

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
एवं

श्री रakesh मिश्रा, लेखा सदस्य  
के समक्ष

Before

**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1344/KOL/2019  
Assessment Year: 2009-10**

Ideal Fertilizers Pvt. Ltd.	Vs.	I.T.O., Ward-1(1), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: AABCI0354H</b>		

**Appearances:**

**Assessee represented by** : Miraj D Shah, AR.

**Department represented by** : Abhijit Adhikari, JCIT, Sr. DR.

Date of concluding the hearing : April 24<sup>th</sup>, 2025

Date of pronouncing the order : May 15<sup>th</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-10, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2009-10 dated 28.02.2019, which has been passed against the assessment order u/s 147 r.w.s. 144 of the Act, dated 31.12.2016.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in issuing notice u/s 148 of the Act, which is illegal and bad in law and hence the same should be quashed and the reassessment made on the basis of the same is required to be cancelled.*

*2. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in issuing notice u/s 148 of the Act, with wrong PAN and address which is illegal and bad in law and hence the same should be quashed and the reassessment made on the basis of the same is required to be cancelled*

*3. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in reopening the assessment only on the basis of information received from the Investigation Wing of the department during assessment proceedings of third party.*

*4. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in reopening the Ex-Parte assessment without considering the fact that the assessment of the appellant Co. for the year under appeal has been completed by the I.T.O., Ward-2(1)(3), Ahmedabad on 31/08/2016. Hence he has no jurisdiction to reopen the case of the appellant Co. and which fact had also been communicated to him vide letter dtd.09/11/2016.*

*5. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in completing the ex-parte assessment without providing copy of the reasons for reopening the assessment to the Appellant hence the same is illegal and bad in law requires to be cancelled.*

*6. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in completing the ex parte assessment without issuing any show cause notice u/s 142(1) and 143(2) of the Act hence the order so passed being illegal and bad in law should be quashed and the reassessment made on the basis of the same is requires to be cancelled.*

*7. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in passing the ex parte order ignoring the fact that the A.O. was informed that the jurisdiction vests with the L.T.O. Ward-2(1)(3), Ahmedabad and the reassessment proceedings were under progress with him at the relevant time.*



8. *The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in completing the reassessment behind the back of the assessee and without providing copy of the statements, material etc, relied upon by him hence the same being against the principles of natural justice and law requires to be cancelled.*

9. *The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in not granting an opportunity for cross examination of the persons making the statement on the basis of which the notice u/s 148 has been issued and completing the reassessment making additions. Hence the assessment so made being against the principles of natural justice and law is illegal and void ab initio.*

10. *The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in passing re assessment order which has not been properly served in the manner as prescribed by the Statute hence the same is liable to be quashed.*

11. *The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in computing the total income at Rs. 1,18,49,690/-.*

12. *The Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,18,25,000/- made by the Assessing Officer as alleged unexplained cash credit u/s 68 of the I.T. Act, 1961 without considering the fact that the same being share capital of the Appellant Company carried forward from previous year and the same does not pertain to the year under appeal. (Tax Effect Rs. 7002660/-).*

13. *The Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,18,25,000/- made by the Assessing Officer as alleged unexplained cash credit u/s 68 of the I.T. Act, 1961 without considering the fact that the same being share capital of the Appellant Company which was found to be explained while assessing the income for A.Yr..2007-08 i. e. year of receipt.*

14. *The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.”*

3. Brief facts of the case are that the assessee company filed its return of income for the AY 2009-10 on 29.09.2009 showing total income of Rs. 24,685/-. Subsequently, information was received from the office of the Investigation Wing of the Income Tax Dept, Ahmedabad, that the assessee had received an amount of Rs. 1,18,25,000/- as share



premium from M/s. Bhoomidev Credit Corporation Ltd. during AY 2009-10. Based on the above facts, the Assessing Officer (hereinafter referred to as Ld. 'AO') reopened the case of the assessee u/s 147 of the Act. Subsequently, the notice u/s 148 of the Act was issued to the assessee and notice u/s 142(1) of the Act along with questionnaire was also issued to the assessee. Despite providing several opportunities, the assessee did not respond to the notices or even file any documents/evidences to substantiate its claims. The Ld. AO completed the assessment u/s 144 of the Act treating the entire amount of Rs. 1,18,25,000/- as unexplained cash credit u/s 68 of the Act and added the same to the income of the assessee and assessed the income of the assessee at Rs. 1,18,49,690/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 28.02.2019 dismissed the appeal of the assessee after holding as under:

*"1. Having examined the matter, I find that the appellant has claimed that the additions as made by the Ld. A.O did not relate to the year under assessment. It has been contended in appeal that the Ld. A.O without considering the fact that no new share capital has been received by the appellant company and the same is carried forward from earlier years, has made the impugned addition.*

*2. However, no attempt was made by the appellant either to explain or substantiate the Share Capital and share Premium in the books, which have been disputed by the Ld. A.O. I find that the denial of the PAN and further such submissions do not lend any credence to the claims of the appellant-company. In these circumstances, I do not deem it necessary to interfere in the findings of the Ld. A.O which accordingly stand confirmed.*

*Ground No. 13 relates to the claim of the appellant to add, alter or modify the grounds appeal. As no such claim has been made by the appellant or the Ld A.R, there is no occasion adjudicate in the matter.*

*In the final result, appeal filed by the appellant is treated as "dismissed"."*

4. Aggrieved with the order of the Ld. CIT(A) the assessee has filed the appeal before this Tribunal.



5. Rival submissions were heard and the record and the submissions made have been examined. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

6. During the course of appeal before us, it was submitted by the Ld. AR that the notice u/s 148 of the Act was not issued by the jurisdictional Assessing Officer and that the addition made u/s 68 of the Act was incorrect as no money was received. It was also submitted before us that the jurisdictional issue of the Tribunal earlier agitated, is being waived by the assessee. It was submitted that the assessee had two PANs out of which one PAN was AABCI0354H, which was to be used. Our attention was drawn to page 1 of the paper book which is a letter dated 12.12.2006 in this regard in which the assessee was asked to use the PAN AABCI0354H only and all the other PANs allotted are stated to be non-operational. It was submitted that the DCIT, Circle-1(1), Kolkata issued a notice u/s 148 of the Act on 31.03.2016 mentioning the PAN as AABCI0542E/1381 and the notice was, therefore, invalid. The Ld. AR was asked whether the name and the address were correct to which he responded that the same were correct and the notice was stated to be at page 2 of the paper book filed. At page 3 as per the detailed Track Events of India Post, the notice was stated to be booked on 01.04.2016 and it was stated that the notice for AY 2009-10 should have been issued by 31.03.2016 and therefore, the same was time barred. It was further stated that as per the detailed Track Events of India Post, the notice was served on 04.04.2016. The notice was also issued by the ITO, Ahmedabad and the jurisdiction had been transferred u/s 127 of the Act to the ITO, Ahmedabad and a copy of the order was required to be filed. Our attention was drawn to page 8 of the paper book being the notice issued by the ITO, Ward-2(1)(3),



Ahmedabad at the assessee's address at Ahmedabad and this notice was issued on 30.03.2016 while the notice issued by the Assessing Officer of Kolkata was issued on 31.03.2016. At page 14 of the paper book, the order u/s 143(3) of the Act dated 31.08.2016 passed by the Assessing Officer of Ahmedabad has been enclosed whereas the order u/s 143(3) of the Act passed by the Assessing Officer of Kolkata dated 31.12.2016, which is subsequent to the order passed by the Assessing Officer who is said to hold the correct jurisdiction over the assessee. Our attention was drawn to page 23 of the paper book that there were neither any increase in the share capital or even the loans and that the money alleged to be received was not received during the year. The written submissions filed before the Ld. CIT(A) have been mentioned from pages 1 to 18 of the paper book and it was stated that the money was received in AY 2007-08 which had been accepted in the order u/s 143(3) of the Act dated 11.09.2009 and no adverse inference was drawn. It was therefore, submitted that the order of the Assessing Officer, Kolkata dated 31.12.2016 being without jurisdiction may be quashed.

6. We have gone through the submissions made. The assessee contends that no share capital or loan was received during the year and the order passed by DCIT, Circle-1(1), Kolkata was without jurisdiction. Since the case of the assessee had been transferred u/s 127 of the Act to Ahmedabad where the Assessing Officer had made the assessment prior to finalization of the assessment proceeding by the Assessing Officer of Kolkata; therefore, the order passed by the Assessing Officer, Kolkata being without jurisdiction was invalid and the same is hereby quashed.



7. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 15<sup>th</sup> May, 2025.**

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

*Sd/-*

**[Rakesh Mishra]**

Accountant Member

Dated: 15.05.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Ideal Fertilizers Pvt. Ltd., 704, Harekrishna Complex, 7<sup>th</sup> floor, Pritamnagar, Ellisbridge,, Ahmedabad, Gujarat, 380006.**
2. **I.T.O., Ward-1(1), Kolkata.**
3. CIT(A)-10, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata