

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER,**

**ITA No.1413/Mum/2024
(A.Y. 2012-13)**

Banaras Trading Private Limited, A-2/03 Janak Apartment, Navghar Samrth Ramdas Nagar, Sai Baba Temple, Vasai (East) Palghar – 401208	Vs.	Income Tax Officer 12(1)(3), Room No. 145A, Aayakar Bhavan, 1 st Floor, M.K. Road, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAECB7358M		
Appellant	..	Respondent

Appellant by :	J.P. Purohit
Respondent by :	Ashok Kumar Ambastha

Date of Hearing	19.06.2024
Date of Pronouncement	10.07.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order of ld. ADDL/JCIT(A)-12 of the Income Tax Act, 1961 for A.Y. 2012-13. The assessee has raised the following grounds before us:

- “1. The ld. ADDL/JCIT(A)-12 erred in confirming the action of the ld. assessing officer in re-opening the assessment under section 147 of the Income Tax Act.
2. The appellant craves leave to add, amend, alter vary and /or withdraw any or all the above grounds of appeal.”

2. Fact in brief is that return of income declaring total income at Rs.8,46,220/- was filed on 27.09.2012. The return of income was processed u/s 143(1) of the Act. Subsequently, information was received from the DCIT, Circle 1(1)(1) Surat that while making verification in the case of M/s Aishvarya Dying & Printing Mills Pvt. Ltd. in respect of receiving share capitals from Kolkata base company i.e M/s Moonrise Fincom Pvt. Ltd. It was found that said company has also made investment of Rs.10,00,000/- in M/s Banaras Trading Pvt. Ltd. which was not genuine. On the basis of aforesaid information the assessing officer has recorded reason for reopening of the assessment u/s 147 of the Act and issued notice u/s 148 of the Act on 30.03.2019. In response to the notice u/s 148 of the Act the assessee has filed return of income on 01.06.2019 declaring total income at Rs.8,46,226/-. The assessee filed various details and explanation during the course of assessment proceedings which was not accepted by the assessing officer, therefore, show cause notice dated 09.12.2019 issued by the assessing officer asking the assessee to show cause as to why the transaction with M/s Moonrise Fincom Pvt. Ltd. of Rs.10,00,000/- in the form of share subscription should not be treated as unexplained and added to the income of the assessee. In response the assessee submitted vide letter dated 12.12.2019 that it had already established the genuineness, creditworthiness and identity of the subscribers of the shares of the company and it was also submitted that the shareholders have also filed the relevant detail as called by issuance of notice u/s 133(6) of the Act. The assessee has also submitted that said party has also filed relevant evidences, i.e. Income Tax Return of the shareholders as under:-

- (a) Income Tax Return of the shareholders for A.Y. 2012-13 & 2013-14*
- (b) Certificate of incorporation of the shareholders.*
- (c) Copy of memorandum and articles of association.*

- (d) Audited Accounts of the shareholders A.Y. 2012-13, 2013-14 & 2018-19.*
- (e) Share application forms.*
- (f) Share certificate for allotment of shares.*
- (g) Copy of the bank account of the shareholders.*
- (h) Ledger copy of the above transaction.*
- (i) Copy of merge order from High Court.*
- (j) Copy of ROC Return under Form No. 2 with receipt of payment. From the perusal of the said details, your honor will observe that the genuineness, credit worthiness and identity of the subscriber of the shares have been established by the party.*

In view of the above submission submitted by the shareholder company in your Good Office in response of Notice u/s. 133(6) sufficiently establishes that the said investments are genuine and therefore should not be treated as unexplained and added in total income.”

However, the AO has not accepted the submission of the assessee and stated that shares of face value of Rs.10 had been issued at a premium of Rs.190 per shares and stated that creditworthiness of the assessee company of receiving such high premium on its share was not established by the assessee company. The assessing officer concluded that transaction of making investment in the share capital of the assessee company was not genuine, therefore, the assessing officer held that the assessee has failed to explain satisfactorily the identity, genuineness and creditworthiness of the credits in the form of shares subscribers along with premium to the amount of Rs.10,00,000/- therefore same was added to the total income of the assessee u/s 68 of the Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee since the assessee has not made compliance to the various notices of hearing issued by the ld. CIT(A) vide order u/s 250 of the I.T Act passed on 30.01.2024.

4. During the course of appellate proceedings before us the ld. Counsel submitted that necessary compliance to notices of hearing could not be made because director of the assessee company due to deteriorating health was admitted to hospital from 09.01.2024 to

16.01.2024. It was also submitted that grandfather of the director was also admitted to hospital multiple time because of serious health ailment who had expired later on 29.01.2024 after prolonged illness. In this regard, the assessee has also filed affidavit from the director of the assessee company dated 07.05.2024 along with medical report and medical certificate in support of his contention that director was admitted to hospital because of serious illness.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above in this order. The assessing officer has completed the assessment u/s 143(3) r.w.s 147 of the Act on 13.12.2019 and treated the investment of Rs.10,00,000/- made in the share capital of the assessee company by M/s Moonrise Fincom Pvt. Ltd. as non-genuine on the ground that assessee failed to explain satisfactorily the identity, genuineness and creditworthiness in the form of shares subscription along with premium to the amount of Rs.10,00,000/-. The ld. CIT(A) has dismissed the appeal of the assessee since no compliance has made during the course of appellate proceedings to the notices of hearing issued by the order of ld. CIT(A). We have perused the affidavit filed by the director of the assessee company on 07.05.2024 as referred above by the ld. Counsel. The director of the assessee company Mr. Pavithran Othayamanaglam reported in the affidavit that because of deterioration in his health he was admitted to hospital from 09.01.2024 to 16th January, 2024. In the affidavit it is also explained that aforesaid director was looking after the accounts and taxation matter of the assessee company, therefore no compliance and track on the notices issued by the ld. CIT(A) could be maintained. Apart from the above, the father of the director was also

expired on 29.01.2024 after prolonged illness. The assessee has also filed copies of medical certificate showing that aforesaid director was admitted on 09.01.2024 and discharged on 16.01.2024 along with the death certificate of his father issued by the municipal corporation. The aforesaid facts and circumstances demonstrate that compliance before the Id. CIT(A) could not be made because of serious health ailments of the director of the assessee company and death of the fathers of the director as discussed supra in this order. In the light of the above facts and circumstances for deciding the case on merit as contemplate in Sec. 250(6) of the Income Tax Act 1961 we restore this case to the file of the Id. CIT(A) for deciding de novo after affording adequate opportunity of hearing to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) without any failure, therefore, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.07.2024

Sd/-

(Raj Kumar Chauhan)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 10.07.2024
Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.