so far as companies incorporated under Iridian Companies Act are concerned, whether private limited or public limited companies, they raise their share capital, through shares though manner of raising share capital in private limited company on one hand and public limited company on other hand, would be different. The share capital and share premium are basically irreversible receipts or credits in the hands of the companies. Share capital is considered to be cost of shares on equivalent amount issued and premium is considered as extra amount charged by the company for issue of that capital. In the case of private limited company, normally shares are subscribed by

family members or persons known/close to the promoters. Public limited company, on the other hand, generally raised by public issue inviting general public at large for subscription of these shares. Yet, it is also possible that in the case of public limited company, the share capital is issued in close-circuit. When companies incorporated under the Companies Act raise their capital through shares, various persons would apply for shares and then give share; application money. This amount received from such share holder would naturally be credited in the books of accounts of the assessee. Once the alleged share; capital is credited to the accounts of the assessee, then role of section 68 would come. It is pertinent to take note of this section. It reads as under:

“Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the officer, satisfactory the sum so credited may be charged to income tax as the income of the assessee of that previous year”.

8. A perusal of the section would indicate that basically this section contemplates three conditions required to be fulfilled by an assessee. In other words, the assessee is required to give explanation which will exhibit nature of transaction and also explain the source of such credit. The explanation should be to the satisfaction of the AO. In order to give such type of explanation which could satisfy the AO, the assessee should fulfill three ingredients viz. (a) identity of the share applicants, (b) genuineness of the transaction, and (c) credit-worthiness of share applicants. As far as construction of section 68 and to understand

its meaning is concerned, there is no much difficulty. Difficulty arises when we apply the conditions formulated in this section on the given facts and circumstances. In other words, it has been propounded in various decisions that section 68 contemplates that there should be a credit of amounts in the books of an assessee maintained by the assessee, (b) such amount has to be a sum received during the previous year, (c) the assessee; offers no explanation about the nature and source of such credit found in the books, or (d) the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory. The Hon'ble Delhi High Court in the case of CIT v. Novadaya Castles (P.) Ltd. .367 ITR 306 has considered a large number of decisions including the decision of Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad [1971] 82 ITR 540 (SC). According to the Hon'ble Delhi High Court basically there are two sets of judgments. In one set of case, the assessee produced necessary documents/evidence to show and establish identity of the shareholder and bank account from which payment was made. The fact that payment was received through bank channels, filed necessary affidavit of the shareholders or confirmations of the directors of the shareholder company. But thereafter no further inquiry was made by the AO. The second set of cases are those where there was, evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The assessing officer has referred to the bank statement, financial

position of the recipient and beneficiary assessee and surrounding circumstances.

9. Let us take into consideration observations made by the; Hon'ble Delhi High Court in the case of Softline Creations P. Ltd. (supra) while taking note of judgment of Hon'ble Delhi High court in the case of CIT Vs. Fair Finvest Ltd., 357 ITR 146 (Delhi). Hon'ble Delhi High Court: made following observations:

".....This court has considered the concurrent order of the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal. Both these authorities primarily went by the fact that the assessee had provided sufficient indication by way of permanent account numbers, to highlight the identity of the share applicants, as well as produced the affidavits of the directors. Furthermore, the bank details of the share applicants too had been provided. In the circumstances, it was held that the assessee had established, the identity of the share applicants, the genuineness of transactions and their creditworthiness; The Assessing Officer chose to proceed no further but merely added the amounts because of the absence of the directors to physically present themselves before him.

The Income-tax Appellate Tribunal has relied upon a decision of this court in CIT v. fair Finvest Ltd. [2013] 357 ITR 146 (Delhi), where in somewhat similar circumstances, it was stated as follows (page 152):

"This court has considered, the submissions of the parties. In this case the discussion by the Commissioner of Income-tax (Appeals) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the directors, Form 2 filed with the Registrar of Companies by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary/,

invoking his powers under section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of section 68.

Having regard to the entirety of facts and circumstances, the court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra)".

10. We also deem it appropriate to take note of some of observations of the Hon'ble Delhi High Court from the decision of Fair Finvest Ltd. (supra). The Hon'ble Court has noticed proposition laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Victor Electrodes Ltd., 329 ITR 271 (Delhi) regarding non-production of share applicants before the AO. The following observations are worth to note:

...In this connection the observation of the jurisdictional High Court in case of Dwarkadhish Investment (Supra) are quite relevant where the court has observed that it is the revenue which has all the power and wherewithal to trace any person. Further in the case of CIT vs. Victor Electrodes Ltd. 329 ITR 271 it has been held that there is no legal obligation on the assessee to produce some Director or other representative of the Director or other representative of the applicant companies before the A.O. Therefore, failure on part of the assessee to produce the Directors of the share applicant companies could not by itself have justified the additions made by the AO particularly when the seven share applicant companies through their present Directors have now again filed, fresh affidavits confirming the application and allotment of shares with respect to the total amount of Rs. 45 Lacs. It is observed that no attempt was made by the AO to summon the Directors of the share applicant companies. Moreover, it is settled law that the assessee need not prove the "source of source". Accordingly, it was incumbent upon the department to have enforced attendance of Shri Mahesh Garg or the erstwhile Directors of the share applicant companies and confronted them with the evidences & affidavits relied upon by the appellant and thereupon given opportunity to the assessee to cross examine these applicants".

11. In the light of above, if we examine the facts on the record, then, it would reveal that the assessee has submitted readymade proforma. During the course of hearing assessee filed the details of its share applicants but could not substantiate those with the financial statements showing the creditworthiness. When ld. Assessing Officer has made the addition, then during the appellate proceedings, it did not file paper book and submitted the relevant details. Under compelling circumstances, ld. CIT(Appeals) has dismissed the appeal.

12. We have also faced that very challenge because details have not been placed on the record. For the sake of contesting, the assessee has been filing the appeal before the ld. CIT(Appeals) as well as before the ITAT. As observed earlier, it is the appeal of the assessee and it is the duty of the assessee to prosecute it. But it is the Registry of the ITAT, who is making effort to trace out the assessee so that it can be compelled to submit the arguments as well as material in support of the appeal. On the basis of the limited information available with us, we are sure that it is just a paper company indulging itself in accommodation entries type of business and not seriously interested in explaining anything. Therefore, we do not see any reason to interfere in the order of ld. CIT(Appeals). The appeal of the assessee is dismissed.

13. Now we take **ITA No. 221/KOL/2023.**

Though in this appeal, the assessee has taken five grounds of appeal, but its solitary substantial grievances revolve around a single issue, namely that ld. CIT(Appeals) has erred in treating the loss of Rs.13,82,458/- in script of Ashika Credit Capital Limited as bogus made by the ld. Assessing Officer.

14. In response to the notice of hearing, no one has come present on behalf of the assessee. With the assistance of ld. D.R., we have gone through the record carefully. We find that the assessee has filed its return of income on 22.11.2014 declaring total income of Rs.6,148/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) as well as 142(1) was issued and served upon the assessee. A perusal of the record would reveal that the assessee had purchased shares of Ashika Credit Capital Limited for a consideration of Rs.23,95,958/-. It has sold these shares for a consideration of Rs.10,13,500/-. It claimed bogus long-term capital loss. The ld. Assessing Officer has confronted the assessee and held that trading in the shares of Ashika Credit Capital Limited is manipulated one. The DDIT (Investigation), Kolkata in its investigation has propounded that this Ashoka Credit Capital Limited is one of the companies involved in providing accommodation entry. The DDIT prepared a list of 84 such penny stock companies and it falls in that list. The assessee failed to submit details before the ld. Assessing Officer. The ld. Assessing Officer disbelieved the claim of the assessee and disallowed it.

15. Appeal to the Id. CIT(Appeals) did not bring any relief to the assessee.

16. On due consideration of the record, we find that this issue is covered against the assessee by the decision of the Hon'ble jurisdictional High Court in the case of Pr. CIT vs Swati Bajaj [139 taxmann.com 352]. Therefore, we do not find any merit in this appeal of the assessee. The appeal of the assessee is dismissed.

17. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open Court on 14/05/2024.

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 14th day of May, 2024

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

*Copies to :(1) Advent Vinimay Private Limited,
207, Maharishi Devendra Road,
Burrabazar, Kolkata-700007*

*(2) Income Tax Officer,
Ward-9(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069;*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) CIT- , Kolkata

ITA No. 220/KOL/2023 (A.Y. 2012-2013)

&

ITA No. 221/KOL/2023 (A.Y. 2014-2015)

Advent Vinimay Private Limited

(5) *The Departmental Representative;*

(6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.