

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'B', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.1085/Kol/2023
Assessment Year: 2012-13

Income Tax Officer, Ward-4(3),Kolkata **Appellant**
vs.
Alert Consultants & Credit Pvt. Ltd. **Respondent**
22, R. N. Mukherjee Road, Kolkata-700001.
(PAN: AAFCM8400N)

Appearances by:

Shri Gautam Patra, Sr. DR appeared on behalf of the Appellant

Shri S. K. Tulsian, Advocate & Sm. Lata Goyal, ACA appeared on behalf of the Respondent

Date of concluding the hearing: November 20, 2024

Date of pronouncing the order: November 25, 2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the revenue against the order dated 30.03.2023 of the Ld. Commissioner of Income Tax, (Appeal), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AY 2012-13.

2. The appeal of the revenue is time barred by 130 days. A separate application for condonation of delay has been filed by the Income Tax Officer, Ward-4(3), Kolkata (hereinafter referred to as the "AO").

3. At the outset, the Ld. Counsel for the assessee has invited our attention to the impugned order of the Ld. CIT(A), which is dated 30.03.2023. The Ld. Counsel has further invited our attention to page 23 of the paper book, wherein, a certification has been given by Pr. Commissioner of Income Tax-II, Kolkata that the impugned order of the Ld. CIT(A) was received in this office

on the same day i.e. on 30.03.2023. The Ld. Counsel, therefore, has submitted that it is evident from the own certificate of the Ld. Pr. CIT that the date of service on the revenue of the impugned order of the Ld. CIT(A) was 30.03.2023. The Ld. Counsel has further invited our attention to the application/affidavit for condonation of delay, wherein, the concerned ITO has given date wise reasons for delay in filing of the appeal, the contents of which are reproduced as under:

<i>S. No.</i>	<i>Dates</i>	<i>Remarks for delay appeal</i>
1.	30.03.2023	<i>Date of order of Ld. CIT(A), NFAC</i>
2.	21.04.2023	<i>Order downloaded from system</i>
3.	21.04.2023-17.07.2023	<i>Tried to locate the Assessment Record to give Appeal Effect and for further proceeding</i>
4.	18.07.2023	<i>Communication of CIT(A) order from Ld. PCIT-2 Kol. Last date of filing an appeal before ITAT is 28.05.2023.</i>
5.	19.07.2023 – 08.09.2023	<i>File was not readily available inspite of so many efforts and delay due to tracing out the records.</i>
6.	09.09.2023 – 10.09.2023	<i>Holidays being Saturday and Sunday</i>
7.	11.06.2023	<i>Drafting of ASR and sending the same.</i>
8.	12.09.2023	<i>File pending with onward transmission with Range Head.</i>
9.	13.09.2023 – 03.10.2023	<i>Pending with Ld. PCIT-2, Kol to decide for filing appeal before ITAT.</i>
10.	04.10.2023	<i>Received approval from Ld. PCIT-2, Kolkata</i>
11.	05.10.2023	<i>Tried to submit online but online is not allowing to file.</i>
12.	06.10.2023	<i>Submitting the paper book to file this appeal.</i>

Delay in 130 days which may kindly be condoned.”

4. The Ld. Counsel inviting our attention to column 2 of the above reproduced chart submits that though the order was received in electronic format on 30.03.2023 by the AO, however, the same was downloaded by him on 21.04.2023.

4.1. He inviting our attention to column 3 of the aforesaid chart has submitted that the AO has deposed that for the period 21.04.2023 to 17.07.2023 he tried to locate the assessment record to give appeal effect

and for further proceeding. The Ld. Counsel, in this respect, has submitted that a perusal of the aforesaid comments would reveal that neither there was any direction from the Commissioner/Pr. Commissioner or there was any proposal to file appeal against the impugned order nor the Ld. CIT(A). The AO was just trying to locate the assessment record to give appeal effect. There was no proposal or correspondence initiated till the stipulated last date of limitation for filing the appeal against the impugned order.

4.2. The Ld. Counsel has further invited our attention to column 4 of the aforesaid reproduced chart and submitted that it was only on 18.07.2023 that a communication of the order of the Ld. CIT(A) was received by the AO from the Ld. Pr. CIT. It is not mentioned in the said column that there was any direction of the Ld. Pr. CIT to file the appeal against the said order. However, only comment that has been mentioned is that the last date of filing the appeal before ITAT was 28.05.2023. The Ld. Counsel, in this respect, has submitted that though the order in electronic form was duly available to the AO, as on the date of passing of the order itself, which was downloaded by him on 21.04.2023, however, the order of the Ld. CIT(A) was communicated in physical form by the Ld. Pr. CIT on 18.07.2023, whereas, the last date for filing the appeal before the ITAT was 28.05.2023. The order was communicated by the Ld. Pr. CIT to the AO after the last date of limitation and as such there was no reasonable cause or justification for the aforesaid delay.

4.3. The Ld. Counsel has further invited our attention to column 5 of the aforesaid chart to submit that the Ld. AO has mentioned that for the period from 19.07.2023 to 08.09.2023, the file was not readily available with him in spite of so many efforts and that the delay occurred due to tracing out the records. The Ld. Counsel, in this respect, has submitted that the aforesaid deposition made by the concerned ITO was factually wrong and incorrect. He, in this respect, has invited our attention to pages 27 and 28 of the paper

book, which is a copy of the order sheet of the assessment records, the contents of which, for the sake of ready reference are reproduced as under:

20.07.2023	Seen order u/s. 250 of the I.T. Act,1961 dated 30.03.2023 of Ld. CIT(Appeals), NFAC, Delhi.	Sd/- ITO, Wd-4(3), Kol.
24.07.2023	As per direction of Ld. CIT(A), NFAC, Delhi, a letter dated 24.07.2023 was issued to furnish relevant documents to give effect to the above order on or before 29.07.2023.	Sd/- ITO, Wd-4(3), Kol.
28.07.2023	In response to the above, the Assessee Co. submitted the requisite documents vide letter dated 28.07.2023, which is seen and placed on records.	Sd/- ITO, Wd-4(3), Kol.
04.09.2023	Assessee Co. had submitted further some documents which is seen and placed on records.	Sd/- ITO, Wd-4(3), Kol.
14.09.2023	In response to letter issued on 13.09.2023, Assessee Company submitted letter dated 14.09.2023 which is placed on records.	Sd/- ITO, Wd-4(3), Kol.
26.09.2023	Notice u/s. 133(6) of the I. T. Act were issued to the investment companies.	Sd/- ITO, Wd-4(3), Kol.
09.10.2023	In response to Notice u/s. 133(6), P.A. Bricks Pvt. Ltd. Submitted letter dt. 27.09.2023 and kept in on records.	Sd/- ITO, Wd-4(3), Kol.
10.10.2023	In response to Notice u/s. 133(6), Rajrath Merchants Pvt. Ltd. Submitted letter dated 29.09.2023.	Sd/- ITO, Wd-4(3), Kol.
12.10.2023	In response to notice u/s. 133(6), Noral Commodities Pvt. Ltd. (NCPL) submitted letter dated 30.09.2023	Sd/- ITO, Wd-4(3), Kol.
	In response to the notice u/s. 133(6), Coraslands submitted letter dated 17.10.2023.	Sd/- ITO, Wd-4(3), Kol.
18.10.2023	Summon u/s. 131(1) of the I. T. Act was issued for appearance on 20.10.2023.	Sd/- ITO, Wd-4(3), Kol.
20.10.2023	The Director of the Assessee Company Mr. Ajoy Kumar Mohta appeared and given statement on oath and made requisite submission.	Sd/- ITO, Wd-4(3), Kol.
.. 01.2024	Order u/s.251/143(3) of the I.T. Act is passed and issued to the assessee.	Sd/- ITO, Wd-4(3), Kol.

4.4. The Ld. Counsel has demonstrated from the aforesaid date wise orders of the Ld. AO that the assessment record was very much available with the AO and further the AO proceeded to give effect to the appeal order of the Ld. CIT(A), without any contemplation to file any appeal against the said impugned order of the Ld. CIT(A). He had issued a notice on 24.07.2023 requiring the assessee to furnish relevant documents in compliance of the order of the Ld. CIT(A). On 28.07.2023, the assessee filed reply and requisite documents with the AO. On 04.09.2023, some further documents were also furnished by the assessee before the AO. On 14.09.2023, the assessee

furnished reply to the letter dated 13.09.2023 of the AO. On 26.09.2023, the AO issued notices u/s. 133(6) of the Act to the investor companies. From 09.10.2023 to 12.10.2023, the response/reply from the concerned parties were received. Thereafter, on 18.10.2023, summons u/s. 131 of the Act were issued for appearance/examination of the Director of the assessee company. On 20.10.2023, Director of the assessee company appeared and gave statement on oath and made requisite submissions. On 10.01.2024, the AO after duly examining all the records and documents furnished by the assessee and investor companies and considering the statement of the Director of the assessee company recorded u/s. 131 of the Act, held the transaction to be genuine and did not make any addition.

5. The aforesaid sequence of dates of event clearly reveals that the AO after receipt of the copy of the order of the Ld. CIT(A), proceeded to examine and verify the transactions as directed by the Ld. CIT(A) and ultimately decided the issue in favour of the assessee. Therefore, the explanation given by the AO that the record was not available with him and further date wise explanation given in his affidavit for delay in filing the appeal is factually wrong and false. The facts on the file show that an incorrect affidavit has been given by the concerned ITO, Ward-4(3), Kolkata viz., Mr. Biswajit Biswas. Though, we restrain ourselves to recommend disciplinary action against the said Income Tax Officer, however, we are not inclined to accept the application/reasons given by the Income Tax Officer for condonation of delay. The Income Tax Officer, being a Government Officer, should have avoided to give an incorrect affidavit before this Tribunal.

6. The appeal of the revenue is liable to be dismissed on this score alone. However, we are also surprised as to why the revenue is aggrieved by the impugned order of the Ld. CIT(A). The concluding part of the order of the Ld. CIT(A) is reproduced as under:

“Facts on record and appellant’s submission have been examined. The AO has held that the EPS of the appellant-company is near zero, has no track record of business

nor any asset base. However, the appellant has submitted that it had assets exceeding Rs. 3 crores as on 31.03.2012. However, the appellant has not said anything about its business and its turnover. The AO has held the share premium to be extraordinarily high but had not examined the valuation report. The AO has further held that investor companies received huge premium just before investing the same in appellant company. However, he has not brought on record identity and creditworthiness of the investor-companies. The appellant is, therefore, directed to submit before the AO identity and creditworthiness of investor companies including net worth certificate and the AO is directed to examine identity and creditworthiness of the investor companies and valuation report of the shares of the appellant company and shall allow the transactions of share capital and premium as genuine if identity and creditworthiness are established and share valuation is found to be done as per the established valuation norms.”

7. On perusal of the above reproduced directions of the Ld. CIT(A) would reveal that the Ld. CIT(A) has not decided the issue on merits in favour of the assessee, rather, the Ld. CIT(A) has observed that certain observations made by the AO in the assessment order were not coming out of record, therefore, he directed the AO to verify the identity and creditworthiness of the investor companies and genuineness of the transaction. The Ld. CIT(A) also directed the assessee to submit the necessary documents etc. before the AO, and if the assessee will be able to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction then, the AO shall allow such transactions as genuine. A perusal of the above order of the Ld. CIT(A) would reveal that the Ld. CIT(A) has only directed to re-examine the issue after considering the documents furnished by the assessee as the contention of the assessee was that the AO has not properly examined the details and documents furnished by the assessee. This is a fair direction given by the Ld. CIT(A). Why the revenue is aggrieved from the aforesaid direction given by the Ld. CIT(A) is not understandable. The only plea taken by the Revenue through its ground of appeal is that the Ld. CIT(A) has not been provided with such powers to restore the matter to the AO. It has been pleaded by the Ld. DR that the Ld. CIT(A) could have called upon remand report from the AO, thereafter, he himself should have passed the order, instead of restoring the matter fully to the file of the AO.

8. At this stage, the Ld. Counsel for the assessee has invited our attention to relevant provisions of the Act and has made the following submissions by referring to the relevant provisions:

“In this regard we would like to refer to the provision of section 153(5) of the Act along with provision of section 250(4) of the Act and the same are reproduced as under:

Section 250(4) of the Act provides for power to the CIT(A) to give direction to the Assessing Officer. The section reads as under:

“(4) The Joint Commissioner (Appeals) or the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Joint Commissioner (Appeals) or the Commissioner (Appeals).”

The powers of CIT(A) under section 250(4) are discretionary power and not the mandatory power. The section reads that the CIT(A) “may” before disposing off appeal which means he can either before disposing of appeal or dispose of appeal directing the assessing officer to make further inquiry.

Further, the provision of section 153(5) of the Act reads as under:

“(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer or the Transfer Pricing Officer, as the case may be, wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order under section 92CA, as the case may be, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be:

Provided that where it is not possible for the Assessing Officer or the Transfer Pricing Officer, as the case may be, to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer or the Transfer Pricing Officer, as the case may be, if satisfied, may allow an additional period of six months to give effect to the order:

Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in subsection (3).

A clear reading of provision of section 153(5) of the Act provides that where effect to an order under section 250 is to be given by the Assessing Officer otherwise than by making a fresh assessment or reassessment such effect shall be given within a period of three months from the end of the month in which order under section 250 is received. Further second proviso provides that where an order under section 250 requires verification of any issue by way of submission of any document by the assessee or

any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 shall be made within the time specified u/s 250(3).

Section 250(3) provides for time of 12 months and so the appeal effect order was to be given within 12 months from the date of receipt of order.

Further, a clear reading of second proviso to section 153(5) provides that the CIT(A) has power to pass such order giving directions where the issue requires verification of by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee and the assessing officer are required to give appeal effect accordingly."

9. The Ld. Counsel referring to the aforesaid submissions has contended that it has been clearly provided under the relevant provisions of the Act that the Ld. CIT(A) may direct the AO to make further inquiry and verification in respect of an issue in appeal before him and further that even as per second proviso to sec. 153(5) of the Act, where, the Ld. CIT(A) directs the AO to verify an issue by way of submission of documents by the assessee or, where, an opportunity of being heard is to be provided to the assessee, a time period of 12 months has been given to the AO to comply the directions. Whereas in other cases, where such verification is not required, the time period to give effect to the appeal order is 3 months only. We agree with the submissions of the Ld. Counsel to the effect that the Ld. CIT(A) enjoins the powers in requiring the AO to make further enquiries and verifications by calling upon documents from the assessee and by giving an opportunity of being heard to the assessee. As discussed above, in compliance of the order of the Ld. CIT(A), the AO has already made due enquiries and verifications to his satisfaction and found the transaction in question as genuine. Even if, the plea of the revenue is considered that the Ld. CIT(A) should have passed the final order himself, after calling upon the remand report from the AO, even then, that part of the order of the Ld. CIT(A) directing the AO to make necessary enquiries and verifications regarding the identity and creditworthiness of the share subscribers and genuineness of the transaction is legally correct. The AO in compliance of the said directions has already made necessary enquiries and verifications and found the transaction as genuine. If the said conclusion arrived at by the AO, is to be assumed as a

remand report of the AO, even then, in that circumstance, no useful purpose will be served at this stage to remand back the matter to the file of the Ld. CIT(A) solely for the limited purpose that the Ld. CIT(A) should pass the order on the basis of such findings and verifications made by the AO. It will be just a mere procedural formality resulting into wastage of time without any fruitful results. Even otherwise, after perusal of the aforesaid relevant provisions of the Income Tax Act read with concluding part of the order of the Ld. CIT(A), we do not find any infirmity in the order of the Ld. CIT(A). The same is accordingly, upheld. There is no merit in the appeal of the revenue and the same is accordingly, dismissed.

10. In the result, the appeal of the revenue stands dismissed.

Order is pronounced in the open court on 25.11.2024.

Sd/-

[Rakesh Mishra]
लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 25.11.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – ITO, Ward-4(3), Kolkata**
2. **Respondent – Alert Consultants & Credit Pvt. Ltd.**
3. **CIT(A), NFAC, Delhi**
4. **Pr. CIT**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar, ITAT, Kolkata