

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.1338/Kol/2023
Assessment Year : 2017-18

Acuity Merchants Pvt Ltd.....Appellant
Amrita Abasan, Bimalendu Ghosh Sarani,
Sonarpur, Kolkata- 700150.
[PAN: AAICA4474D]

vs.

ITO, Ward-4(3), Kolkata..... Respondent

Appearances by:

Shri S. K. Tulsyan, Advocate, appeared on behalf of the appellant.
Shri S. Datta, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : March 07, 2024

Date of pronouncing the order : May 20, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.10.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC, Delhi erred in law in having upheld the addition of Rs 8.61,73,500/- u/s 68 of the Act without properly appreciating the admitted facts on record that the assessee had received loans in the form of shares only from various parties/creditors duly reflected in the demat account and not any fund transacted either through bank or cash book and hence such receipt of shares as loan did not amount to cash credit as envisaged u/s 68 of the Act.

2. That, the Ld. CIT(A) while did not dispute the credit of shares of the aggregate value of Rs.8,61,73,500/- from five creditor parties in the demat account and reflection of the same at Note-4 of the audited accounts but at the same time wrongly alleged that there was no transfer of shares as claimed by the assessee simply holding that in the balance sheet advance from others and not loan was shown at Rs.14,48,57,451/- which was inclusive of Rs.8,61,73,500/- received from five parties and hence the addition wrongly upheld u/s 68 of the Act is liable to be deleted as bad in law.

3. That, without any prejudice to the above, there was self-contradiction in the Ld. CIT(A)'s finding while upholding the addition of Rs.8,61,73,500/- in the guise of sec. 68 of the Act inasmuch as the source of credit in which shares were allotted was clearly explainable, the identity of the shareholders and the liability of the company to the shareholders has not been disputed and hence the allotment of shares cannot be treated as unexplained cash credit.

4. That, therefore, as the order of the Ld. CIT(A) on the above issues suffers from illegality and is devoid of any merit, the addition made u/s.68 of Rs.8,61,73,500/- r.w.s. 115BBE of the Act should be quashed and your appellant be given such relief(s) as prayed for.

5. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.”

3. The brief facts of the case are that during the assessment proceedings, the Assessing Officer noticed that the assessee had claimed to have received advance of Rs.14,48,57,451/- from various parties. On being asked to furnish the details of the persons from whom the advance was received, the assessee furnished list of 15 persons/entities, however, the Assessing Officer noticed that the assessee could furnish confirmation of 10 persons/entities only. He noted that the assessee had failed to submit the necessary documents to prove the identity and creditworthiness of the creditors and genuineness of the transaction in respect of 5 persons amounting to Rs.8,61,73,500/-. He, therefore, treated the said amount of Rs.8,61,73,500/- as unexplained cash credit u/s 68 of the Act and taxed the same as per the provisions of section 115BBE of the Act.

4. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the ld. CIT(A). The assessee explained before the CIT(A) that no actual sum of money was received by the assessee from the said 5 parties. That only the shares of other companies were transferred by the aforesaid 5 entities to the assessee and the purchase consideration was shown as payable/advance received in the books of account of the assessee. However, the ld. CIT(A) from the balance sheet observed that the assessee has not properly stated so in the balance sheet. That in Note-4 of the balance sheet, the amount of Rs.14,48,57,451/- was shown as 'advance from others' and not as 'loan on transfer of shares' as claimed by the assessee. He further noted as per Note-7 of the balance sheet, the money was shown to have been invested in shares. He, therefore, observed that from Note-4 & Note-7, it was not clear that shares/investments by those companies were transferred to the assessee and that the investment was not made by the assessee after receiving the credits in sum of money. He, therefore, confirmed the additions so made by the Assessing Officer.

5. Before us, the ld. counsel for the assessee has submitted that the provisions of section 68 were not applicable in this case as no sum of money was received by the assessee. He in this respect has relied upon the following case laws:

- i. Coordinate Bench of this Tribunal in the case of M/s Abhijeet Enterprise Ltd. vs. ITO, ITA No.308/Kol/2017;
- ii. Hon'ble Calcutta High Court in the case of Jatia Investments Co. v. CIT (1994) 206 ITR 718(Cal);
- iii. Hon'ble Madras High Court in the case of V.R. Global Energy (P) Ltd. v. ITO (2018) 96 taxmann.com 647 (Madras)

5.1 He has further invited our attention to the pages 133-134 of paperbook, which is the copy of demat account of the assessee showing that the shares were credited in the demat account of the assessee. He has further relied upon the copies of the ledger of the creditors into the books of account of the assessee showing the transfer/purchase of shares of different companies and credited in the books of account of the assessee. The Id. counsel has further relied upon the respective delivery slips of the parties which show the transfer of shares by the said creditors. The Id. counsel, therefore, has submitted that the shares were purchased by the assessee on credit basis. He has further submitted that the matter may be remanded to the file of the Assessing Officer for examination and verification of the aforesaid facts.

6. The Id. DR has however relied upon the findings of the lower authorities.

7. Considering the above submissions of the Id. AR, the matter is restored back to the file of the Assessing Officer to examine the contentions of the assessee and pass an appropriate order accordingly on this issue in accordance with law.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 20th May, 2024.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 20.05.2024.

RS

Copy of the order forwarded to:

1. Acuity Merchants Pvt Ltd
2. ITO, Ward-4(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches