

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 1071/KOL/2023
Assessment Year: 2017-18**

***Monalisa Enclave Private Limited.....Appellant
[PAN: AAFCM 9042 A]***

Vs.

ITO, Wd-1(2), Kolkata.....Respondent

Appearances:

Assessee represented by: Rajeeva Kumar, Adv.

Department represented by: Prabhas Roy, JCIT, Sr. D/R.

Date of concluding the hearing : May 1st, 2024

Date of pronouncing the order : June 12th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 31.08.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 19.12.2019.

2. The brief facts of the case are that the appellant being a company had filed its return of income for the AY 2017-18 declaring total income of Rs. 'NIL'. The case was selected for scrutiny assessment under CASS, notice u/s 143(2) of the Act was issued. In compliance to the statutory notice, the

appellant company submitted the details through e-proceeding. Thereafter, income of the appellant was assessed u/s 143(2) of the Act at total income of Rs. 15,27,000/- by making addition as unexplained credit u/s 68 of the Act and disallowance of expenses of Rs. 23,000/-.

2.1. The appellant preferred appeal before ld. CIT(A) whereat he submitted his submission but ld. CIT(A) has dismissed his appeal thereby holding that the addition to the income of Rs. 15,04,000/- is found to be on sound factual and legal position.

Being aggrieved and dissatisfied with the said order the present appeal has been preferred.

2.2. The ld. Counsel for the assessee challenges the impugned order thereby submitting that the order of ld. CIT(A) and the ld. AO is bad both on facts as well as law as the appellant has submitted the entire documents relating to M/s. Rasili Barter Pvt. Ltd. that goes to establish the identity of the person and the shareholder, creditworthiness of the transaction and genuineness of the transaction. Even though ld. AO and ld. CIT(A) had added the share capital of Rs. 15,04,000/- as unexplained share capital. The ld. Counsel for the assessee further submits that the assessee/appellant can not force the director of M/s. Rasili Barter Pvt. Ltd. to appear before the AO or the ld. CIT(A) though the appellant had already discharged his duty by submitting all those documents which were required by the AO and asked to submit to the assessee. The ld. Counsel for the assessee has filed documents relating to M/s. Rasili Barter Pvt. Ltd.

3. Contrary to that it had been argued by the ld. D/R that identity, creditworthiness of the appellant company were documentary and personal appearance by the directors of the applicant company have been avoided. So, the questions asked by the AO remained unanswered and accordingly, he supports the impugned order of ld. CIT(A).

4. After hearing rival submissions of the Counsels of the respective parties, we have perused the order of the AO and Id. CIT(A) and find the following facts:

- i) Before the AO after verification of the reply received from one of the share allottees i.e. M/s. Rasili Barter Pvt. Ltd. was asked to submit following details; (a) Copy of share application (b) Copy of share allotment letter (c) Copy of share certificate.
- ii) M/s. Rasili Barter Pvt. Ltd. was directed to appear at the office personally to explain the details of transaction with the assessee along with documents.

4.1. It is averred the AO's order that no one appeared on behalf of M/s. Rasili Barter Pvt. Ltd. nor the assessee company produced evidences required to substantiate transaction with M/s. Rasili Barter Pvt. Ltd. Ld. **AO has held that assessee has failed to discharge the onus to provide a transaction being a genuine transaction.**

On perusal of the order of Id. CIT(A), it appears to us that appellant has produced the following documents:

- i) Income tax acknowledgement for AY 2017-18.
- ii) Copy of share application.
- iii) Copy of audited accounts along with all the annexures.
- iv) Bank statements for the relevant periods of transaction of the share application related to M/s. Rasili Barter Pvt. Ltd.

4.2. Ld. CIT(A) after going over the documents has held thus:

The facts in the case show that the submission of the identity, creditworthiness of the applicant company were documentary and personal appearance of the directors of the applicant company have been avoided. Due to the same, the nature of business of the applicant company, its track record of profitability, reasons for investment in appellant company and such other questions remained unanswered.

Now, the question comes for our consideration is that when there was documentary evidence filed by the assessee company that relates to the company M/s. Rasili Barter Pvt. Ltd. to establish the genuineness and creditworthiness of M/s. Rasili Barter Pvt. Ltd. then what remains more for the assessee company to establish their case.

It is not the duty of the assessee company nor in control of the company to direct the director of M/s. Rasili Barter Pvt. Ltd. to appear and show the genuineness. In our view, appellant has discharged the onus cast upon it, u/s 68 of the Act. Before us, the following documents have again been filed by the appellant:

1. *Audited Statement of Accounts of appellant company for the year ended 31st March, 2017*

2. *Bank Statement of appellant company from 01.04.2016 to 31.03.2017*

3. Documents relating to M/s. Rasili Barter Pvt. Ltd.

a) *Audited Statements of Accounts for the year ended 31st March, 2017*

b) *Copy of Bank Statement highlighting the transactions.*

c) *ITR acknowledgement for the year A.Y. 2017-2018*

d) *Copy of Share application*

e) *Copy of allotment letter*

f) *Copy of share certificate*

g) *Copy of resolution for applying in share of M/s. Monalisa Enclave Private Ltd.*

h) *Certificate from M/s. Rasili Barter Pvt. Ltd. with evidence / documents for its sources of fund*

i) *Copy of Assessment Order for the A.Y. 2017-2018 and on wards*

j) *Copy of certificate of incorporation Pursuant to change of name from Rasili Barter Pvt. Ltd to Sunidhi Fincon Private Limited dated 30th June 2021.*

k) Copy of Master Data downloaded from MCA Website in the name of Sunidhi Fincon Private Limited

5. The learned counsel has also filed decision of Kolata High Court passed in *Crystal Networks(P) Ltd. Commissioner of Income tax (2013) 353 ITR 171*. The Hon'ble high court has held thus- When the basic evidences are on record the mere failure of the creditor to appear cannot be basis to make addition.

6. The above all those documents relate to M/s. Rasili Barter Pvt. Ltd. Keeping in view the above documentary evidences and the facts stated above we are thus, in this view that the case is again remanded back to the file of Id. CIT(A) to pass a fresh order after going over the entire papers which has been filed by the assessee to support their creditworthiness and genuineness of the transaction without shifting any onus upon the assessee to produce the director of the company such as M/s. Rasili Barter Pvt. Ltd. Accordingly, the case is allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12th June, 2024.

Sd/-

[Manish Borad]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 12.06.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Monalisa Enclave Private Limited, 3rd Floor, Development House, 24, Park Street, Kolkata, West Bengal, 700016.**
2. **ITO, Wd-1(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

***I.T.A. No.: 1071/KOL/2023
Assessment Year: 2017-18
Monalisa Enclave Private Limited***

Assistant Registrar
ITAT, Kolkata Benches
Kolkata