

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.1293/Kol/2024

Assessment Year: 2012-13

ACIT, CC-2(1), Kolkata.....Appellant

vs.

Pujita Merchandise Pvt. Ltd.....Respondent

37E, Block-B, New Alipore,

Kolkata – 700053.

[PAN: AADCP7771M]

Appearances by:

Shri Subhendu Datta, CIT-DR, appeared on behalf of the appellant.

Shri Ravi Tulsiyan, FCA, appeared on behalf of the Respondent.

Date of concluding the hearing : November 06, 2024

Date of pronouncing the order : November 07, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal is filed by the revenue against the order dated 12.03.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, we note that there is a delay of 27 days in filing the present appeal for which application for condonation of delay is placed on record, wherein, the reasons for the delay have duly been mentioned. Considering the averments made in the application, we find sufficient cause for the delay. Accordingly, we condone the delay and proceed to adjudicate upon the matter.

3. The brief facts of the case are that the assessee is a company and filed its return of income for the assessment year in question on 27.09.2012 reporting a total income of Rs.11,100/-. Thereafter, the case of the assessee was selected for scrutiny under CASS followed by issuance of notices u/s 143(2) and 142(1) of the Act and in response to

the notices, the assessee company submitted necessary documents including audited balance sheet and Profit & Loss A/c. The assessment of the assessee was completed u/s 143(3) vide an order dated 26.03.2015, wherein, the Assessing Officer determined the total income of the assessee as Rs.9,26,11,100/-, which is notably higher than assessee's self-assessed amount. During the assessment proceedings, the Assessing Officer was discovered that the assessee had received fund from issuing equity shares at Rs.10/- each with premium of Rs.90/- per share and raised fully paid-up share capital of Rs.9,26,00,000/-. A large part of this application money had been received in prior years, while only Rs.1,00,000/- was received in the current year from M/s Mohan Management Ltd. Out of the total share application money of Rs.9,46,00,000/-, the assessee refunded Rs.21,00,000/- to M/s Mohan Management Ltd. on 23.02.2012 and received fresh share application of Rs.1,00,000/- during the assessment year in question. The Assessing Officer issued summons u/s 131 of the Act to the director of the assessee company and in response to the summons, the assessee company submitted financial details and identity documentation in relation to the transaction. Notice u/s 133(6) of the Act was also issued to the investor companies which were duly served and the investor companies have submitted their replies. However, the Assessing Officer suspected a collusion between the assessee and its investor companies citing the high share premium as unusual. Thus, the Assessing Officer made addition of Rs.9,26,00,000/- invoking section 68 of the Act to the taxable income of the assessee.

4. Dissatisfied with the above order, the assessee preferred appeal to the ld. CIT(A). The ld. CIT(A) after giving thoughtful consideration has observed that section 68 of the Act can only be applied to credits recorded to the assessment year in question. That since most of the assessee's funds were received in prior years, except only Rs.1,00,000/-

was received from M/s Mohan Management Ltd. in the current year could be treated as unexplained cash credit u/s 68 of the Act. Therefore, the ld. CIT(A) deleted the addition of Rs.9,25,00,000/- retaining of Rs.1,00,000/- as unexplained income in the hands of the assessee. Reliance in this respect has also been placed by the ld. CIT(A) on the following judicial precedents:

- 1. CIT vs. Usha Stud Agricultural Farms Ltd. reported in [2008] 301 ITR 384 (Delhi)*
- 2. CIT vs. Jagat Kumar Satishbhai Patel reported in [2014] 225 Taxman 190 (Gujarat)*
- 3. DCIT vs. Global Mercantiles Pvt. Ltd. reported in [2016] 157 ITD 924*
- 4. Systensia Network Security India vs. ITO in ITA No.2927/Mum2/17 dated 27.07.2018*

5. In appeal before this Tribunal, the revenue contested that the decision of CIT(A) ascertaining the deletion of Rs.9,25,00,000/- was incorrect and liable to be set aside the order of the ld. CIT(A), since the director of the investor companies could not appear before the Assessing Officer at the time of framing of the assessment order.

6. On the other hand, the ld. AR objected to such prayer made by the ld. DR. He stated that if an addition u/s 68 of the Act is made, there must be credit for the financial year relevant to the assessment year in question. He has submitted that the assessee received share application funds of Rs.9,25,00,000/- in prior years, therefore, it cannot be a subject matter for the impugned addition in the current assessment year u/s 68 of the Act. That only the receipt of Rs.1,00,000/- from M/s Mohan Management Ltd. during the current year was deemed taxable as was rightly made by the ld. CIT(A). Therefore, there is no need to interfere in the order of the ld. CIT(A) and the same may be upheld.

7. We, after hearing the rival submissions of the parties and perusing the materials available on record, find that the ld. CIT(A) in his order has

clearly stated that section 68 of the Act is applicable when credit is received in the relevant year not for the earlier years. In the present case, credit of Rs.9,25,00,000/- was coming from earlier years and only Rs.1,00,000/- was received from M/s Mohan Management Ltd. in the assessment year in question. We further observe that the assessee had duly furnished details of the share application money, date wise receipts, mode of payment, amount, name, address, income tax returns, PAN No. of share applicants, Profit & Loss A/c along with their balance sheet before the ld. CIT(A). That the ld. CIT(A) ultimately concluded that the assessee had duly discharged its onus of providing complete details of the shareholders and in any case, no addition could be made u/s 68 of the Act in the assessment year under appeal as no share application monies were received during the current assessment year. Therefore, we hold that the order passed by the Ld. CIT(A) in this regard does not require any interference. Accordingly, we uphold the order of the ld. CIT(A) by dismissing the present appeal of the revenue.

8. In terms of the above, the appeal of the revenue is dismissed.

Kolkata, the 7th November, 2024.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 07.11.2024.

RS

Copy of the order forwarded to:

1. ACIT, CC-2(1), Kolkata
2. Pujita Merchandise Pvt. Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches