

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri Waseem Ahmed, AM]

I.T.A No. 1599/Kol/2012
Assessment Year: 2006-07

Income-tax Officer, Wd-9(2), Kolkata. Vs. M/s. Baba Basuki Commodities (P) Ltd.
(Appellant) (PAN: AABCB0390A)
(Respondent)

Date of hearing: 29.10.2015
Date of pronouncement: 30.10.2015

For the Appellant: Shri S. S. alam, JCIT, Sr. DR
For the Respondent: Shri Subash Agarwal, Advocate

ORDER

Per Shri Mahavir Singh, JM:

This appeal by revenue is arising out of order of CIT(A)-VIII, Kolkata in Appeal No.133/CIT(A)-VIII/Kol/2011-12 dated 31.08.2012. Assessment was framed by ITO, Ward-9(2), Kolkata u/s. 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2006-07 vide his order dated 24.10.2011.

2. The only issue in this appeal of revenue is against the order of CIT(A) deleting the addition made by AO on account of funds received from Shri Piyush Poddar amounting to Rs.5,00,000/- received by cheque no. 336669 dated 02.06.2005 and Rs.5,00,000/- received by cheque no. 377003 dated 14.09.2005 as assessee failed to explain the source of the same.

3. Briefly stated facts are that the AO received AIR information that assessee had received a sum of Rs.5 lacs on 02.06.2005 and Rs.5 lacs on 14.09.2005 aggregating to Rs. 10 lacs in its bank account bearing No. CD 985 with Central Bank of India, N. S. Road Branch, Kolkata by cheques. The AO required the assessee to explain the source of the same and source was explained that these cheques were received from one Shri Piyush Poddar, proprietor of M/s. P. P. Traders, 4, West, Ghoshpara road, Old Post Office, 24 Pgs (N) having PAN AFVPP1955P. It was explained that in the case of Piyush Poddar, assessment was completed for AY 2006-07 by ITO, Wd-51(3), Kolkata and in his bank account huge amount of cash was deposited, which was subsequently

transferred to various bank accounts through cheques. The assessee was also one of the beneficiaries of cheques issued by Piyush Poddar. According to assessee, this amount is explained in the hands of Piyush Poddar wherein entire amount was added in his hand by the department but the AO was not convinced and he made protective addition in the hands of the assessee. Substantive addition was made in the hands of Piyush Poddar. Aggrieved, assessee preferred appeal before CIT(A), who deleted the addition. Aggrieved, now revenue is in appeal before us.

4. We have heard rival submissions and gone through facts and circumstances of the case. At the outset, Ld. Counsel for the assessee filed copies of Tribunal's order in the case of Piyush Poddar in ITA No. 1050/K/2011 for AY 2006-07 dated 07.09.2015 and argued that the Tribunal has accepted the peak credit in the case of Piyush Poddar and hence, in the hands of beneficiary the amounts are explained. After going through the order of Tribunal in the case of Piyush Poddar, Ld. Counsel was specifically asked to read para 13 wherein a caveat was put by Tribunal that assessing peak credit in the case of Piyush Poddar will not absolve the beneficiaries from explaining the credits in their accounts. The relevant para 13 of Tribunal's order in the case of Piyush Poddar reads as under:

"13. However, we would like to make it clear that this direction the Ld. AO to assess the peak credit in this case should not be construed as a conclusive proof in the hands of the beneficiary in the said bank account for explaining their amounts. Accordingly, this issue is set aside to the file of the Ld. AO to complete the assessment in accordance with the directions mentioned hereinabove."

5. On this, Ld. Counsel for the assessee drew our attention to assessment order page 3 and reply of the assessee as reproduced in the assessment order, which reads as under:

"ii) It is on record that the assessee company had received a sum of Rs. 5,00,000/- through account payee cheque drawn on CD A/c. No. 1094 during the year under assessment as evidenced from / reflected in its account maintained with Central Bank of India.

iii) The above amount was received from M/s. P. P. Traders vide cheque No.336669 dt. 02/06/2005 as short term loan, which was refunded vide cheque No. 352278 dt. 15/07/2005.

iv) Further, the assessee company received a cheque No.377003 dt.14/09/2005 amounting to Rs. 5,00,555/- drawn on the said CD A/c. No. 1094 against share application found to have been applied by Rawatmal Pithisaria(HUF) for subscription to the share capital of the assessee company.

v) The above application money of Rs. 5 lacs was received on behalf of the applicant through banking channel, CD A/c. No. 1094 maintained with Central Bank of India by one Shri Piyush Poddar, proprietor of M/s. P.P. Traders whose sole activities, as

revealed on enquiry, was that of providing entries to parties through issuing cheques on receiving cash and his portion of commission. All such transactions were actually 'benami' in nature and conducted through the A/c. No. CD-I094 maintained with Central Bank of India."

Ld. Counsel for the assessee stated that this first amount of Rs.5 lacs vide cheque no. 336669 dated 02.06.2005 was short term loan which was refunded to Piyush Poddar vide cheque no. 352278 dated 15.07.2005 and the same amount was again received vide cheque No. 377003 dated 14.09.2005 and against these shares were allotted to Piyush Poddar to the extent of Rs. 5 lacs. Ld. Counsel for the assessee fairly conceded that only Rs. 5 lacs can be added because the initial Rs.5 lacs was returned back to Piyush Poddar by the assessee. On query from the bench, ld. Sr. DR fairly conceded that yes Rs. 5 lacs is to be added because the earlier Rs. 5 lacs received was returned back by the assessee to Piyush Poddar. We find that the plea of the assessee's counsel is quite reasonable and accordingly, we delete the addition of Rs. 5 lacs and sustain the balance addition of Rs. 5 lacs invested by assessee in allotting shares to Piyush Poddar. Accordingly, this addition of Rs. 5 lacs is sustained and balance Rs. 5 lacs is deleted. Appeal of revenue is partly allowed as indicated above.

6. In the result, the appeal of revenue is partly allowed.

7. Order is pronounced in the open court on 30.10.2015

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 30th October, 2015

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT – ITO, Ward-9(2), Kolkata.
2. Respondent – M/s. Baba Basuki Commodities (P) Ltd., 158, J. L. Bajaj Street, Kolkata-700 001.
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.