

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 259/RPR/2022

निर्धारण वर्ष / Assessment Year : 2011-12

Bhatia Energy and Minerals Pvt. Ltd.
Near Bank of India, Dayalband,
Bilaspur (C.G.)-495 001
PAN : AADCB8992N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Bilaspur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.03.2023

घोषणा की तारीख / Date of Pronouncement : 16.03.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 17.10.2022, which in turn arises from the order passed by the A.O under Sec. 143(3)/147 of the Income-tax Act, 1961 (in short 'the Act') dated 28.12.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal before us:

“Gr.No.1

1. On the facts and circumstances of the case and in law, reasons recorded without having any tangible material for escaped income of Rs.25,00,000/- based on unverified information received from Investigation wing which is incorrect & on erroneous footings; without application of mind by the Ld. AO on borrowed satisfaction; merely on presumption & surmises; more so, addition has been made of Rs.25,00,000; reopening u/s148/147 is invalid & is liable to be quashed.

Gr.No.2

2. On the facts and circumstances of the case and in law, approval granted by Ld PCIT u/s151(1) in most mechanical & routine manner without application of mind on the wrong reasons recorded for Rs.25,00,000/-, which is not valid; in absence of a valid approval as mandated by law u/s151(1), reopening u/s147/148 is invalid, bad in law and is liable to be quashed as held in Kalpana Shantilal Haria (2017) (Bom HC); Sea Glimpse Investments (P) Ltd (2021) (Boni HC); Synfonia Tradelinks (P) Ltd (2021) (Del HC); NC Cables Ltd (2017) (Del HC); S Goyanka Lime & Chemical Ltd (2015) (SC); Central India Electric Supply Co Ltd (2011) (Del HC); Chhugamal

Rajpal (1971) (SC); Omkam Developers Ltd (2021) (Del-Trib); Madhu Apartment (P) Ltd (2021) (Del-Trib); Alankar Commodeal (P) Ltd (2022) (Kol-Trib); Maheshwari Roller Flour Mills (P) Ltd (2020) (Del-Trib).

Gr.No.3

3. On the facts and circumstances of the case and in law, the Ld. CIT Appeal Faceless has erred in confirming addition of Rs.25,00,000/- u/s 68 on count of unexplained share capital/premium; while the assessee-Co has discharged onus cast upon it u/s 68 by submitting various documentary material/evidences which has not been proved false/untrue by the Ld AO by bringing material/evidence on record to prove contrary by conducting necessary enquiry; addition of Rs.25,00,000/- is liable to be deleted.

Gr.No.4

4. On the facts and circumstances of the case and in law, the Ld. CIT Appeal Faceless erred on facts and in law in passing the order u/s 250 on 17.10.2022 ignoring that appellant in response to notice dated 07.10.2022 had filed an adjournment seeking time upto 24.10.2022 and thus, the order passed by him without providing opportunity hearing is bad in law.

Gr.No.5

5. The Ld. CIT Appeals Faceless has erred on facts and in law in not deciding the grounds appeal on merits.

Gr.No.6

6. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before at the time of hearing.”

2. On the basis of information gathered by the A.O from the office of the ADIT(Inv.), Bilaspur that the assessee company during the year under consideration i.e. F.Y.2010-11 as a beneficiary had received share capital/premium of Rs.25 lac from M/s. Debraj Vincom Pvt. Ltd., a Kolkata based company, its case was reopened u/s.147 of the Act. Notice u/s.148 of the Act was issued to the assessee company.

In compliance, the assessee company had filed its return of income on 16.09.2018 declaring an income of Rs. Nil. Copy of the “reasons to believe” at the request of the assessee were made available by the A.O. Objections raised by the assessee as regards the jurisdiction assumed for reopening of its case u/s.147 of the Act were disposed off by the A.O vide his letter dated 01.10.2018.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee company was in receipt of share application money of Rs.25 lac from M/s. Debraj Vincom Pvt. Ltd. As the assessee had failed to substantiate the authenticity of the aforesaid transaction of receipt of share application money from the aforementioned share subscriber company, therefore, the A.O vide his order passed u/ss.143(3)/147 dated 28.12.2018 dubbed the same as unexplained cash credit u/s.68 of the Act and determined the income of the assessee company at Rs.25,00,000/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me. As the assessee appellant despite having been intimated about the hearing of appeal had failed to put up an appearance, therefore, I am constrained to proceed with

and dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963, i.e, after hearing the respondent revenue and perusing the orders of the lower authorities.

6. As is discernible from the assessment order, the assessee in the course of the assessment proceedings had in order to substantiate the authenticity of the transaction of receipt of share application money placed on record bank statement, audited accounts and copy of return of income of the investor company. The A.O in order to verify the genuineness of the transaction in question though issued an e-mail notice u/s.133(6) of the Act dated 22.12.2018 to the share subscriber company but no reply was received by him. Also, the spot verification carried out by the Inspector of Income Tax, Kolkata revealed that no such company was existing at the given address. In reply, it was submitted by the assessee company that the e-mail id of M/s. Debraj Vincom Pvt. Ltd. was vsp 93@rediffmail.com and on verification it was informed that as no notice u/s.133(6) was received at the said e-mail id, therefore, there was no occasion for the subscriber company to comply to the same. However, the A.O did not accept the aforesaid claim of the assessee. Observing that the share subscriber company had provided its e-mail id as nkandco@gmail.com in the company master data with the Ministry of Corporate Affairs site, therefore, the A.O rejected

the aforesaid explanation of the assessee company. Although, it was the claim of the assessee company that the share subscriber company had shifted its address but the same was summarily rejected by the A.O for the reason that no such company was found existing at the given address. The A.O on the basis of his aforesaid observations, being of the view that the assessee company had failed to discharge the onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of the aforesaid transactions, thus, held the amount of Rs.25 lac as unexplained cash credit u/s.68 of the Act.

7. On a perusal of the order of the CIT(Appeals), I find that he had merely endorsed the observation of the A.O for the reason that the assessee company despite having been afforded sufficient opportunity had even in the course of the proceedings before him failed to come forth with any explanation. Accordingly, the CIT(Appeals) upheld the view taken by the A.O and dismissed the appeal.

8. I have given a thoughtful consideration to the orders of the lower authorities and the contentions advanced by the Ld. Departmental Representative (for short 'DR') to support the order of the A.O. Admittedly, it is a matter of fact borne from record that the assessee on being called upon to substantiate the identity,

creditworthiness and genuineness of the transaction of receipt of share application money of Rs.25 lac had placed on record certain documents, viz. bank statement, audited accounts and copy of the return of income of the investor company. However, I find that the aforesaid documents were summarily rejected by the A.O without pointing out any infirmity or shortcomings in the same. Apart from that, it is not the case of the A.O that the assessee despite directions had failed to place on his record any additional documents/material in the course of the proceedings before him. On a perusal of the assessment order, I find that the major aspect that had weighed in the mind of the A.O for dubbing the transaction as bogus/dumb was the fact that there was no compliance by the share subscriber company to the notice issued u/s.133(6) of the Act that was issued at its e-mail id i.e. nklandco@gmail.com. On a perusal of the assessment order, it transpires that assessee company had brought to the notice of the A.O that the e-mail id of the share subscriber company i.e. M/s. Debraj Vincom Pvt. Ltd was vsp 93@rediffmail.com and as no notice u/s.133(6) of the Act was received on the same, therefore, there was no occasion for it to effect any compliance to the same. However, I find that the A.O instead of issuing notice u/s.133(6) of the Act at the e-mail id provided by the assessee

company had hushed through the proceedings and taken a view that the transaction was a bogus transaction.

9. In so far the observation of the A.O that the share subscriber company was not available at its address, it transpires from a perusal of the assessment order that though it was clarified by the assessee company that there was a change in the address of the share subscriber company, but the said fact was also bypassed by the A.O. In sum and substance, for the reason that there was no compliance of the notice issued u/s.133(6) and that the share subscriber company was not available at its address that the A.O had held the entire amount of share application money of Rs.25 lac as unexplained cash credit u/s.68 of the Act.

10. I have given a thoughtful consideration to the issue in hand and is unable to comprehend as to what stopped the A.O for issuing notice u/s.133(6) of the Act to the investor company at the e-mail id that was provided by the assessee, viz. vsp 93@rediffmail.com. Also, I am unable to fathom that as to for what reason no spot enquiry as regards the availability of the investors company was carried out at the address where the share subscriber company was claimed to have shifted its office. It is also borne from the record that no infirmity had been pointed out by the A.O as regards the documents

which were placed on record by the assessee company to substantiate the authenticity of the transaction in question, viz. bank statement, audited accounts and copy of the return of income of the investor company. In fact, a perusal of the assessment order reveals that the A.O instead of carrying out necessary verifications had focused mere on referring to certain judicial pronouncements /orders. I am unable to comprehend as to how the A.O could have hushed through the proceedings without making necessary verifications and pointing out any infirmity in the documentary evidences which were placed on his record by the assessee company and summarily dubbed the transaction in question as a bogus transaction.

11. Also, the approach of CIT(Appeals) does not inspire any confidence. A perusal of the order of the CIT(Appeals) reveals that he had merely endorsed the view taken by the A.O. Again what details were being looked for by the CIT(Appeals) is beyond comprehension. I am unable to persuade myself to subscribe to the view taken by the lower authorities in the absence of necessary verifications of the factual position by them. At the same time the conduct of the assessee also does not inspire any confidence. Neither the assessee company had before the A.O or before CIT(Appeals) placed on record any such clinching documentary evidence which would substantiate

the authenticity of the transaction in question. Considering the totality of the facts involved in the case before me, I am of the view that the characterization of the share application money of Rs.25 lac by the A.O as unexplained cash credit u/s.68 of the Act is clearly devoid and bereft of necessary verifications by him. At the same time the non-cooperative and evasive conduct of the assessee before the lower authorities can also not be lost sight of.

12. I am, thus, in terms of my aforesaid observations of the considered view that the matter in all fairness requires to be restored to the file of the A.O, with a specific direction that he shall in the course of set-aside proceedings call for the requisite details and make necessary verifications as regards the identity, creditworthiness and genuineness of the transaction under consideration. Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate the authenticity of the transaction of receipt of share application money on the basis of fresh documentary evidence in the course of set-aside proceedings. Accordingly, the order of the CIT(Appeals) is set-aside and the matter is restored to the file of the A.O in terms of my aforesaid observations.

13. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 16th day of March, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 16th March, 2023.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur