

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1890 /KOL/ 2014
Assessment Year: 2010-2011**

***Income Tax Officer,.....Appellant
Ward-12(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069***

-Vs.-

***M/s. Indo Wagon Engineering Ltd.,.....Respondent
228A, A.J.C. Bose Road, 5th Floor,
Kolkata-700 020
[PAN: AABCI 1097 B]***

Appearances by:

*Shri Rajat Kumar Kureel, JCIT, D.R., for the Department
Shri Manoj Kataruka, Advocate, for the assessee*

Date of concluding the hearing : July 21, 2016

Date of pronouncing the order : September 28, 2016

O R D E R

This appeal is preferred by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-XII, Kolkata dated 21.07.2014 and in the solitary ground raised therein, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the addition of Rs.48,45,015/- made by the Assessing Officer on account of the alleged bogus liability.

2. The assessee in the present case is an investment company. The return of income for the year under consideration was filed by it on 21.09.2010 declaring total income of Rs.16,061/-. In the balance-sheet filed along with the said return, a sum of Rs.48,45,015/- was shown by the assessee as payable to M/s. Visage Equipments Pvt. Limited as sundry creditor. In order to verify the genuineness of the said liability, a notice under section 133(6) was issued by the Assessing Officer on 29.11.2012, which could not be served by the postal authority on M/s. Visage

Equipments Pvt. Limited. When this position was confronted by the Assessing Officer to Shri A.K. Goenka, Director of the assessee-company, he requested the Assessing Officer to send the notice again. Accordingly, a notice under section 133(6) was issued by the Assessing Officer on 14.12.2012, in response to which, a reply was filed by M/s. Visage Equipments Pvt. Limited confirming the balance shown by the assessee. It was, however, found by the Assessing Officer from the assessment records of another assessee, namely M/s. Raghav Industries Limited that a similar liability shown in the name of M/s. Visage Equipments Pvt. Limited was treated by the Assessing Officer as a bogus liability after verification. Following the stand taken in the case of Raghav Industries Limited, the liability shown by the assessee in the name of M/s. Visage Equipments Pvt. Limited was treated by the Assessing Officer as bogus and the same amounting to Rs.48,45,015/- was added by him to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 31.01.2013.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the addition of Rs.48,45,015/- made by the Assessing Officer by treating the liability shown by the assessee in the name of M/s. Visage Equipments Pvt. Limited as bogus for the following reasons given in his impugned order:-

"It is noted that the entire basis of assessment of the Assessing Officer is on the reliance of the Investigation Report as well as the Assessment Order framed in the case of Raghav Industries Limited. It is not known as to what is the status of the case of Raghav Industries Limited as the Appellant is not having any relationship with the company viz. Raghav Industries Limited, and if at all whatever is the outcome of the assessment framed is not known and not relevant in deciding this issue in hand. The Assessing Officer has not conducted any independent inquiry to find out whether the shares purchased from Visage Equipments Pvt. Ltd. were genuine or not. The prima facie details and findings submitted by the Appellant does not in any

manner point that there was any non- genuinity in respect of the shares purchased. The Appellant had purchased from Visage Equipments Pvt. Ltd. shares which has been even mentioned in the assessment order for an amount of RS.4,04,54,015/- and during the impugned assessment year the Appellant paid an amount of RS.3,56,09,000/- to Visage Equipments Pvt. Ltd. and the balance of Rs.48,45,015/- was standing as Sundry Creditors. Therefore, when the investment made by the Appellant are accepted by the Assessing Officer from the same party and when payments made during the year to the same party have been accepted by the Assessing Officer, then it is not understood as to how the Sundry Creditors amount is bogus?

The whole basis of the assessment and addition, in my opinion, is on a wrong footing and basis of another assessment order which does not fulfil the criteria or the tests for making additions in the case of the appellant. I am of the considered view that on the basis of the facts of the case, the issue in hand should have been introspected to come to a finding whether the Sundry Creditors are genuine or not. However, it is observed that the Assessing Officer has not come to any independent finding during the relevant year that the Sundry Creditors are not genuine except relying on or referring the assessment framed in the case of Raghav Industries Limited for the Asst. Year 2009-10.

In the light of the above discussion & finding, perusing the entire facts of the case, I am of the considered view that the addition made by the Assessing Officer based on entirely wrong footing and cannot stand the test of law. Hence, the addition made by the AO is hereby directed to be deleted. Thus these grounds of appeal of the appellant are allowed as indicated above”.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the impugned addition of Rs.48,45,015/- was made by the Assessing Officer to the total income of the assessee by treating the liability in the name of M/s. Visage Equipments Pvt. Limited as bogus by mainly relying on the assessment order passed in the case of another assessee namely M/s. Raghav Industries Limited, wherein the liability appearing in the name of the said party was treated by the Assessing Officer as bogus. As pointed out by the

ld. counsel for the assessee from the copies of relevant orders, the order of the Assessing Officer passed in the case of M/s. Raghav Industries Limited on this issue has already been reversed by the ld, CIT(Appeals) vide his order dated 30.09.2014 and the appeal filed by the Revenue against the said order has been dismissed by the Tribunal vide its order dated 20.01.2016 passed in ITA No.2268/KOL/2014 on account of low tax effect involved therein. Keeping in view this position as well as the reasons given by the ld. CIT(Appeals) in his impugned order, I find no infirmity in the impugned order of the ld. CIT(Appeals) deleting the addition of Rs.48,45,015/- made by the Assessing Officer to the total income of the assessee on account of the alleged bogus liability. The same, is therefore, upheld and this appeal of the Revenue is dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on September 28, 2016.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 28th day of September, 2016

- Copies to :*
- (1) ***Income Tax Officer,
Ward-12(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069***
 - (2) ***M/s. Indo Wagon Engineering Ltd.,
228A, A.J.C. Bose Road, 5th Floor,
Kolkata-700 020***
 - (3) ***Commissioner of Income Tax (Appeals)-XII, Kolkata;***
 - (4) ***Commissioner of Income Tax- ,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***