

आयकर अपीलिय अधिकरण, कोलकाता पीठ 'C', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.82/Kol/2024
Assessment Year: 2012-13

Agarwal Trexim Pvt. Ltd. **Appellant**
B/9/H/1, Rajab Ali Lane, Kolkata-700023.
(PAN: AACCA1397B)

vs.

Income Tax Officer, Ward-9(1), Kolkata **Respondent**
.

Appearances by:

None appeared on behalf of the appellant.

Shri Rakesh Kumar Das, CIT DR, appeared on behalf of the Respondent.

Date of concluding the hearing :July 11, 2024

Date of pronouncing the order :October 10, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 03.01.2024 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)" passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

2. The assessee in this appeal has agitated against the addition made/confirmed by the lower authorities of Rs.25,00,00,000/- by treating the share capital/share premium received by the assessee as unexplained income of the assessee. No one has put an appearance on behalf of the assessee despite service of notice several times. Earlier the case was fixed on 26.03.2024. A letter dated 21.03.2024 was received from the assessee company seeking time to engage a lawyer in the case. The bench did not function on 26.03.2024 and the case was

adjourned by the Registry to 16.04.2024. The notice was served through RPAD, however, no one appeared on behalf of the assessee on 16.04.2024. The Bench adjourned the case to 18.04.2024 and directed the Registry to inform the assessee of the date of hearing telephonically. As per the note of the Registry, the assessee was informed telephonically and one Shri Prakash S Law, staff of the assessee, had picked up the phone who was informed of the date of hearing. However, even on 18.04.2024 no one appeared on behalf of the assessee. The case was thereafter, adjourned to 11.07.2024 and notice was directed to be issued through RPAD as well as through e-mail. However, despite service of notice, the assessee has failed to appear on 11.07.2024. It seems that the assessee is no more interested in pursuing its appeal. Therefore, we proceed to adjudicate the appeal after hearing the Ld. DR.

3. The brief facts of the case are that the Assessing Officer (in short "AO") noticed that the assessee during the year had received huge share application money and share premium. On being asked to explain the identity and creditworthiness of the share subscribers and genuineness of the transaction, the assessee submitted certain primary details. However, AO was not satisfied with the details submitted by the assessee and held that the issue was not verifiable from the primary details submitted by the assessee. The AO thereafter issued summons u/s. 131 of the Act to the Director of the assessee company for personal deposition and producing the following details:

"1. Proof of identity – Voter Card/Passport/Driving license/PAN Card.

2. List of companies where you were Directors/Shareholders from the A.Y. 2008-09 till date with dates of appointments thereto with DIN.

3. Proof of acknowledgement or filing IT Return along with copies of accounts and that of the companies where you have been director as mentioned above in SI. No.2 for A.Yrs 2010-11, 2011-12 & 2012-13.

4. All bank statements explaining debit & credit entries therein also highlighting the relevant entries with regard to the share capital investment.

5. Produce all investors (in case of company, the Managing Director) who have made investment in your company.

6. The source of fund in the hands of investors with their respective bank statement explaining all the debit/credit entries.

7. Identification or family members who are directors in the assessee company and there relationship.

8. A write up on justification of large share premium.”

4. However, neither the director of the assessee appeared for personal deposition nor furnished the details as were called upon by the AO. The AO, therefore, held that the primary details submitted by the assessee fall far short of discharging the onus of the assessee in explaining the source of the said share capital and share premium and genuineness of the transaction. He, therefore, made the impugned addition by treating the share capital/share premium received by the assessee as income of the assessee from unexplained sources.

5. Being Aggrieved by the said order of the AO, the assessee preferred appeal before the Ld. CIT(A), wherein, the assessee filed its submission. However, the Ld. CIT(A) observed that on perusal of the submissions of the assessee it was seen that the shareholder companies had merely claimed receipt of share application money/sale of investment as source of fund for share subscription in assessee company but, however, no documents had been provided for justification of such claim. Further that even the ITR/financial statements of the shareholder companies have neither been submitted during the appellate proceeding nor before the AO. He, therefore, held that the genuineness of the transaction along with creditworthiness of the share subscribers could not be established. The Ld. CIT(A) also

held that the assessee could not establish the justification of the receipt of huge amount of share application money and share premium when there was continuously meagre income of the assessee on account of interest on loans only and that there was no justification even as to why the share subscribers would invest huge amount in a small company like assessee having a meagre income. Concluding part of the order of the Ld. CIT(A) is reproduced as under:

“On perusal of the submission, it is seen that the shareholder companies have merely claimed 'receipt of share application money'/ 'sale of investment' as the 'source of fund' for share subscription in the assessee company. No documents have been provided in justification of such claim. Further, even the ITR/financial statements of the shareholder companies have not been submitted during the appellant proceedings nor did the AO mention filing of any such submission by the shareholder companies/assessee in the assessment order. Hence, the genuineness of the transactions along with creditworthiness could still not be established.

8.1 The appellant is absolutely silent regarding the basis for the valuation of premium for the shares issued to investing companies. There is no and there cannot be any justification for subscribing the shares of appellant's company at such a huge premium. As observed by Hon'ble Supreme Court, in the case of NRAI Ronand Steel Pvt. Ltd. (supra), "The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee", and once his explanation for premium is rejected, for this reason alone, the addition under section 68 is justified. "

8.2 Now, coming to the financials of the appellant company, the only source of receipt in the profit & loss account is shown as "interest on loans" that too of merely Rs. 3.94 lakhs and Rs. 3.52 lakhs for the F.Y. 2010-11 & 2011-12 respectively. After claiming certain expenses, the total income has been shown at Rs. 18,721/- and Rs. 9,236/- for the F.Y. 2010-11 & 2011-12 respectively. The earning per share is reflected at Rs. 0.02 & 0.008 only in the F.Y. 2010-11 & 2011-12. There is not even an iota of indication of any vibrant business activity of appellant company in their financial statements. Almost the entire receipts shown on account of share capital/premium is found to be invested in the subscription of other private limited companies, instead of being used for any business activity. Buying shares by any person at such a huge premium in a nondescript small private limited company, without a share in management and control, is something extremely unusual unless the investor is very well known or close associate of the company in which investment is being made. Having considered entire facts of the case and evidences brought on record, I find no infirmity in the order of AO, hence, addition made of Rs. 25,00,00,000/- is confirmed. As a result, Grounds of appeal are dismissed.”

6. As observed above, despite several opportunities there is no representation on behalf of the assessee and under the circumstances, we do not find any reason to interfere with the above order of the Ld. CIT(A) which is hereby upheld. Accordingly, the appeal of the assessee is dismissed.

7. In the result, the appeal of the assessee stands dismissed.

Order is pronounced in the open court on 10.10.2024

Sd/-
[Rakesh Mishra]
लेखा सदस्य/Accountant Member

Sd/-
[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 10.10.2024.

JD

Copy of the order forwarded to:

- 1.Appellant – M/s Agarwal Trexim Pvt. Ltd.
2. Respondent – ITO, Ward-9(1), Kolkata
3. CIT(A), NFAC, Delhi
4. Pr. CIT,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches