

**IN THE INCOME TAX APPELLATE TRIBUNAL
Kolkata Bench, KOLKATA
(Bench- "C")**

**BEFORE SRI ABY T.VARKEY, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

I.T.A No. 975/Kol/2013
Assessment Year: 2006-07

I.T.O Wd-3(4) Kolkata [PAN : AACCP7714M] (Appellant)	-Vs-	M/s Palpit Viniyog (P) Ltd. Kolkata (Respondent)
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For the Appellant	None (DR)
For the Respondent	None(AR)
Date of Hearing	27.12.2017
Date of Pronouncement	13 .01.2017

ORDER

Per Aby T.Varkey, JM

This is an appeal preferred by the Revenue against the order of CIT(A)-XX, Kolkata dated 16.01.2013 for AY 2006-07.

2. None appeared for both the parties. However, after perusal of the records and the grounds of appeal, we are of the opinion that we can dispose of the appeal without hearing both the parties.

3. The main grievance of the Revenue is that the Ld. CIT(A) has given relief to the assessee by admitting new evidences without seeking the remand report as envisaged under Rule 46A of the Income Tax Rules 1962 (hereinafter the Rules).

4. We have gone through the records carefully. We note that the AO after perusal of the audited balance sheet observes that the assessee company has received share application money from share applicants and since no details were produced before him came to the conclusion that assessee has introduced its own undisclosed income in the garb of share application money and in order to lower the taxable income and for evading the tax. Therefore, the AO treated the claim of assessee's share-application money of Rs. 85,00,000/- as undisclosed case credit u/s 68 and added it back to the total income of the assessee company.

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who after reproducing the written submission of the assessee at page 2 and 3 of the impugned order has noted that he has gone through the copy of the audited balance sheet for the financial years 2004-05 and also copy of the assessment orders for financial year 2004-05 and has observed that the assessee has inadvertently inserted a figure in the balance sheet of the year A. Yr. 2006-07 with regard to the share application which are mentioned as Rs. 16.50 Lakhs instead of Rs. 101.50 Lakhs and was of the opinion that there is no share application money received during the year under consideration. We take note that the assessee has stated before the CIT(A) that in the audited balance sheet of the year 31.03.2006 it was noted that the share application money is Rs. 101.50 Lakhs where as in the last year it was wrongly typed as Rs. 16.50 Lakhs instead of Rs. 101.50 Lakhs. So, it seems that there is an enhancement of share application of Rs. 85.00 Lakhs (Rs. 101.50 Lakhs – Rs. 16.50 Lakhs).

6. Be that as it may be, the Ld. CIT(A) has given the relief by going through the financials of earlier years and submissions made before him which was the basis on which relief has been granted. The Ld. CIT(A) has not stated as to whether the AO has erred in making the addition. The assessee itself has admitted to have made a mistake which must have prompted the AO to make the addition. The AO has clearly pointed out that the assessee was show-caused and enquired about the share application money to the tune of Rs. 85,00,000/-. But when there was no response from the assessee company, the AO had no other alternative but to make the

addition. In such a scenario without the assessee spelling out the first cause for not responding to the notice of the AO, the Ld. CIT(A) ought not have entertained evidences and admitted the same without complying with Rule 46A of the Rules. So, therefore, we are of the considered opinion that there is a violation of Rule 46A and in the interest of justice we set aside the order of the Ld. CIT(A) and remand the matter back to the file of the AO to *de novo* assess after hearing the assessee in accordance to law. The assessee company is directed to co-operate with the assessment proceedings.

7. In the result the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Court on 13.01.2017.

Sd/-
[Shri Waseem Ahmed]
Accountant Member

Sd/-
[A.T.Varkey]
Judicial Member

Dated : **13.01.2017**

{SC SPS}

Copy of the order forwarded to:

1. M/s. Palpit Viniyog (P) Ltd., 293/294, Bangur Avenue, Lake Town, Kolkata-95.
2. Office of the I.T.O., Ward-3(4), P-7, Chowringhee Square, Aayakar Bhawan, Kolkata-69.
3. CIT(A)-XX, Kolkata
4. CIT -XII, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches