

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA**

**Before**  
**Dr. Manish Borad, Accountant Member**  
**&**  
**Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.369/KOL/2020**  
**Assessment Year: 2012-13**

***Robert Sterling Trade Enterprises P. Ltd. .... Appellant***  
***121, Netaji Subhas Road, 4<sup>th</sup> floor,***  
***Room No. 47, Kolkata-700001.***  
***(PAN: AABCR2046P)***

***Vs.***

***Income Tax Officer, Ward-4(1), Kolkata .... Respondent***

**Appearances by:**

*Shri Siddharth Agarwal, Advocate appeared for Appellant.*  
*Shri Bonnine Debbarma, JCIT, Sr. DR appeared for Respondent.*

Date of concluding the hearing : 10.06.2024  
Date of pronouncing the order : 05.09.2024

**ORDER**

**Per Dr. Manish Borad, Accountant Member:**

This appeal filed at the instance of the assessee pertaining to the Assessment Year (in short “AY”) 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax, (Appeals)-10, Kolkata [in short Ld. “CIT(A)”] dated 29.11.2019 arising out of the assessment order framed u/s. 143(3) of the Act by ITO, Ward-4(1), Kolkata dated 12.03.2015.

2. Registry has informed that the appeal of the assessee is time barred by 125 days and an application for condonation of

delay has been filed by the assessee dated 12.06.2020. Perusal of the same indicates that the delay has been caused mainly on account of lockdown during the Covid-19 pandemic period and partial delay has occurred as the main director of the assessee who is looking after the case was outstation. Considering the reasonable cause mentioned in the application, we condone the delay of 125 days and admit the appeal for adjudication.

3. Brief facts of the case are that the assessee is a private limited company carrying business with the principal object of loan financing and investment. Assessee has had declared loss of Rs.8,337/- for AY 2012-13 in the return of income filed on 28.09.2012. In the scrutiny assessment after being selected through CASS for the reason "large share premium" and followed by validly serving notices u/s. 143(2) and 142(1) of the Act. Ld. AO observed that during the year assessee has received share capital of Rs. 21,69,000/- and share premium of Rs.1,08,45,000/-. Ld. AO asked the assessee to explain the nature and source of the alleged sum. However, assessee failed to satisfy the AO and also did not appear on various dates of hearing. Accordingly, ld. AO concluded the assessment making addition u/s. 68 of the Act for unexplained credit at Rs.1,30,14,000/-.

4. Aggrieved, assessee preferred appeal before the ld. CIT(A) and filed detailed submission but again failed to succeed. Aggrieved, assessee is now in appeal before this Tribunal.

5. Before us, ld. Counsel for the assessee has referred to the paper book containing 40 pages and an index of judgment/orders

containing 44 pages. Crux of the arguments are that assessee has sufficiently discharged its primary onus of explaining the nature and source of the alleged sum and, therefore, addition u/s. 68 of the Act is uncalled for.

6. On the other hand, Ld. DR vehemently argued supporting the orders of the lower authorities.

7. We have heard rival submissions and perused the records placed before us. Addition u/s. 68 of the Act at Rs.1,30,14,000/- is challenged. Before us, this issue has been raised in ground nos. 1, 2 and 3. We note that the assessee issued equity shares comprising of share capital of Rs.21,69,000/- and share premium of Rs.1,08,4500/-. Alleged sum of share capital and share premium is basically conversion of unsecured loan to share capital. Unsecured loans were taken in preceding years and interest was duly paid. However, since it is a fresh credit entry in share capital account Ld. AO was well within his power to examine the same u/s. 68 of the Act. It is an undisputed fact that assessee failed to avail the opportunity of hearing granted by the ld. AO and, therefore, various details referred to by the Ld. CIT(A) in the impugned order have not been examined by the AO. In the paper book, there is no reference of any remand report, if any, called for from the AO. The summons issued by the AO remained uncomplied. The confirmation of account placed by the assessee in the paper book has been issued by the assessee itself. No confirmations have been received by the AO directly from the alleged share applicants. Considering these factual aspects and that the AO had no occasion to examine the

documents filed by the assessee to explain the source and the identity and creditworthiness of the share applicants , we therefore, deem it proper to restore the matter to the file of the AO for examining the issue afresh after giving proper opportunity to the assessee and decide in accordance with law. Ground Nos. 1 to 3 are allowed for statistical purposes.

8. Ground No. 4 has been raised for a small issue that even though the assessee has declared loss of Rs.8,337/- Ld. AO has taken the returned income as nil. We have perused the income tax return placed at pages 1 to 9 of the paper book and find force in the contention of the ld. Counsel for the assessee and thus hold that Ld. AO erred in treating the returned income as nil and that he ought to have taken the loss of Rs.8,337/- as the returned income for the purpose of computing the income. Therefore, this ground is allowed.

9. Ground nos. 5, 6 and 7 are general and consequential in nature need no adjudication.

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

Order is pronounced in the open court on 5<sup>th</sup> September, 2024.

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Dr. Manish Borad)  
Accountant Member

Dated : 05.09.2024

*J.D. Sr. PS.*

*Copy of the order forwarded to:*

**1. Appellant – Robert Sterling Trade Enterprises Ltd.**

**2. Respondent – ITO, Ward-4(1), Kolkata**

**3. CIT(A)-10, Kolkata.**

**4. CIT-**

**5. Departmental Representative**

**6. Guard File.**

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata