

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 657/Kol/2023
Assessment Year: 2012-13

Radiant Commercial & Investment Pvt. Ltd. (PAN: AACCR 4019 H)	Vs.	ITO, Ward-12(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	11.06.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	11.07.2024
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT (Sr. D.R)

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi dated 09.05.2023 for the AY 2012-13.

2. The only issue raised in the various grounds of appeal is against the confirmation of addition of Rs. 1,96,50,000/- by the Ld. CIT(A) as made by the AO u/s 68 of the Act in respect of share capital and share premium.

3. Facts in brief are that the assessee filed return of income on 19.09.2012 declaring total income Nil. The statutory notices were duly issued and served on the assessee including the notice u/s 142(1) dated 31.03.2014 along with questionnaire which was complied with by the assessee by filing the details/explanation in the office of the AO on 17.04.2014. The counsel of the assessee appeared before the AO from time to time during the assessment proceedings and also furnished information as desired by the AO. Thereafter a letter was issued on 23.01.2015 along with notice u/s 142(1) calling upon the assessee to comply the same beside requiring the assessee to produce the directors of the companies who had applied for and have been allotted shares of the assessee company. Pertinent to state that the assessee has issued 65,500 equity shares to three group companies. In the said letter, it was stated that if the assessee did not comply the same, the assessment would be completed on merit u/s 144 of the Act. The AO also issued summon u/s 131 of the Act on 30.01.2015 to the assessee to produce the directors of the companies who have been allotted shares during the year. The AO also mentioned in para 4 of the assessment order that one of the directors of the subscribing companies Mrs. Sarita Giria, appeared before him and statement could not to be recorded due to her ill health. Finally the AO treated the share capital of Rs. 6,55,000/- along with share premium of Rs. 1,89,95,000/- as unexplained cash credit as the assessee could not establish the identity, creditworthiness and genuineness of the share subscribers and even did not produce the director of the investor companies in spite of summon issue u/s 131 of the Act and added the same to the income of the assessee in the assessment framed u/s 144 of the Act dated 16.03.2015.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO by citing the same reasons that though the assessee has furnished all the evidences before the appellate authority and the AO also carrying out independent verification of these transactions by issuing notice u/s 133(6) of the Act to the subscribing companies and also by issuing summon u/s 131 in compliance to which Ms. Sarita Giria, one of the directors of the subscribing companies appeared before the AO, however the

statement was not recorded but eventually dismissed the appeal of the assessee on the ground that the assessee did not produce the requisite details as called for by the AO THEREBY overlooking all the evidences as filed by the assessee as well as by the share subscribers.

5. The Ld. A.R vehemently submitted before us that the order passed by the Ld. CIT(A) ignoring all the evidences filed by the assessee before the Ld. CIT(A) comprising the names, addresses, PANs, Audited annual accounts, ROC certificates , bank statements filed by the assessee as well as subscribers. The Ld. A.R vehemently submitted that all these share subscribers were group companies of the assessee and were having common directors besides having sufficient resources available during the year justifying the investments. The Ld. A.R stated that the AO has even issued notices u/s 133(6) of the Act requiring the share subscribers to furnish the requisite details as regards the equity shares allotted as well as the details of payments made by them which were duly furnished by the share subscribers before the AO confirming the said transactions. The Ld. A.R. also submitted that the summon u/s 131 of the Act was issued to the assessee calling upon to produce the directors of the subscribing companies for examination and in compliance one of the directors Ms Sarita Giria appeared before the AO. However no statement was recorded by the AO which has also been stated in the assessment order that due to her ill health no statement was recorded which is wrong narration of the fact as the director had duly appeared before the AO and it is for the AO to record the statement which was not recorded. The Ld. A.R submitted that the assessee had filed all the evidences proving the identity of the subscribers by filing copies of ITRs, certificate of incorporation, ROC records. The observation of the authorities below that the identity is not proved is nothing but a wrong finding given by ignoring the facts available on records. Similarly the creditworthiness of these group companies were there as they have sufficient sources available with them and it is not the case of AO or Ld. CIT(A) that any cash was deposited into these companies before making investment in assessee company. The Ld. A.R stated that the AO has reached a conclusion on the basis of the fact that since

these companies were having same address and common directors; therefore they are shell companies without giving any substantive findings as to how these subscribers constituted shell companies. The Ld. A.R also assailed the order of Ld. CIT(A) affirming the order of AO passed u/s 144 of the Act despite all the facts/evidences being filed by the assessee as well as by the subscribing companies before the AO. The Ld. A.R contended that both the authorities below instead of commenting on the evidences/proofs filed by the assessee as well as the subscribers, merely relied on the facts that they have common place of business and common directors and therefore these are shell companies thereby giving no substantive findings. The Ld. A.R also referred to the provision of Section 68 of the Act as stood during AY 2011-12 and submitted that provisions are applicable only where the sum was credited into books of account maintained by the assessee for any previous year and assessee offers no explanation about the nature and source or explanation offered by him, is not, in the opinion of AO satisfactory then the sum so credited may be charged to the income tax as income of the assessee of that previous year. The Ld. A.R submitted that in the instant case the assessee has offered sufficient explanation about the nature and source thereof by filing all the evidences as stated above and therefore the conclusion drawn by both the authorities below was wrong, misleading and contrary to the facts on record. The Id AR in defense to his arguments relied on the following decisions:

- i) CIT vs. Steller Investment Ltd. in [1991] 192 ITR 287 (Del)
- ii) DCIT vs. Gandhi Capital Pvt. Ltd. in ITA No. 2922 /Ahd/ 2016
- iii) M/s V.R. Global Energy Pvt. Ltd. vs. ITO in ITA NO. 871/Mad/2016 (Madras High Court)
- iv) CIT vs. Electro Polychem Ltd. in [2007] 294 ITR 661
- v) PCIT vs. Surya Alloys Industries Ltd. [2022] 138 taxmann.com 342 (Cal)
- vi) CIT vs. Lovely Exports in Application No. 11993 of 2007 dated 11.01.2008

The Ld. A.R vehemently submitted that in view of the aforesaid facts , the appellate order may kindly be reversed and AO may be directed to delete the addition as the assessee has discharged his onus by filing all the evidences qua share subscribers and the onus shifted upon the revenue remain un discharged.

6. The Ld. D.R on the other hand relied heavily on the order of authorities below by submitting that the mere filing of documents qua the subscribers are not sufficient and the burden/onus of the assessee as provided u/s 68 of the Act has not been discharged. The Ld. D.R though admitting that the notices issued u/s 133(6) were complied with by the share subscribers. The ld DR also admitted that Mrs. Sarita Giria, one of the directors of the subscribing companies appeared before the AO in compliance to summon issued u/s 131 but that cannot be treated as sacrosanct proving the identity, creditworthiness of investors and genuineness of the transactions. The Ld. D.R submitted that the assessee has issued 65,500 shares at Rs. 300 per share including a share premium of Rs. 290 per shares and collected Rs. 1,96,50,000/- from three group companies. The credentials of the assessee are very weak and when the assessee failed to comply with the directions given by the AO, the assessment was framed u/s 144 of the Act. The Ld. D.R also referred to the written submissions filed by him before the bench and submitted that circumstantial evidences and surroundings of whole transactions had to be considered. The Ld. D.R submitted that though these companies were having available sources with them to invest in the assessee company but has hardly any business and earning therefrom during the year. The Ld. D.R cited series of decisions in his support namely:

i) CIT vs. N. R. Portfolio Pvt. Ltd. [2014] 42taxmann.com339 (Delhi)

ii) CIT v. Nova Promoters & Finlease (P.) Ltd [\[2012\]342 ITR 169](#)

iii) CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC)

iv) Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC)

The Ld. D.R therefore prayed that the order passed by the Ld. CIT(A) is very reasoned and speaking one and therefore the appeal of the assessee may kindly be dismissed.

7. After hearing the rival contentions and perusing the material on record, we find that the assessee during the year has raised share capital/share premium by issuing 65,500 equity shares at face value of Rs. 10/- each at a share premium of Rs. 290/- per share thereby collecting Rs. 1,96,50,000/- from three group companies who have common directors and place of businesses. We note that the AO during the course of assessment proceedings called for various information/explanation/details from the assessee which were duly furnished before the AO comprising names, addresses, PANs, audited balance sheets, bank statements and confirmations from the share subscribers. We also note that the AO has issued notice u/s 133(6) of the Act to all the three subscribers which were duly responded by them and details requested by the AO were duly furnished. Besides summons u/s 131 was also issued to the assessee calling upon the assessee to produce the directors of the share subscribers for examination and we note that one of the directors of the subscribers Mrs. Sarita Giria appeared before the AO, however no statement was recorded citing the reason that the said person was not well on that day and no further opportunity was allowed or any direction was issued to appear before the AO. Having considered these facts on record, we are of the view that the assessee has discharged the onus cast upon it by the Statute by filing all the evidences comprising names, addresses, PANs, audited accounts, bank statements, certificates of incorporation, return of allotment of shares, proof of these investor companies being active in MCA records etc. However neither AO nor Ld. CIT(A) has commented on these evidences and merely formed their conclusions on the basis of conjectures and surmises that identity, creditworthiness of the investors and genuineness of the transactions were not proved by the assessee by ignoring the fact that even the notices u/s 133(6) and 131 of the Act were duly complied with as stated above. In our opinion, the addition made by the AO despite the assessee filing all the evidences and AO doing the verification by issuing notices u/s 133(6) and 131 which is incorrect and cannot be sustained. The Hon'ble Delhi

High Court in the case of CIT vs. Steller Investment Pvt. Ltd. (supra) has held that even if it be assumed that the subscribers to the increased share capital were not genuine, even then under no circumstances could the amount of share capital be regarded as undisclosed income of the assessee. The Hon'ble Court admitted that there were some bogus share holders and the money may have been provided by some other persons. But it would have been sensible to reopen the assessments of the person alleged to have advanced the money and how the amount in respect of increase in share capital could be assessed in the hands of the assessee company itself was beyond understanding.

8. We also note that in para 7.7 of the appellate order, the Ld. CIT(A) has given a finding that the submissions given by the assessee during the appellate proceedings pointed towards the elaborate documentations filed by the assessee in relation to application of shares, allotment of shares, share certificates, payments by cheques and necessary papers/documents filed before the Registrar of the company. The Ld. CIT(A) also noted that the assessee has provided a copies of bank statements, contract notes, delivery instructions to the broker that all the transactions were genuine however in his considered view of the matter, it is precisely this elaborate paperwork strengthen the issue long term capital gain which clearly has been schemed, pre-planned and executed with malafide intelligence and precision. We find that the Ld. CIT(A) has completely gone out of track while recording the findings as in the present case issue involved is raising share capital / share premium by issuing equity shares and not of earning of long term capital gain by selling equity shares. Having considered the facts, we are of the view that there was a complete non-application of mind to the facts/evidences filed by the assessee as well as share subscribers as the Ld. CIT(A) has wrongly recorded a finding that the assessee has wrongly derived benefit by way of long term capital gain on sale of equity shares which is totally wrong and based on conjectures, surmises and day dreaming. Considering all these facts and circumstances, we are not in a position to sustain the findings given by the Ld.

CIT(A). Accordingly, the order of Ld. CIT(A) is set aside and AO is directed to delete the addition.

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

Order is pronounced in the open court on 11th July, 2024

Sd/-

Sd/-

(Sanjay Garg/संजय गर्ग)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 11th July, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Radiant Commercial & Investments Pvt. Ltd., 11C, Ram Mohan Dutta Road, Kolkata-700020
2. Respondent – ITO, Ward-12(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata