

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI LALIET KUMAR, JM AND SHRI M. BALAGANESH, AM

ITA No. : 6933/Mum/2019
Assessment Year: 2007-08

Asst. CIT-10(3)(2) 2 nd Floor, Room No. 509, Aayakar Bhawan, M. K. Road, Churchgate, Mumbai-400 020	Vs.	M/s. P. G. Holiday Inn Pvt. Ltd. 503, Acme Regency, S. V. Road, Vile Parle (E), Mumbai-400 066 PAN : AACCP 4461 D
(Appellant)		(Respondent)

Appellant by : Shri R. A. Dhyani
Respondent by : Shri Pramod Vaidya

Date of hearing : 01.12.2021
Date of Pronouncement : 03.12.2021

ORDER

Per Laliet Kumar, JM :

The present appeal is filed by the Revenue against the order dated 13.08.2019 passed by Id. CIT(A)-2, Panaji, Goa for Assessment Year 2007-08 on the following grounds:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of addition made for the reason of assessee being not able to prove genuineness and credit worthiness of share capital and securities premium."*

2. *The appellant prays that the order of the Ld.CIT (A) on the above grounds be set aside and that of the AO be restored.*

3. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.*

2. At the outset, the Id. Authorised Representative (Id. AR for short) for the assessee has submitted that the assessee is not pressing the transfer of appeal to Goa

jurisdiction and he seeks to withdraw the application filed by the assessee for the purposes. In view of the statement given by the Id. AR, the application for transfer of appeal is dismissed as withdrawn.

3. The Id. AR had submitted that in the present case, the sole issue raised by the Revenue is already settled and decided against the assessee and for that purpose, it was submitted that the case is covered in favour of the assessee by virtue of the judgment of Hon'ble Bombay High Court in the case of *Pr. CIT vs. Shree Rajlakshmi Textile Park (P.) Ltd.* 113 taxmann.com 2 (Bom), *CIT vs. Usha Stud Agricultural Farms Ltd.* (301 ITR 384 (Del)) and *CIT vs. Lovely Exports (P.) Ltd.* (216 CTR 195 (SC)).

On merit, it was submitted that the Id. CIT(A) has rightly deleted the addition as the share capital and share premium were not received by the assessee in the year immediately preceding the assessment year and, therefore, the same cannot be charged to the income of the assessee for the assessment year.

4. The Id. Departmental Representative (Id. DR for short) for the Revenue relied upon the order passed by the Assessing Officer (A.O. for short).

5. We have heard the rival contentions of the parties and perused the material available on record. In the present case, the A.O. has made the addition u/s.144 of the Act, as none appeared on behalf of the assessee during the assessment proceedings and from the perusal of the balance sheet and profit and loss account, it transpired to the A.O. that the assessee has issued the share capital of Rs.42,50,000/- and the share premium was charged for Rs.1,57,50,000/- schedule 2 of the balance sheet.

6. The assessee had also placed on record nine confirmation letters, the summary of the confirmation letters are as under:

Sr. No.	Name	Amount	Description	Date of outstanding of amount
1	Mrs. Anjali Pathak	Rs.12,50,000/-	For issue of shares at Rs.10/- for 1,25,000 shares	date is not mentioned
2	Mr. Mahendra Mehar Singh Gujral	Rs.12,50,000/-	For issue of shares at Rs.10/- for 1,25,000 shares	date is not mentioned
3	M/s. Star Bio Source Private Limited	Rs.25,00,000/-	Investment in equity shares	30.12.2005
4	M/s. Michigan Traders Pvt. Ltd.	Rs.25,00,000/-	Investment in equity shares	04.01.2006
5	M/s. Plasticon Industries Limited	Rs.25,00,000/-	Investment in equity shares	05.01.2006
6	M/s. Jajodia Textiles Mills Pvt. Ltd.	Rs.10,00,000/-	Investment in equity shares	23.02.2006
7	M/s. Abode Hotels Limited	Rs.25,00,000/-	Investment in equity shares	31.12.2005
8	M/s. Mahasakti Pipes (P) Ltd.	Rs.25,00,000/-	Investment in equity shares	30.12.2005
9	M/s. Riddish Holdings Private Limited	Rs.25,00,000/-	Investment in equity shares	30.12.2005

From the perusal of the above noted table, it is abundantly clear that there is no detail of making the payment by the said two persons namely Anjali Pathak and Mahendra Mehar Singh Gujral in the confirmation letters. No bank statement of these two persons were provided to the Bench.

7. In our considered opinion, it is necessary for the lower authorities, more particularly the Id. CIT(A) to record, as to when the payment for issuance of shares were received by the assessee company in its books of accounts or, in other words, when the amount were credited in the account of the assessee . Since, no discussion have taken place in the entire order passed by the Id. CIT(A) , further, we noticed that in written submissions also no such details have been filed before us, on the basis of which it can be deduced as to the date of credit of the amount in the books of the assessee . interestingly in the balance sheet also there were no outstanding loans/ amount for the earlier years. In absence of these documents and information, it will be against the interest of justice and law to decide the issue merely on the basis of the judgement relied upon by the Id. AR and vague finding of the CIT(A) .

8. The Id. CIT(A) has merely relied upon the confirmation letter given by the respective shareholders, confirming the transaction along with the loan transactions before us as well as before the Id. CIT(A). No books of accounts of the assessee were produced before us showing credit entry of the amounts invested in the shares prior to the previous years. For the purposes of section 68, it is essential that there must be credit entry in the books of account in the previous year for which the addition are sought to be made. However, the Id. CIT(A) without verifying the credit entry in the books of the assessee, have deleted the addition merely on the basis of the bank statement of other persons. That cannot be countenanced as what is required to be satisfied by the Id. CIT(A) , was that, there exist credit entry in the books of accounts of the assessee for the years prior to the previous year.

8.1 Further, we may likely note that the assessee feeling aggrieved by the order passed by the Id. CIT(A) and preferred an appeal before the ITAT, Panaji, vide ITA No. 280/Panaji/2019. The ITAT, Panaji vide order dated 09.03.2021 has remanded back the matter back to the file of the Id. CIT(A) with the following directions:

7. *Heard both the parties and perused the material available on record. We note that the assessee filed its return of income on-line giving jurisdiction to ACIT, Circle-1, Margao, Goa and received first notice u/s.142(1) of the Act at registered office situated at in Mumbai. Immediately, the assessee mane petition to the concerned AO to transfer the file to the ACIT, Circle-1, Margao, Goa as the principal place of business falls within the jurisdiction of ACIT, Cirlce-1, Margao, Goa but however the AO rejected the same. The CIT(A) also acknowledged the same in its order in para 3.1 of the impugned order. The main contention of the ld. AR is that all the necessary evidences regarding the assessment are in the Administrative Office situated at Margao, Goa and no details were available in the Mumbai registered office and that is why the assessee could not file any details before the AO at Mumbai. We note that as discussed above the AO at Mumbai proceeded to complete the assessment u/s. 144 of the Act. Amongst the additions made by the AO the assessee made contentions before the CIT(A) regarding the additions made on account of Share Capital and*

Share Premium and considering the same, the CIT(A) deleted the same vide para 3.3 of the impugned order. Regarding the other addition made on account of other loans were confirmed due to the fact that there were no details filed by the assessee before the AO nor in the First Appellate proceedings. The assessee filed evidences in the form of confirmations loans, copy of Income Tax returns of two Directors by way of paper book before us and on examination of the same, we note that the said evidences are crucial and necessary to decide the issue involved in the present appeal and also goes to the root of assessee as rightly contended by the ld. AR. In this regard an affidavit of General Manager of assessee filed before us stating the loan confirmations of two Directors Shri Mahendra Singh Gujaral and Miss Anjali Pathak received initially and were not in prescribed format and did not contain requisite details. The said details could not be filed before the CIT (A) in time as it were not in proper format Further, he stated the error/lapse in non-submissions of the confirmation loans in time before the CIT(A) is unintentional and is due to genuine We find that the addition made on reason of receiving the same late. account of other loans requires verification of details but however no details were filed before the AO and CIT(A) as it is evident from the assessment order as well as impugned order. We note that the details filed before this Tribunal by way of paper book are necessary for the fair adjudication of the issue involved and in the interest of justice taking into consideration the facts and circumstances of the case as rightly conceded by the ld. DR, we deem it proper to remand the matter to the file of CIT(A) for its fresh adjudication. The assessee is liberty to file evidences, if any, in support of its claim. Accordingly, the grounds raised by the assessee are allowed for statistical purpose.

9. In light of the above, we are of the opinion that the matter is required to be remanded back to the file of the ld. CIT(A) with a direction to examine the matter afresh and find out whether the shares were issued at a premium and if, the answer is yes, whether the amount for issuance of shares were credited in the books of account of the assessee company for issuing the shares. If the shares were issued and the amounts were received and credited by the assessee company in earlier years, i.e prior to assessment year under consideration, then the addition may be deleted. However, in

case, the A.O. on factual verification conclude that the amounts are credited in the year under consideration, then onus lies on the assessee to show identity, creditworthiness of the depositors and genuineness of transactions to the satisfaction of the Id CIT(A), such is the mandate of section 68 of the Act. Therefore the assessee is directed to discharges its onus first before Id. CIT(A), he may examine the same and decide the issue afresh. Needless to say that while deciding the issue, the Id. CIT(A) shall make sure that the requisite parameters *qua* section 68 are duly satisfied and to the satisfaction of the Id.CIT(A). CIT(A) is directed to decide the matter denova after affording the opportunity of hearing to the assessee and AO.

10. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

Order pronounced on this 03rd day of December, 2021.

Sd/-

- Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

MUMBAI, Dt: 03.12.2021
Roshani, Sr. PS

Copy forwarded to :

1. The Appellant,
2. The Respondent,
3. The C.I.T.
4. CIT (A)
5. The DR, Bench, ITAT, Mumbai

BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai