

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Shri Sonjoy Sarma, Judicial Member  
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 878/Kol/2024  
Assessment Year: 2008-2009**

**Anjaniputra Dealcom Pvt. Ltd.,**

21B, Canning Street,

Kolkata - 700001

[PAN: AAGCA8240D] .....**Appellant**

**vs.**

**ITO Ward 1(1), Kolkata,**

P-7, Chowringhee Square,

Kolkata - 700069

..... **Respondent**

**Appearances by:**

Assessee represented by : Manish Tiwari, AR

Department represented by : S.B. Chakraborty, JCIT, Sr. DR

Date of concluding the hearing : October 08, 2024

Date of pronouncing the order : October 10, 2024

**ORDER**

**Per Sonjoy Sarma, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2008-09 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (in short 'the Ld. CIT(A)'), dated 27.02.2024 arising out of Assessment Order dated 28.03.2014, passed under Section 263/143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

*"1. The order of the Learned Commissioner of Income Tax (Appeals) - NFAC is erroneous on facts of the case and in law.*

*2. That the Learned Commissioner of Income Tax (Appeals) - NFAC erred in not holding assessment order as antedated, time-barred and non-existing in the eyes of the law.*

*3. That the Learned Commissioner of Income Tax (Appeals) - NFAC erred in justifying the addition of Rs. 2,90,25,000/- u/s 68 of the Income Tax Act, 1961 as unexplained credit as the assessee had duly discharged its onus.*

*4. That under the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) NFAC failed to take into consideration the submissions filed during the appellate proceedings.*

*5. That the appellant craves leave to add, alter, amend or delete any or all the grounds of appeal on or before the date of hearing."*

3. The brief facts of the case are that the assessee company filed its return of income for AY 2008-09 on 15.05.2008 by declaring total income of Rs. 190/-. The Ld. AO on examination of the balance sheet of assessee notice that fresh subscription to the share capital to the extent of Rs. 2,90,25,000/- from 9 subscribers. The case of the assessee was reopened and notice u/s 148 of the Act was issued on 17.05.2010 on the ground that the assessee had debited Rs. 7,080/- towards preliminary expenses to the Profit & Loss Account. During the relevant previous year, the assessee company was engaged in investment, commission and brokerage activities. The Ld. AO initiated enquiry u/s 133(6) of the Act requesting information from the subscribers to share capital as investment in assessee-company. Subsequently, assessment order was passed on 08.07.2010 u/s 143(3) of the Act by determining the total income of assessee at Rs. 7,200/- raising net tax liability of Rs. 2,166/-. Subsequently, the Ld. PCIT in exercise the powers u/s 263 of the Act, find that the assessment order dated 08.07.2010 was erroneous and prejudicial to the interest of the revenue. Therefore, the Ld. PCIT vide order dated 10.12.2013 observed that the Ld.

AO had not conducted details or complete enquiry into the share capital and premium introduced the assessee's accounts amounting to Rs. 2,90,25,000/-. Upon re-examination the Ld. AO concluded that the assessee has failed to explain the source of share premium and was of the view that the company had routed its unexplained money through the shell companies. Based on the judicial precedents and in the light of the inability of the assessee to discharge its burden of proof regarding the share capital introduced. The Ld. AO held that the share capital and premium amounting to Rs. 2,90,25,000/- was nothing assessee's own unaccounted money introduced into books. Accordingly, the same was treated as unexplained income and added back to the assessee's total income.

4. Aggrieved by the alleged addition made by the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), which was dismissed where the Ld. CIT(A) sustained the addition of Rs. 2,90,25,000/- u/s 68 of the Act.

5. Dissatisfied with the above order, the assessee preferred an appeal before this Tribunal, raising multiple grounds, including that the Ld. CIT(A) erred in upholding the addition u/s 68 of the Act without considering the explanation and documentary evidence provided by the assessee. The Ld. AR contention is that the assessment order passed by the Ld. AO was antedated time barred and non-existence in the eyes of law as it was communicated after the due date prescribed under law.

6. The Ld. Counsel for the assessee submitted that the AO's assessment order was communicated in violation of prescribed time limit and thus, should be considered null and void. The assessee submitted that the Ld. CIT(A) did not examine this crucial issue in the impugned order passed.

7. We after hearing the submission of the parties and on careful consideration of the facts of the case and examining the material available on record, we find that the issue whether the assessment order was communicated beyond the time prescribed under law and whether it was communicated after the due date was not examined by the Ld. CIT(A) and this vital issue that goes to the route of the assessment proceedings. We therefore, deem it appropriate in the interest of justice to remand the matter to the file of Ld. CIT(A) for fresh examination on the above issue. In view of the above findings, the appeal of the assessee is allowed for statistical purposes. The Ld. CIT(A) is directed to re-examine the issue regarding the validity of the assessment order, particularly on the point of whether it was antedated time barred and non-existence in the eyes of law in the light of the statutory time limits. The assessee is also directed to furnish all the necessary supporting documents to substantiate its claim before the Ld. CIT(A). The Ld. CIT(A) shall provide a reasonable opportunity of being heard to the assessee during the proceedings.

8. In term of the above, appeal of the assessee is allowed for statistical purposes.

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

***Kolkata, the 10<sup>th</sup> October, 2024.***

Sd/-  
**[Rakesh Mishra]**  
**Accountant Member**

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Dated: 10.10.2024.  
AK, PS

*Copy of the order forwarded to:*

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

//True copy//

By order

Assistant Registrar, Kolkata Benches