

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.4208/Mum./2018
(Assessment Year : 2009-10)

Income Tax Officer
Ward-13(3)(3), Mumbai

..... Appellant

v/s

RTG Exchange Ltd.
Plot no.115/IT 03, Raj Chambers
R.K. Paramhans Marg, Andheri (East)
Mumbai 400 069 PAN – AABCG0985A

.....Respondent

ITA no.4066/Mum./2018
(Assessment Year : 2009-10)

RTG Exchange Ltd.
RTG House, 3 Chapeal Road
Off Hill Road, Bandra (West)
Mumbai 400 050 PAN – AABCG0985A

..... Appellant

v/s

Income Tax Officer
Ward-13(3)(3), Mumbai

.....Respondent

Assessee by : Shri Bimlendu Bhushan
Revenue by : Smt. Mahita Nair

Date of Hearing – 30/01/2023

Date of Order – 05/04/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The captioned cross–appeal has been filed challenging the impugned order dated 28/03/2018, passed under section 250 of the Income Tax Act,

1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-21, Mumbai, [*learned CIT(A)*], for the assessment year 2009-10.

2. In its appeal, the assessee has raised the following grounds: -

"1. On the basis of facts and circumstances of the case, the Hon'ble CIT(A) has erred in confirming an addition of Rs.19,80,000/- on account of Unsecured Loans under section 68 of the Income Tax Act, 1961. It is submitted that the amount of Rs.19,80,000/- was received by the appellant in earlier years and not during the year under consideration. It is therefore prayed to delete the addition and necessary directions shall be given in this regard.

2. Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal."

3. While the Revenue has raised following grounds in its appeal: -

"1 On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the additions of Rs.8,82,03,600/- out of Rs.9,01,83,600/- on account of receipts of share capital/share premium received from investor by invoking the provisions of Section u/s.68 of the income tax Act, 1961.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the additions of Rs.8,82,03,600/- out of Rs.9,01,83,600/- on account of receipts of share capital/share premium received from investor without appreciating the fact that the assessee could not establish the genuineness, identity of investors & creditworthiness of lenders beyond doubt, and hence the addition was maintainable as per proviso to Section 68 of the I.T.Act 1961.

3. The appellant prays that the order of the Id.CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to add, amend or alter any grounds or add a new ground which may be necessary."

4. The brief facts of the case as emanating from the record are: The assessee is engaged in the business activities of a full-fledged money changer holding RBI license. For the year under consideration, the assessee filed its return of income on 30/09/2009 declaring a total income of Rs.4,66,398 under the normal provisions and book profit of Rs.4,69,722 under section 115JB of

the Act. The return filed by the assessee was processed under section 143(1) of the Act. Thereafter, based on the information received from ACIT, Range 9(1) that the assessee company had taken share premium amounting to Rs.8,95,44,000 during the year under consideration, reassessment proceedings under section 147 of the Act were initiated and notice dated 30/03/2014 under section 148 of the Act was issued and served on the assessee. In response to the aforesaid notice, the assessee submitted that its original return filed on 30/09/2009 may be treated as a return filed in response to the notice issued under section 148 of the Act. Upon receipt of the reasons for reopening the assessment, the assessee also filed its objections challenging the initiation of reassessment proceedings in its case. The said objections were rejected and communicated to the assessee on 23/02/2015. The Assessing Officer ("**AO**") issued summons under section 133(6) of the Act to the parties whose complete address was provided by the assessee. However, in certain cases said summons was received back by the postal **authorities under the remark 'not known'**. While some investors filed incomplete details without the proper bank accounts. In absence of sufficient proof of creditworthiness of the investors or the subscribers, the AO vide order dated 27/03/2015 passed under section 143(3) r/w section 147 of the Act treated the entire amount of share premium of Rs.8,95,44,000 and share capital of Rs.6,39,600 as bogus and unexplained cash credit and added the aggregate amount of Rs.9,01,83,600 to the total income of the assessee under section 68 of the Act.

5. The learned CIT(A) vide impugned order granted partial relief to the assessee and directed the deletion of Rs.8,82,03,600 as genuine share application money and an amount of Rs.19,80,000 as not explained. Being aggrieved, both parties are in appeal before us.

6. We have considered the rival submissions and perused the material available on record. As per the assessee, it had issued 6,39,600 equity shares at a face value of Rs.10 each and a premium of Rs. 140 each. As per the assessee, the following subscribers have subscribed to its equity shares: -

<i>Sl. No.</i>	<i>Name of subscriber</i>	<i>Total No. of shares</i>	<i>Amount (in Rs.)</i>
1.	<i>Cicago Commodities Pvt. Ltd.</i>	<i>3,60,000</i>	<i>5,40,00,000</i>
2.	<i>Dhaval Chandan</i>	<i>61,600</i>	<i>92,40,000</i>
3.	<i>Buniyad Chemicals Ltd.</i>	<i>3,300</i>	<i>4,95,000</i>
4.	<i>Lalit Khilani</i>	<i>6,600</i>	<i>9,90,000</i>
5.	<i>Dilip Chandan</i>	<i>61,600</i>	<i>92,40,000</i>
6.	<i>Pravin Chandan</i>	<i>61,600</i>	<i>92,40,000</i>
7.	<i>Rajesh Chandan</i>	<i>61,600</i>	<i>92,40,000</i>
8.	<i>Talent Infoways Ltd.</i>	<i>3,300</i>	<i>4,95,000</i>

7. In respect of subscribers at serial No. 3, 4, and 8, in the aforesaid table, the learned CIT(A) held that the receipt of investment by these investors is not proved by substantial documentary evidence and accordingly the learned CIT(A) upheld the addition made by the AO. However, in respect of remaining investors i.e. at serial No. 1, 2, 5, 6, and 7, the learned CIT(A) accepted the submissions of the assessee and directed the AO to delete the addition in respect of these entities. Therefore, in order to decide the grievance of both

parties, it is relevant to examine the information vis-à-vis the findings of the lower authorities in respect of each entity.

8. In respect of Cicago Commodities Private Limited, the assessee filed confirmation, ITR acknowledgement, bank statement, balance sheet, and profit and loss account. During the appellate proceedings, the learned CIT(A) directed the AO to furnish its report in respect of details furnished by the assessee. The AO vide its letter dated 24/11/2016, forming part of the paper book on pages 159-161, submitted that information under section 133(6) of the Act was sought from Cicago Commodities Private Limited, but the notice was returned unserved. The AO submitted that as per the balance sheet of this entity, as on 31/03/2009, investment of Rs.4.73 crores has been made, while the party confirmed that share purchase of Rs.5.40 crores. Thus it was submitted that the party has not confirmed the actual amount invested. On the basis of the details filed by the assessee, the learned CIT(A) held that the investment made by the investor which was shown in the books of accounts of the investor is the amount which was received by the assessee. The learned CIT(A) also held that all the details were available with the AO, but the AO did not consider the same. Accordingly, the learned CIT(A) accepted the submissions of the assessee. We find that the learned CIT(A) did not examine the objections of the AO in its remand report regarding share investment by Cicago Commodities Private Limited. Further, we find that the assessee has not produced the party as required by the AO during the remand proceedings.

9. In respect of Mr. Dhaval Chandan, Mr. Dilip Chandan, Mr. Pravin Chandan, and Mr. Rajesh Chandan, the assessee filed confirmation, ITR

acknowledgement, Ledger account, capital account, bank statement. In its remand report, the AO, inter-alia, submitted that from the bank statement of the investors **it is evident that prior to the transfer of money to the assessee's** account, Mr. Dhaval Chandan, Mr. Dilip Chandan, Mr. Pravin Chandan, and Mr. Rajesh Chandan received the money from some other entity. The learned CIT(A) vide impugned order held that the AO has reported that said amount was transferred from M/s VRLA Manufacturing Company Private Limited, however, the said objection is not relevant as the assessee can utilise the amount anywhere as per the requirement of its business. We find that the assessee is required to satisfy the condition of identity and creditworthiness of the investors and the genuineness of the transaction. However, the learned CIT(A) did not examine the aspect of creditworthiness of the investor in light of the objections raised by the AO in its remand report that the money was received by the investors from some other entity before being transferred to the assessee. During the hearing, the learned Authorised Representative submitted that all the above 4 investors are brothers and partners in M/s VRLA Manufacturing Company Private Limited from whom the money was received. However, this aspect needs verification which is not done by any of the lower authorities. Further, we find that the assessee has not produced the parties as required by the AO during the remand proceedings.

10. In respect of Buniyad Chemicals Ltd., Mr. Lalit Khilani, and Talent Infoway Ltd., the assessee, inter-alia, filed confirmation, ITR acknowledgement, bank statement, balance sheet, and profit and loss account. During the remand proceedings, the assessee submitted that there is no

transaction between these parties and the assessee, during the year under consideration and Buniyad Chemicals Ltd. and Talent Infoway Ltd. paid Rs.5 lakhs during the financial year 2007-08. In the case of Lalit Khilani, the transaction was done in the financial year 2005-06 with Mr. Prakash H. Gadiya of "*Gadiya Global Securities*" and not in "*Gadiya Global Forex Ltd.*". The learned CIT(A) vide impugned order did not agree with the submissions of the assessee and held that the receipt from the investors was not proved by substantial documentary evidence. In this regard, it is pertinent to note that the question of the creditworthiness of the investor can be raised only in the year in which the payment has been made. It is the plea of the assessee that there is no transaction among the parties except the allotment of shares for which the payment was made in the preceding financial year. Thus the Revenue can question the creditworthiness of the entity in the year in which the payment is made. However, we find that without examining the aforesaid aspect the plea of the assessee was rejected. Further, we find that the assessee has not produced the parties as required by the AO during the remand proceedings.

11. Therefore, in view of the aforesaid findings, we deem it appropriate to remand this matter to the file of the AO for *de novo* adjudication after necessary examination/verification of the various aspects as highlighted above. Since the matter is remanded for fresh adjudication, the assessee shall be at liberty to adduce any evidence to prove the genuineness of the transaction and the identity and creditworthiness of the investors. The assessee is directed to comply with all the directions of the AO for complete

adjudication of this matter. As a result, grounds raised by the assessee as well as by the Revenue in the present cross-appeal are allowed for statistical purposes.

12. In the result, the present cross-appeal is allowed for statistical purposes.

Order pronounced in the open Court on 05/04/2023

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/04/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai