

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1257/Kol/2024
Assessment Year: 2012-13

Varima Jewels Pvt. Ltd. (PAN: AACCV 2582 K)	Vs.	ITO, Ward-8(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	21.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	02.12.2024
For the Appellant/ निर्धारिती की ओर से	Shri Manish Tiwari, FCA
For the Respondent/ राजस्व की ओर से	Ruchika Sharma, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 14.05.2024 for the AY 2012-13.

2. Issue raised in ground no. 1 is against the confirmation of addition of Rs. 80,00,000/- by the Ld. CIT(A) as made by the AO on account of share capital / share premium being unexplained cash credit u/s 68 of the Act.

3. Facts in brief are that the assessee filed return of income on 30.09.2012 declaring total income of Rs. 8,71,130/- which was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee along with questionnaires. The assessee's counsel appeared before the AO during the course of assessment proceedings and furnished the details as called for along with evidences proving the identity, creditworthiness of the share applicants as well as the genuineness of the transactions. The assessee furnished before the AO the copies of audited financial statement, bank statements, Form no. 2 with ROC with list of allottees and also filed in respect of share applicants copies of share applications, board resolutions, bank statements, ITR acknowledgments, audited financial statements, source of funds, copies of assessment orders u/s 143(1)/ 143(3) of the Act . The AO in order to independently verify the transactions, issued notices u/s 131 on 16.02.2015 to the directors of the assessee company and required the assessee to produce certain information/details as mentioned in the said summons which were duly furnished vide written submission dated 23.02.2015 a copy of which is attached at page 156 of PB. The AO finally noted that the assessee was not having any significant business to justify the issue of shares at high premium of Rs. 990/- with face value of 10/- each and added the same as unexplained cash credit u/s 68 of the Act to the income of the assessee as the same remained unverified and unexplained when the assessee did not appear personally u/s 131 of the Act.

4. In the appellate proceedings, the Ld. CIT(A) simply confirmed the order of AO on this issue by noting that the assessee has not produced the directors before the AO and no attempt was made to make any compliance before the Ld. CIT(A) and accordingly, dismiss the appeal of the assessee.

5. After hearing the rival contentions and perusing the material on record, we find that in the assessment proceedings, the assessee has furnished all the information as stated hereinabove qua itself as well as with regard to share applicants who subscribed to equity shares in the assessee company. We also note that summons u/s 131 of the Act were issued to the directors of the assessee which were duly complied with by filing

all the requisite documents before the AO as called for by him. We even note that the directors of the assessee company solely appeared before the AO but could not be attended due to pre-occupation of the assessing officer. We also note that the observations of the AO that the assessee is not doing any business and therefore no justification to issue an equity shares of face value of 10 each at a premium of 990/- is wrong and against the facts available on records. In our opinion, the said observations of the AO are not in conformity with the records available before the AO. We observe from the balance sheet of the assessee a copy of which is filed at page 9 of the PB that the assessee has share capital/ reserves to the tune of Rs. 1,25,25,010/- whereas the gross revenue from the operation was Rs. 24,618,203/- and net profit was Rs. 12,82,910/-. We even note that the assessee was having a bank limit from Standard Chartered Bank of Rs. 1.01 crores and has fixed assets to the tune of Rs. 15,05,000/- as WDV as on 31.03.2012. In our opinion, both the authorities below have failed to appreciate the facts and accordingly acted on the presumption that verification could not be made of these transactions in absence of personal appearance of the directors of the assessee company as well as the share subscribers. Accordingly, the addition made by the AO and confirmed by the Id CIT(A) on such presumption basis cannot be sustained. The mere non appearance before the AO in compliance to summons can not be a ground for making addition when assessee has filed all the evidences/details before the AO as well as Id CIT(A) and the AO has not pointed out any defect or deficiency in those evidences. We find support from a series of decisions namely (i) CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC);(ii) CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom);(iii) Crystal Networks Pvt. Ltd. Vs. CIT 353 ITR 171 (Kol);(iv) ITO Vs. M/s. Cygnus Developers India Pvt. Ltd.(ITA No. 282/Kol/2012) and (v) Joy Consolidated Pvt. Ltd. Vs. ITO (ITA No. 547/Kol/2020). The Hon'ble Supreme Court in the case of Orissa Corporation Ltd. (supra)has observed and held as under:

“That in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal

came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.”

5.1 The case of the assessee is also squarely covered by the decisions of Hon’ble Calcutta High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT (supra) wherein it has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions , the fact that summon issued were returned un-served or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. The relevant portion of the decision is extracted below:

“We find considerable force of the submissions of the learned Counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the Ld. CIT(A) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or note. When it was found by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:

“The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and records its findings on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law.”

The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.

Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.

Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed.”

5.2. The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) the operative part whereof is extracted below:

“8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. CIT(A) and further drew our attention to the decision of Hon’ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No. 179/2008 dated 17.11.2009 wherein the Hon’ble Allahabad High Court took a view that non-production of the director of a Public Limited Company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs. Devinder Singh Shant in ITA No. 208/Kol/2009 vide order dated 17.04.2009.

9. We have considered the rival submissions. We are of the view that order of Ld. CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the revenue that the revenue disputed only the proof of identity of share holder. In this regard it is seen that for AY 2004-05 Shree Shyam Trexim Pvt. Ltd. was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd. was assessed to tax u/s 143(3) for AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 2005-06 by the very same ITO, Ward-9(3), Kolkata assessing the assessee. In the light of the above factual position which is not disputed by the revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon’ble Allahabad High Court as well as ITAT, Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non-production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue.”

5.3. Similar ratio has been laid down by the Hon’ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd (supra) by holding that provisions of section 68 of the Act can not be invoked for the reasons that the person has not appeared before the AO where the assessee had produced on records documents to establish genuineness of the party such as PAN ,financial and bank statements showing share application money .

6. In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but AO has not commented on these evidences filed by the assessee. Besides the investors have also furnished complete details/evidences before the AO which proved the identity , creditworthiness of investors and genuineness of the transactions. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above , we are inclined to set aside the order of Ld. CIT(A) by directing the AO to delete the addition.

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 2nd December, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 2nd December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Varima Jewels Pvt. Ltd., 95A, Park Street, Kolkata-700016
2. Respondent – ITO, Ward-8(2), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata